

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**AD HOC COMMITTEE ON NURSING HOME CERTIFICATE OF NEED**  
**September 18, 2025, 12:30PM**  
**90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC**  
**TRANSCRIPT**

**Mr. La Rue** Good afternoon, everyone. I want to start off by thanking the department and the council and Jeff for forming this Ad Hoc Committee. I think it's going to be really important work, and we've only got four meetings to get this done. I appreciate all the pre work that Val and her team did in preparation for today's meeting.

**Mr. La Rue** I'm going to turn it over to Val to make the initial presentation.

**Ms. Deetz** Not used to talk on the microphone. I'm Val Deetz. I'm the Deputy Director for the New York State Department of Health Office for Aging and Long-Term Care. Just so folks know who is represented from the department, I have Dr. Doug Fish to the right of me, our Deputy Commissioner for the Office of Health Care Delivery. And then to the left of me I have Andrew Lebwohl, Director of Long-term Care, Licensure of Planning and Finance. Mike Heeran, Director for Nursing Home Licensure. I have Claudette Royal, New York State Ombudsman and Kerrin Donato at the end, also a member of the Ombudsman's team. And on the phone today, we have Lynn Baniak, who's the Deputy Director for Long-Term Care Planning and Finance under Andy's direction. Thank you very, very much for allowing us to participate on this. We put a quick Power Point together just to level set on what the expectations of this group are.

**Ms. Deetz** Lynn, could you move the Power Point forward, please?

**Ms. Deetz** Again, the Ad Hoc Committee charge, number one, it was created as a result of some of the concerns, ongoing concerns over nursing home transactions, and which culminated back in April with the three applications that Jeff referenced before. It really is to examine the current policies and practices that are governing the processes for the review of nursing home Certificate of Need applications and to develop some procedural recommendations for the Department of Health that could be applied uniformly across our reviews and help to develop the recommendations that we present to the Public Health and Health Planning Consult.

**Ms. Deetz** Next slide.

**Ms. Deetz** On that same note, like Scott just said, we'll have four meetings that will include the specific members of the Public Health and Health Planning Council, the state ombudsman, and the department staff. We will have just this one in-person meeting, but the rest of the meetings will be held via Zoom. At the conclusion, Scott and team from PHHPC along with some input from the department will report their findings to the full PHHPC and then delivering that set of final recommendations. Again, the public will have an opportunity to provide public comment through the normal process that. Most of you go through, I know that there's a lot of individuals that are very familiar with Colleen Leonard, our secretary for the Public Health and Health Planning Council. Colleen usually shepherds any comments that come in in writing to the group.

**Ms. Deetz** Next slide.

**Ms. Deetz** One of the things that we had determined was necessary for us to review, there are four focus areas. We're going to touch on focus area number one, which is the qualification and review of the proposed operator and operators and operating entity so that we know the individuals that are coming in to run nursing homes have the appropriate experience and to do so. What I've done on the Power Point, which will be posted to the New York State Public Health website under the CON page, you'll see there are New York State Public Health Law references as well as references to Title X on the specific regulations and statute that govern our review processes in these areas. Our second meeting will be determining the adequacy of finances to support short and long-term financial sustainability, one, three, and five years. There was a lot of questions from the group at the April meeting in regard to how we determined that there would be a financially sustainable project. How can we do a better job of explaining that to our partners with the Public Health and Health Planning Council? Assessment of consulting services will be another area we'll touch upon, including related party transactions. Again, the regulatory and statutory references for those specific review areas are noted in the Power Point, and then conditional approval. We do hope to have a presentation. During the financial piece by our Medicaid Fraud Control Unit of the Attorney General's Office. We look forward to that presentation. We'll let you know when that happens. With that, Scott, I think we can probably dive right into the first focus area, which is the qualifications and review of proposed operator or operating entities.

**Mr. Robinson** Could I just ask a question about the related party transactions and what is meant by that? I mean, I think all of us are aware that a significant part of the business proposition for folks that are entering into the nursing home business is the real estate side of the transaction. We've never kind of paid much attention to that because we've been focused on the operator side. Is the related party transactions that you're referring to include the real estate property piece of nursing homes as we're going forward?

**Ms. Deetz** It sure does, so thanks for asking that question.

**Mr. Thomas** One other quick question, and Peter asked one of my questions. The other was, in terms of qualifications, will the Ombudsman's Office be talking about their work and the effect that their work might have on subsequent applications by people who have been the subject of their reviews? Not by name, I'm not asking for any, but just conceptually. They're here, so I assume so.

**Ms. Deetz** That's why they're included in the committee, yep, exactly right. They are the eyes and ears on the ground. They are there for the residents of the nursing homes, and they are... They can provide us a wealth of information.

**Mr. Thomas** Terrific. Thank you.

**Ms. Deetz** Scott, going to turn it back over to you on this first special focus area, which is the qualifications and review of the operator and operating entity applicants.

**Mr. La Rue** Thank you, Val.

**Mr. La Rue** I just want to clarify. When we're talking about this first bullet and the qualifications, there's really two buckets. The first bucket is someone who's putting forth an application for which they're the owner operator, and the other would be an investor group that was purchasing the nursing home and proposing an operating group to run the nursing home on their behalf. Would that be correct?

**Ms. Deetz** Sorry, yes, that is correct.

**Mr. La Rue** Okay, so why don't we take the easier one first, which is simply the criteria for which an individual who's purchasing a nursing home would need to meet from all aspects looking at it holistically. Would someone from the department be able to review what the current recommended criteria currently is?

**Ms. Deetz** Sure, I'm going to kick that off, Scott, and then I'll probably turn it over to see if any of my colleagues have any additional points to add. Right now, when the review is conducted of the qualifications, we look at the natural person operators to ensure that they have the relevant experience. We look at if they have adequate experience, meaning five years, and this was something that's been in effect since 2016. As a result of another Public Health and Health Planning Council deeper dive into the CONs and the review of the CONs for nursing home applications. We check on the relevance, right? What kind of experience? Specifically, if I'm not an owner operator right now, but I am a nursing home administrator, I am a Director of Nursing that may be administering those services in a residential healthcare facility or any other leadership position held at the healthcare facility. We dive a little deeper to find out...Is its continuous years that they have been employed? Is it the same facility that they have been in employed by? Sometimes we have regional or corporate individuals that are in roles of administrator that we wouldn't see perhaps stability as far as nursing home tenure, right? They're not going to be there for a long term because what happens is they jump from facility to facility to fill in if there is a nursing home administrator that's either terminated or leaves our employment. Let me stop there to see if Mike or anybody else from our team has any additional information to share.

**Mr. Heeran** That pretty much covers it, as far as what we look at. Again, we just look overall. They have to be in a leadership type of role and a position to qualify and to be relevant experience. That's the biggest part, as well as yours.

**Mr. Perry** I just have a quick question. It sounds like you're again referring to the operator. What about the requirements for the owner? I'm missing that.

**Ms. Deetz** I'm not certain I understand your question. Because the operator is what the department gives the license to operate a nursing home. If you're talking about the owner of the real property, we don't regulate the real property. We're looking at feasibility and financial stability. Mike, I don't know if you want to add anything else.

**Mr. Heeran** If somebody is a member of the operating licensed LLC, or company, or corporation, whatever is licensed, they're subject to CNC. When we use the term investor, on the operations side, we really don't have that. If you even have a 0.001% interest and you're on the licensing entity in a capacity as a member, you're subject a character incompetent. Somebody in that group, at least one person, I don't know if this was touched upon in that group has to have the five years minimum experience in the relevant position. It's at least one.

**Ms. Deetz** I think somebody from our Division of Legal, Marthe, you wanted to add something on that as well.

**Ms. Ngwashi** Thanks.

**Ms. Ngwashi** Good afternoon. My name is Marthe Ngwashi. I'm an attorney at the Department of Health. We use the terms owner and operator interchangeably. I want you to just understand it from a broad perspective. If you're talking about owner, we're talking about the operator of the facility, because we're talking who we're giving a license to. We might say owner. We might say operator. We might say established operator. Do you understand what I'm saying? I don't want to get too confused about who the person is that's operating it, because New York State law does allow legal entities to own and operate a facility. Do you see what I'm saying? It's the same thing. If you have a more specific question about it, maybe we would be able to help you, but I don't want you to think that it's something completely different. There could be a situation where the person who is seeking a license is also the owner of the real property, right? In that case, we wouldn't use the term the operator, because the real property does not have an operator. It just has an owner, just like your home. As it relates to the operator, the entity or the individual seeking a license to operate, to provide the services, the skilled nursing services at that facility, they are either an owner or an operator, doesn't matter. They're an established operator.

**Mr. Holt** Scott, it might be helpful because I'm not sure how well you can see the room from your spot, but I can manage the questions because we're getting a lot of hands going up around the table here. If you're okay with that, I can go through and manage that part of it.

**Mr. La Rue** That'd be very helpful, Tom. Thank you.

**Mr. Holt** Dr. Kalkut, Ms. Monroe, Dr. Friedrich, and Ms. Soffel.

**Dr. Kalkut** If there is a group of owners, are they each considered an operator?

**Ms. Ngwashi** If you have a group of people who form a legal entity, yes, they will be. For the purposes of the license, we're looking at that legal entity. Obviously, for the department's perspective, we are looking at the stockholders, we're looking at the directors, we are looking at the members, if it's an LLC. We look at the partners, if it's a partnership, or an individual, if it's an individual. Do you see what I'm saying? We're always going to look at each individual person.

**Dr. Kalkut** If it's an LLC.

**Ms. Ngwashi** We look at all the members.

**Dr. Kalkut** They get competency, character and competency reviews?

**Ms. Ngwashi** Correct.

**Dr. Kalkut** I'm stuck on one of those reviews, and maybe I'm not remembering it correctly, where one of the owner group, or I don't recall if it was LLC, the only experience that was listed was her work as a milliner, a hat maker.

**Ms. Ngwashi** This is what Val was talking about when she just went over some of the things that the department looks at to determine whether or not somebody has either adequate experience to be an operator. They're not just looking at one thing. They're looking at a few different things. I think she went over them, and Mike talked a little bit about them too. I understand that sometimes it might look like, well, why should that

person be able to do it? Sometimes somebody is in ownership for financing purposes, and that's okay also. You don't always have to have a scenario where someone has all of this skilled nursing or nursing home administrator experience to be able to own and operate a nursing home.

**Dr. Kalkut** I don't want to stretch this out, but if an owner is also an operator and that person lists an experience as milliner.

**Ms. Ngwashi** Let's just use the term operator. Let's not use the term owner.

**Ms. Marks** From a legal standpoint, the owner is going to be the legal entity. That's why you might have someone who is part of the legal entity. We are going to look at them for character and competence, because we're going back to the individuals who will make up that legal entity, but the entity that is the owner operator is the legal entity itself. You're looking at all the people together, not just each one individually. I think I would send this back to Mike.

**Ms. Ngwashi** You're not looking at all of them individually for the purposes of operating the actual nursing home. You are looking at each one of them, individually, for the purpose of character and competence. Certain people within the ownership, if they're multiple people, may have different skill levels. Like, say, for instance, I know how to do marketing, but you know how to do something related to financing or something. Do you see what I'm saying? So, each person might come together to form this entity to be able to carry on the functions of the business. Everyone might not have the same skill set.

**Mr. Heeran** So to bring it home, at least when we're talking about this experience, it's one of the members of the legal entity, one, has to have these minimum standards for experience.

**Mr. Lebwohl** They all need to have good character. You need one person with competence, and you need everyone in the group to have good character.

**Ms. Monroe** At a previous meeting that the council had, we had a great presentation by Mark Furnish, who isn't here, but he talked about levels of ownership or levels of ownership. Thank you, the professional term. Because one of the things I thought we were going to look at here was not just what you currently do, but what we might think is important to be done. When you do the character and competence, do you look at different tiers of ownership as opposed to operation? I think that's frankly where we're getting confused. Because I can operate the nursing home, but I may or may not be an owner of the nursing home.

**Ms. Ngwashi** You cannot operate a nursing home if you are not an owner. You will never have a scenario where someone is operating a nursing, and they are not licensed to operate that nursing home. Do you understand what I'm saying? As she was saying, you get the license. It's as an individual, partner, limited liability company. It could be a different entity.

**Mr. Perry** As an owner of that nursing home, can I not hire someone to operate that nursing home for me?

**Ms. Ngwashi** No, no, no. You cannot do that. You cannot hire somebody to operate a nursing home. The only people that can operate a nursing home are people who are

licensed to operate the nursing home. No, I understand that. You might be thinking about some people who come in to handle administrative services. Those are not operators of nursing homes. Do you see what I'm saying? You really do have to get specific. They are not the people who are operating the nursing home. The people who were operating the nursing home are the people who have submitted an application to the department. The department has vetted them for the four criteria, character and confidence, financial feasibility, need, and also any other factor the department and the PHHPC deems pertinent. Those are the people who legally acceptable to operate the nursing home.

**Ms. Ngwashi** I think you're getting confused in them though. You're getting confused in that one.

**Ms. Marks** I said we're talking about terms of art here that have legal restrictions and legal connotations, not common understanding. In the common understanding or common parlance of an operator, I think what you're talking about is a nursing home administrator, which is a different role. I'm sorry. It's the legalese. I apologize for that. What we're taking about is the legal definition of an operative, which is a defined term in the law. That's why it's a term of art and that's Marthe is being very careful to distinguish between who can actually operate a nursing home because that's a legal definition. An administrator may be running it, but they're not operating it. I know that sounds stupid.

**Mr. Holt** Marcus Friedrich.

**Dr. Friedrich** The following question then, when you sell a nursing home, do you sell the operating certificate that you have to be an owner to make that sale? That is where, in my head at least, I get confused about that because we were talking here about transfer of ownership. Is that also then at the same time transfer of operation? Can the same operator continue operating while I'm transferring the nursing home to somebody else?

**Ms. Ngwashi** I mean, I don't know that I fully understand your question, but an application has to be submitted to the department to change the ownership and operation of a nursing home facility, right, just as other provider types. While that application is pending, the current operator, current licensed operator is still responsible to operate that facility. During that process, you will only still have just one operator doing something. Once the transaction is approved by the PHHPC and is later closed by the parties, then the formal transfer of ownership will take place. The department will recognize the new operator of that facility.

**Mr. Robinson** Maybe what we should ask ourselves, given this confusion, which you're doing your best to help us with, is if we were to invent this system again, would we do it this way? Is there maybe, as part of the work and recommendations of this group, not to sort of figure out how the spaghetti links together. More to say, if we were to restart this structure so that we had a more common-sensical way of understanding it and regulating it, what would we set up? Because it seems to me that for us to sort of tweak around the edges here is not going to be very, very productive. Is the department open to looking at this afresh?

**Mr. Holt** On that point, Scott, and please correct me if I misspeak here, but it's my understanding that we wanted to get everybody to a certain baseline of how we currently function, because we've got members that are relatively new to the council. We've members that have been on the council for quite some time that have had some of these experiences. I think that's what we're trying to get to, at least with this portion of it is to get

us all to an even point. And then, Peter, perhaps a next step of this could be what you're suggesting. I think we're just trying to get ourselves all to a level playing field right now. Am I correct, Scott, in assuming that?

**Mr. La Rue** Yes, absolutely.

**Ms. Deetz** That's the department's understanding as well. We do have, like I said early on, and thanks for bringing that up, Tom, we have statute and regulations that govern this. It's giving clarity on those. We're for the qualifications piece. We're willing to hear if there's concerns on what criteria that we're using or how we can give you the members of the establishment and the PHHPC committee the information you need to make a final recommendation on the project.

**Ms. Soffel** I want to try to tease out a little bit the operator role vis-a-vis the actual administering and running of the facility, because I think that my concern is what does the department do to assure that the person who has got day-to-day responsibility for overseeing patient safety, patient care, patient quality has the qualifications that we want them to have? If they're not the operator, what can we enforce in terms of the person who's actually on the ground every day running the facility?

**Ms. Deetz** I was hoping somebody would ask that question.

**Ms. Soffel** Well, it seems like an obvious question, right?

**Ms. Deetz** I am a nursing home administrator. Luckily, I am nursing home administrators, so I can give you some information on that. We are governed under specific laws. We are required to have a specific education and training. We are requiring going through an administrator and training program, which could be up to twenty-four months. We actually take federal examinations to become a nursing home administrator and then state-specific guidelines. We are licensed by the Board of Examiners of Nursing Home Administrators, which is an independent body that provides that license.

**Ms. Monroe** You're not saying the department people are. You're saying a nursing home administrator.

**Ms. Soffel** My question was, it's all well and good that the operator has quality and competence, but what about the person who's actually running the place?

**Ms. Deetz** Yep, so they're responsible for the day-to-day operations, and they are held accountable through the surveillance work that the department does. Any time there is an immediate jeopardy with substandard quality of care, they are brought before the Board of Examiners of Nursing Home Administrators to answer the concerns by the licensure board for that discipline.

**Mr. Holt** Mr. Thomas.

**Mr. Thomas** Not to beat a dead horse, Mark, but to beat a dead horse. The entity, HUCO is buying a nursing home. HUCO is owned by Tom, Mike, Gary, Peter, Ann, and me. The entity is the operator. That's HUCO. In order for that entity to buy it and to evaluate the ability of that entity to operate it, you will look through the entity to the five of us and determine character and competence. At least one of the five or seven of us has to have the competence, five-year competence to own this nursing home. The rest of us can't be,

for lack of a better word people who do not have an appropriate character to be in that ownership structure. Is that essentially, without getting involved in the words. I mean, I want to get up and just draw it. I'm not going to do that. That's what tax lawyers do. I think that's, to sum it up. You're looking through. Like we often do, I mean, there's multi-tiered CONs, not in nursing homes, but in health systems that come in here all the time. You're looking at multiple tiers of ownership. You're saying anybody in that ownership structure, not the operator, the operator is the entity, I know the difference, but the six people who own the operator. They're all subject to that review, careful review. We'll get into the nuances of real estate and all the other stuff. Thank you.

**Dr. Eisenstein** I'd like in Mr. Thomas to HUCO, but you kind of took what I was going to say, but it raises the next question. If I'm understanding this right, they could be the ownership group and one of them has to have the criteria, but they as an ownership group couldn't present an application with Ms. Deetz, who might have all the experience as the person managing the operation if she's not officially part of the ownership group. Is that what you're saying? My question is, to me, and I've heard this come up just in casual conversation a lot, if people who are licensed nursing home administrators are not part of ownership groups, it seems that there's probably a very small pool of people with the money to be in ownership groups of buying nursing homes versus maybe a few more people who are seasoned professionals at running nursing homes, but aren't as rich as HUCO and the rest of the group over there, right? I mean, I'm guessing this and based on discussion. Are we going into a process that we even have capacity in New York State? Are there enough buyers of nursing homes to create a program? The population's aging. There's more care at home and other things. I'm not sure if this is a yes or no question or a general. Do we have capacity even to build the program that we hear to build? Are there enough of those people? I know there's probably enough nursing home administrators, but they don't count as owners for this process. Is there the capital? Are there are enough qualified, because one of them has to meet all those requirements. It doesn't matter how much money they have. If one of them doesn't have the five years of experience, this sale can't happen if I'm understanding this right. Is there a capacity?

**Ms. Farrell** Can I add on to that? Scale. Very often, we see ownership groups that come in and they're operating in Florida and in other states. Do we have state-specific requirements when it comes to scale and evaluating competency in state and out of state?

**Ms. Soffel** And to sort of tag on that question, how do you know that the person with the five years of experience will have any role in the actual operation of the nursing home and not simply go back to their house in Florida and say, good luck, guys?

**Mr. Heeran** That's actually, if you look at the sub italics at the bottom of the focus area, I believe that's what we've done in the past to make sure that that experience member stays on. I've been around for a while in this business, the Department of Health side.

**Ms. Soffel** I do understand Hugh is moving to Florida.

**Mr. Heeran** We do, we can and have in the past put conditions on. If you see, like, HUCO can formulate their organization or whoever they want to formulate to make sure they have an experience piece, a money piece. That's common. There's your how do you get the capacity? You have to build the team underneath your operating LLC to bring in the right pieces. You can, and that's, I think, what the italics means up on that screen is the PHHPC can put a condition on to make that person stay on or someone similar be brought on for a certain period of time, so you don't have an organization structured and then after a few

years or months restructure the organization. I think that's what that is for just to draw your attention to that.

**Dr. Eisenstein** Is their capacity? Are there enough buyers that meet the criteria?

**Mr. Lebwohl** They just need to bring in a partner who's going to be able to do the operating piece. There's plenty of people who have the capital to bring it in and then when you assemble a group of people to bring in the capital the purchase it they have to add a partner who has the operating experience.

**Ms. Deetz** And that's assuming that individual or entities want to sell. It's very difficult to determine what you're asking or come up with a solid response to what you are asking.

**Mr. La Rue** There certainly hasn't been a lack of buyers to date. The last couple of years, the circumstances have changed financially for nursing homes in general since the staffing legislation was passed, but I still think it hasn't deterred individuals from wanting to buy nursing homes. Tom, I can't tell if there are more questions or comments. If we started with a base level of understanding here, I go back to the original kind of two buckets and we kind of diverged into the investor bucket. If we went back to the very simple transaction, which is a single owner operator that is going to purchase the nursing home and operate the nursing homes. Is there anything about the experience that Val shared that we would recommend or want to change for that individual? You think about the quality of care and operational history, I talk about that quite a bit with the five-star ratings, that it's not about an individual incident from my perspective. It's about how have you done historically over your portfolio of homes or the experience that you've had in terms of your quality and your operations and financial viability, I think that is more a key indicator than any specific point in time that someone had an unfortunate incident.

**Ms. Monroe** Can I ask, Scott, do you mean that you would pay more attention to financial viability than to quality-of-care indicators?

**Mr. La Rue** No, absolutely not. I'd start with quality.

**Ms. Monroe** Okay.

**Mr. La Rue** And what I'm saying is if you have five years of experience, is it just in one place or have you been in multiple places? What is your track record over that higher portfolio both from a quality and financial performance? We'd certainly start with and most importantly, with quality.

**Mr. Holt** Dr. Friedrich.

**Dr. Friedrich** Marcus Friedrich here. Scott, so if I understand you correctly, it's in a way the delta, how the quality is changing over time, because I think in quality measurement, there's always this issue that you measure quality at one point of time. Am I correct assuming that you mean how maybe the quality has changed over time in the other homes? How would you define that quality? How would you understand quality when you have two different, let's say, operators with different backgrounds? The person, in my book at least, who has a deteriorating quality over time is probably worse than somebody who has medium quality and stays there or even improves the quality. I don't know how in the nursing home world how fast quality can go either direction. This is probably a multi-year process or something like that.

**Mr. La Rue** Well, yeah, it could change fairly rapidly. The systems that are in place to measure these things are not necessarily timely themselves. It's not necessarily a reflection of that moment, which is kind of what I'm saying. If the benchmark is a five-year look back period, how has that individual performed in their responsibilities of the owner of the nursing homes during that five-year period, whether it was one nursing home or it was five nursing homes. What was the pattern of performance? I'm thinking that that is really the most important indicator. And then, of course, with the feedback that you're getting from the ombudsman about what they're seeing is happening in the facility plays an important role as well. Are they operating the home ethically and have a positive community relationship that they've established? You take a look at the staffing rating as an example. If someone's entire history and portfolio is one star staffing that's not a recruitment issue that's probably how they from a business perspective have decided to run their homes which is with the minimum staffing they could possibly get by versus maybe three or four homes are three stars or more and one of them is one star. There's probably something unique about that one home or the geographic area that it's in that might be challenging as it relates to the recruitment. I'm just suggesting it best to look at a pattern and a history then an isolated incident.

**Dr. Friedrich** Right, and I'm sorry, just to put a finer point on that, because there are situations where an otherwise high-quality provider could have a one-off incident that occurred in the facility. And that then would preclude that nursing home from having a five-star quality rating for three or four years now. I forget what that time frame is. You really have to take a little bit closer look at all of the information that's going into those five-star ratings.

**Mr. La Rue** Unfortunately, the recent changes in the star ratings, I think are favorable in terms of the methodology because the timeframes have been shortened and the weighting of the more recent activity is weighted higher, so I think it's going to be more reflective of what is happening today than the old five-star rating system, which could be quite a bit laggard.

**Mr. Robinson** Scott, we may need to understand a little bit better. What is the pathway for new people coming into this career as owner-operators, or whatever it is? How do they get their experience? How do people get on the right pathway? What is it that they have to do to achieve a point where they're now coming forward as an applicant for the first time and saying, I want to buy and own and operate this nursing home?

**Mr. La Rue** I think it's going to be a rare circumstance that an individual is able to come forward and buy a nursing home on their own. The finances are too significant to do that. I mean, you're talking about somewhere in the neighborhood of \$100,000 a bed, or at least that's what it was pre-pandemic. Whether it's an individual or someone who's coming through with a group of investors, I think it's generally an individual who's been working in the nursing home in some capacity, whether it was nursing or whether it was therapeutic recreation, it doesn't matter, and they become interested in this and somebody sponsors them to be a licensed nursing home administrator and provides them the opportunity to do their internship and supports them to go get their license. That's generally how I've seen historically this goes. There aren't many people who go get their license who haven't had historical experience at a nursing home.

**Ms. Farrell** Could we know more about the star ratings? Who gives them? What's the criteria? It seems like we've had several applications where they're sort of average to poor. I think they're one to five.

**Ms. Deetz** Those are the Centers for Medicare and Medicaid Services, CMS. They're federal ratings based on a host of different components. They have a detailed data dictionary right on their main page for that. If you just Google CMS five star, it will come up. It'll bring every one of the domains they look at.

**Ms. Farrell** Similar to Medicare plans?

**Ms. Deetz** I don't know.

**Ms. Farrell** Medicare plans have star ratings.

**Ms. Deetz** I don't know about the Medicare plans. I'm not familiar with them. These have been around for a while. They actually gage the performance in different areas and different domains of the nursing home operations.

**Ms. Farrell** Do you have a minimum expectation with respect to star ratings? Like if somebody is a consistent one or two, how do you think about that?

**Mr. Heeran** In regulation, there's what's called the litmus test referred to, where you have to have a certain number of. There's a chart, it'll be on every report that we issue to the PHHPC, TPRC, that shows that they had to operate a number of facilities over 40 percent of higher-star rated facilities, two or less are considered low-star, sorry, three or more stars out of five, so there's whole presentation we do. But to be clear, because I'm picking this up a little bit that only applies to people who have ownership of the facilities. If you work there, which is part of what we're grappling with here is if you have no experience owning it, you're an administrator, we don't... Typically, we struggle with how to. You can't really use the star ratings because you weren't an owner. You were an employee. How do you get to quality that way? For the owners, we do have very specific regulations. How do you use the Star Ratings? Apply it. You have to own it for forty-eight months or more, I think four more facilities to count. If you have one, you know, facility.

**Ms. Deetz** And that's why we're here today to figure out if there's other recommendations that you all might have that could help inform your review.

**Mr. Heeran** I'm sorry, five facilities at forty-eight months or more.

**Ms. Monroe** That leads me into, my question should address that. When this little group was convened, my understanding or my personal understanding was that it followed a CON approval that we had, where owner operators of other nursing homes that could not meet the quality standards and probably then would not have been given a license for this other set of nursing homes. Had two nursing home administrators buy the nursing home with money that was lent by these other folks who probably could not have made the character and competence level. When you look at those nursing home administrators who are now going to buy the home, their financial ability to do that is directly dependent upon other owner operators with a poor history. Do you look at the financial capacity of the new owner operator to deliver on this? That's just an example, but that's one that really triggered for me, wait a minute, who's really running this place?

**Mr. Lebwohl** I think part of the purpose of this group is to set the terms that we're going to look at for that. As we're looking at the plan for the four meetings here, it's both the question of financial feasibility and the question of related party transactions that really speak to what you're talking about, I think, which is people using other financial relationships, whether that's a real estate lease, whether it's a consulting agreement or something else, in order to create a financial relationship so that people who would not be able to pass a character evaluation, nonetheless get to financially benefit from the operations of the nursing home, which I think is really what you're asking, right?

**Ms. Monroe** Well, that was my question under character incompetence. Does financial capacity to deliver what needs to be delivered... Is that looked at under character and competence or not at all at this point? Because if it's not, I would really like to see it become a category.

**Ms. Ngwashi** Okay, thank you. We noted that.

**Dr. Eisenstein** So, correct me if this assertion is wrong. Based on Ms. Farrell's question before, you're going to evaluate the character and competency of the ownership group. Earlier we established when I asked if there was capacity, you said, well, an administrator just needs to find people to up front the money. It seems to me to make more sense that I care about the people running the nursing home. The administrator running the nursing home rather than the people who were brought in to up front the money. Now, there shouldn't be bad characters at all. Why are we looking at the people who are up fronting the money as far as they're great, and not the people who are actually running the day-to-day operation? I'm not using the word operator. The administrator who's overseeing the actual facility, if they're not part of the ownership group. Like to me, in a lot of these cases, the owners are just rich people might not ever, ever be in the place.

**Mr. Robinson** But the problem is that those people will influence decisions.

**Dr. Eisenstein** I get it. My concern is not that they are evaluated, it's that the people running the day-to-day operation might not be, because that was what was said. I just want to make sure that, to me, the actual administrator, the general manager of the facility, their character and competence to me is the most important thing, because they're the one day-to-day going to make the decisions. Yes, they'll be influenced by the ownership, but they're not there.

**Mr. Lawrence** This is Harvey Lawrence. I'm sorry to barge in. I don't know if I'm online. This has been one of the issues that I've always had with some of the nursing home structures. It seems like we're talking about owner-operators, but we're really talking about the business part of the nursing home and that is separated from the real estate. Quite often, I think there is that line that because of real estate at some point will ultimately end up influencing the outcome at the nursing home, especially if it's a sweetheart lease deal or arrangement. There is the potential that there are some influences not from the, in terms of the lease, the owner of the real state of the behaving impact on the operation of a nursing home. It seems to me that that's an issue that we need to look at and to see how or whether that has an impact on the operating ability of a nursing home or on the quality of the services that are provided.

**Ms. Marks** If I can answer that to Dr. Eisenstein's question, it is the operator, the owner operator, who is legally responsible for running the nursing home. The nursing and home administrator is reviewed, they're licensed, they have their own process. The owner-

operator can change the nursing-home administrator at any time. What this body is doing, and what we're doing in the licensing process is licensing the owner or operator. They're the ones that are going to be responsible for the operations, whether they are just the money or someone else, or the one with the expertise.

**Ms. Farrell** Can I just note, we had a couple of applications, I believe that where a county was the owner operator. The business model in the county didn't work anymore. There was a true sense of urgency to get this transaction done. That's where these investors came in from other states, and they operated at scale, and the whole thing was really very confusing, but it was this sense of urgency, which I'm sure you felt as well because we were being told, well, this particular facility is going to shut down. That's where I think there was so much tension and yet some of us just didn't feel comfortable moving forward on those applications because again, the quality ratings weren't acceptable. There were documented incidents. The whole thing was just challenging for us. I'm wondering if there's any insight or, again, other than encouraging character and competency, where the track record of quality ratings is indeed acceptable. I mean, we felt bad that we had to take action that was going to be difficult for the residents of that rural county, for example. Are there suggestions with respect to that situation?

**Mr. Lawrence** Lindsay, if I could just piggyback on that as well, I am still had, and maybe I'm totally off base here, but I'm asking whether the ownership of the fee, the building, the structure, how does that factor into the operations of the nursing home, the business? Because sometimes I've seen some applications where there seemed to be some cross-fertilization that just didn't work in terms of potential conflict, double dealing.

**Mr. Robinson** Sort of dividing between the problem and jumping to a potential solution here. These separate kinds of transactions and activities that relate to nursing homes, whether it's the operator, owner, the real estate owner, potentially the consulting agreement. When you look at how most not-for-profits work, they're a single entity. You know, the not-for-profit owns mostly the building owns the operating license, hires a consultant if they need it, but there's a single point of accountability for the business operations as well as the quality of care. We allow for-profit nursing homes to kind of divide that up. That makes it much more difficult for anybody to both oversee and to ensure that there's accountability for quality, even though we say that the owner operator is the one who's responsible. I would suggest that we may want to consider mandating that for for-profit nursing homes that there be a single entity that both owns the real estate and the operating license and that they have to bring an integrated proposal and application in front of the PHHPC and the department rather than continuing the current model of essentially allowing people to make all the money on the real estate side and essentially having the operations essentially be there as a shell to allow for that profit making to occur.

**Ms. Ngwashi** Okay, thank you so much.

**Ms. Deetz** I'm just going to ask the ombudsman to speak and give some input and insight into what their role is and what they see for quality, regardless of the sponsorship, meaning for profit or not for profit.

**Ms. Royal** Part of our review is to look at those facilities that are tied to that application, whether it be current owners or in the cases that you were talking about with that county facility, for example, or any other similar applications. We're going to be looking at the facilities that are currently operated in any way by those people. If someone is a nursing home administrator, we're going to talk to our regional programs about how that facility that

that particular administrator is operating. Are the residents happy? Honestly, star ratings are important. However, we do see situations where a facility may be a lower star rating, but residents may have a higher satisfaction in those facilities, and vice versa. You might have a facility that's a five star that the residents are not happy in. Star ratings are based on a snapshot in time at the end of the day. They're based on surveys. They're based on complaint investigations, all of those pieces, parts. We're looking at them from a day-to-day operations in a lot of ways. We have, in some facilities, a weekly presence, in some a monthly. We try to get to everywhere at least once a quarter. More concerning facilities, we're going in on a more frequent basis. If we're getting a lot calls about a specific issue, we're going into those facilities on a most frequent basis We're getting kind of a pulse on what is happening in that facility in a true day-to-day atmosphere. We're also seeing if there's trends with specific owners. Just using an example, if a facility seems to have food issues in all of the facilities currently operated by those proposed owners that's going to be a red flag to us that's something that we'd want to note in our application process, because that may be a concern across the board. Maybe those owners are not necessarily providing enough budget for food items. Just an example, I'm not saying those things. We're looking at that day-to-day stuff. We're also looking at the people that are not necessarily current owners. If they're involved in the operations at a higher level, they may be a director of nursing or a regional director of nursing. We're going to look at those facilities that that person is a regional Director of Nursing in, because they're going to be involved in operations, even though they may not own it. They're going to be involved in the decisions that are being made on a day-to-day basis. Those are just some of the examples of things we are looking at. We go back at least three years in those reviews when we're doing that process. We look at all of our complaints. We look at the frequency of our visitation. We also look at that general vibe in a facility. We ask the residents because they're aware of the sale. They have to be notified of it. What their feelings are on it? We're also looking at, for example, those rural places. What is the true impact if that place was to close? How do the residents feel about that? We're the residents' voice when we're presenting our comments to PHHPC.

**Mr. La Rue** I could go back to Mr. Robinson's comments. I don't know who from the department or Mark or Kathy. Is that within the swim lane of this committee's scope to make that kind a suggestion or look at the structure of how we manage for-profit entities taking ownership of a home? Again, just for the record, I'm not anti-for-profit. I'm not anything else with not-for profit. You've got good operators on both sides. Our issue here is we're trying to find a path that ensures when we approve an application, we know who's actually running the nursing home. There is a history of success for that individual, and the current situation makes it very, very difficult to know who's actually running the nursing home. At the end of the day, it's always the money. If somebody's money and investment is on the line and the nursing homes is failing. I mean, I find it very hard to believe they're not going to have an influence of what's happening in that nursing home. I think Mr. Robinson brings up a good point. It addresses the Ann's concern as well, which in in the case of that application the suggestion was that individual that was being proposes the operator was being proposed because she could pass the character incompetent. At the end of the day... Someone else is putting up the money. They're going to be the ones who ultimately are making the decisions about who's running that. I know that the department that they can only review what's before them. They've got paperwork that says it's her. They were testing to the fact that it's her. I don't know what else the department can do. I ask this question. If someone puts forth false information or misrepresent this, I do believe that you know there are consequences for the license. I'd let the department answer that. My bigger question is... Are we veering out of our swim lane?

**Ms. Deetz** Public Health and Health Planning Council members and the members of the Establishment Committee the information they need right to make the decisions on a recommendation and if we're not giving that information in the form of our exhibits what can we do to make sure that you have the right information to act on that application that comes before you? Regardless of the different components of the review, whether they be the financial, the character and competence, the need, all of those are factored in when we bring to the council our recommendation, right? Our question for you is what aren't we bringing that could be beneficial or helpful to you in order to make those decisions? We're not in the same predicament where it was split on.

**Mr. Robinson** I think you're helping us a lot with the information that you're providing. I think in addition to that, the members of the council and the committee are also responding on the basis of their experience in hearing applications come through and struggling with some decisions about how we ought to be proceeding. Our question almost back to you is, is the department willing to consider not only tweaks to the interpretation of character and competence and financial feasibility and that kind of thing? If there were recommendations that require statutory regulatory changes... Is the department willing to entertain that? Obviously, that would require proposals that go to the legislature ultimately. We recognize that some of this stuff may be beyond the scope of what can be resolved even internally within the department. That's our kind of question to you. Do you want to kind of limit it to what's currently in statute? Are you open at least to weighing whether or not the department wants to bring forward to the legislature revisions to statute to enable us to maybe more effectively ensure good quality operators are running our nursing homes.

**Ms. Deetz** I think that's a multi-part question, and I think we'll have to take that back to our principles. I don't think that is why we came into this as a focus review group. Those opportunities will certainly be shared with those back at the health department.

**Ms. Ngwashi** If I may, I just also want to mention that I think that there is enough room in the statute and regulations for some of the enhancements, so to speak, that some of the PHHPC members might be looking for. If there is a need to better understand what exactly the department is looking at as it relates to statute and regulation, then we can do that. I think, to Val's point, we're not closing the door really to anything, but we do have to think about some of the suggestions that you have in a very broad aspect. I think a starting point is what is the current law? What are the current regulations? What does the department's application process look like right now? How might we better enhance it so that we can take into account some of the feedback that you guys are providing? That's why some of information that you're saying today, I don't really think necessitates a response at this time, because we would like to just be able to take it under consideration and then to be able provide some meaningful feedback about what we're going to be able to undertake with you all.

**Mr. Robinson** I'm not speaking for the committee. This is just my own personal point of view here, but I just am still struggling with the fact that we have to kind of keep separate the real estate and property side of the business with the operating side of business and that creates all kinds of complexities. Therefore, the question would be is their room within the current statutory and regulatory structure for us to bring those two things together and require that entities that are applying for license operator licenses for nursing homes to essentially bring an integrated business plan together that includes both the real estate and the rest of the operations of a nursing home? That's the question and that's whether, does that fit within the regulatory structure or not?

**Ms. Ngwashi** We will look into it. There are some things that we have tried to do to create better alignment. Because also, Mr. Lawrence, we hear you as it relates to how does the real estate impact the operations. We understand that as an important aspect of being able to provide care. We do need to look at that aspect because the department is charged with certain functions by statute and so real property is under another one. It's not something that is explicitly given to the department as an authority. We just have to look at the statute and regulations to see how we might be able to maybe create some parity there.

**Mr. Robinson** I just would point out that at least on the hospital side, it does. The entire real estate function and buildings and facilities are part of the business model and the applications of any hospital. The department does have that purview, at least within hospitals. The question is, does it also have that same purview within nursing homes?

**Ms. Ngwashi** I think I'm not following you because they're both Article 28. They're also non-profit. I don't know if the difference.

**Ms. Monroe** Well, you don't have to answer it right away.

**Ms. Ngwashi** No, I'm just saying that to be able to understand what it is that you're asking so that we can all talk about it internally, that's why, but maybe you can tell me later what you mean by some sort of requirement on the hospital side because they are both governed under Article 28. I know that the regulations differ, but I'm not just familiar with some sort of requirement for hospitals to have the same ownership.

**Mr. Thomas** Peter's right in terms of a hospital ownership. There are nuances inside of that, Peter, because the larger systems have separate corporate entities. It gets a little bit complex. Let's say a Peter's solution is out here as being clean and easy in concept. If it's not that clean and in practice, let's step back and I just have a question I think, which is back to my example, you've got a new nursing home. We don't own the real estate. They doesn't own the real state. For lack of a better word, the complexity gets into the third-party contracts, into the related party contracts; whether they're administrative, whether they're leases, whether they are financing, all the above. That's where, you know, at least there's some sense, I think that financial viability of homes is drawn into question because some unrelated group of people who are providing, who are owning a company as providing staffing or administrative services are bleeding off revenue or whatever. Staying with the lease example for a minute, let's assume that we can't lease in a near term consolidate ownership of operation and real estate. Can't force that, which I hear you, that big clean. How do you assess the third-party lease? We're into the related party bullet on your agenda? Do you? If you do, on what basis? That's a tough question to answer. I have a sense of what the answer is. You follow my question, which is if you have three opinions from independent third parties who say that a per square foot lease is X, and that is market, and this lease is free X, we can solve for that probably. You won't approve it without much change in rules. You may not because it's not financially viable. That's a lot to ask, but very narrowly, are you assessing the leases, in my example, for business appropriateness in your review?

**Ms. Deetz** I think we're going to take that back just so we all understand it and can go back and take a look through law and regulation just to make sure before we respond. This is really helpful by giving us those questions and maybe that we can't answer today, but we can bring back. I think that's great. I know that today we wanted to focus on the

qualifications. We've jumped right into the third party or related party transactions and into the lease agreements and some of the really intricate pieces of our reviews.

**Ms. Monroe** I apologize that I stepped out so if you, but when you heard we were going to do this, you work with this stuff every day. What would you like to be able to do that you don't do today? Because I think that's part of what we're trying to figure out is what are the improvements. What do you see as improvements in the work that you do that you would like to see happen or get addressed?

**Ms. Deetz** I'll bring that back so we can talk collectively as a group.

**All** (Laughing)

**Ms. Monroe** You don't know? I'm sure you know.

**Ms. Deetz** Oops, I'm taking myself off of the microphone, so I apologize.

**Ms. Deetz** Remember, the department has very specific areas that we can review. Whereas, the PHHPC has broader authority, right? You have the ability, what we call the fourth wrong, to ask questions of the applicant. That's why we do expect the applicants to be here to ask questions of the department. To help you form those questions, really what we would like is for you to give us the information that we can bring... Maybe not put in the exhibit.

**Ms. Monroe** Well, I'm not asking that we write. I'm asking, you know, as you think about this, just like you're asking us to think about this. How do you think the review of owner-operator could be improved? If that puts you in an awkward spot, I'm sorry. I do think you have opinions that would be very helpful to us in helping to set a direction.

**Ms. Ngwashi** You're correct, and I just want to add emphasis here that the criteria that we look at is in statute and regulation, right? When we talk about it, more specifically, we're talking about four areas, character and competence, need, financial feasibility, and any other factor you deem pertinent. The department does also look at other factors. What you're saying about the department having some sort of an opinion about things is valid because there is a lot of institutional knowledge and expertise that is brought to the application review. Thanks.

**Ms. Soffel** Just like to add, Martha, none of those terms are particularly well-defined in the statute. The fact that it says character incompetence is... I mean, it could mean anything. I think that part of what we struggle with all the time is there is no working definition of those turns. I'm sorry I have to leave this jolly party, but I have a dentist appointment.

**All** (Laughing)

**Mr. Heeran** I just want to add, because there's a real example that we went through recently, where a staff, when it comes to experience, not ownership, experience, we try to present to PHHPC information for PHHPC to consider that technically we could not apply. What information as staff do we feel you'll need to make that decision? Example, experience. If you're not an owner, we can't apply star ratings, quality to your experience because you don't own it. You're an employee. Does this body want to message that they want to look at that? They want us to present that information so you can apply the star rating. How do you define quality and experience? If you're administrator for somewhere

for ten years, do you want to look at the star ratings of those facilities over those ten years? We technically don't do that to non-owners. I'm just trying to give you a good example.

**Ms. Royal** I just want to add something on what you were saying. Those are kind of questions that they could be asking of you is what your kind of noting. I also wanted to add, something I didn't say earlier. For example, using that situation that we've had recently that sort of spearheaded this. One of the things we have the ability to do as well. Keep in mind, we've only been part of this process for like the last, I think it came into law in like 2022. We're new too. We're kind of building the plane as we go on this as well. The ombudsman, I'm sorry, this is Claudette, the state ombudsman. We're in a learning curve as well in how we can improve our own process, which is why we felt it was important to be part of this. One of the things we have the ability to do is we're listening to the applicants say what they're going to do. We're looking at their application to see what their plan is for when they take over ownership. We have the ability to go into the facilities afterwards, and I can put out that directive, which I do to our programs when we know someone has officially taken over, to go in there and see. Are those things being implemented? Are they doing what they had said that they were going to do? What are the residents seeing as this change is taking over? Has the quality gone down? Has staffing declined? Are the residents seen significant changes good or bad? If we're seeing those changes in a negative manner, we have the ability to file that complaint with Department of Health to report what those concerns are, which would then flag them that, hey, this was a new ownership, which may change their process for investigating what that complaint is. There is a little bit of a checks and balance that we have, the ability to do. In regs for us, there are specifics of what we have to look at. I'm kind of, like I said, building it as I go on what I feel is important to look at prior to those applications.

**Ms. Farrell** I think that's helpful, and I think your job is to bring sort of the minimum, as regulators, you have to bring the sort of minimum level to meet the standards that you're held to. I think what you're hearing us is we want the state to operate at the higher standard, right? What do we need to do to make that happen? I hear you. You know, sort of getting the sense of the boots on the ground. How do you really quantify that in a measurable way if it's not the star ratings? Again, we do see lots of applications where some of the character and competence is, oh my goodness, sometimes there's an awful lot there that's concerning, but Martha says, this does meet the minimum standard. Our concern is, well, what do we do about it? Do we move it forward? I guess by law we're required to do. I think what you're hearing is just this desire to elevate the standard for the residents of the state. That's our role as the PHHPC. I guess I would ask, what would your recommendations be to elevate those standards? Obviously, there's a business model and there are capital requirements that owner-operators need to adhere to, but if the business model doesn't work and they're skimping on food, or the food is bad, right, that's going to come out in other ways. So, very challenging.

**Mr. La Rue** Tom and Val, do you think that we have sufficient information here today to get together and prepare for the next meeting? Do you take further discussion? It seems like we've indirectly covered, as Val said, many of the points that is on that slide.

**Dr. Friedrich** Gary, you've got to turn your mic on.

**Dr. Kalkut** Not when there is a purchase of both the operations and the real estate. Is there a valuation of that real estate as there is when there is a lease, and it meets market

cost? Is there the same sort of a valuation for purchased land that the facility sits on? How is that valued?

**Ms. Deetz** We're going to take that back because that just brings us to what we just talked about or what Tom just said. That'll bring us to the next meeting, which is the financial viability piece.

**Dr. Kalkut** Right, because I've sort of been startled by, which is silly in some ways, the price of the facility versus the price of the property. Obviously, it depends on a number of factors and whether that appeal of land that is undervalued in some way drives some of the transactions.

**Ms. Deetz** I don't want to put words in your mouth, correct me if I'm wrong, are you referring to fair market value?

**Dr. Kalkut** It is fair market value, yeah, as, you know, a square footage or a lease would be.

**Ms. Deetz** Thank you.

**Mr. Holt** Scott, looking around the room, I'm not seeing other questions at this point to your earlier question. Unless there are other questions from members of the committee or the council that are still with us.

**Mr. Lawrence** Yeah, this is Harvey back to the real estate and the operating business. For me, just having an understanding of what is the business model and where are the potential returns and how is that divided between the operating business and the real estate. What are the tax implications for if I'm a landowner leasing to an operator? You know, to understand the business model, I think would help to explain whether the underlying real estate is supporting the business model or whether it is siphoning off resources from that operating entity.

**Ms. Deetz** Noted. We'll take that back. Again, we will have another agency that will come and provide presentation as well.

**Mr. La Rue** If that covers the questions, then, Tom, I want to thank everyone.

**Mr. Holt** Scott, sorry to interrupt. Ann just has one more question

**Ms. Monroe** If I could just mention, in my mind as I'm thinking about this, what I've taken away from this is that there are things that could be done to improve the quality of nursing home ownership and operation for the benefit of New Yorkers within the current structure of regulation and law. There are other things where we bump up against one or another of those. I think we really, I feel we should first focus on that first bucket and be as creative in a partnership with the department as possible to identify those things that we could do better for people within the world that currently exists. I worry that we at this table are not going to know all those possible answers. We need to get some of those from you as well.

**Mr. La Rue** Excellent summary. Thank you.

**Mr. Holt** We've got a ticket that we stand adjourned. We'll be looking forward to the dates for the upcoming meetings, which will all be via Zoom.

**Ms. Monroe** Do you have a date?

**Mr. Holt** No, we do not yet have dates.

**Ms. Monroe** Okay.

**Mr. Holt** Thanks to the staff for all of your efforts in putting this all together for us. The robust conversation is an indication. Thank you.