

NEW YORK STATE PROPOSES CHANGES TO REGULATIONS GOVERNING THE APPLICATION PROCESS FOR THE ESTABLISHMENT OF NURSING HOMES

The State of New York Public Health and Health Planning Council (“PHHPC”) is considering changes to the regulations governing the application process for the establishment of nursing homes. These changes are due to be considered at a meeting of the PHHPC’s Committee on Codes, Regulations, and Legislation, which is scheduled to be held on September 23, 2021. These changes include, but are not limited to:

- Requiring the Department of Health (“DOH”) to provide notice to the Office of the State Long-Term Care Ombudsmen of an acknowledgement by DOH of an application for establishment of a nursing home and when such application has been scheduled for consideration.
- Requiring the applicant and current operator to provide notice to staff (including union representatives, if applicable), residents, and their representatives of an acknowledgement by DOH of an application for establishment of an existing nursing home and when the application has been scheduled for consideration.
- Making the “character, competence, and standing in the community” review standard comparable for all applicants and including limited liability companies as acceptable entity applicants subject to the standard.
- Broadens the definition of individual applicants subject to the substantially consistent high level of care standard by adding the titles of: stockholder, member, controlling person, and principal member.
- Places more focus on individuals in reviewing an applicant’s supervisory responsibility in relation to violations at nursing homes the applicant has been affiliated with in the past (10) years.
- Provides clear definitions of what constitutes: (a) recurrent violations and (b) violations which are not promptly corrected, findings of which at facilities an applicant is or was affiliated with in the past ten (10) years can preclude the necessary determination of an applicant’s substantially consistent high level of care.
- Adds additional review factors for applicant individuals who are or have been affiliated with another nursing home in the past seven (7) years, including, but not limited to:
 - Findings of facility inspections;
 - Survey findings;
 - Routine and patient abuse complaint investigation results;
 - Affiliated facilities earning a two-star rating or less by the Centers for Medicare and Medicaid Services (“CMS”);
 - Violations of state or federal nursing home code, or other applicable rules and regulations which threatened to directly affect the health, safety or welfare of any patient or resident; and
 - Explanations and supporting documents supplied by the applicant relating to any of the considered factors.
- Sets forth five events, which, if such events have occurred at a facility the applicant is affiliated with within the five (5) years preceding the application, preclude a determination of a consistently high level of care. These five events are:

- Closure of a facility or a facility closure as a result of a settlement agreement concerning a decertification action or licensure revocation;
- A health care related facility, agency, or program was the subject of a decertification action or licensure revocation;
- Involuntary termination from the Medicare or Medicaid program;
- Violations found, which either threatened to directly affect patient/resident health, safety or welfare, or resulted in direct, significant harm to the health, safety or welfare of patients/residents, and were recurrent or were not promptly corrected; and
- If any individual of the applicant/operator has greater than forty percent (40%) of the nursing homes in their portfolio with a CMS star rating of two stars or less and has held an ownership interest in such nursing home for forty-eight (48) months or more; unless the portfolio contains fewer than five (5) facilities, then the PHHPC shall make a determination on a case-by-case basis, using the criteria set forth for applicants who have been affiliated with another nursing home in the past seven (7) years (discussed above).

This summary of the proposed changes is not exhaustive. For the full details of the proposed changes please refer to the PHHPC's [website](#). Additionally please refer to the Department of Health's [website](#) for a link to view the discussion of these proposed regulations at tomorrow's meeting of the PHHPC's Committee on Codes, Regulations, and Legislation.

* * * * *

Should you have any questions regarding the above, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

Contact Information:

111 Great Neck Road Great Neck, NY 11021 516.393.2200	411 Hackensack Avenue Hackensack, NJ 07601 201.883.1030	350 Bedford Street Stamford, CT 06901 203.316.0483	677 Broadway Albany, NY 12207 518.242.7582	401 E Las Olas Boulevard Fort Lauderdale, FL 33301 754.228.3853
---	---	--	--	---

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at info@garfunkelwild.com. This material is intended as informational only and the content should not be construed as legal advice. Readers should not act upon information in this material without first seeking professional advice. This material may be considered Attorney Advertising under certain rules of professional conduct. © 2021 Garfunkel Wild, P.C.