



State of California—Health and Human
Services Agency
**California Department of
Public Health**



June 12, 2023

AFL 23-17

TO: Skilled Nursing Facilities (SNFs)
Intermediate Care Facilities (ICFs)

SUBJECT: Assembly Bill (AB) 1502 – Change of Ownership and Change of Management Requirements

AUTHORITY: Health and Safety Code (HSC) sections 1253.2, 1253.3, 1265, and 1267.5

All Facilities Letter (AFL) Summary

This AFL notifies all SNFs and ICFs of the chaptering of AB 1502 (Chapter 578, Statutes of 2022) revising SNF and ICF requirements regarding licensure, changes of ownership (CHOW), and changes in management companies (CHOM).

AB 1502 also requires all SNF CHOW and CHOM applications submitted on or after July 1, 2023, to receive California Department of Public Health (CDPH) approval before any change occurs, requires additional application content, sets a timeline for application review, expands grounds for denial, and adds disqualification criteria and civil penalties.

Overview

Effective January 1, 2023, SNF and ICF applicants for initial licensure must provide evidence that they have the financial capacity to operate the facility for 90 days and must notify CDPH 30 days prior to any change in the information specified in HSC section 1267.5(a) and submitted as part of an initial application or CHOW.

For CHOW or CHOM applications submitted to CDPH on or after July 1, 2023, AB 1502 revises the license application, review, and approval process for SNFs:

- Requiring CDPH approval before a CHOW or CHOM occurs and that the applicant submit a complete application to CDPH at least 120 days before the transaction will occur.
- Expanding the application contents to include all persons or entities acquiring a direct or indirect ownership interest in the SNF of 5 percent or more, including the applicant's parent corporation or corporate chain.
- Directing CDPH to determine whether the applicant is reputable and responsible, as evidenced by, among other things, the applicant's long-term care experience and compliance history for the prior five years and its

financial resources.

- Requiring CDPH to approve or deny the application within 120 days of receipt of the complete application, with expedited review allowed under limited circumstances. CDPH may extend the 120-day time period up to an additional 60 days due to extenuating circumstances.
- Providing grounds for application denial, applicant disqualification, and new civil penalties. The bill requires the current and prospective licensees to provide certain notices to CDPH.
- Requiring CDPH to convene a stakeholder meeting by April 1, 2023, to discuss SNF application fees.

CDPH Approval Required Prior to a CHOW or CHOM Occurring

AB 1502 requires all approvals to take place before the CHOW or CHOM can occur. Only those persons and entities approved by CDPH may operate or manage a SNF.

Transactions that must receive prior approval include, but are not limited to:

- A transaction enabling a person or entity to operate, establish, manage, conduct, or maintain a SNF.
- The transfer, purchase, or sale of an ownership interest of 5 percent or more in either the SNF or its licensee.
- The sale or transfer of the entity licensed by CDPH.
- A transaction allowing a SNF to be operated, in whole or part, under a management contract, including but not limited to an interim or longer-term management agreement that transfers operational control or management responsibilities from the SNF owner or licensee to a new entity.
- An agreement with a management company hired, retained, or authorized to act on behalf of a licensee to make financial decisions for the SNF, direct or control aspects of patient care and quality within the SNF, or be involved in the hiring, firing, supervision, and direction of direct care staff.
- The lease of all or part of a SNF, which results in the licensee losing possessory interest of the facility.

Applicants shall provide all notices, as required in this AFL, to the CDPH Centralized Applications Branch (CAB), unless otherwise specified.

Timelines

A SNF licensee planning to relinquish ownership, operation, or management must report the intended transaction to CDPH at least 120 days prior to its anticipated occurrence. The applicant for a CHOW or a CHOM must also submit its complete application to CDPH at least 120 days before the intended transaction. If CDPH determines that the submitted application is incomplete, it will provide written notice of the missing information to the applicant. If the applicant does not submit a completed application within 45 days after notification, the application will be denied.

CDPH must complete its CHOW or CHOM application review and make its determination regarding the applicant's reputability and responsibility within 120 calendar days of the applicant's submission of a complete application. CDPH may extend the timeline for extenuating circumstances and will give notice to the applicant.

If a facility has exigent circumstances, including, but not limited to, being subject to receivership or temporary management, the applicant may request an expedited review from CDPH. If CDPH determines that the applicant is reputable and responsible, CDPH may allow the applicant to operate the facility while the remaining portions of the application are under review.

The proposed transaction must be completed no later than 120 days after CDPH's notice of approval. The applicant may apply for one 60-day extension that includes notifying CDPH of the expected transfer date and the reasons for the delay. Both the applicant and licensee, or the person or entity relinquishing its license, must notify CDPH within 10 days of the final transaction that transfers the SNF's ownership, operations, or management to the applicant. If

the proposed sale, transfer of operations, or change in management does not occur after the applicant submits their application to CDPH, the licensee must notify CDPH within 10 days of the event terminating the sale, transfer, or change, including, but not limited to, the end of contract negotiations or a transaction not closing escrow.

Expanded Application Contents

In addition to the information previously required for SNF applications for initial licensure, CHOWs and CHOMs, AB 1502 requires the applicant to submit additional information to CDPH including names and addresses of prospective owners, directors, board members, as well as parent organizations and their directors, board members and managers. The applicant must also submit evidence that they are reputable and responsible, have the financial capacity to operate the facility, and any other information CDPH requires.

The applicant must also submit the following disciplinary information regarding the applicant and each relevant individual or entity for the past five years:

- Any revocation, suspension, probation, exclusion order, termination of Medicare or Medicaid certification, receivership, appointment of a temporary manager, designation as a special focus facility or special focus facility candidate by the federal Centers for Medicare and Medicaid Services, or other similar administrative enforcement or disciplinary action that was initiated in California or any other state or by the federal government, or is in the process of being adjudicated, against a facility associated with the applicant or a person identified above, by any authority responsible for the licensing of health, residential, or community care facilities.
- Copies of findings, orders, or both, issued by any health, residential, or community care licensing agency, certification agency, or any court relevant to the actions described in the preceding subparagraph.
- Any injunctions, corporate integrity agreements, judgments, or settlements resulting from actions filed by the Attorney General, the Department of Justice, a district attorney's office, or other federal, state, or local law enforcement agency against the applicant or any facilities that they have owned, operated, or managed.
- Any petition for bankruptcy relief involving the applicant's operation or closure of a health, residential, or community care facility licensed in California or any other state, the court, date, and case number of the filing, and whether a discharge was granted. If a discharge was not granted, the applicant shall provide copies of any court findings supporting denial of discharge.
- The identity of any SNF operated, managed, or owned by the applicant that has been subject to foreclosures, judgment liens, utility cutoffs, or disruptions in staffing, services, or supplies due to failures to meet payroll or pay bills.

Applicants must report any change in the above required information that occurs during the pendency of the application to CAB within 10 calendar days unless CDPH requires a shorter timeframe.

Expanded Review Process

AB 1502 expands the types of information and evidence that CDPH may review and consider concerning the applicant's reputability and responsibility, including, but not limited to:

- CDPH's inspection findings for health facilities owned, operated, or managed by the applicant, including federal and state findings resulting in regulatory violations, citations, other enforcement penalties,
- Temporary manager appointments,
- Findings of violations of required staffing levels,
- Financial instability related to the operation of the health facility,
- Special focus facility status.

AB 1502 extends CDPH's compliance history review to five years and requires CDPH to verify ownership and compliance histories through its own records. When cross-checking the applicant's information and evidence, CDPH must also check with other licensing agencies in this state, other states, and territories. In addition, AB 1502 reiterates CDPH must thoroughly examine the compliance histories of each long-term care (LTC) facility that is or has been owned, operated, or managed by the applicant during the prior five years, and expands that requirement to include any SNF facility chain associated with the applicant.

Disqualification and Denial

The following will result in automatic disqualification:

- The applicant owns, operates, or manages 10 percent or more of the licensed SNFs in California unless CDPH, in its discretion, concludes that the interests of resident health and safety requires that an exception is warranted.
- The applicant has a felony conviction related to the services or care provided in a health or community care facility, regardless of the length of time between the date of the application to CDPH for licensure and the felony conviction.
- The applicant has owned, operated, or managed a long-term care health facility that, while under their ownership, operation, or management, has been issued two or more of any combination of "AA" citations or "A" citations involving the death of a resident at the facility within a consecutive 24-month period within the prior five years. Only final citations that have been upheld by the state shall count toward automatic disqualification.
- The applicant or anyone with a beneficial ownership interest of 5 percent or more in the applicant entity has owned, operated, or managed a skilled nursing facility, nursing facility, intermediate care facility, assisted living facility, community care facility, or other type of long-term care facility in this state or any other state or territory that, while under their ownership, operation, or management, was terminated from the federal Medicare program or the Medi-Cal program due to noncompliance, had its license suspended or revoked, or was subjected to receivership or temporary management within the prior five years.
- The applicant is currently or was within the prior five years on the List of Excluded Individuals/Entities of the United States Department of Health and Human Services Office of Inspector General.

In addition to the current grounds for CDPH to deny a SNF licensure application, AB 1502 also authorizes CDPH to deny an application if it is incomplete, the applicant fails to correct deficiencies, withheld required information, made false statements, or did not disclose required disciplinary or enforcement action. CDPH may also deny the application if the applicant failed to establish through evidence satisfactory to CDPH that they are reputable and responsible, have the ability to comply with CDPH's rules and regulations, and have the education, experience, and financial resources for the operation of the SNF.

Enforcement Penalties and Remedies

Additionally, AB 1502 authorizes new civil enforcement actions. CDPH may issue a class "B" citation with a civil penalty of \$500 to \$2,000, when a licensee or prospective licensee assumes management or operational control of a SNF prior to CDPH approval. Failure to correct the violation within the time specified in the citation results in an additional civil penalty of \$500 for each day that the deficiency continues beyond the date specified for correction.

After licensure, CDPH may also assess a civil penalty of \$10,000 to a licensee for a material violation of HSC 1253.3, with that civil penalty issued and enforced in the same manner as a class "A" citation. In addition, CDPH may issue a class "B" citation and civil penalty of \$500 to \$2,000 to a licensee for failure to report a change in required information to CDPH.

When CDPH discovers the unapproved acquisition, operation, or management of a SNF following its denial of an application, AB1502 requires that CDPH ensures that the facility's operation transitions to a qualified operator in a manner that will protect the health and safety of the residents. In addition, the SNF's administrator must advise all residents, their representatives, and the state and local long-term care ombudsperson offices about the unapproved acquisition, operation, or management and inform them of the sanctions imposed by CDPH, as well as the residents' right to remain in the SNF while corrective actions are taken.

Appeal Rights

The applicant has 20 days after receiving CDPH's written notice of denial to request an appeal. During the pendency of the appeal, the applicant must not acquire, operate, establish, manage, conduct, or maintain the SNF that is the subject of the appeal. Management and operational control of the facility must remain with the current licensee.

CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of the HSC and the California Code of Regulations to ensure compliance.

If you have any questions or concerns regarding this AFL, please contact your local district office.

Sincerely,

Original signed by Cassie Dunham

Cassie Dunham

Deputy Director

Resources:

- CDPH Health Care Facilities Paper Application Packet

Center for Health Care Quality, MS 0512 . P.O. Box 997377 . Sacramento, CA
95899-7377

(916) 324-6630 . (916) 324-4820 FAX
Department Website (cdph.ca.gov)

