

Changes To Citation Law For Nursing Homes Effective July 1, 2004

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Effective July 1, 2004, new requirements relating to citations issued by the Department of Public Health against nursing homes took effect. These new requirements, which are set forth in P.A. 04-258, §39, could affect the ability of a nursing home owner or licensee to acquire additional nursing facilities.

Prior to this recent change, Connecticut General Statutes § 19a-528a prohibited any nursing home owner or licensee, who (1) received four civil penalties as a result of citations from the Connecticut Department of Public Health, in a two year period, (2) had intermediate sanctions imposed through final adjudication under the Medicare or Medicaid programs, or (3) had a Medicare or Medicaid provider agreement terminated, from acquiring another nursing home in Connecticut for five years from the date of the imposed penalty, sanction, or termination.

The language in the new law eliminates the reference to the four civil penalties; however, it also clarifies that a potential owner or licensee of a nursing home in Connecticut who has had (1) civil penalties imposed by Connecticut or *any* other state, (2) intermediate sanctions imposed under Medicare or Medicaid in *any* state, or (3) a Medicare or Medicaid agreement terminated in *any* state, is prohibited from purchasing a nursing home in Connecticut. The revised statute does

allow the Department discretion to permit an acquisition, notwithstanding the civil penalties, sanctions or terminations if the owner or licensee can show "good cause."

The Department has always reviewed the operating history of nursing home licensure applicants, both within and outside of Connecticut, and so this statutory revision does not signify major changes in the licensure approval process for nursing homes. However, licensure applicants will need to submit additional information as part of the application process.

Because the amendment took effect July 1, 2004, any change-of-ownership licensure applications filed on or after July 1, 2004 will require the applicant to list and explain any citations received during the past two years as part of the application process. The applicant must demonstrate sufficient "good cause" to gain the Department's approval of the application. The Department has indicated that routine citations should not cause problems, but applicants will need to list and explain the citations as part of the application process. Meanwhile, the Department is working on revisions to the actual licensure application to reflect this change in the law.

Before a provider submits a change of ownership application for a nursing home in Connecticut, the provider may want to consult with legal coun-

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sel to address concerns with citations that could affect approval of an application. Likewise, it becomes even more important for any provider who receives a citation for a currently operating facility and who is considering the possibility of acquiring another facility, to fully exercise the right to contest the citation with the Department. Again, legal counsel can be of assistance in developing arguments to persuade the Department to reconsider the citation.

If you have any questions regarding this memorandum, please contact one of the following members of Wiggin and Dana's Long Term Care Practice Group:

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Nothing in this Advisory constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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