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# CLIENT ALERT: New York Nursing Home Reform Legislation – Updated

## FEATURED ATTORNEY

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### **New York Nursing Home Reform Legislation Impacting Change in Ownership Process and Requiring New Disclosures**

Sections 2801-a and 2803-x of the NYS Public Health Law were amended effective April 27, 2021.

The amendments impact change of ownership applications and require additional notices and disclosures to residents and staff.

The full text of the new law can be found [here](#).

Below is a summary of the amendments to NYS Public Health Law Section 2801-a and 2803-x.

## **I. NYS Public Health Law 2801-a**

### **A. Section 2-B was added and includes the following:**

- Notice of CON applications on the Department of Health website within 30 days of the Public Health and Health Planning Council (PHHPC) receipt
- Notice to Long-Term Care Ombudsman and DOH regional office
- For existing homes, notice to staff and residents as well
- 90-day comment period
- Review of applications by Long Term Care Ombudsman

- PHHPC cannot take any action contrary to advice of Ombudsman or the DOH regional office without a public hearing

## **B. Section 3-B was added and includes the following:**

- Applications will not be approved unless the applicants (i.e., controlling persons, principal stockholders or LLC members) can demonstrate a “consistently high level of care” which has been provided at other nursing homes owned by them for at least the three previous years in any state
- PHHPC shall not find that a “consistently high level of care” was provided at any nursing home if:
  - it has a CMS rating of 2 or less;
  - it has recurrent violations that threatened the health, safety, or welfare of any resident; or
  - it has been in receivership, closed due to decertification or license revocation or involuntarily terminated from the Medicare or Medicaid program in the past five years
- In the event that an applicant that has taken over a facility and promptly corrected such violations, PHHPC shall not be prohibited from considering the application

## **II. NYS Public Health Law 2803-x**

- Notification requirement of all common or familial ownership of any corporation, entity or individual providing services to the facility was extended to all prospective residents and existing residents and is to be included in the admission agreement or, for existing residents, an addendum to the admission agreement.
- Facilities must provide 90-day notice to the DOH prior to entering into any arrangement for the provision of services with any new common or familial owned corporation or other entity or individual and must also provide notice to all residents and their representatives, staff and their representatives and the State Office of the Long-Term Care Ombudsman.
- Notification to the DOH 90 days prior to executing a letter of intent or other contractual arrangement related to the management, operations, staffing agency or other entity to be involved in operations of the facility. In addition, the facility must give notice to all residents and their representatives, staff and their representatives and the State Office of Long-Term Care Ombudsman within five days of signing.
- Any new owner, operator or management company of a nursing home must retain all employees of the nursing home for at least a sixty day transition period, except for the administrator, director of nursing, any controlling person, principal stockholder or principal member and may not reduce the wages or benefits or modify any other terms or conditions of employment, whether economic or otherwise during such transition period, except for cause.

The [healthcare attorneys](#) at Abrams Fensterman, LLP are committed to providing you with the most current and accurate information and guidance. If you have any questions, please contact [Patrick Formato, Esq.](#), [Barbara Stegun Phair, Esq.](#), [Frank Mazzagatti, Esq.](#), [Michael Gurman, Esq.](#), [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.