

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 32.1-126.6, relating to nursing homes;*
 3 *change of operator; application to Commissioner of Health for change of operator license; civil penalty.*

4 [S 247]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 32.1-126.6 as follows:**8 **§ 32.1-126.6. Assignment or transfer of operation of nursing home; civil penalty.**9 *A. As used in this section, unless the context requires a different meaning:*10 *"Entering operator" means the person that takes over the daily operations and management of a nursing*
11 *home when change of ownership or control occurs.*12 *"Exiting operator" means (i) an operator that will cease to be the operator of a nursing home on the*
13 *effective date of a change of operator, (ii) an operator that will cease to be the operator of a nursing home on*
14 *the effective date of a facility closure, (iii) an operator of a nursing home that is undergoing or has*
15 *undergone a voluntary withdrawal of participation, or (iv) an operator of a nursing home that is undergoing*
16 *or has undergone an involuntary termination.*17 *"Operator" means the person that is responsible for or arranges for the operation and management of a*
18 *nursing home licensed pursuant to this article.*19 *"Owner" means a person that has at least five percent ownership or interest, either directly, indirectly, or*
20 *in any combination, in any of the following:*21 *1. The land on which the nursing home is located;*22 *2. The structure in which the nursing home is located;*23 *3. Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or*
24 *structure on or in which the nursing home is located; or*25 *4. Any lease or sublease of the land or structure on or in which the nursing home is located.*26 *"Owner" does not include a holder of a debenture or bond related to the nursing home and purchased at*
27 *public issue or a regulated lender that has made a loan related to the nursing home unless the holder or*
28 *lender operates the nursing home directly or through a subsidiary.*29 *"Provider" means an operator that has a current, signed participation agreement with the Department of*
30 *Medical Assistance Services.*31 *"Related party" means a person that has common ownership with, is associated or affiliated with, has*
32 *control of, or is controlled by the entering operator. "Related party" includes:*33 *1. An individual who is a relative of an entering operator. For the purposes of this subdivision, "relative"*
34 *means the entering operator's spouse, parent, child, sibling, stepparent, stepchild, stepsibling, parent-in-law,*
35 *child-in-law, sibling-in-law, grandparent, grandchild, foster parent, foster child, foster sibling, parent's*
36 *sibling, or child of parent's sibling.*37 *2. An individual who possesses at least five percent ownership or equity in both the entering operator and*
38 *an organization that supplies goods or services to an entering operator.*39 *3. An individual who possesses at least 10 percent ownership or equity in both the entering operator and*
40 *another organization from which the entering operator purchases or leases real property.*41 *"Related party" does not include an organization that supplies goods and services to an entering operator*
42 *if (i) such organization is a separate bona fide organization; (ii) a substantial part of such organization's*
43 *business activity of the type carried on with the entering operator is transacted with others than the entering*
44 *operator and there is an open, competitive market for the types of goods or services such organization*
45 *provides; (iii) the types of goods and services provided by such organization are commonly obtained by other*
46 *nursing homes from outside organizations and are not a basic element of patient care ordinarily provided*
47 *directly to patients by nursing homes; and (iv) such organization charges the entering operator fees for the*
48 *goods and services it provides that are similar to those in the open market and not more than charges made*
49 *under comparable circumstances to other nursing homes by the organization.*50 *B. An entering operator shall obtain a change of operator license from the Commissioner prior to taking*
51 *over the operations of a nursing home when a change of ownership or control of the nursing home occurs.*
52 *Each of the following requirements shall be satisfied before the Commissioner may issue a change of*
53 *operator license from an exiting operator to an entering operator:*54 *1. The entering operator shall complete a change of operator license application on a form prescribed by*
55 *the Commissioner and pay the applicable fee for such application as determined by the Board. The completed*
56 *application shall be submitted no later than 45 days before the proposed effective date of the change of*

57 operator if such change of operator does not entail the relocation of residents or 90 days before the proposed
 58 effective date of the change of operator if such change of operator entails the relocation of residents. The
 59 Commissioner may waive the time period requirements of this subdivision if he determines there is an
 60 emergency. A change of operator license application shall include:

61 a. Disclosure of all direct and indirect owners owning at least five percent of each of the following:

62 (1) The entering operator, if the entering operator is an entity;

63 (2) The owner of the building or buildings in which the nursing home is housed if such owner is not the
 64 entering operator;

65 (3) The owner of the legal rights associated with the ownership and operation of the nursing home beds if
 66 such owner is not the entering operator; and

67 (4) Each related party that will provide services to the nursing home through contracts with any person
 68 identified in this subdivision 1 a.

69 b. Disclosure of whether a person identified in subdivision a has or had a direct or indirect ownership or
 70 operational interest in a current or previously licensed nursing home in the Commonwealth or another state,
 71 including disclosure of whether any of the following occurred with respect to any such nursing home within
 72 the five years immediately preceding the change of operator license application:

73 (1) Closure of the nursing home;

74 (2) Bankruptcy proceedings;

75 (3) Receivership proceedings;

76 (4) License suspension, denial, or revocation;

77 (5) Injunction proceedings initiated by a regulatory agency;

78 (6) The nursing home was listed in table A, B, or D of the Special Focus Facility list published by the
 79 Centers for Medicare and Medicaid Services; or

80 (7) A civil or criminal action was filed against the nursing home by a state or federal entity.

81 c. Any additional information that the Commissioner considers necessary to determine the ownership,
 82 operation, management, and control of the nursing home.

83 2. The entering operator shall submit evidence of a bond or other financial security reasonably
 84 acceptable to the Commissioner for an amount not less than the product of the number of licensed beds in the
 85 nursing home, as reflected in the application submitted pursuant to subdivision 1, multiplied by \$10,000.
 86 Such bond may be supplied by either the entering operator or the property owner of the nursing home. The
 87 bond required pursuant to this subdivision shall be waived for applications that demonstrate that the entering
 88 operator or a person that directly or indirectly owns at least 50 percent of the entering operator directly or
 89 indirectly owns at least 50 percent of the nursing home and its assets.

90 a. The entering operator or property owner shall renew, replace, or maintain the bond or other financial
 91 security for five years after the effective date of the change of operator. The aggregate liability of a surety
 92 shall not exceed the sum of the bond, which is not cumulative from period to period. If the entering operator
 93 or property owner fails to renew, replace, or maintain the bond or other financial security pursuant to this
 94 subsection, the Commissioner shall give the operator notice of the deficiency and shall revoke the operator's
 95 license 30 days after the issuance of such notice. The entering operator or property owner may release the
 96 bond or other financial security five years after the effective date of the change of operator if none of the
 97 events described in subdivision b occur.

98 b. The Commissioner may utilize the bond or other financial security required pursuant to this subsection
 99 to pay expenses incurred by the Commissioner or any other state entity in relation to any of the following
 100 events if such event occurs within the five-year period during which the bond or other financial security is
 101 required:

102 (1) Closure of the nursing home;

103 (2) Bankruptcy proceedings;

104 (3) Receivership proceedings;

105 (4) License suspension, denial, or revocation;

106 (5) An additional change of operator, unless the new applicant submits a bond or other financial security
 107 in accordance with the provisions of this subsection; or

108 (6) The nursing home is listed in table A, B, or D of the Special Focus Facility list published by the
 109 Centers for Medicare and Medicaid Services.

110 3. The entering operator or an individual who will have operational control of the nursing home has at
 111 least five years of experience as (i) an administrator of a nursing home located in the Commonwealth or
 112 another state or (ii) an individual with operational control of a nursing home located in the Commonwealth
 113 or another state.

114 4. The entering operator attests that he has plans for quality assurance and risk management for the
 115 operation of the nursing home.

116 5. The entering operator attests that he has general and professional liability insurance coverage
 117 pursuant to the requirements of § 32.1-127.

118 6. The entering operator attests that he has sufficient numbers of qualified staff, by training or by

119 experience, who shall be employed to properly care for the type and number of nursing home residents.

120 C. The Commissioner shall issue a notice of intent to grant a change of operator license to the entering
121 operator upon a determination that all the requirements of subsection B have been met.

122 D. Upon issuance of a change of operator license, the Department of Medical Assistance Services shall
123 complete a provider screening pursuant to the requirements of 42 U.S.C. § 1395cc(j) for any operation
124 intending to participate in Medicare or Medicaid.

125 E. Nothing in this section shall be construed to waive or replace any requirements for nursing home
126 licensure established by the provisions of this article and the regulations of the Board.

127 F. The Commissioner shall deny a change of operator license application if:

128 1. The requirements established by this section are not satisfied;

129 2. The entering operator or a person identified in subdivision B 1 a that directly or indirectly has 25
130 percent or more ownership of the entering operator meets both of the following criteria:

131 a. The entering operator or the person has or had (i) 50 percent or more direct or indirect ownership or
132 (ii) operational control, either alone or together with one or more persons, of a currently or previously
133 licensed nursing home in the Commonwealth or another state.

134 b. Any of the following occurred with respect to the previously licensed nursing home described in this
135 subdivision 2:

136 (1) Involuntary closure of the nursing home by a regulatory agency or voluntary closure in response to
137 licensure or certification action;

138 (2) Bankruptcy proceedings that are not dismissed within 60 days;

139 (3) Receivership proceedings that are not dismissed within 60 days; or

140 (4) License suspension, denial, or revocation for failure to comply with operating standards.

141 3. A change of 25 percent or more of the property ownership interest in a nursing home occurs in
142 connection with the change of an operator and the person that acquired the property ownership interest
143 meets both of the following criteria:

144 a. The entering operator or the person has or had (i) 50 percent or more direct or indirect ownership or
145 (ii) operational control, either alone or together with one or more persons, of a currently or previously
146 licensed nursing home in the Commonwealth or another state.

147 b. Any of the following occurred with respect to the previously licensed nursing home described in this
148 subdivision 3:

149 (1) Involuntary closure of the nursing home by a regulatory agency or voluntary closure in response to
150 licensure or certification action;

151 (2) Bankruptcy proceedings that are not dismissed within 60 days;

152 (3) Receivership proceedings that are not dismissed within 60 days; or

153 (4) License suspension, denial, or revocation for failure to comply with operating standards.

154 G. An entering operator may appeal the denial of a change of operator license application in accordance
155 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

156 H. An entering operator shall:

157 1. Notify the Commissioner immediately upon discovery of any error, omission, or change of information
158 in a change of operator license application.

159 2. Notify the Commissioner within 30 days of any change in the information or documentation required by
160 this section that occurs after the effective date of the change of operator.

161 3. Truthfully supply any additional information or documentation requested by the Commissioner.

162 4. Not complete the change of operator until the Commissioner issues to the entering operator notice of
163 intent to grant a change of operator license in accordance with subsection C. The entering operator shall
164 submit a final document indicating completion of a change of operator transaction within five days of such
165 transaction.

166 Any entering operator that fails to notify the Commissioner or supply additional information or
167 documentation in accordance with the requirements of this subsection shall be subject to a civil penalty of
168 \$2,000. Such penalty shall be collected by the Commissioner and the proceeds shall be deposited into the
169 general fund.

170 I. The Commissioner shall investigate any allegation that a change of operator has occurred and the
171 entering operator failed to submit an application in accordance with this section or an application was filed
172 but the information was fraudulent. Any person that effects a change of operator and fails to submit an
173 application in accordance with this section, or that applies for a change of operator license and provides
174 fraudulent information, shall be subject to a civil penalty of \$2,000 for each day after the date that such
175 change of operator transaction occurs. Such penalty shall be collected by the Commissioner and the
176 proceeds shall be deposited into the general fund.

177 If an entering operator subject to a civil penalty pursuant to this section fails to submit an application or
178 new application in accordance with this section within 60 days of the Commissioner becoming aware of the
179 change of operator, the Commissioner shall begin the process of revoking the nursing home license pursuant
180 to § 32.1-135.

181 **2. That the Board of Health shall promulgate regulations to implement the provisions of this act. The**
182 **initial adoption of regulations by the Board pursuant to this act shall be exempt from the requirements**
183 **of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**