Wyoming Department of Health

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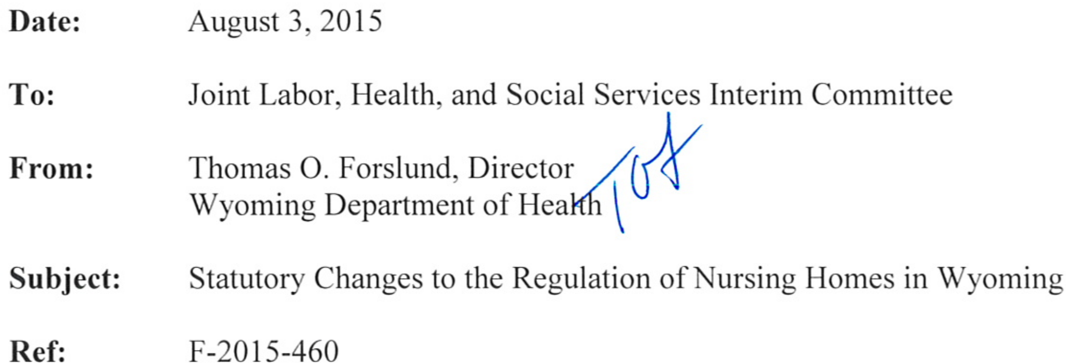
Thomas O. Forslund, Director | **Governor Matthew H. Mead**

MEMORANDUM



Date: August 3, 2015

To: Joint Labor, Health, and Social Services Interim Committee

From: Thomas O. Forslund, Director
Wyoming Department of Health

Subject: Statutory Changes to the Regulation of Nursing Homes in Wyoming

Ref: F-2015-460

In May 2015, Deseret Health Group, Inc. abruptly announced the closure of its facilities in Rock Springs and Saratoga, Wyoming, as well as an additional 12 facilities in four other states, due to financial insolvency. This report considers state policy options in light of existing federal and state nursing home regulations, cost-effectiveness, feasibility, and the impact on Wyoming residents. Statutory changes to licensing and/or receivership may prevent and better manage nursing home closures in the future to protect the health and safety of Wyoming residents.

Current federal and state regulations, cost-effectiveness, feasibility, and the impact on Wyoming residents in relation to potential statutory changes to licensing and receivership of nursing homes are discussed in the attached report.

This report addresses only those statutory changes which fall under the purview of the Wyoming Department of Health, that is, those which have a direct impact on health and safety. Although the State of Wyoming response to the Deseret event involved several state and local agencies, the Department of Health does not presume to make policy recommendation outside its area of expertise.

Please contact me at (307) 777-7656 or tom.forslund@wyo.gov if additional information is needed.

TOF/CC/jg

Attachment: Report - Nursing Home Regulations in Wyoming

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Wyoming Department of Health

Report to the Joint Labor, Health and Social Services Interim Committee

Recommended Statutory Language in Response to the Deseret Closures

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August 3, 2015

RECOMMENDED STATUTORY LANGUAGE IN RESPONSE TO THE DESERET CLOSURES

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Section 1. Executive Summary

In May of 2015, Deseret Health Group, Inc. abruptly closed its facilities in Rock Springs and Saratoga, as well as an additional 12 facilities in four other states, due to financial insolvency. This report considers state policy options in light of existing federal and state nursing home regulations, cost-effectiveness, feasibility, and the impact on Wyoming residents. Statutory changes to licensing and/or receivership may prevent and better manage nursing home closures in the future to protect the health and safety of Wyoming residents.

Section 2. Background

The Wyoming Department of Health (WDH) is charged with protecting health and safety, including that of vulnerable populations, such as the elderly. WDH regulation of nursing homes is conducted by the Office of Healthcare Licensing & Surveys (OHLS) and includes licensure of the facility and regular inspections of the facility for health and safety code compliance.

On April 30, 2015, Deseret Health Group, Inc. (Deseret) informed the WDH of the company's insolvency due to the unexpected denial of a line of credit, and the imminent closure of its facilities in Rock Springs and Saratoga, Wyoming. Licensing documentation and previous health and safety inspections conducted by the OHLS had not revealed any indications of instability. OHLS complaint investigations, conducted May 7 through May 9, 2015, found the quality of care to be good, however, the inability of Deseret to pay staff, utilities, food, and medical invoices threatened to disrupt those operations vital to maintaining quality of care. To protect the health and safety of the facilities' residents, the WDH took over temporary management of both facilities on May 8, 2015. As of June 1, 2015, both facilities remained open under new management. Current federal and state regulations, cost-effectiveness, feasibility, and the impact on Wyoming residents in relation to potential statutory changes to licensing and receivership of nursing homes are discussed below.

Section 3. Scope

This report addresses only those statutory changes which fall under the purview of the WDH, that is, those which have a direct impact on health and safety. Although the State of Wyoming's response to the Deseret event involved several state and local agencies, the WDH does not presume to make policy recommendation outside its area of expertise.

Section 4. Policy Options

The State must balance several factors in considering statutory changes to the regulation of nursing homes, including existing federal and state regulations, the cost-effectiveness of various policy options, the feasibility of their implementation, and their impact on Wyoming residents.

Current Regulatory Environment

Both federal and state nursing home licensure requirements were reviewed to determine: 1) what are the baseline federal requirements for nursing home licensure, and 2) how does the strength of Wyoming rules compare to those of other states?

Federal Requirements

All federal licensing and certification surveys for participation in Medicare and Medicaid are conducted by state agencies on behalf of the Centers for Medicare and Medicaid Services (CMS). Thus, federal licensing requirements provide a regulatory "floor", or minimum requirement, that is enforced by all states. Surveys are to be conducted every 15 months and review the physical structure of the facility, staffing levels, and the quality of patient care. The OHLS has consistently scored high (5 of 5) on the Federal Oversight and Support Survey, which CMS uses to verify the quality of state surveys conducted on its behalf.

Section 6101 of the Affordable Care Act (ACA) of 2010 introduced new ownership reporting and closure requirements for nursing homes.[1] 42 CFR 483.75 requires nursing homes to disclose any changes in ownership and to provide notification of closure to the state a minimum of 60 days prior to closure.[2] 42 CFR 420.206 and 455.104 specify that nursing homes must disclose, at the time of application and renewal with CMS and the state Medicaid agency, any entities with a five percent or more ownership interest, if any of the owners are related, and any ownership interests from the previous three years.[3]

On July 13, 2015, at the White House Conference on Aging, comprehensive proposed rule changes for nursing home licensure were released, the first major update in 30 years.[4] Included in the proposed federal rule changes for nursing homes is the following statement:

> "... we also considered requiring periodic external audits specifically focusing on financial records and quality of care issues. We would welcome comments on a requirement for these types of audits or any other additional requirements for operating organizations that operate five or more facilities."[5]

Any changes to the federal requirements will have a significant impact on the daily activities of the OHLS.

State Requirements

In addition to the federal regulations, most states have enacted additional licensing requirements which are enforced via a state survey conducted in conjunction with the federal

[1] PPACA. 2010. Page 635. Retrieved from: http://housedocs.house.gov/energycommerce/ppacacon.pdf
[2] 42 CFR § 483.75 https://www.law.cornell.edu/cfr/text/42/483.75 and 42 CFR § 455.104 https://www.law.cornell.edu/cfr/text/42/455.104
[3] 42 CFR § 420.206. Retrieved from: https://www.law.cornell.edu/cfr/text/42/420.206
[4] Jaffe, S. 13 July 2015. "New Regulations Would Require Modernizing Nursing Home Care." *Kaiser Health News*. Retrieved from: http://khn.org/news/new-regulations-would-require-modernizing-nursing-home-care/
[5] 80 FR 42167. Retrieved from: https://www.federalregister.gov/articles/2015/07/16/2015-17207/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities

survey. A sample of state licensing requirements is summarized in Table 1, below. Ten states were selected and their nursing home licensure rules and application packages reviewed. Five (Minnesota, Utah, Kansas, and Nebraska) were also affected by the Deseret shut-down in 2015. Two (Texas and Arizona) are geographically and politically similar to Wyoming, while three (California, New York, and Connecticut) are more urban, have larger populations, and also have more robust nursing home regulations in place.

Table1. Summary of State Nursing Home Licensure Requirements

State	State Licensure	Ownership Disclosure	Financial Disclosure	At Least One NH Closure in the Last 12 Months?
Arizona[6]	Yes	Yes, anyone with 10% or more financial interest who has ever had a license denied or revoked	No	Yes, management could not afford upgrades and the building was sold to a developer[7]
California[8]	Yes	Yes, anyone with a 5% or more interest in the facility; must also list all facilities which the licensee has a 5% or more interest in (both inside and outside California) plus additional info on any closed/license revoked/or put into receivership; also list property owner; management companies must also complete a form, going back 3 years, for all facilities with which they were involved	Yes, bank statements, lines of credit, certificates of deposit, etc. which show that the facility can operate for at least 45 days (45 X number of beds X daily rate) Bonds required if holding patient money	Yes, due to "financial losses"[9]

[6] Arizona Department of Health Services. Bureau of Long-Term Care Licensing. Retrieved from: http://www.azdhs.gov/als/long-term-care/

[7] Alltucker, K. 2 January 2015. "Elderly residents told to vacate Phoenix nursing home." *The Arizona Republic*. Retrieved from: http://www.azcentral.com/story/news/local/phoenix/2015/01/02/elderly-residents-told-vacate-phoenix-nursing-home/21220885/

[8] California Department of Public Health. Licensing and Certification. Retrieved from: http://www.cdph.ca.gov/programs/LnC/Pages/lnc.aspx , and http://www.cdph.ca.gov/pubsforms/forms/Pages/HealthFacilities-SkilledNursingFacilities.aspx

[9] Moore, D. 29 January 2015. "Quincy nursing home slated for closure; Local leaders look for options to keep it open." *Plumas County News*. Retrieved from: http://www.plumasnews.com/index.php/13376-quincy-nursing-home-slated-for-closure-local-leaders-look-for-options-to-keep-it-open

State	State Licensure	Ownership Disclosure	Financial Disclosure	At Least One NH Closure in the Last 12 Months?
Connecticut[10]	Yes	Yes, any party with a 10% or greater financial interest	Yes, the licensee must provide "evidence of financial capacity" every 2 years	Yes, due to "financial instability"[11]
Kansas[12]	Yes	Yes, a list of facilities operated outside of Kansas	Yes, projected operating income and expenses for the first month as well as documentation of one month's expenses in cash holdings	Yes, two Deseret closures
Minnesota[13]	Yes	Yes, anyone with a 10% interest or more in the NH	No	Yes, two Deseret closures
Nebraska[14]	Yes	No, only requires submission of information for one owner	No	Yes, four Deseret closures
New York[15]	Yes, 10 year compliance check of all NHs operated outside the state and owned by the applicant	Yes, list all other facilities owned and operated both in and outside the state, all stockholders in the company, 10 years of employment history and affiliations with other facilities in the last 10 years, ownership interest of any relatives over the last 10 years	Yes, income and expense projections for the facility, personal financial statements from anyone contributing capital (including salary)[16]	Yes, due to "escalating costs" and tax increases[17]

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[10] Connecticut Public Code 19-13D. Retrieved from: http://www.sots.ct.gov/sots/lib/sots/regulations/title_19/013d.pdf

[11] Berman, B. 13 March 2015. "Residents and workers protest Derby nursing home closure." *FOX CT*. Retrieved from: http://foxct.com/2015/03/13/residents-and-workers-protest-derby-nursing-home-closure/

[12] Kansas Department on Aging. Statutes and Regulations for the Licensure and Operation of Nursing Facilities. Retrieved from: http://www.hpm.umn.edu/nhregsplus/NHRegs_by_State/Kansas/KS%20Complete%20Regs.pdf

[13] Minnesota Department of Health. "Nursing Home Licensure." Retrieved from: http://www.health.state.mn.us/divs/fpc/profinfo/lic/licnh.htm

[14] Nebraska Department of Health and Human Services. Long Term Care Facilities Applications/Licensure Requirements. Retrieved from: http://dhhs.ne.gov/publichealth/Pages/crl_ltc_requirements.aspx

[15] New York State Department of Health. List of CON Schedules. Retrieved from; https://www.health.ny.gov/facilities/cons/more_information/schedules.htm

[16] Note that New York is a Certificate of Need (CON) state and requires all facilities to demonstrate a need for services in the community to receive approval from the State for construction.

[17] Musumeci, N. 6 March 2014. "Seniors booted out of Park Slope nursing home due to closure plan." *New York Daily News*. Retrieved from: http://www.nydailynews.com/new-york/brooklyn/seniors-booted-park-slope-nursing-home-due-closure-plan-article-1.1713275

State	State Licensure	Ownership Disclosure	Financial Disclosure	At Least One NH Closure in the Last 12 Months?
Texas[18]	Yes	Yes, any party with a 5% or greater financial interest, must list all facilities owned and operated outside of Texas, 5 year prior disclosure period for criminal activity and bankruptcy or receivership (including outside of Texas)	Yes[19], must provide details for any lines of credit, start-up costs and funds, mortgages, assets, and estimated operating costs as part of licensure, must notify Department of Health if the facility cannot meet its financial obligations	Yes[20], due to bankruptcy[21]
Utah[22]	Yes	Yes, anyone with a 25% interest or more in the NH	No	Yes, four Deseret closures
Wyoming[23]	Yes	No, only requires submission of information for one owner	No	Yes, two Deseret closures

No centralized listing of nursing home closures was found during this review. An online search for news articles was used to gather information regarding nursing home closures in each state. Note that regardless of the level of regulation, all states reviewed in this sample experienced at least one nursing home closure within the last 12 months due to financial instability.

Cost-effectiveness

When making regulatory changes, costs to consider include those incurred by the State, providers, and Wyoming residents. For example, increased financial scrutiny of nursing homes may require additional staff while burdening providers with additional data collection and reporting, which is ultimately passed down to payers in the form of higher prices. It is important to note that sudden nursing home closures are rare events, occurring once every

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[18] Texas Department of Aging and Disability Services. Nursing Facility Provider Resources. Retrieved from: http://www.dads.state.tx.us/providers/nf/howto.html#nflicense and http://www.dads.state.tx.us/providers/nf/rules.html

[19] Texas Administrative Code Title 40 § 19.1925. Retrieved from: http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=19&rl=1925

[20] Texas Department of Aging and Disability Services. Voluntary Nursing Facility and ICF/IID Closures. Retrieved from: http://www.dads.state.tx.us/PROVIDERS/closures/index.html

[21] Escobar, E. 4 September 2014. "Nursing Home Shuts Down Unexpectedly." *KXXV News Channel 5.* Retrieved from: http://www.kxxv.com/story/26454770/nursing-home-shuts-down-unexpectedly

[22] Utah Department of Health. Nursing Home Licensure Application. Retrieved from: http://health.utah.gov/hflcra/forms/APPLICATIONNew.pdf

[23] Wyoming Department of Health. "Nursing Care Facility (Nursing Home) – Wyoming Licensure Information. Retrieved from: http://www.health.wyo.gov/ohls/Wyoming_Nursing_Care_Facility.html

few years, while the cost of increased regulation is largely fixed. To provide a frame of reference for State costs, current WDH temporary management expenditures and credits related to the Deseret closures are summarized in Table 2, below. Due to ongoing claims, all figures are rounded to the nearest thousand.

Table 2. WDH Temporary Management Expenditures and Credits as of July 15th, 2015

Expenditures and Credits		Rock Springs	Saratoga	Total
Expenditures	Bounced Deseret payroll checks	$21,000	$7,000	$28,000
	Temporary management payroll	$150,000	$131,000	$281,000
	Other Expenses[24]	$5,000	$2,000	$7,000
	NFA Funds (facility)[25]	$102,000	$49,000	151,000
	Total	**$278,000**	**$189,000**	**$467,000**
Credits	NFA Fund (federal and facility)[24]	$205,000	$98,000	$303,000
	Medicaid Claims	$54,000	$22,000	$76,000
	Third Party Payments	$14,000	$5,000	$19,000
	Total	**$273,000**	**$125,000**	**$398,000**
	Current Balance	-($5,000)	-($64,000)	-($69,000)

There are a several important caveats to the numbers reported above. First, the WDH continues to receive bills and claims for payment from various parties. Second, the reported costs do not account for WDH staff time responding to the crisis, nor the staff time and costs incurred by multiple other state agencies involved in the response, including the Governor's Office, Attorney General, State Auditor, Secretary of State, Departments of Administration and Information, Workforce Services, and Family Services. Finally, these costs do not account for community time and donations. For example, the Corbett Foundation covered approximately $20,000 of bounced Deseret payroll checks for the Saratoga employees and the Wyoming State Hospital diverted food and medical supplies to the Saratoga facility. The WDH is working with the Attorney General to document all expenses to file a civil claim; however it is unlikely that the money will be successfully recouped.

Feasibility

Feasibility addresses if the desired changes can be implemented and have a meaningful impact on the desired outcome, in this case, either the prevention or better management of nursing home closures. In the case of Deseret, and many nursing home closures across the country, the root cause of the closure was financial mismanagement, rather than a deficiency

[24] Payroll accounted for the majority of WDH expenditures at both facilities. Expenditures also included petty cash, food, and repairs to fix a gas leak at Saratoga.

[25] Nursing Facility Assessment funds are set forth in W.S. § 42-8-103. Payments into the fund are made quarterly by all nursing home facilities and matched by CMS. Funds are then redistributed to facilities with Medicaid beds to effectively raise Medicaid rates to Medicare levels to cover financial shortfalls. Deseret did not make payment into the NFA Fund for April – June 2015. CMS approved the release of federal funds to cover operating costs during temporary management with the State covering Deseret's portion. Deseret's portion of the NFA funds is considered a State expenditure at this time and recoupment will be sought in court.

related to health and safety. OHLS does not have the expertise to conduct financial audits of nursing home corporations, or the time and manpower to collect and verify ownership information.

Additionally, many nursing home companies operate across state lines, complicating any one state's ability to track the parent company's finances and ownership information for licensure. Dr. Charlene Harrington, of the University of California at San Francisco, has studied nursing home closures extensively and argues that regulation of chains, rather than individual facilities, is needed to effectively prevent closures.[26] As noted in Table 1, states that collect additional ownership and financial information as compared to Wyoming, such as Texas, California, and New York, has not been able to prevent all nursing home closures.

Impacts on Wyoming Residents

Nursing home closures have significant psychological and emotional impacts on residents, their families, and the communities in which they operate. OHLS interviews with staff and residents at both the Saratoga and Rock Springs facilities revealed that "all the residents were upset about the situation, and several residents were struggling to deal with having to change residences."[27] Local communities also suffer economic impacts through lost jobs and revenue, which are particularly significant in Wyoming's rural communities where nursing homes may be large employers.

In addition to avoiding pain and suffering for current nursing home residents, it is vital that access to nursing home services be maintained as the baby boomer population ages and demand increases in the future. Population projections for Wyoming predict slow or declining population growth in all age groups except those 65 and older through 2030.[28] Meeting increased demand in rural communities will be a challenge. Thus, it is important to not restrict nursing home operation in Wyoming through increased regulation such that the availability of services is diminished in the future.

Section 5. Recommendations

One option to prevent nursing home closures is to increase regulation of facilities allowed to enter and operate in the Wyoming market through the nursing home licensure process. Specific changes could include:

1) More rigorous background checks;
2) Increased ownership reporting, to include any individual with a 5% or more interest in the company and any facilities owned outside of the state;

[26] Lundstrom, M. & Reese, P. 10 November 2014. "Part 3: California falls short in disclosing nursing-home ownership." *The Sacramento Bee*. Retrieved from: http://www.sacbee.com/news/investigations/nursing-homes/article3657510.html
[27] Office of Healthcare Licensing & Surveys. Federal survey , Deseret Health and Rehab at Saratoga, LLC. 9 May 2015. Page 2.
[28] Wyoming Department of Employment. 2008. *Nurses in Demand: A Statement of the Problem*. Retrieved from: http://doe.state.wy.us/lmi/nursing_demand_08.pdf

3) Increased financial reporting requirements, to include projected operating costs and cash reserves; and
4) Requiring nursing homes to hire external auditors to conduct a full financial audit and report results to the OHLS.

Each of the above actions may require an increase in staff to process the additional information, as well as increase the burden on providers to gather and report the required information. Additionally, the financial status of facilities is likely to change over time and it is unclear what frequency of reporting (annually, semi-annually, etc.) would be most effective and at what point the state should intervene in the private market if a business is run poorly. Connecticut, for example, established a Nursing Home Financial Advisory Committee in 1998[29] to review the financial solvency of nursing homes and advise the Departments of Social Services and Public Health.[30] However, as recently as March 2015, a nursing home closed in Connecticut due to financial instability.[31] While timely notice to the state was given by the facility, the emotional damage to the patients and economic damage to the community were not prevented, in this case, by additional regulation.

While increased regulation is costly and will not be able to prevent all nursing home closures, a strong receivership statute is less costly and can protect residents in the event of a closure. Receivership statutes allow the state or its designated representative to assume control of a nursing home if the quality of care or financial stability becomes an issue.[32]

As an example, Minnesota passed legislation updating the state receivership statute in late May 2015, in direct response to the Deseret closures, including changes to:

1) shorten the number of days from five to two for judges to review receivership orders,
2) require the Department of Health to maintain a list of approved management entities for receivership cases; and
3) specify conditions under which receivership is triggered to include if "there is a threat of imminent abandonment by the owner and operator" or "there is a pattern of failure to meet ongoing financial obligations such as failing to pay for food, pharmaceuticals, personnel, or required insurance."[33,34]

The Attorneys General reviewed existing receivership statutes in Connecticut, Nebraska, Kansas, and Minnesota and have provided draft statutory language for a new, stronger

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[29] CT Gen Stat § 17b-339 (2012). Retrieved from: http://law.justia.com/codes/connecticut/2012/title-17b/chapter-319y/section-17b-339

[30] CT Gen Stat § 17b-339 (2012). Retrieved from http://law.justia.com/codes/connecticut/2012/title-17b/chapter-319y/section-17b-339

[31] Berman, Beau. 13 March 2015. "Residents and workers protest Derby nursing home closure." *FOX CT*. Retrieved from: http://foxct.com/2015/03/13/residents-and-workers-protest-derby-nursing-home-closure/

[32] Although receiverships can be applied to any facility, they are most commonly applied to nursing homes; this is likely because hospitals and other acute care facilities do not have long-term patients who would need ongoing care and relocation services in the event of a facility closure.

[33] Hegarty, S. 8 May 2015. "Nursing home receivership changes passed by House." *Minnesota House of Representatives*. Retrieved from: http://www.house.leg.state.mn.us/sessiondaily/SDView.aspx?StoryID=5802

[34] MN HF 1792. Retrieved from: https://www.revisor.mn.gov/bills/bill.php?view=chrono&f=HF1792&y=2015&ssn=0&b=senate#actions

receivership act to improve the State's ability to respond to nursing home closures in the future (Appendix A).

Section 6. Summary

Increased regulation of nursing home facilities operating in Wyoming is time intensive, expensive, and may decrease access if too restrictive. Given the difficulty in gathering and verifying ownership and financial information, the rare occurrence of unexpected nursing home closures, and pending federal regulatory changes, it is prudent to avoid making expansive changes to licensing requirements. However, strengthening the state receivership statute is low cost and would allow the WDH to better manage nursing home closures when they arise in the future.

Section 7. Appendices

Appendix A contains the draft receivership statute provided by the Attorney General.

Appendix A:
Wyoming Medical Receivership Act Draft
July 20, 2015

Appendix A: Wyoming Medical Receivership Act Draft
July 20, 2015

35-2-1101. Short title.

This act may be cited as the "Wyoming Medical Receivership Act."

35-2-1102. Definitions

(a) As used in this act:

(i) "Department" means the department of health;

(ii) "Emergency" means a situation, physical condition or one or more practices, methods or operations that present imminent threat to the health, safety or welfare of the residents or patients of a health care facility;

(iii) "Health care facility" means any facility licensed under the provisions of W.S. 35-2-901 through 35-2-912;

(iv) "Transfer trauma" means the medical and psychological reactions to physical transfer that increase the risk of death or grave illness, or both, in elderly persons.

35-2-1103. Petition for receivership. Hearing. Parties. Emergency Order.

(a) The department may file a petition to appoint a receiver for a health care facility upon its own investigation or upon receiving a complaint concerning the facility.

(b) A licensee, owner, operator, resident or patient of a health care facility, may submit a written complaint with the department. A resident or patient's legally liable relative, conservator or guardian may submit a complaint on behalf of their ward or relative. Complaints submitted under this section must specify conditions at the facility that warrant a petition to appoint a receiver. If the department fails to take action to resolve a complaint under this section within forty-five (45) days after its receipt, the person who filed the complaint may file a petition for the appointment of a receiver for the facility. In the case of a health care facility that intends to close, a complainant may file a petition if the department does not act within seven (7) business days after receipt of the complaint. The court shall immediately notify the attorney general of petitions filed under this subsection.

(c) The court shall hold a hearing not later than ten days after the date the petition is filed. Notice of such hearing shall be given to the licensee, owner or

operator of the health care facility not less than five (5) days prior to the hearing. Notice shall also be posted in a conspicuous place inside the facility for not less than three (3) days prior to the hearing. Notice inside the facility shall include the identity of the parties, the court, civil action number, and a brief description of the facts in the petition.

(d) The court may appoint a receiver upon an ex parte motion when affidavits, testimony or any other evidence presented indicates that there is a reasonable likelihood an emergency exists in the health care facility which must be remedied immediately to insure the health, safety and welfare of the residents or patients of the facility. Notice of the petition and ex parte order appointing the receiver shall be served on the licensee, owner, or operator and shall be posted in a conspicuous place inside the facility not later than twenty-four hours after issuance of such order. A hearing on the petition shall be held not later than five (5) days after the issuance of such order unless the licensee, owner or operator consents to a later date.

(e) If the licensee, owner or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court may appoint a receiver for the health care facility without a hearing.

35-2-1104. Imposition of receivership.

(a) The court may appoint the director of the department or his designee as receiver of a health care facility upon a finding that the facility:

(i) Is operating without a license or the facility's license has been suspended, revoked or not timely renewed pursuant to W.S. 35-2-901 through 35-2-912;

(ii) Is closing or intends to close and adequate arrangements for relocation of its residents or patients have not been made at least thirty (30) days prior to closing;

(iii) Sustained, or there is a reasonable likelihood of sustaining, a serious financial loss or failure which jeopardizes the health, safety or welfare of the facility's residents or patients;

(iv) Substantially violated a provision of the public health laws of this state, Title XVIII or XIX of the federal Social Security Act (42 USC 301 as amended), or any rule or regulation adopted pursuant to such state or federal laws; or

(v) An emergency exists, and a receiver is necessary because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency.

(b) The department may adopt rules and regulations setting forth the necessary qualifications of persons designated as receiver and a method for selecting designees.

35-2-1105. Effect of appointment.

(a) When a receiver is appointed under this act, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver shall not affect the rights of the licensee, owner or operator to defend against any claim, suit or action against such licensee, owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department.

(b) The court shall determine a fair monthly rental for the health care facility, taking into account all relevant factors including the condition of the facility and the licensee, owner or operator's degree of responsibility for the conditions necessitating receivership. The rental fee shall be paid by the receiver to the appropriate controlling entity each month that the receivership is in effect, but shall be reduced if the facility's receipts do not cover the cost of operations and maintenance. Notwithstanding any other law to the contrary, no payment made to a controlling entity under this provision may include allowance for profit or be based on a formula that includes allowance for profit. The controlling person may agree to waive the monthly rent by affidavit to the court.

35-2-1106. Duties of receiver.

(a) A receiver shall:

(i) Have the same powers as a receiver of a corporation under W.S. 1-33-104, and shall exercise such powers to remedy the conditions that constituted grounds for the imposition of receivership, assure adequate health care for the residents or patients and preserve the assets and property of the licensee, owner, or operator.

(ii) Notify each resident or patient and each resident or patient's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

(iii) Collect incoming payments from all sources.

(iv) Apply the current revenue and current assets of the health care facility to current operating expenses of the facility.

(v) Be responsible for and pay taxes against the health care facility which become due during the receivership. State and federal taxes incurred prior to the receivership remain the responsibility of the owner or operator.

(vi) Be entitled to take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession.

(b) Not later than ninety (90) days after the date of appointment as a receiver, the receiver shall take all necessary steps to stabilize the operation of the health care facility in order to ensure the health, safety and welfare of the residents or patients of the facility.

(c) Within a reasonable time period after the date of appointment, not to exceed six months, the receiver shall determine whether the health care facility can continue to operate and provide adequate care to residents or patients in substantial compliance with applicable federal and state law and shall report such determination to the court.

(i) If the receiver determines that the health care facility can continue to operate, the receiver shall seek purchase proposals for the facility. If a transfer is not completed within six months or all purchase and sale proposal efforts have been otherwise exhausted, the receiver shall request an order of the court to close the health care facility and make arrangements for the orderly transfer of residents or patients pursuant to subsection (d) of this section.

(ii) If the receiver determines that the health care facility will be unable to continue to operate the receiver shall immediately request an order of the court to close the facility and make arrangements for the orderly transfer of residents or patients pursuant to subsection (d) of this section

(d) If any resident is transferred or discharged such receiver shall provide for:

(i) Transportation of the resident and such resident's belongings and medical records to the place where such resident is being transferred or discharged;

(ii) Aid in locating an alternative placement and discharge planning;

(iii) Preparation for transfer to mitigate transfer trauma, including but not limited to, participation by the resident or the resident's guardian in the selection of the resident's alternative placement, explanation of alternative placements and orientation concerning the placement chosen by the resident or the resident's guardian; and

(iv) Custodial care of all property or assets of residents or patients that are in the possession of an owner of the health care facility.

(e) In no event may the receiver transfer all residents or patients and close the health care facility without a court order and without complying with the notice and discharge plan requirements for each resident in accordance with this section.

35-2-1107. Powers of receiver.

(a) In addition to the duties provided in W.S. 35-2-1106, a receiver may exercise those powers and shall perform those duties set out by order of the court.

(b) A receiver may also:

(i) Assume the role of administrator and take control of day-to-day operations or name an administrator to conduct the day-to-day operations of the health care facility subject to the supervision and direction of the receiver;

(ii) Correct or eliminate any deficiency in the structure or furnishings of the health care facility that endangers the safety or health of the residents or patients while they remain in the facility, provided the total cost of correction does not exceed three thousand dollars. The court may order expenditures for this purpose in excess of three thousand dollars on application from the receiver.

(iii) Remedy violations of federal and state laws and regulations governing the operation of the health care facility;

(iv) Let contracts and hire agents and employees to carry out the powers and duties of the receiver; and

(v) Hire or discharge any employees including the health care facility's administrator.

(c) The receiver in its discretion may, but shall not be required to, defend any claim, suit, or action against the receiver or the health care facility arising out of conditions, actions, or circumstances occurring or continuing at the health care facility after the appointment of the receiver.

(d) The court may limit the powers or duties of a receiver to those necessary to solve a specific problem.

35-2-1108. Receiver's Fees.

(a) A receiver who is a designee of the department shall be entitled to a reasonable receiver's fee as determined by the court.

(b) The court may require the department of health to provide for the payment of any receiver's fees authorized in this section upon a showing that:

(i) The assets of the facility are not sufficient to make such payment, and

(ii) No other source of payment is available, including the submission of claims in a bankruptcy proceeding involving the health care facility's owner or operator.

(c) The department shall have a claim in the receivership or a bankruptcy proceeding involving the health care facility's owner or operator for any court-ordered fees and expenses of the receiver. To the extent allowed under state or federal law, the department's claim under this section shall have priority over all other claims of secured and unsecured creditors and other persons whether or not the health care facility is in bankruptcy.

35-2-1109. Accounting by receiver

A receiver appointed under this act shall regularly file with the court a full and detailed account of the receiver's actions. Specific contents and timing of the report may be ordered by the court. Any interested person may request that the court hold a hearing prior to approval of the receiver's report.

35-2-1110. Termination of receivership

(a) The court, upon a motion by the receiver or the owner or operator of the health care facility, may terminate the receivership if it finds that:

(i) The health care facility has been rehabilitated so that the violations complained of no longer exist;

(ii) The orderly transfer of the patients has been completed and the health care facility is ready to be closed.

(b) In its termination order, the court may include such terms as it deems necessary to prevent the conditions complained of from recurring.

(c) If the receivership has not been terminated within twelve months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department. The receivership period may be extended as necessary to protect the health, safety, and welfare of the residents or patients.

35-2-1111. Receiver's liability

The liability of the department, or its designee, shall be limited as set forth in the Wyoming Governmental Claims Act for the operation of medical facilities and the provision of health care.

35-2-1112. Notification of receivership or bankruptcy proceedings

If a health care facility is placed in receivership or has filed a petition for relief under the United States Bankruptcy Code, the facility shall notify each person seeking admission as a patient that the facility has been placed in receivership or has filed a petition for bankruptcy.

35-2-1113. Jurisdiction

(a) Actions under this act may be brought in the county in which the health care facility is located.

(b) When a single corporation owns or operates health care facilities in more than one county, the action may be brought in either county or the first judicial district.

(c) Actions involving out of state corporations may be brought in the first judicial district.

35-2-1114. Applicability of receivership provisions

The provisions found at Wyo. Stat. 1-33-101 through 1-33-110 shall apply to actions under this act to the extent that they do not conflict.

Statutes reviewed:

Connecticut General Statutes Annotated: §§19a-541 through 19a-549.
Nebraska §§ 71-2084 through 71-2096.
Kansas §§ 39-954 through 39-963
Minnesota Statutes 2014, section 144A.15