

OFFICE OF THE ATTORNEY GENERAL
2009 GENERAL ASSEMBLY SESSION
SELECT COMMITTEE ON AGING
PROPOSED AMENDMENT TO ~~SENATE BILL 450~~, AN ACT CONCERNING
NURSING HOME OVERSIGHT

Sec. 1. Section 17b-352 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) For the purposes of this section and section 17b-353, "facility" means a residential facility for the mentally retarded licensed pursuant to section 17a-277 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for the mentally retarded, a nursing home, rest home or residential care home, as defined in section 19a-490.

(b) Any facility [which] that intends to (1) transfer all or part of its ownership or control [prior to being initially licensed]; (2) introduce any additional function or service into its program of care or expand an existing function or service; or (3) terminate a service or decrease substantially its total bed capacity, shall submit a complete request for permission to implement such transfer, addition, expansion, increase, termination or decrease with such information as the department requires to the Department of Social Services, provided no permission or request for permission to close a facility or transfer ownership of such facility is required when a facility in receivership is closed by order of the Superior Court pursuant to section 19a-545. The Office of the Long-Term Care Ombudsman pursuant to section 17b-400 shall be notified by the facility of any proposed actions pursuant to this subsection at the same time the request for permission is submitted to the department and when a facility in receivership is closed by order of the Superior Court pursuant to section 19a-545.

(c) An applicant, prior to submitting a certificate of need application, shall request, in writing, application forms and instructions from the department. The request shall include: (1) The the name of the applicant or applicants; (2) and a statement indicating whether the application is for [(A)] (1) a transfer of ownership or control, (2) a new, additional, expanded or replacement facility, service or function, [(B)] (3) a termination or reduction in a presently authorized service or bed capacity or [(C)] (4) any new, additional or terminated beds and their type. ; (3) Applications, other than those seeking transfer of ownership or control, shall include (A) the estimated capital cost; [(4)] (B) the town where the project is or will be located; and [(5)] (C) a brief description of the proposed project. Such request shall be deemed a letter of intent. No certificate of need

application shall be considered submitted to the department unless a current letter of intent, specific to the proposal and in accordance with the provisions of this subsection, has been on file with the department for not less than ten business days. For purposes of this subsection, "a current letter of intent" means a letter of intent on file with the department for not more than one hundred eighty days. A certificate of need application shall be deemed withdrawn by the department, if a department completeness letter is not responded to within one hundred eighty days. The Office of the Long-Term Care Ombudsman shall be notified by the facility at the same time as the letter of intent is submitted to the department.

(d) Any facility acting pursuant to subdivision (3) of subsection (b) of this section shall provide written notice, at the same time it submits its letter of intent, to all patients, guardians or conservators, if any, or legally liable relatives or other responsible parties, if known, and shall post such notice in a conspicuous location at the facility. The notice shall state the following: [(A)] (1) The projected date the facility will be submitting its certificate of need application, [(B)] (2) that only the department has the authority to either grant, modify or deny the application, [(C)] (3) that the department has up to ninety days to grant, modify or deny the certificate of need application, [(D)] (4) a brief description of the reason or reasons for submitting a request for permission, [(E)] (5) that no patient shall be involuntarily transferred or discharged within or from a facility pursuant to state and federal law because of the filing of the certificate of need application, [(F)] (6) that all patients have a right to appeal any proposed transfer or discharge, and [(G)] (7) the name, mailing address and telephone number of the Office of the Long-Term Care Ombudsman and local legal aid office.

(e) The department shall review a request made pursuant to subsection (b) of this section to the extent it deems necessary, including, but not limited to, in the case of a proposed transfer of ownership or control [prior to initial licensure] the financial viability of the applicant, the impact on the facility rate, any real property lease or debt instrument, nursing facility management services agreement and the financial condition of the applicant, the financial responsibility and business interests of the transferee and the ability of the facility to continue to provide needed services, or in the case of the addition or expansion of a function or service, ascertaining the availability of the function or service at other facilities within the area to be served, the need for the service or function within the area and any other factors the department deems relevant to a determination of whether the facility is justified in adding or expanding the function or service. The commissioner shall grant, modify or deny the request within ninety days of receipt thereof, except as otherwise provided in this section. Upon the request of the applicant, the review period may be extended for an additional fifteen days if the department has requested additional

information subsequent to the commencement of the commissioner's review period. The director of the office of certificate of need and rate setting may extend the review period for a maximum of thirty days if the applicant has not filed in a timely manner information deemed necessary by the department. The applicant may request and shall receive a hearing in accordance with section 4-177 if aggrieved by a decision of the commissioner.

(f) The Commissioner of Social Services shall not approve any requests for beds in residential facilities for the mentally retarded which are licensed pursuant to section 17a-227 and are certified to participate in the Title XIX Medicaid Program as intermediate care facilities for the mentally retarded, except those beds necessary to implement the residential placement goals of the Department of Developmental Services which are within available appropriations.

(g) The Commissioner of Social Services shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section. The commissioner shall implement the standards and procedures of the Office of Health Care Access concerning certificates of need established pursuant to section 19a-643, as appropriate for the purposes of this section, until the time final regulations are adopted in accordance with said chapter 54.

Sec. 2. Section 17b-339 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established a Nursing Home Financial Advisory Committee to examine the financial solvency of nursing homes on an ongoing basis and to support the Departments of Social Services and Public Health in their mission to provide oversight to the nursing home industry [which promotes] on issues concerning the financial solvency of and quality of care provided by nursing homes. The committee shall consist of [seven members: The] the Commissioner of Social Services, or his designee; the Commissioner of Public Health, or his designee; the Secretary of the Office of Policy and Management, or his designee; [the director of the Office of Fiscal Analysis, or his designee;], the Comptroller or designee; and the executive director of the Connecticut Health and Education Facilities Authority, or his designee]; and one representative of nonprofit nursing homes and one representative of for-profit nursing homes appointed by the Governor].

[(b)] The Commissioner of Social Services and the Commissioner of Public Health shall be the chairpersons of the committee. [Any vacancy shall be filled by the appointing authority.]

[(c)] (b) The committee, upon receipt of a report relative to the financial solvency of and quality of care provided by nursing homes in the state, shall recommend appropriate action [for improving the financial condition of any nursing home that is in financial distress] to the Commissioner of Social Services and the Commissioner of Public Health. The Commissioner of Social Services shall notify the committee of any nursing home request for an interim rate increase pursuant to section 17b-340 of the general statutes.

[(d)] (c) Not later than January 1, [1999] 2010, and annually thereafter, the committee shall submit a report on its activities to the joint standing committees of the General Assembly having cognizance of matters relating to appropriations, human services and public health and to the select committee of the General Assembly having cognizance of matters relating to aging, in accordance with the provisions of section 11-4a.

(d) Not later than October 1, 2009, and quarterly thereafter, the committee shall meet with the chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to human services, appropriations and the budget of state agencies, and public health, and the Long-Term Care Ombudsman to discuss activities of the committee relating to the financial solvency of and quality of care provided by nursing homes.

Sec. 3. (NEW) *(Effective from passage)*: (a) For each fiscal year ending July 1, 2010, each chronic and convalescent nursing home or rest home with nursing supervision shall obtain an annual financial audit of its operations conducted by an independent auditor, and shall provide a copy of the audit report to the commissioner. The Commissioner of Social Services may also require each owner of a chronic and convalescent nursing home or rest home with nursing supervision to submit to the Department of Social Services quarterly reports of accounts payable by vendor and by days outstanding in a format prescribed by the commissioner. If such reports indicate a facility may be experiencing financial distress, the commissioner shall require such facility to submit specific financial information, including, but not limited to, debt agreements and interim financial statements.

(b) The commissioner may require (1) a nursing facility management services certificate holder, as defined in section 19a-490 of the general statutes or any person or entity that has a beneficial ownership interest of ten per cent or more in such holder to report annual costs and such other information concerning the financial condition of any facility managed or owned by such holder or beneficial

owner in this state or another state, and (2) any person or entity that has a beneficial ownership interest of ten per cent or more in a chronic and convalescent nursing home or rest home with nursing supervision to report information concerning the financial condition of any facility owned by such person or entity in this state or another state, in a format prescribed by the commissioner. For purposes of this subsection, beneficial ownership includes ownership through any level or relationship of parent and subsidiary corporations and partnerships.

(c) If the Commissioner of Social Services determines, based on a review of the information provided pursuant to subsections (a) and (b) of this section and review of a chronic and convalescent nursing home's or rest home with nursing supervision's annual cost report submitted to the Department of Social Services pursuant to section 17b-340 of the general statutes, that a chronic and convalescent nursing home or rest home with nursing supervision has undergone an adverse change in financial condition, the commissioner shall notify the Commissioner of Public Health and may require the nursing home facility to report monthly its cash availability and the status of vendor payments and employee payrolls. The Commissioner of Social Services may require the reporting of other financial information to assist in measuring the financial condition of the nursing home facility.

(d) The criteria to be used by the Commissioner of Social Services pursuant to subsection (c) of this section to determine whether a chronic and convalescent nursing home or rest home with nursing supervision has undergone an adverse change in financial condition shall include, but not be limited to, (1) the frequency of Medicaid advances granted in accordance with section 119 of public act 07-1 of the June special session; (2) unfavorable working capital ratios of assets to liabilities; (3) a high proportion of accounts receivable more than ninety days old; (4) a high proportion of accounts payable more than ninety days old; (5) significant increases in accounts payable, unpaid state or municipal taxes, state user fees or payroll-related costs; (6) minimal equity or reserves or decreasing equity or reserves; (7) high levels of debt and high borrowing costs; (8) significant increases in the level of debts and borrowing costs; and (9) significant operating losses for two or more consecutive years.

(e) If the Commissioner of Social Services determines that a chronic and convalescent nursing home or rest home with nursing supervision is in financial distress that may lead to the facility having insufficient resources to meet its operating costs, the commissioner shall issue a report of such findings to the Nursing Home Financial Advisory Committee, established pursuant to section 17b-339 of the general statutes, as amended by this act, in a format prescribed by the committee.

Sec. 4. (NEW) (*Effective from passage*): No nursing facility management services certificate holder, who is a related party to the owner of a chronic and convalescent nursing home or rest home with nursing supervision, shall be paid fees, including expenses from such facility for which it provides such services, in excess of the management fee permitted by the Department of Social Services in setting the rate for such facility pursuant to section 17b-340 of the general statutes unless the Commissioner of Social Services, after a financial review of such holder, approves a management fee in excess of such rate. For any violation of this section, the Commissioner of Social Services may assess a civil penalty not to exceed the amount by which the fee paid for such services exceeds the approved management fee plus fifteen thousand dollars. A holder may appeal such assessment in accordance with the procedure established in subsection (b) of section 17b-238. The provisions of this section shall not apply to any management fee in effect on or before April 1, 2009. As used in this section, "related party" means persons or organizations related through an ability to control, ownership, family relationship or business association, and includes person related through marriage.

Sec. 5. Section 17b-4 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Department of Social Services shall plan, develop, administer, operate, evaluate and provide funding for services for individuals and families who are served by the department [who] and are in need of personal or economic development. In cooperation with other social service agencies and organizations, including community-based agencies, the department shall work to develop and fund prevention, intervention and treatment services for such individuals and families. The department shall: (1) Provide appropriate services to individuals and families as needed through direct social work services rendered by the department and contracted services from community-based organizations funded by the department; (2) collect, interpret and publish statistics relating to individuals and families serviced by the department; (3) monitor, evaluate and review any program or service which is developed, operated or funded by the department; (4) supervise the establishment of pilot programs funded by the department in local communities which assist and support individuals and families in personal and economic development; (5) improve the quality of services provided, operated and funded by the department and increase the competency of its staff relative to the provision of effective social services by establishing and supporting ongoing staff

development and training; and (6) encourage citizen participation in the development of social service priorities and programs.

(b) The Department of Social Services shall study continuously the conditions and needs of elderly and aging persons in this state in relation to nutrition, transportation, home-care, housing, income, employment, health, recreation and other matters. It shall be responsible in cooperation with federal, state, local and area planning agencies on aging for the overall planning, development and administration of a comprehensive and integrated social service delivery system for elderly persons and the aged. The department shall: (1) Measure the need for services; (2) survey methods of administration of programs for service delivery; (3) provide for periodic evaluations of social services; (4) maintain technical, information, consultation and referral services in cooperation with other state agencies to local and area public and private agencies to the fullest extent possible; (5) develop and coordinate educational outreach programs for the purposes of informing the public and elderly persons of available programs; (6) cooperate in the development of performance standards for licensing of residential and medical facilities with appropriate state agencies; (7) supervise the establishment, in selected areas and local communities of the state, of pilot programs for elderly persons; (8) coordinate with the Department of Transportation to provide adequate transportation services related to the needs of elderly persons; and (9) cooperate with other state agencies to provide adequate and alternate housing for elderly persons, including congregate housing, as defined in section 8-119e.

[(c) The Department of Social Services, in conjunction with the Department of Public Health, may adopt regulations in accordance with the provisions of chapter 54 to establish requirements with respect to the submission of reports concerning financial solvency and quality of care by nursing homes for the purpose of determining the financial viability of such homes, identifying homes that appear to be experiencing financial distress and examining the underlying reasons for such distress. Such reports shall be submitted to the Nursing Home Financial Advisory Committee established under section 17b-339.]

Sec. 6 (NEW) (*Effective from passage*): (a) The Commissioner of Social Services, in consultation with the Banking Commissioner and the executive director of the Connecticut Health and Educational Facilities Authority, shall establish reasonable rates of indebtedness and reasonable real property lease payments for chronic and convalescent nursing homes and rest homes with nursing supervision. No chronic and convalescent nursing homes and rest homes with nursing supervision licensed in this state, or any owner of the property on which

such facility is located who is a related party to the owner of any such facility, shall increase its indebtedness beyond the amount established pursuant to this section or increase its real property lease payments unless approved by the Commissioner of Social Services. As used in this subsection, "related party" means persons or organizations related through an ability to control, ownership, family relationship or business association, and includes person related through marriage.

(b) The proceeds of any loan in which a chronic and convalescent nursing homes and rest homes with nursing supervision has pledged, granted a lien or otherwise encumbered the assets of such facility shall be used solely for the purpose of operating such nursing home facility or providing improvements to the nursing home facility unless approved by the Commissioner of Social Services. The provisions of this section shall not apply to any indebtedness or lease entered into by a chronic and convalescent nursing homes and rest homes with nursing supervision on or before April 1, 2009.

(c) A chronic and convalescent nursing home or rest home with nursing supervision may submit a request pursuant to this subsection for an increase in indebtedness or lease payments or use of the proceeds of a loan in a manner prescribed by the commissioner. The commissioner may request information as necessary to evaluate the request and shall approve, deny, or modify the request not later than sixty days after submission of any such requested information. The commissioner shall approve or modify a request only if the commissioner determines that such request will not materially adversely affect the financial viability of the facility or the quality of patient care.

(d) Any violation of subsections (a) and (b) of this section shall constitute a substantial failure to comply with the requirements established under chapter 368v of the general statutes for purposes of disciplinary action pursuant to section 19a-494 of the general statutes. In addition to any action by the Commissioner of Public Health under said section, the Commissioner of Social Services may impose a civil penalty not exceeding twenty-five thousand dollars for each violation and may refer the finding of the Department of Social Services to the Commissioner of Public Health for appropriate action. Any person subject to such civil penalty may appeal such penalty in accordance with the procedure established in subsection (b) of section 17b-238.

Sec. 7. (NEW) (*Effective from passage*): Each chronic and convalescent nursing homes and rest homes with nursing supervision shall submit annually to the Department of Social Services, along with such facility's annual cost report, proof of its insurance liability coverage for negligence or medical malpractice, and damages to property, and the amounts of such coverage on a form prescribed by the Commissioner of Social Services. On or before January 1, 2010, and annually thereafter, the department shall report information concerning insurance liability coverage of such facilities to the joint standing committee of the General Assembly having cognizance of matters relating to human services and the Nursing Home Financial Advisory Committee.

Sec. 8. Section 19a-490 of the general statutes is amended by adding a new subsection (n) as follows (*Effective from passage*):

(n) "Nursing facility management services certificate holder" means a person or entity certified by the Department of Public Health to provide nursing facility management services, as defined in section 19a-561 of the general statutes.

Sec. 9. Subsection (b) of section 19a-491 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(b) If any person acting individually or jointly with any other person shall own real property or any improvements thereon, upon or within which an institution, as defined in subsection (c) of section 19a-490 is established, conducted, operated or maintained and is not the licensee of the institution, such person shall submit a copy of the lease agreement to the department at the time of any change of ownership and with each license renewal application. The lease agreement shall, at a minimum, identify the person or entity responsible the maintenance and repair of all buildings and structures within which such an institution is established, conducted or operated. If a violation is found as a result of an inspection or investigation, the commissioner may require the owner to sign a consent order providing assurances that repairs or improvements necessary for compliance with the provisions of the Public Health Code shall be completed within a specified period of time or may, in accordance with the provisions of section 19a-494, assess a civil penalty of not more than one thousand dollars for each day that such owner is in violation of the Public Health Code or, if appropriate in violation of the consent order. A consent order may include a provision for the establishment of a temporary manager of such real property or improvements who shall have the authority to complete any repairs or

improvements required by such order. Upon request of the Commissioner of Public Health, the Attorney General may petition the Superior Court for such equitable and injunctive relief as such court deems appropriate to ensure compliance with the provisions of the consent order. The provisions of this subsection shall not apply to any property or improvements owned by a person licensed in accordance with the provisions of subsection (a) of this section to establish, conduct, operate or maintain an institution on or within such property or improvements.

Sec. 10. Subdivision (2) of subsection (b) of section 19a-493 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(2) Any change in the ownership of a facility or institution, as defined in subsection (c) of section 19a-490, owned by an individual, partnership or association or the change in ownership or beneficial ownership of ten per cent or more of the stock of a corporation which owns, conducts, operates or maintains such facility or institution, shall be subject to prior approval of the department after a scheduled inspection of such facility or institution is conducted by the department, provided such approval shall be conditioned upon a showing by such facility or institution to the commissioner that it has complied with all requirements of this chapter, the regulations relating to licensure and all applicable requirements of the Public Health Code. Any such change in ownership or beneficial ownership resulting in a transfer to a person related by blood or marriage to such an owner or beneficial owner shall not be subject to prior approval of the department unless: (A) Ownership or beneficial ownership of ten per cent or more of the stock of a corporation, partnership or association which owns, conducts, operates or maintains more than one facility or institution is transferred; (B) ownership or beneficial ownership is transferred in more than one facility or institution; or (C) the facility or institution is the subject of a pending complaint, investigation or licensure action. If the facility or institution is not in compliance, the commissioner may require the new owner to sign a consent order providing reasonable assurances that the violations shall be corrected within a specified period of time. Notice of any such proposed change of ownership shall be given to the department at least ninety days prior to the effective date of such proposed change. For the purposes of this subdivision, "a person related by blood or marriage" means a parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For the purposes of this subdivision, a change in the legal form of the ownership entity, including, but not limited to, changes from a corporation to a limited liability company, a partnership to a limited liability partnership, a sole proprietorship to a corporation and similar

changes, shall not be considered a change of ownership if the beneficial ownership remains unchanged and the owner provides such information regarding the change to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution. For the purposes of this subdivision, a public offering of the stock of any corporation that owns, conducts, operates or maintains any such facility or institution shall not be considered a change in ownership or beneficial ownership of such facility or institution if the licensee and the officers and directors of such corporation remain unchanged, such public offering cannot result in an individual or entity owning ten per cent or more of the stock of such corporation, and the owner provides such information to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution. For purposes of this subdivision, beneficial ownership includes ownership through any level or relationship of parent and subsidiary corporations and partnerships. To the extent required by this subdivision, the licensee of such facility or institution shall provide to the department the identities of, and any other information required by the department regarding the individual shareholders, partners or members that have a beneficial ownership interest in the facility or institution, as defined in subsection (a) of section 19a-490.

Sec. 11. Section 19a-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Subject to the provisions of section 19a-493, the Department of Public Health shall make or cause to be made a biennial licensure inspection of all institutions and such other inspections and investigations of institutions and examination of their records as the department deems necessary.

(b) The commissioner, or an agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this chapter, shall have power to inspect the premises of an institution, issue subpoenas, order the production of books, records or documents, administer oaths and take testimony under oath relative to the matter of such inquiry, [or] investigation or hearing. At any hearing ordered by the department, the commissioner or such agent may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such subpoena or, having appeared in obedience thereto, refuses to answer any pertinent question put to such person by the commissioner or such agent or to produce any records and papers pursuant to the subpoena, the attorney general, upon request of the

commissioner or such agent, may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the business has been conducted, setting forth such disobedience or refusal, and said court shall cite such person to appear before said court to answer such question or to produce such records and papers.

(c) The Department of Mental Health and Addiction Services, with respect to any mental health facility or alcohol or drug treatment facility, shall be authorized, either upon the request of the Commissioner of Public Health or at such other times as they deem necessary, to enter such facility for the purpose of inspecting programs conducted at such facility. A written report of the findings of any such inspection shall be forwarded to the Commissioner of Public Health and a copy shall be maintained in such facility's licensure file.

(d) In addition, the Commissioner of Social Services, or a designated representative of the Commissioner of Social Services, at the request of the Office of Health Care Access or the Nursing Home Financial Advisory Committee or when the Commissioner of Social Services deems it necessary, may examine and audit the financial records of any nursing home facility, as defined in section 19a-521, or any nursing facility management services certificate holder, as defined in subsection (n) of section 19a-490 of the general statutes, as amended by this act. Each such nursing home facility or nursing facility management services certificate holder shall retain all financial information, data and records relating to the operation of the nursing home facility or nursing facility management services for a period of not less than ten years, and all financial information, data and records relating to any real estate transactions affecting such operation, for a period of not less than twenty-five years, which financial information, data and records shall be made available, upon request, to the Commissioner of Social Services or such designated representative at all reasonable times. In connection with any inquiry, examination or investigation, the Commissioner of Social Services or authorized agent may issue subpoenas, order the production of books, records and documents, administer oaths and take testimony under oath. The Attorney General, upon request of said commissioner, may apply to the Superior Court to enforce any such subpoena or order.

Sec. 12. Section 19a-503 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

Notwithstanding the existence or pursuit of any other remedy, the Department of Public Health may, in the manner provided by law and upon the advice of the Attorney General, conduct an investigation and maintain an action in the name

of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an institution or nursing facility management services agency, without a license or certificate under this chapter.

Sec. 13. Section 19a-528a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

For any application of licensure for the acquisition of a nursing home filed after July 1, 2004, any potential nursing home licensee or owner must submit in writing, a change in ownership application with respect to the facility for which the change in ownership is sought. Such application shall include such information as the Commissioner of Public Health deems necessary and shall include whether such potential nursing home licensee or owner (1) has had civil penalties imposed through final order of the commissioner in accordance with the provisions of sections 19a-524 to 19a-528, inclusive, or civil penalties imposed pursuant to the statutes or regulations of another state, during [a] the two-year period preceding the application, (2) has had in any state [intermediate] sanctions, other than civil penalties less than ten thousand dollars, imposed through final adjudication under the Medicare or Medicaid program pursuant to Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as from time to time amended, or (3) has had in any state such potential licensee's or owner's Medicare or Medicaid provider agreement terminated or not renewed. [] The commissioner shall not approve such application to acquire another nursing home in this state for a period of five years from the date of final order on such civil penalties, final adjudication of such [intermediate] sanctions, or termination or nonrenewal, except for good cause shown. [Notwithstanding, the provisions of this section, the Commissioner of Public Health, may for good cause shown, permit a potential nursing home licensee or owner to acquire another nursing home prior to the expiration of said five-year period.]

Sec. 14. Section 19a-543 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The court shall grant an application for the appointment of a receiver for a nursing home facility upon a finding of any of the following: (1) Such facility is operating without a license issued pursuant to this chapter or such facility's license has been suspended or revoked pursuant to section 19a-494; (2) such facility intends to close and adequate arrangements for relocation of its residents

have not been made at least thirty days prior to closing; (3) such facility has sustained a serious financial loss or failure which jeopardizes the health, safety and welfare of the patients or there is a reasonable likelihood of such loss or failure; [or] (4) there exists in such facility a condition in substantial violation of the Public Health Code, or any other applicable state statutes, or Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended, or any regulation adopted pursuant to such state or federal laws; or (5) if such facility is in severe financial distress, as defined in subsection (c) of this section.

(b) The court, upon a determination pursuant to subsection (a) of this section that a receiver is appropriate, may, in addition to appointing a receiver for the nursing home facility, appoint a receiver for (1) any person or entity providing nursing facility management services, as defined in subsection (n) of section 19a-490, as amended by this act, to such facility; (2) any owner of real property, or improvements thereon, on which such nursing home facility is located; or (3) any legal entity owned or managed by a related party to the nursing home facility owners providing goods or services to such facility. The court may issue such orders as it deems necessary to any person that controls or possesses assets necessary for the receiver to fulfill its duties as set forth in section 19a-545. As used in this subsection, "related party" means persons or organizations related through an ability to control, ownership, family relationship or business association, and includes persons related through marriage.

(c) As used in this section, "severe financial distress" means: (1) Allowing more than thirty-five per cent of the facility's vendor accounts to be overdue for payment by more than one hundred twenty days; (2) allowing the facility payment of required employee pension or health insurance contributions to be overdue by more than sixty days; (3) maintaining an unfavorable working capital ratio of assets to liabilities for more than one fiscal year; (4) maintaining minimal equity or reserves for more than one fiscal year; (5) incurring significant operating losses for more than one fiscal year; or (6) any other criteria which the Commissioner of Social Services may further define in regulations adopted pursuant to the provisions of chapter 54. The commissioner, pursuant to section 17b-10, may implement policies and procedures to implement the provisions of subdivision (6) of this subsection while in the process of adopting such policies and procedures as regulations, provided the commissioner prints notice of the intent to adopt the regulations in the Connecticut Law Journal not later than twenty days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

Sec. 15. Section 19a-546 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A receiver may not be required to honor any lease, mortgage, secured transaction or other contract entered into by the owner of the facility if, upon application to the Superior Court, said court determines that: (1) The person seeking payment under the agreement was an owner or controlling stockholder of the facility or was an affiliate of such owner or controlling stockholder at the time the agreement was made; or (2) the rental, price or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rental, price or rate of interest at the time the contract was entered into.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest [which] that the receiver is permitted to avoid under subsection (a) of this section and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the duration of the receivership. No allowance for such property costs set by the court shall exceed the fair rental value allowance determined pursuant to the regulations adopted pursuant to section 17b-238. The court shall hold a hearing not later than fifteen days after application is made. Any known owners of the property involved shall receive notice of such application from the receiver at least ten days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease, security interest or mortgage involved by any person who received such notice, but the payment does not relieve the owner of the facility of any liability for the difference between the amount paid by the receiver and the amount due under such lease, security interest or mortgage involved.

(c) The provisions of this section shall not apply to a lease, mortgage, secured transaction or other contract entered into with any financial institution regulated by a state or federal agency.

Sec. 16. Section 19a-547 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The court may appoint any responsible individual whose name is proposed by the Commissioner of Public Health and the Commissioner of Social Services to act as a receiver. Such individual shall be a nursing home administrator

licensed in the state of Connecticut with substantial experience in operating Connecticut nursing homes or shall possess such other experience and education that the court deems satisfactory to appropriately and professionally implement such receivership. On or before July 1, 2004, the Commissioner of Social Services shall adopt regulations governing qualifications for proposed receivers consistent with this subsection. No state employee or owner, administrator or other person with a financial interest in the facility may serve as a receiver for that facility. No person appointed to act as a receiver shall be permitted to have a current financial interest in the facility; nor shall such person appointed as a receiver be permitted to have a financial interest in the facility for a period of five years from the date the receivership ceases.

(b) The court may remove such receiver in accordance with section 52-513. A nursing home receiver appointed pursuant to this section shall be entitled to a reasonable receiver's fee as determined by the court. The receiver shall be liable only in his official capacity for injury to person and property by reason of the conditions of the nursing home. He shall not be personally liable, except for acts or omissions constituting gross, wilful or wanton negligence.

(c) The court, in its discretion, may require a bond of such receiver in accordance with section 52-506.

(d) The court may require the Commissioner of [Public Health] Social Services to provide for the payment of any receiver's fees authorized in subsection (a) of this section upon a showing by such receiver to the satisfaction of the court that (1) the assets of the nursing home facility are not sufficient to make such payment, and (2) no other source of payment is available, including the submission of claims in a bankruptcy proceeding. The state shall have a claim for any court-ordered fees and expenses of the receiver and any state advance payments to the nursing home facility after a receiver has been appointed which shall have priority over all other claims of secured and unsecured creditors and other persons whether or not the nursing home facility is in bankruptcy. [, to the extent allowed under state or federal law.]

Sec. 17. Section 19a-561 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) As used in this section, (1) "nursing facility management services" means services provided in a nursing facility to manage the operations of such facility, including the provision of care and services, and (2) "nursing facility

management services certificate holder” means a person or entity certified by the Department of Public Health to provide nursing facility management services.

(b) On and after January 1, 2007, no person or entity shall provide nursing facility management services in this state without obtaining a certificate from the Department of Public Health.

(c) Any person or entity seeking a certificate to provide nursing facility management services shall apply to the department, in writing, on a form prescribed by the department. Such application shall include the following information:

(1) (A) The name and business address of the applicant and whether the applicant is an individual, partnership, corporation or other legal entity; (B) the names of the officers, directors, trustees or managing and general partners of the applicant, the names of the persons having ten per cent or greater beneficial ownership interest in the applicant, and a description of each such person's relationship to the applicant; (C) if the applicant is a corporation incorporated in another state, a certificate of good standing from the state agency with jurisdiction over corporations in such state; and (D) a certificate of good standing from the licensing agency with jurisdiction over public health for each state in which the applicant currently provides nursing home management services;

(2) A description of the applicant's nursing facility management experience;

(3) An affidavit signed by the applicant and any of the persons described in subdivision (1) of this subsection disclosing any matter in which the applicant or such person (A) has been convicted of an offense classified as a felony under section 53a-25 or pleaded nolo contendere to a felony charge, or (B) has been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property, or (C) is subject to a currently effective injunction or restrictive or remedial order of a court of record at the time of application, or (D) within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including, but not limited to, actions affecting the operation of a nursing facility, residential care home or any facility subject to sections 17b-520 to 17b-535, inclusive, or a similar statute in another state or country; and

(4) The location and description of any nursing facility in this state or another state in which the applicant currently provides management services or has provided such services within the past five years.

(d) In addition to the information provided pursuant to subsection (c) of this section, the department may reasonably request to review the applicant's audited and certified financial statements, which shall remain the property of the applicant when used for either initial or renewal certification under this section.

(e) Each application for a certificate to provide nursing facility management services shall be accompanied by an application fee of three hundred dollars. The certificate shall list each location at which nursing facility management services may be provided by the holder of the certificate.

(f) The department shall base its decision on whether to issue or renew a certificate on the information presented to the department and on the compliance status of the managed entities. The department may deny certification to any applicant for the provision of nursing facility management services at any specific facility or facilities where there has been a substantial failure to comply with the Public Health Code or failure to provide the information required under subparagraph (D) of subdivision (1) of subsection (c) of this section.

(g) Renewal applications shall be made biennially after (1) submission of the information required by subsection (c) of this section and any other information required by the department pursuant to subsection (d) of this section, and (2) submission of evidence satisfactory to the department that any nursing facility at which the applicant provides nursing facility management services is in substantial compliance with the provisions of this chapter, the Public Health Code and licensing regulations or other laws and regulations applicable to the operation of such facility or payment of a three-hundred-dollar fee.

(h) In any case in which the Commissioner of Public Health finds that there has been a substantial failure to comply with the requirements established under this section or if the department receives information from a licensing agency with jurisdiction over public health in another state that the holder is not in good standing in such state, the commissioner may initiate disciplinary action against a nursing facility management services certificate holder pursuant to section 19a-494. In addition to the remedies provided under section 19a-494, the commissioner may also assess such holder a civil penalty not to exceed five thousand dollars per violation for any class A or class B violation, as defined in section 19a-527, that occur at a nursing facility for which such holder provides nursing facility management services, provided such fine in addition to any civil fine under section 19a-493 shall not exceed five thousand dollars per violation. Failure to pay such penalties shall be subject to the remedies provided in section 19a-526.

(i) The department may limit or restrict the provision of management services by any nursing facility management services certificate holder against whom disciplinary action has been initiated under subsection (h) of this section.

(j) The department may, in implementing the provisions of this section, conduct any inquiry or investigation, in accordance with the provisions of section 19a-498, as amended by this act, regarding an applicant or certificate holder.

(k) Any person or entity providing nursing facility management services without the certificate required under this section shall be subject to a civil penalty of not more than one thousand dollars for each day that the services are provided without a certificate.