

Recent Developments in Nursing Home Transactions: What You Need to Know

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Agenda


- ❖ LTC Transaction Trends and Developments
- ❖ CON Updates
- ❖ Q & A




LTC TRANSACTION DEVELOPMENTS AND TRENDS



Recent Trends		
2009	2010	2011
Steady level of transactions – for now	Lower number of LTCF transactions	Lower number of LTCF transactions
Tight capital markets	Tight capital markets	Loosening capital markets
Falling prices	Steady prices	Steady prices
More lease/purchase or stock transactions	More asset purchase transactions	More asset purchase transactions
Steady CON activity	Significant Increased CON activity	Steady CON activity

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Recent Trends
<ul style="list-style-type: none"> ❖ Lower number of overall nursing home transactions <ul style="list-style-type: none"> ▪ Consolidation – many deals have already closed, and there are many fewer sellers ▪ Distressed properties for sale – bankruptcies, receiverships, low census, older physical plant, over-leveraged CCRCs (newer physical plant) ▪ The deals that are getting done take longer ▪ Many deals aren't getting done

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Recent Trends
<ul style="list-style-type: none"> ❖ Loosening capital markets <ul style="list-style-type: none"> ▪ Interest rates still very favorable ▪ FHA-insured financing very popular – queues are getting smaller ▪ Local and regional banks are doing deals – relationships are key ▪ Appraisals are coming in lower due to reimbursement concerns

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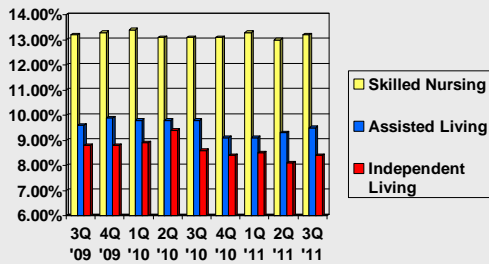
Recent Trends – Prices *

2008	2009	2010	2011
Nursing homes - \$45,500/bed	Nursing homes - \$47,500/bed	Nursing homes - \$62,500/bed	Nursing homes - \$59,100/bed
Assisted living - \$124,900/unit	Assisted living - \$113,300/unit	Assisted living - \$103,300/unit	Assisted living - \$161,700/unit

* Source: Irving Levin Associates, Inc.



Recent Trends – Cap Rates *



* Source: National Investment Center



Transparency & Disclosure

- ❖ Section 6101 of PPACA significantly increased the number and types of “disclosable parties” for nursing facilities.
- ❖ Examples of “disclosable parties” include any person/entity who:
 - has a 5% or greater direct/indirect ownership interest
 - owns a mortgage or other interest secured by the facility or property of the facility, if the interest is 5% or more of the total property
 - is a member of the governing body of the facility
 - is an officer, director, member, partner, trustee or managing employee of the facility




Transparency & Disclosure

- ❖ **Examples of “additional disclosable parties” include any person/entity who:**
 - Exercises operational, financial, or managerial control over the facility or a part thereof;
 - Provides policies or procedures for any of the facility’s operations;
 - Provides financial or cash management services;
 - Provides management or administrative services; or
 - Leases or subleases real property to the facility




Transparency & Disclosure

- ❖ **Currently, information relating to disclosable parties must be “made available” upon request of HHS, OIG or the State**
- ❖ **Beginning in July, 2012, nursing facilities must report the required information on a standardized form to HHS**
- ❖ **Beginning in March, 2013, HHS will make the ownership and additional disclosable party information submitted on the standardized form available to the public**



Transparency & Disclosure

- ❖ **Rules to be promulgated by March 23, 2012 [did not happen]**
- ❖ **CMS Form 855-A has been revised to capture much, but not all, of this information**
- ❖ **State agencies are also beginning to require additional information [e.g., Ohio Medicaid]**



Change of Ownership Issues

❖ Nursing Home Licensure Application

- Change of Operator/Owner Consent Form no longer used
- Certificate of Use and Occupancy Permit (must have "I-2" designation)
- State Fire Marshall Inspection Report
- Updated Fee = \$320/50 beds or part thereof
- Application not complete until ALL information submitted



Change of Ownership Issues

❖ Medicaid Application

- Medicaid Information Technology System (MITS) replaces paper applications
- Application is more comprehensive and requires greater detail
- Minimal instructions/guidance
- "3-day rule" - applications in progress will be saved on MITS system for only 3 days from date of last login
- Slower processing times



Change of Ownership Issues

❖ Medicare Application

- Form 855A significantly revised on 7/1/11
 - ✓ Must report exact percentage of ownership or control interest in provider
 - ✓ Must disclose "entities with at least a 5% mortgage, deed of trust, or other security interest in the provider"
 - ✓ SNFs must submit organizational diagram of ALL owners (even less than 5%)
 - ✓ No filing fee requirement for CHOWs (unlike initial enrollments, revalidations, etc.)



Change of Ownership Issues

❖ Successor Liability Agreements

- Mechanism to avoid withholding of final Medicaid vendor payment(s) in CHOP, voluntary withdrawal or closure
- Affiliated or entering operator assumes either (a) total Medicaid debt of exiting operator or (b) only such portion of debt related to franchise permit fees
- Eligibility of "affiliated operator"
 - ✓ At least 1 other provider agreement
 - ✓ At least 90% average monthly Medicaid payment



Change of Ownership Issues

❖ Successor Liability Agreements

- Successor liability agreements should be signed and submitted to ODJFS with or immediately after 45/90-day notice
- Allows unpaid debt to be paid by the entering/affiliated operator over a period of up to 6 months
- Loophole: no successor liability available for replacement facilities being constructed by single facility owner/operator



Franchise Permit Fees

❖ ODJFS is withholding unpaid franchise permit fees from vendor payments

- Increased risk for sellers of nursing home bed operating rights
- Consider de-licensing beds for long-range construction projects after CON approval
- Escrow funds for payment of franchise permit fees
- Unpaid bed taxes factor to decertify facilities



Franchise Permit Fees

- ❖ **Franchise permit fee redetermination provisions**
 - Potential opportunity in last year's Budget Bill to reduce franchise permit fee liability in middle of fiscal year in the event of a "bed surrender"
 - JFS has narrowly interpreted "bed surrender"
 - ✓ Included: beds permanently surrendered to State
 - ✓ Excluded: beds de-licensed and pending relocation pursuant to CON
 - ✓ Result: no reduction in franchise permit fees for most providers
 - Several appeals recently filed challenging JFS' position



Recent Trends – HUD/FHA

<u>Pros</u>	<u>Cons</u>
Long-term [25 – 40 years]	Long pre-payment penalty/lock-out
Fixed interest rates	Tax, insurance, and maintenance escrows
Non-recourse	A/R financing protocol
Few financial covenants	Additional regulation (inspections)
	Master lease



Government Actions

- ❖ RACs, MICs and ZPICs
 - ❖ Medicare requirements for quality of care
 - ❖ Safety and quality of post-acute care*
 - ❖ Nursing home compliance plans*
 - ❖ Oversight of poor-performing SNFs
 - ❖ Hospitalizations of SNF residents
 - ❖ Part B billing during non-Part A stays*
- KEY** → enhanced due diligence/expanded representations and warranties




Purchase Price Allocation

- ❖ **Purchase price allocation is more important than ever**
 - Transfer tax for sellers
 - Real estate taxes for buyers
 - Equipment
 - Goodwill/non-competition agreements
 - Building
 - Vehicles



Bankruptcies

- ❖ **Increase in nursing home bankruptcies**
 - Not like the late 1990s (then – chains; now – single facilities, some of which are non-profit)
 - Watch for stringent bidding requirements favoring “stalking horse” bidders
 - Live auction to determine successful bidder
 - Medicare successor liability not avoided by bankruptcy



Construction Issues

- ❖ **Construction contract disputes**
 - Delay in opening new buildings and projects – life safety code issues abound
 - Cost to correct can be high – waiver may be difficult to obtain
 - Review ALL construction contracts – AIA forms favor architects and contractors
 - Tie liquidated damages to licensure and certification, not certificate of occupancy
 - Harmonize with construction loan documents



CON Updates



Agenda


- ❖ CON Updates
- ❖ LTC Transaction Trends and Developments
- ❖ Health Care Reform and Other Legislative News
- ❖ Q & A



CON Updates

Current Law:

- ❖ Fewer CONs being filed – 93 in 2010, 30 in 2011 and 5 through April 1, 2012
- ❖ Fewer new and/or replacement facilities being built; more conversions and/or expansions
- ❖ Increased franchise permit fees and reduced reimbursement impacting transactions
- ❖ More private rooms and concentration of Medicare and manage care



CON Updates

- ❖ Appeals rare, but still occur, especially for new facilities
 - Denials even rarer, but cost of “delay” enhanced with increased franchise permit fees
 - Denials occur on failure to comply with mandatory criteria or attempt to revise application after deemed complete
- ❖ Observation: More important than ever to make sure planning, filing and appeal done by experienced and knowledgeable persons



CON Updates

- ❖ Three (3) methods to relocate beds
 - Intra-county transfers (file anytime)
 - Contiguous county – 30 beds to existing facility (maximum of 30 beds to receiving facility every five years and can be filed anytime)
 - Inter-county transfers: over-bedded to under-bedded – file July 2012 (next potential filing July 2016)



Inter-County Relocation Process

- ❖ CON applications may be subject to comparative review
- ❖ Bed need by county determined by ODH formula on April 1, 2012 (85% and 90% occupancy criteria)
- ❖ CONs must be filed in July 2012 and decision will be rendered by April 30, 2013
- ❖ Cannot include intra-county or contiguous county bed transfers with inter-county CON
- ❖ New bed need calculation in April 2016 for July 2016 (redistribute relinquished beds possible in 2014)



Related Issues

- ❖ Cannot transfer more beds into a county than # of beds needed
- ❖ Cannot transfer more beds out of a county than # of excess beds
- ❖ Seller also must turn in 10% of beds being relocated to ODH in addition to beds being relocated



Related Issues

- ❖ After re-location, # of remaining beds in facility's service area must equal or exceed state bed need rate (48.5 beds/1000 population of 65+ age in 2010)
- ❖ What is service area?
 - Health professional shortage area (HPSA) facility
 - Non-HPSA facility (15 miles)



Rule 3701-12-13(M)

(M) For applications made under the first comparative review process or under the first phase of a four year comparative review process, the director shall:

- (1) Limit the number of beds approved for a county to no more than the number of beds determined to be needed in the receiving county;
- (2) Maintain, after the relocation, the number of beds in the source facility's service area at least equal to the state bed need rate. For purposes of this paragraph, a facility's service area shall be either of the following:
 - (a) The census tract in which the facility is located, if the facility is located in an area designated by the United States secretary of health and human services as a health professional shortage area under the "Public Health Service Act," 88 Stat. 662 (1944), 42 U.S.C. 254 (e), as amended;
 - (b) The area that is within a fifteen mile radius of the facility's location, if the facility is not located in a health professional shortage area; and
- (3) Require the operator of the health care facility from which beds were relocated to reduce the number of beds operated in the facility by a number of beds equal to at least ten per cent of the number of beds relocated and to surrender the operating rights to those beds to the director by de-licensing if the beds are licensed, de-registering if the beds are registered, and de-certifying if the beds are certified. In calculating the number of beds to be surrendered to the director, the number of beds shall be rounded to the nearest whole number. This reduction shall be completed not later than the completion date of the project for which the beds were relocated.



County	Projected 2020 Pop (5 Age 65)	Long Term Care Bed Supply	Total Projected Beds Needed	Projected Shortage	Projected Surplus	Maximum Number of Beds Available for Allocation to a County with a Projected Short (Shorten 2020)	Maximum Increase in Bed Supply from Counties with Beds Available	County Occupancy
Albany	7,270	406	530	0	66	0	0	77.82%
Albany	17,830	760	629	69	0	0	0	88.86%
Albany	2,880	160	137	0	23	0	36	50.55%
Albany/County	81,900	4,126	4,173	0	253	253	0	85.57%
Albany	3,910	180	177	0	3	0	0	81.74%
Albany	5,330	267	276	9	0	0	0	79.58%
Albany	4,450	222	252	0	0	0	0	82.47%
Albany	2,700	137	139	0	0	0	0	79.71%
Albany	6,540	405	399	0	305	0	0	77.67%
Albany	3,310	90	163	133	0	0	0	65.64%
Albany	5,140	228	227	0	0	0	0	81.62%
Albany	8,330	380	387	62	0	0	62	83.33%
Albany	8,110	403	238	0	137	0	0	83.11%
Albany	26,850	820	1,230	460	0	0	460	85.35%
Albany	7,110	372	239	27	0	0	0	77.84%
Albany	5,310	177	219	0	103	0	0	65.14%
Albany	13,730	688	1,053	69	0	0	0	79.66%
Albany	10,000	540	568	68	0	0	0	80.00%
Albany	13,120	645	517	0	329	278	0	77.47%
Albany	13,170	616	611	0	296	396	0	76.47%
Albany	9,940	541	462	0	299	0	0	88.67%
Albany	7,700	360	390	0	0	0	0	82.00%
Albany	30,990	1,090	1,279	0	212	612	0	82.01%
Albany	89,790	4,216	4,172	0	66	0	0	88.87%
Albany	43,180	2,112	1,819	0	293	961	0	78.76%
Albany	16,180	868	791	0	117	171	0	86.46%
Albany	8,000	262	302	40	0	0	0	88.11%
Albany	6,580	294	220	0	40	0	0	75.51%



County	Projected 2020 Pop (5 Age 65)	Long Term Care Bed Supply	Total Projected Beds Needed	Projected Shortage	Projected Surplus	Maximum Number of Beds Available for Allocation to a County with a Projected Short (Shorten 2020)	Maximum Increase in Bed Supply from Counties with Beds Available	County Occupancy
Albany	3,160	92	100	8	0	0	0	81.00%
Albany	29,770	1,452	1,984	60	0	0	0	85.50%
Albany	28,000	240	333	60	0	0	0	80.50%
Albany	20,520	1,170	104	0	1,547	54	0	74.17%
Albany	1,670	81	118	0	79	0	0	74.47%
Albany	18,310	890	576	40	0	0	0	83.82%
Albany	1,170	296	183	0	361	0	0	67.47%
Albany	1,918,820	66,811	89,520	6,181	1,2,202	6,302	1,968	83.81%




Counties Eligible to Receive Beds from a County with a Shortage

County	Maximum Increase in Bed Supply from Counties with Beds Available	County Occupancy
Albany	0	89.76%
Albany	26	89.28%
Albany	10	88.02%
Albany	400	87.06%
Albany	28	87.01%
Albany	608	86.07%
Albany	217	85.87%
Albany	18	85.00%
Albany	408	84.74%
Albany	19	83.76%
Albany	1700	88.41%
Albany	17	83.40%
Albany	43	83.33%
Albany	468	83.04%
Albany	39	82.61%
Albany	0	81.07%
Albany	66	80.86%
Albany	66	80.07%
Albany	17	80.00%
Albany	16	80.00%



CON Comparative Review Considerations (Points)

- ❖ CCRC (1-4 points)
- ❖ Serving underserved population (1-3 points)
- ❖ Alternatives to institutional care (2 points)
- ❖ Medicaid waiver (2 points)
- ❖ Reduction of alternative beds (negative 2 points)
- ❖ Resident satisfaction surveys (1 point)
- ❖ Facility currently less than 50 beds (1 point)
- ❖ Nurse aide training site (1 point)
- ❖ CMS 5 star rating (1-2 points)
- ❖ Facility will serve rehab patients (2 points)



Rule 3701-12-13


(L) In determining which applications should receive preference in a comparative review process, the director shall consider, in conjunction with all other applicable criteria prescribed by this chapter, all of the following as weighted priorities. Applications that meet all applicable criteria for certificate of need approval and that receive the most points under this paragraph will be given preference. When applications that meet all applicable criteria for certificate of need approval and that are under a comparative review process for the same county receive an equal number of points under this paragraph, the director shall give preference to the application that demonstrates the greatest need for the reviewable activity.

(1) Whether the project, as described in the application, is or will be part of a continuing care retirement community (CCRC) that complies with paragraph (1)(3) of this rule upon completion of the reviewable activity. This criterion is weighted with four points for a CCRC with at least a four to one ratio of alternative beds to long-term care beds, three points with at least a three to one ratio, two points with at least a two to one ratio and one point with at least a one to one ratio. No points will be given if the ratio is less than one to one.

(a) The alternative beds shall be available to the residents and potential residents of the long-term care facility.

(b) Appropriate agreements shall exist between the long-term care facility and the alternative facility for transfer of residents.

(c) The applicant shall certify that the capital expenditure for the proposed alternative facility will be obligated, within the meaning of paragraph



Rule 3701-12-13

(A)(1)(a) of rule 3701-12-18 of the Administrative Code, at the same time as the capital expenditure for the portion of the project involving the long-term care facility.

(d) The applicant shall certify that no application will be filed by any person for a certificate of need for conversion of the alternative beds to long-term care beds for at least two years after the proposed alternative beds are occupied by residents.


(e) The application shall contain a certification that if for any reason the alternatives to inpatient long-term care cannot be developed or provided, development of the portion of the project involving the long-term care facility will be discontinued and the director will be notified immediately.

(f) The application shall contain documentation of how the long-term care facility and the alternative beds proposed will be integrated into the existing and projected community system for caring for elderly and individuals with disabilities. This documentation shall include at least:

(i) A thorough inventory of existing and projected alternative beds to inpatient long-term care within the county;

(ii) A description of the planning process leading to selection of the alternative beds proposed in the application, including discussions with appropriate community groups such as local aging agencies regarding the community's needs for alternative services; and

(iii) An analysis of the need in the community for the proposed alternative beds, taking into account the needs of the target population, the existing and projected alternative services and beds in the community, the ability of the target population to assume the cost for an alternative bed, and the expected effect of the alternative beds on utilization of long-term care facilities. The application also shall contain a demonstration of the economic viability of the proposed alternative beds.



Change in Site Within a County

- ❖ New site must be in same county
- ❖ Must be done prior to being deemed complete
- ❖ Cannot be used for inter-county relocation from excess to need
- ❖ Cannot revise anything else
- ❖ Additional filing fee equal to 25% of original filing fee



Licensure Issues

- ❖ Showers in toilet rooms (and waivers therefrom)
- ❖ "Jack & Jill" bathrooms
- ❖ Dining and Activity Space
- ❖ RCF Conversion
- ❖ Staffing



Compliance With Approved CON

- ❖ Plan of care for resident relocation
- ❖ Close existing facility prior to project completion
- ❖ Contractual obligations of seller of operating rights to nursing home beds



Facility Size

- ❖ New NF with < 50 beds – Operated in a cost-effective manner; and
 - Special health need; or
 - Plant deficiencies; or
 - CCRC
- ❖ New NF or bed addition with > 150 beds
 - Replacement facility; or
 - Special health need and can be operated efficiently without sacrificing quality



Ownership of Beds

- ❖ Make sure lease specifies who owns the beds or operating rights
- ❖ Watch closing dates on purchase agreements – may need to amend purchase agreement before CON granted




Existing Health Care Facility

- ❖ Health Care Facility
 - Licensed nursing home
 - Registered hospital
 - County home or county nursing home
- ❖ Actively providing services; or
- ❖ Provided services for 365 consecutive days in last 24 months
- ❖ NOTE: Applies to hospital-based SNFs



CON Proposed Changes

- ❖ Eliminate pre-decisional objection right
- ❖ Limit ability to transfer up to 30 beds to contiguous counties
 - Max 30 beds to any nursing home
 - Within 5 year period after CON implementation
- ❖ Replacement CON's
- ❖ Maximum of 15 days to relocate residents from existing SNF to new projects

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QUESTIONS???

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