

THOUGHT LEADERSHIP

LEGAL UPDATES

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Industry

Healthcare

Professionals

CRYSTAL M. BLOOM

BOSTON:

617.598.6783

CRYSTAL.BLOOM@

HUSCHBLACKWELL.COM

REBECCA RODMAN

BOSTON:

617.279.8990

REBECCA.RODMAN@

HUSCHBLACKWELL.COM

Effective Date for Massachusetts' Long-Term Care Reform Law Nears

On September 6, 2024, Massachusetts Governor Maura Healy signed “An Act to Improve Quality and Oversight of Long-term Care” into law. This law includes sweeping changes for both long-term care and assisted living facilities. Importantly, the law includes provisions that will support the long-term care workforce, protect the rights and well-being of LGBTQ+ residents of long-term care facilities, and expand state oversight to ensure safe, high-quality care in assisted living and long-term care facilities. However, the new law also creates additional reporting and oversight requirements for long-term care facilities that will create an increased operational and administrative burden for long-term care facility licensees and applicants for licensure.

We can expect the Massachusetts Department of Public Health (DPH) to update its long-term care facility regulations to operationalize these changes. These updates may mitigate some of the burdens but will also necessarily include increased requirements that will affect operators of long-term care facilities.

Below is a summary of the main changes that licensees and those interested in acquiring a long-term care facility should keep in mind.

New requirements related to notices of intent to acquire a long-term care facility

Timing

Currently, DPH must complete its suitability review for a new licensee within 90 days after the applicant submits a Notice of Intent to Acquire a long-term care facility. The department allows itself one 30-day extension, but if the department does not issue a determination of suitability within that

timeframe, the applicant is deemed suitable and may move its licensure application forward.

The new law permits DPH to extend that 90-day period at will, with no outside limit to the time the department may take. It remains to be seen how the department operationalizes this timeframe, but this has potential to slow down transactions since a transfer of ownership cannot be completed until the applicant is deemed suitable by the department.

Notice requirements

At the same time an applicant submits a Notice of Intent to Acquire, the applicant must also provide notice to the current staff of the facility and any labor organization that represents the facility's staff of the applicant's plans to retain or not retain the facility staff and to recognize and bargain with any labor organizations currently representing the facility staff.

To comply with this requirement, a potential acquirer will need to work with the current owner to identify all staff and labor unions prior to filing the Notice of Intent to Acquire. If the notice is not provided, the department may deem the application incomplete and require the applicant to start over, further delaying the transaction.

Parties of interest to the department

The department's suitability review is expanded by the amended statute. The suitability review now includes a review of the applicant, all owners with at least a five percent share, and any management companies that will be used by the applicant to manage operations at the long-term care facility.

In making a suitability determination, DPH must review the following:

1. The criminal history and, to the extent possible, civil litigation history of all owners and contracted management companies. The civil litigation review includes but is not limited to litigation related to the operation of a long-term care facility, such as quality of care, safety of residents or staff, employment and labor issues, fraud, unfair or deceptive business practices, and landlord-tenant issues, whether complete or pending.

The statute does have privacy protections for this requirement. Any information obtained by the department for its suitability review that is related to criminal or civil litigation will be kept confidential and exempt from disclosure under the public records law.

2. The financial capacity of all owners and any management companies to establish or operate a long-term care facility. This review shall include a review of any recorded liens or unpaid fees or taxes in Massachusetts or other states.

3. The history of all owners and management companies in providing long-term care in the commonwealth and other states, if any. The department will consider quality measures, compliance with statutes and regulations related to long-term care facilities, and CMS Quality Rating Systems. This review includes, if applicable, the involvement of any private equity firms.

Additional requirements of note

Notices related to changes in information, particularly changes to financial status

Every applicant for licensure and current licensee must maintain records of all information provided to the department and must notify the department in writing as soon as practicable of any change to that information. Most particularly, an applicant or licensee must notify the department of any change in financial status, including bankruptcy filing, default under a lending agreement or lease, the appointment of a receiver, or the recording of any lien. Failure to provide timely notice will subject the applicant or licensee to sanctions, including monetary or licensure sanctions.

The statute does not indicate what is considered “timely notice.” It is to be hoped that the department will specify a timeframe in its amendments to 105 CMR 153.000. Otherwise, applicants and licensees will be vulnerable to an unclear, possibly inconsistent standard. Further, unlike the protections provided for criminal and civil litigation matters, this section of the statute does not have any confidentiality protections.

Department review of management contracts

Prior to entering a contract with a management company, an applicant or licensee must receive approval from the department that the management company is responsible and suitable to manage a long-term care facility. Applicants and licensees must provide the department with the same information that is required for a suitability review of an applicant.

After department approval an applicant or licensee may enter a contract with the management company and must include a written agreement that requires the company to comply with all applicable federal, state, and local laws, regulations and rules. That written agreement must be provided to the department. Any payment terms in the agreement do have confidentiality protections and are exempt from the public records law.

Provisional licenses

For the first time, the statute gives DPH the right to issue a provisional license to a long-term care facility. A provision license may be issued for up to one year and can be issued at the discretion of the department for public necessity or to prevent undue hardship to an applicant or licensee.

Depending on how DPH implements this change, this could help new facilities, or those that are making changes to their operations, as DPH may be willing to issue a provisional license to allow a facility to operate when it cannot yet comply with all licensure requirements.

What this means to you

These changes are effective December 5, 2024. We anticipate that the department will update its regulations to reflect these changes, which will provide further information as to how these changes will affect the operations of long-term care facilities. We will update this article to reflect those regulations, and any guidance issued by the department.

Contact us

If you have questions regarding Massachusetts' new long-term care law or other compliance-related concerns, please contact Rebecca Rodman, Crystal Bloom, or your Husch Blackwell attorney.