

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1187 (Delegate McDonough, *et al.*)  
Health and Government Operations

Finance

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Persons Who Operate Nursing Homes - Licensure

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This bill • requires specified information to be included in applications for licensure as a nursing home; • authorizes the Secretary of Health and Mental Hygiene, on review of specified information, to approve, deny, or approve subject to conditions, applications for licensure as a nursing home; • requires nursing homes to submit specified changes in financial condition; • and requires the Secretary to convene a workgroup regarding licensure regulations.

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Fiscal Summary

**State Effect:** Any additional staff time required by the Office of Health Care Quality to review expanded license applications could be handled with existing budgeted resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Licensure of Nursing Homes:* An applicant for initial licensure as a nursing home must submit evidence (1) that affirmatively demonstrates the ability of the applicant to comply with minimal standards of medical care, nursing care, financial conditions, and other applicable laws and regulations; and (2) regarding the regulatory compliance history and

financial condition of any health care facility owned or operated by the applicant in other jurisdictions.

An applicant for initial or relicensure as a nursing home must include in the application the identity of any person with an ownership interest in the nursing home and any management company, landlord, or other business entity that will operate or contract with the applicant to manage the nursing home.

On review of this information and any other information that is relevant to the ability of the applicant to operate a nursing home, the Secretary may approve, deny, or approve subject to conditions an application for a license or license renewal.

*Financial Condition Reporting:* Nursing homes must report any significant changes in the home's financial condition or any other circumstance that could adversely affect the nursing home's delivery of essential services to residents of the nursing home. Any information obtained under these provisions is confidential and may not be disclosed without the licensee's consent.

Financial condition reporting requirements do not apply to the holder of a license that has been suspended or revoked or to the use of information in an administrative proceeding initiated by DHMH or a judicial proceeding.

*Workgroup:* The Secretary of Health and Mental Hygiene must convene a workgroup to make recommendations regarding regulations on • the specific information to be required during the licensure and relicensure process for nursing homes; • the significant changes in financial condition to be reported to the Secretary under the bill; and • any other issues related to licensure of nursing homes. By December 1, 2008, the Secretary must review the recommendations of the workgroup and publish regulations to implement the bill.

**Current Law:** The Secretary has authority to establish regulations and standards for the licensure of related institutions, including comprehensive care facilities and extended care facilities (nursing homes). Basic licensing provisions are set out in regulation under Title 10, Subtitle 7, Chapter 2 of COMAR.

Under these regulations, a license is required to operate a nursing home. A license may be obtained by filing an application with the Secretary and paying a nonrefundable license fee of between \$3,000 and \$7,000 based on the number of beds. Licenses are valid for two years and may be renewed. Applications on behalf of a corporation, association, or government unit or agency must be made by two officers and include • the names of all board members; • the names of persons holding 2% or more of the stock or assets; and • disclosure of ownership of property, real estate, and equipment.

The Secretary may require applicants to submit information concerning the applicant's

- past or current operation of a nursing home within or outside the State; and
- financial and administrative ability to maintain a nursing home in compliance with regulations.

Liability insurance is not required under current law or regulation, although it is routinely maintained by nursing homes as a business practice.

**Background:** In recent years, private investment firms have bought some of the nation's largest nursing home chains. In October 2007, officials in five states expressed concern about the Carlyle Group's then planned \$6.3 billion acquisition of HCR Manor Care, the nation's largest nursing home chain, prompting a congressional investigation of business practices at nursing homes owned by private investment firms. The acquisition was finalized on December 31, 2007.

Scrutiny of this acquisition practice has been raised in Maryland as Manor Care owns 15 skilled nursing facilities, 9 assisted living facilities, and 3 home care and hospice offices in the State. While Manor Care has indicated a commitment to maintaining current staffing and quality levels following the merger, documents filed with regulators by the Carlyle Group indicate plans to make each nursing home a stand-alone company and to separate ownership of the homes' real estate and operations, an organizational structure that has been used by other firms to avoid liability and regulatory scrutiny. Manor Care asserts that private investment in the long-term care sector has been a critical factor in providing essential capital, whether in the form of equity or debt.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 29, 2008  
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