

## Subtitle 24 MARYLAND HEALTH CARE COMMISSION

### Chapter 01 Procedural Regulations for Health Care Facilities and Services

Authority: Health-General Article, §§19-109(a)(1) and (8), 19-116(b), 19-118(d), 19-120, 19-120.1, 19-120.2, and 19-126, et seq., Annotated Code of Maryland

#### .01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1)—(16) (text unchanged)

(17) “Comprehensive care facility” means a nursing home as defined at §19-1401, Health-General Article, Annotated Code of Maryland.

[(17)—(43)] (18)—(44) (text unchanged)

[(44)] (45) “Merged asset system” means an organization comprised of [one] two or more regulated health care facilities under common ownership or control.

[(45)—(46)] (46)—(47) (text unchanged)

(48) “Nursing home” has the meaning stated at §19-1401, Health-General Article, Annotated Code of Maryland.

[(47)—(63)] (49)—(65) (text unchanged)

#### .03 Non-Coverage by Certificate of Need or Other Commission Approval.

A. Acquisition of an Existing Health Care Facility.

(1) At least 30 days before closing on a contract to acquire a health care facility, the person acquiring the facility shall notify the Commission in writing, with a copy to the local health officer in each affected jurisdiction and the appropriate State licensing agency, of the intent to acquire the facility, and include the following information:

(a)—(b) (text unchanged)

(c) Complete organizational charts that describe the ownership of the health care facility prior to and after the proposed acquisition; [and]

(d) A description of any unsatisfied conditions imposed by the Commission on the facility and an affirmation that the person acquiring the facility will abide by any conditions still in effect; and

[(d)] (e) (text unchanged)

(2) Deemed Approval.

(a) Except for acquisitions of a [comprehensive care facility established under §1 of this regulation] nursing home, CON review is not required if Commission staff does not issue either a determination of coverage or notice that timely or complete notice was not received within 60 days of receipt of a notice from the person acquiring the health care facility.

(b) (text unchanged)

(3)—(4) (text unchanged)

(5) Conditions imposed by the Commission on a health care facility survive an acquisition of the facility.

B. Acquisition of a [Comprehensive Care Facility] Nursing Home, Home Health Agency, or Hospice.

(1) In addition to providing the information required in §A of this regulation, a person seeking to acquire a nursing home shall obtain approval for the acquisition in accordance with Regulation .21 of this chapter.

[(1)] (2) In addition to providing the information required in §A of this regulation, a person seeking to acquire a [comprehensive care facility,] home health agency[,] or hospice shall:

(a)—(d) (text unchanged)

[(2)] (3) Disqualification for Acquisition. A [comprehensive care facility] nursing home, home health agency, or hospice may not be acquired by an entity if an owner or member of senior management or an owner or member of senior management of a related or affiliated entity of the acquiring entity has been convicted of a felony or crime or pleaded guilty, nolo contendere, entered a best interest plea of guilty, or received a diversionary disposition regarding a felony or crime within the last 10 years, unless:

(a)—(c) (text unchanged)

[(3)] (4) (text unchanged)

C. (text unchanged)

D. Temporary Delicensure or Suspension of Bed Capacity, Health Care Facility, or CON-Approved Service.

(1) (text unchanged)

(2) Temporary Delicensure of Nursing Home Bed Capacity after an Acquisition.

(a) A temporary delicensure of licensed bed capacity or a licensed and operating nursing home following an acquisition does not require CON review, and the Commission will retain the bed capacity or the nursing home on its inventory for up to three years immediately following the acquisition, if the person who acquired the nursing home:

(i) Provides written notice to the Commission at least 30 days before the proposed temporary delicensure;

(ii) Demonstrates the temporary delicensure is needed to reduce the number of resident rooms that contain more than two beds;

(iii) States the intention either to bring the bed capacity back onto the facility's license or relicense the health care facility at the end of the three-year period, or to notify the Commission that it intends to take another of the actions permitted under §D of this regulation; and

(iv) Has received authorization from the Executive Director for the temporary delicensure.

(b) The Executive Director may extend the period of a temporary delicensure under §D of this regulation beyond three years for good cause including:

(i) Demonstrated progress toward eliminating multi-bedded rooms by expanding the existing facility;

(ii) A pending or approved application for a CON or exemption from CON review to relocate the beds to another existing or new facility;

(iii) Evidence of physical or legal constraints; or

(iv) Evidence of good faith negotiations to sell the beds.

[(2)—(9)] (3)—(10) (text unchanged)

E.—K. (text unchanged)

#### **.12 Holder Responsibilities and Penalties for Noncompliance[ ].**

A.—D. (text unchanged)

E. Enforcement. The Commission may impose financial penalties, withdraw a CON or other Commission approval, or both, if it finds that:

(1) The [holder] person who obtained Commission approval made a material misrepresentation upon which the Commission relied in approving the application or issuing first use approval;

(2)—(3) (text unchanged)

(4) The [holder] person who obtained Commission approval failed to meet a condition on the approval;

(5)—(7) (text unchanged)

F.—H. (text unchanged)

I. CON Application after Withdrawal of a Prior CON. If a CON or other approval is withdrawn due to lack of sufficient progress in implementing the project, the holder may file an application seeking Commission approval to initiate or complete the previously authorized project, which shall be considered a new application by the [Commission] Commission.

#### **.21 Acquisitions of Nursing Homes.**

A. Notice of Transfers of Ownership.

(1) A person shall provide notice to the Commission at least 30 days before the change of ownership of a nursing home, including changes in ownership of real property and improvements, bed rights, or operatorship, that:

(a) Involves at least a 5 percent transfer in ownership interest; and

(b) Is not an acquisition that requires approval under §B of this regulation.

(2) The notice required by §A(1) of this regulation shall be in a form required by the Commission and include:

(a) A description of the change in ownership interest;

(b) Complete organizational charts for all persons holding at least a 5 percent ownership interest in the nursing home prior to and following the proposed transfer;

(c) An attestation that the change does not require approval under §B of this regulation; and

(d) Any other information requested by the Commission.

B. Request for Acquisition Approval.

(1) Applicability.

(a) This section does not apply to an acquisition that:

(i) ~~involves~~ Involves only changes of ownership interests among existing owners of a nursing home; or

(ii) The Commission has exempted from these requirements in accordance with COMAR 10.24.20.06A(2).

(b) This section applies to:

(i) Transfers of stock or assets of the owner of the real property and improvements, bed rights, or operation of the nursing home, or any combination thereof;

(ii) An affiliation agreement between non-profit entities that changes the person who controls a nursing home's operation or assets; and

(iii) A lease agreement that changes the person who controls a nursing home's operation or assets.

(2) At least 60 days before closing on an acquisition of a nursing home, a person shall:

(a) Submit to the Commission a request for acquisition approval in a form prescribed by the Commission; and

(b) Provide notice, in the form prescribed by the Commission, to the residents, resident representatives, and employees of the nursing home that:

(i) The request for acquisition approval was submitted to the Commission; and

(ii) They have the right to submit comments.

(3) Notice by the Commission to the Public, and Other State Agencies. Within 5 days after it receives a complete request for acquisition approval, the Commission shall:

**Commented [AB1]:** HFAM recommended language that was a broader (unless otherwise exempt under the Commissions' statute or regulations).

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(a) Submit notice of its receipt and the deadline for residents, resident representatives and employees of the nursing home to submit comments on the proposed acquisition:

- (i) To at least one newspaper of general circulation in the affected area;
- (ii) To be published in the next available issue of the Maryland Register; and
- (iii) On the Commission's website; and

(b) Provide notice of the request to:

- (i) The Secretary or the Secretary's designee;
- (ii) The Office of the Attorney General;
- (iii) The Secretary of Aging; and
- (iv) The State Long-Term Care Ombudsman Program.

**C. Executive Director Action.**

(1) The Executive Director shall review a request for acquisition approval within 45 days after receiving the completed request from the applicant.

(2) The Executive Director, in consultation with the Secretary or the Secretary's designee, may:

- (a) Approve the acquisition;
- (b) Approve the acquisition with conditions;
- (c) Deny the acquisition; or
- (d) Refer the request for acquisition approval to the Commission for a final decision.

(3) To approve a request for acquisition approval, the Executive Director must find that the acquisition:

- (a) Is consistent with COMAR 10.24.20, the State Health Plan chapter for Comprehensive Care Facility (Nursing Home) Services; and
- (b) Is in the public interest.

(4) In determining whether an acquisition of a nursing home is in the public interest, the Executive Director shall:

- (a) Consider comments from individuals who:
  - (i) Reside in the nursing home;
  - (ii) Have family members who reside in the nursing home; or
  - (iii) Are employed as employees of the nursing home; and
- (b) Consult with the Attorney General on whether the acquisition raises public interest concerns.

**D. Commission Action.** If the Executive Director refers a request for acquisition approval to the Commission under §C(2)(d) of this regulation, the Commission shall use the criteria specified in §C(3) and (4) of this regulation to make a final decision within 60 days after receiving the completed request from the applicant.

**E.** The Commission shall promptly send a copy of the decision of the Executive Director or Commission on a request for acquisition approval to the Secretary, the Secretary of Aging, the Office of Health Care Quality, the Office of the Attorney General, and the State Long-Term Care Ombudsman.

**F. Appeal.**

(1) **Commission Review of Executive Director Decision.**

(a) A person who is a party to the acquisition may seek Commission review of an Executive Director's decision denying the request or imposing a condition on approval.

(b) A request for review of an Executive Director's decision:

- (i) Shall be filed within 15 days after the issuance of a decision;
- (ii) Shall specifically identify each finding and conclusion to which review is requested; and
- (iii) May include a request for oral argument.

(c) The Commission shall review the Executive Director's decision within 45 days of the request for review.

(2) **Judicial Review.**

(a) A decision of the Commission under §D or §F(1) of this regulation shall be a final decision for the purpose of judicial review.

(b) A person that is a party to the acquisition may take a direct judicial appeal within 30 days after the Commission makes the final decision.

**G. Annual Reports.**

(1) On or before July 1 immediately following the acquisition of a nursing home and each year for 3 years thereafter, the person that acquired the nursing home shall submit a report to the Commission in accordance with COMAR 10.24.20.

(2) The Commission shall provide a copy of the report required under §G(1) of this regulation to the Secretary, the Secretary of Aging, the Office of Health Care Quality, the Office of the Attorney General, and the State Long-Term Care Ombudsman.

**[.21] .22 Severability.**

**[.22] .23 Effective Date.**