



PA 23-122—HB 6731

Public Health Committee

Human Services Committee

**AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S
RECOMMENDATIONS REGARDING CHANGE IN OWNERSHIP OF
HEALTH CARE FACILITIES**

SUMMARY: This act generally expands the circumstances under which licensed health care facility or institution (“facility”) ownership changes need prior approval from the Department of Public Health (DPH). It does so by eliminating exemptions in prior law for (1) changes in ownership or beneficial ownership of under 10% of the stock of a corporation that owns or operates the facility or (2) certain transfers to relatives. As under prior law, these provisions apply to all DPH-licensed institutions (e.g., hospitals, behavioral health facilities, and nursing homes).

The act requires proposed new owners to submit several documents and other information to DPH as part of its review of the transfer. It allows DPH to inspect facilities before approving an ownership change; prior law required an inspection.

The act establishes the criteria that the commissioner must consider when evaluating an application and sets conditions under which she may deny it (for example, if other facilities the person owned or operated were subject to specified adverse actions). It prohibits someone from applying to acquire ownership in a facility if DPH denied a prior application by the person’s relative.

The act allows the commissioner to waive specified requirements for certain applicants. It also creates an exemption from prior approval requirements for certain transfers involving outpatient surgical facilities or nonprofit hospitals.

The act makes related changes by lowering the ownership threshold, from 10% to 5%, for certain notification requirements about nursing home licensing and transfers of ownership.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2023

**§ 1 — APPROVAL PROCESS FOR HEALTH CARE FACILITY OWNERSHIP
CHANGES**

Scope of Requirement

The act generally subjects all transfers of ownership or beneficial ownership of DPH-licensed health care facilities to prior approval by the department. This includes direct ownership changes or changes in the ownership of the business entity that owns, operates, or maintains the facility.

The act does so by eliminating two exemptions from prior law. First, it eliminates the exemption for changes in ownership or beneficial ownership of under

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10% of the stock of a corporation that owns, operates, or maintains the facility.

Second, it eliminates the exemption for certain transfers to relatives, including relatives by marriage (specifically parents, spouses, children, siblings, aunts, uncles, nieces, or nephews). Prior law exempted these transfers unless they involved (1) at least 10% of the ownership or beneficial ownership of the entity that owns, operates, or maintains more than one facility; (2) multiple facilities; or (3) a facility that was the subject of a pending complaint, investigation, or licensure action. The act specifies that changes in ownership or beneficial ownership resulting in transfers to relatives of the owners or beneficial owners are subject to prior approval.

As under prior law, the following are not considered to be ownership changes and do not require DPH approval: (1) a change in a licensee's legal form of ownership (e.g., a corporation becoming a limited liability company) that does not change the beneficial ownership or (2) a public stock offering meeting certain requirements (e.g., it cannot result in someone owning 10% or more of the stock).

Additionally, the act provides that, under certain conditions, the change in ownership of, or to, a 501(c)(3) nonprofit business entity licensed as a hospital is not an ownership change requiring approval. This applies if the ownership transfer is exempt from review under the law on nonprofit hospital transfers to for-profit entities. As with the other exemptions above, the owner must give DPH information about the change, as the department requires, to properly identify the current ownership status.

The act also exempts from prior approval requirements transfers of ownership or beneficial ownership of 10% or less of an outpatient surgical facility to a physician, as long as the facility gives DPH information (in a manner the commissioner sets) to update the facility's licensing information.

Application Process

Prior law required at least 120 days' prior notice to DPH before a proposed facility ownership change, but it did not specify the application process.

The act requires the proposed new owner (or current owner, for changes in beneficial ownership) to apply within this same timeframe, in a way the commissioner sets. The application must include the following materials and information:

1. a cover letter identifying the facility by name, address, county, and number and type of licensed beds;
2. a description of the proposed transaction;
3. the names of each current owner and proposed new owner or beneficial owner;
4. the names of each owner of any non-publicly traded parent corporation of each proposed new owner and beneficial owner;
5. if applicable, organizational charts for the (a) current owner (showing the change in beneficial ownership) and (b) proposed new owner, its parent business entity, and its wholly owned subsidiaries;
6. a copy of the sale agreement or other transfer of ownership document and

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- any lease or management agreements;
- 7. disclosures of whether each proposed new owner was ever convicted or pled guilty to fraud, patient or resident abuse or neglect, or a crime of violence or moral turpitude; and
- 8. various disclosures for certain other facilities (see below).

Other Facilities. Under the act, the application also must include the name and address of any U.S.-based (including territories) licensed health care facility each proposed new owner or beneficial owner owned, operated, or managed during the prior five years. The act requires several disclosures related to these facilities.

The application must disclose any direct or indirect interest arising from the person's ownership, operation, or management of these facilities. This includes interests in intermediate entities; parent, management, and property companies; and other related entities.

The application must disclose whether each facility is the subject of a pending complaint, investigation, or licensure action by a government authority. Additionally, it must disclose whether each facility has been subject to the following:

1. three or more civil penalties imposed through DPH final orders or civil penalties in other states during the prior two years;
2. Medicare or Medicaid sanctions in any state, other than civil penalties of \$20,000 or less;
3. termination or nonrenewal of a Medicare or Medicaid provider agreement;
4. any violations of any state licensing or federal certification standard on inappropriate admission denials or discharges; and
5. any state licensure or federal certification deficiency, during the prior five years, that presented a serious risk to the life, safety, or quality of care of the facility's patients or residents.

Under the act, these serious risks include any deficiency in state licensure or federal certification requirements, including requirements in specified federal regulations, that led to:

1. a state or federal agency action to ban, curtail, or temporarily suspend facility admissions or suspend or revoke its license;
2. a Medicare or Medicaid decertification, termination, or exclusion from participation, including denying payment for new admissions solely due to the provider's failure to correct deficiencies or non-compliance with regulatory requirements, imposed by DPH or the federal Centers for Medicare and Medicaid Services (CMS), due to noncompliance with Medicare or Medicaid conditions of participation;
3. a citation of any deficiency that constitutes a pattern or widespread scope of actual harm or immediate jeopardy, or any deficiency causing widespread actual harm, as described in specified CMS regulations (for these purposes, "immediate jeopardy" is a situation where noncompliance with certain CMS requirements caused, or is likely to cause, a resident's or patient's serious injury, harm, impairment, or death);
4. a determination that the facility, on a second revisit, failed to correct cited deficiencies from a prior survey that led to CMS denying payment for new

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- admissions or DPH requiring the facility to curtail admissions; or
5. a determination that the provider is a “poor performer” as defined by CMS based on a finding of substandard quality of care or immediate jeopardy on the current survey and on a survey in either of the two prior years.

Under the act, “substandard quality of care” is the failure to meet specified CMS requirements that constitute either (1) immediate jeopardy to resident health or safety; (2) a pattern of or widespread actual harm that is not immediate jeopardy; or (3) a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm. Generally, these requirements concern long-term care facility (1) admission, transfer, and discharge rights and (2) quality of care in numerous areas (e.g., respiratory care and pain management) (42 C.F.R. §§ 483.15 & 483.25).

Inspection and Compliance With Regulatory Requirements

The act allows DPH, after receiving an application for an ownership change, to inspect the facility to ensure its compliance with applicable laws and regulations. Prior law required an inspection.

As under existing law, the act conditions DPH’s approval on the facility showing that it has complied with all applicable requirements of the health care institution statutes, licensure regulations, and other applicable regulations. The act also specifies that approval is conditioned upon the proposed new owner or beneficial owner meeting the act’s requirements as to character and competence, quality of care, and an acceptable history of regulatory compliance (see below).

Permissible Waiver

The act allows DPH to waive certain requirements.

For ownership or beneficial ownership changes resulting in a transfer to a person related by blood or marriage to an owner or beneficial owner, the commissioner may waive the requirement to submit specified information on other health care facilities they owned or operated during the past five years (see above).

For ownership or beneficial ownership changes of 5% or less of the ownership of a business entity that is a licensed institution, she may waive the (1) submission of some or all of the information required under the act or (2) determination as to the owner’s character, competence, and history of regulatory compliance (see below).

Under the act, the commissioner must develop a waiver application process and the criteria for evaluating waiver requests. When developing the process and criteria, she must consult with long-term care industry representatives.

Grounds to Deny or Stay an Application

The act requires the commissioner, when evaluating an application, to consider whether each proposed new owner and beneficial owner demonstrates character and competence and quality of care. She must also consider whether any licensed

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facilities they owned, operated, or managed (in the U.S. and its territories) has an acceptable history of compliance in the past five years with (1) state licensure and regulatory requirements and (2) federal requirements.

Under the act, the commissioner may deny an application if these qualities are not demonstrated, as shown by the following:

1. the facility was subject to any adverse action required to be listed in the application (e.g., termination of a Medicare or Medicaid provider agreement or certain licensing or certification deficiencies);
2. the facility had continuing violations, or a pattern of them, of state licensure or federal certification standards; or
3. the applicant's criminal conviction or guilty plea to any crime required to be listed on the application (e.g., patient abuse or neglect).

The act also allows the commissioner to temporarily stay the department's decision on an application if she determines that there are certain pending investigations of the applicant's actions at any facility it operates or manages. This applies when the investigation, if substantiated, would constitute a threat to a patient's or resident's life, safety, or quality of care. She may delay the decision until there is a final determination of the investigation.

Additionally, if the commissioner denies an application, the act prohibits the applicant's relatives from applying to acquire an ownership interest in the facility.

§§ 2 & 3 — NURSING HOME OWNERSHIP INTERESTS

The act requires applicants for a nursing home license to give DPH the names of anyone with a 5% or greater ownership interest in the owner, rather than 10% or greater as under prior law. Under existing law, people listed on the application must sign an affidavit disclosing certain information (e.g., felony convictions or civil judgments for fraud or health care business-related licensure suspension or revocation).

The act makes a related change to the application for a nursing home ownership change. Existing law requires DPH to include on the application a statement notifying the potential nursing home licensee and owner that they (and certain other individuals) may be held civilly or criminally liable, or subject to administrative sanctions, for abuse or neglect of a resident by a nursing home employee. In addition to certain other listed positions, prior law applied this notice provision to anyone having at least a 10% ownership interest in the nursing home or entity that owns it. The act lowers this threshold to 5%.