

## **“SNAP-SHOT” DATE FOR “BED TAX” ASSESSMENTS RAPIDLY APPROACHING**

*NFs that wish to reduce their franchise permit fee for fiscal year 2012 by de-licensing beds must act by April 29, 2011.*

The franchise permit fee (or “bed tax”) imposed on each Ohio nursing facility bed is currently \$12.00 per day for State fiscal year 2011 (July 1, 2010 – June 30, 2011). Accordingly, a 100-bed nursing facility is currently being assessed a bed tax of \$438,000.00 for State fiscal year 2011. While the bed tax for State fiscal year 2012 (July 1, 2011 – June 30, 2012) has not yet been determined by the Ohio Department of Job and Family Services, at this point, we do not anticipate a significant decrease, if any, from the amount currently assessed against Ohio nursing facilities. Therefore, in light of this significant expense, now more than ever, many of our clients may find it beneficial to explore the possibility of “de-licensing” beds from their nursing facilities to potentially reduce their bed tax liability in the upcoming State fiscal year 2012.

**Important Dates.** The annual bed tax is assessed against a nursing facility based upon the number of licensed beds on May 1 of each calendar year. It is important to note that regardless of whether a nursing facility is closed, the nursing facility's license is partially or totally surrendered, and/or beds at the nursing facility are sold, transferred, or de-licensed following May 1, the bed tax calculated for, and assessed against, the nursing facility is based on the nursing facility's licensed bed capacity on that May 1 date, and will not be limited, reduced, cancelled, or otherwise changed throughout the remainder of the next State fiscal year. Therefore, if you are considering de-licensing some or all of your nursing facility beds, all applicable statutes and regulations regarding de-licensing and de-certifying nursing facility beds must be complied with no later than Friday, April 29, 2011 (since the last day of April, April 30, 2011, falls on a Saturday), or the bed tax will be assessed on those beds for all of State fiscal year 2012.

**Opportunity to Re-license Beds for CON Projects.** In addition, please note that there is a potential opportunity to de-license beds that are the subject of a final, non-appealable certificate of need without losing the right to subsequently “re-license” the beds when the project that is the subject of the certificate of need is completed. Once again, this action must be completed on or before April 29, 2011, in order for the beds to be excluded from the State fiscal year 2012 bed tax assessment and should not be taken absent specific counsel and advice. It is important to note, however, that if any beds that are the subject of a final, non-appealable certificate of need are de-licensed and the certificate of need holder does not proceed with its project in the manner contemplated by its certificate of need grant letter, or abandons the certificate of need, the holder may permanently lose the right to re-license or operate those beds in the future.

**Considerations Prior to Proceeding.** Although de-licensing beds can potentially result in a significant financial savings for a nursing facility, it is important to be aware that once beds are de-licensed, those beds cannot be operated, sold, leased, transferred, or relocated to another facility, or relicensed at the existing facility. Also, in addition to the need to evaluate the potential strategic and financial effects of permanently relinquishing beds, nursing facilities whose assets are encumbered by a security interest of a bank or other third party will need to review the applicable financing documents and/or consult with legal counsel to determine whether the de-licensure of beds and resulting reduction in bed capacity is permitted. In virtually all cases, the applicable financing documents provide that the prior written consent of the lender and/or certain accommodations to the lender is required.

Please contact us if you would like further information or assistance with these matters, or if you have any questions regarding this e-mail alert.

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