Licensing, Oversight & Regulation of Nursing Homes

Office of Licensure and Certification
Virginia Department of Health

Key Terms

State

Nursing home: a LTC medical care facility licensed by the State Health Commissioner
Certified nursing facility: nursing home or nursing care unit that is certified to participate in Medicare, Medicaid, or both
Inspection: investigation of a facility's compliance with Code of Virginia and 12VAC5-371 by VDH
Nursing care unit: a unit within a hospital operating under the hospital's license that provides LTC care

Federal

Distinct part: a NF, SNF, or SNF/NF inside a hospital
Nursing facility (NF): a LTC medical care facility certified to participate in Medicaid only
Skilled nursing facility (SNF): a LTC medical care facility certified to participate in Medicare only
SNF/NF: a LTC medical care facility certified to participate in Medicare and Medicaid
Survey: investigation of a facility's compliance with requirements of participation by VDH as the state survey agency for CMS

Certified nursing facility = NF, SNF, or SNF/NF
# LICENSING

## Establishing a Freestanding Nursing Home

<table>
<thead>
<tr>
<th>Process</th>
<th>Timeframes</th>
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</table>
| Step 1: Apply for and obtain a Certificate of Public Need  
  - 1% of capital expenditure, capped at $20K | Step 1: max. 120 days |
| Step 2: Build new nursing home | Step 2: Variable |
| Step 3: Apply for and obtain a nursing home license  
  - $1.50/bed, min. $75 and max. $500 | Step 3: Variable |
| Optional Step 4: Apply for and become certified as a NF, SNF, or SNF/NF | Optional Step 4: Variable |
Establishing a Nursing Care Unit in a Hospital

**Process**

Step 1: Apply for and obtain a Certificate of Public Need
- 1% of capital expenditure, capped at $20K

Step 2: Build new nursing care unit

Optional Step 3: Apply for and become certified as a NF, SNF, or SNF/N

**Timeline**

Step 1: max. 120 days

Step 2: Variable

Optional Step 3: Variable

**Nursing units operate under a hospital’s license**

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**LTC by Facility, Licensure, and Certification**

- NH License, Fully Certified, 278 (93%)
- NH License, Partially Certified, 2 (1%)
- NH License Only, 8 (3%)
- Hospital License, Fully Certified Distinct Part, 7 (2%)
- No License, Fully Certified, 2 (1%)
- Other, 19 (7%)
Distribution of 33,167 LTC Beds in Virginia

Distribution:
- SNF/NF, 29,959 (90%)
- SNF, 1,498 (5%)
- NF, 1,048 (3%)
- Non-participating, 662 (2%)
- Other, 3,208 (10%)

Licensing & Certification Systems

Currently, all licensing processes are paper-based.
Applicants and regulants mail in physical applications and paper checks.
As of April 2021, VDH staff can now deposit checks electronically.
Previously all checks had to be driven to the bank.
VDH is working with Salesforce to launch an entirely electronic licensing system
with integrated payment options.
- Phase 1: Licensing Programs
- Phase 2: COPN, MCHIP, and PRA programs

CMS provides an electronic system for federal surveys, which VDH is allowed
to use for state inspections as well.
VDH is a State Survey Agency

VDH conducts federal surveys to certify if a provider is in compliance with Medicare and/or Medicaid regulations, per agreement under § 1864 of the Social Security Act.

Only VDH is authorized to contract with CMS for the purposes of conducting federal surveys.

Federal surveys are conducted in conformity with CMS's State Operations Manual, Mission and Priorities Document, and other directives, as well as meeting metrics from the State Performance Standards System.

VDH conducts federal surveys for all Medicare and Medicaid provider types, regardless of whether state law requires a license, registration, or permit and whether VDH is responsible for state oversight.
Federal Certified Providers Surveyed by VDH

Nursing facility
Skilled nursing facility
Intermediate care facility for individuals with intellectual disabilities
Ambulatory surgical center
Community mental health center
Comprehensive outpatient rehabilitation facility
Critical access hospital
End stage renal disease facility
Home health agency
Hospice
Hospital
Inpatient rehabilitation facility
Laboratory and diagnostic testing
Organ transplant program
Outpatient rehabilitation providers
Portable X-ray
Psychiatric hospital
Psychiatric residential treatment facility
Rural health clinic

**Licensed by DBHDS
**No required license, registration, or permit

Inspections and Surveys (current)

State inspections and federal surveys are unannounced
- Inspections are mandated to occur at least biennially
- Surveys are mandated to occur between 12 and 15 months

VDH triages complaints according to CMS guidelines:
- Immediate Jeopardy (IJ) - within 2 business days
- Non-IJ High – within 10 business days
- Non-IJ Medium – within 180 calendar days
- Non-IJ Low – whenever VDH is next onsite

Complaints are evaluated for alleged violations of federal and state law
- If a complaint would fall under both, VDH will investigate under federal authority first

Deficiencies are scored according to scope and severity
Inspections and Surveys (eff. 10/24/22)

State inspections and federal surveys are unannounced
- Inspections are mandated to occur at least biennially
- Surveys are mandated to occur between 12 and 15 months

VDH triages complaints according to CMS guidelines:
- Immediate Jeopardy (IJ) if facility does not have adequate protection for all residents - within 3 business days
- IJ if facility has adequate protection for all residents - within 7 business days
- Non-IJ High – within average of 15 business days, not to exceed 18 business days
- Non-IJ Medium – within 45 calendar days
- Non-IJ Low – whenever VDH is next onsite

Complaints are evaluated for alleged violations of federal and state law
- If a complaint would fall under both, VDH will investigate under federal authority first

Deficiencies are scored according to scope and severity

Scope and Severity Matrix

<table>
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<th>SCOPE</th>
<th>Isolated</th>
<th>Pattern</th>
<th>Widespread</th>
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<tr>
<td>Immediate jeopardy to resident health or safety</td>
<td>J</td>
<td>K</td>
<td>L</td>
</tr>
<tr>
<td>Actual harm that is not immediate jeopardy</td>
<td>G</td>
<td>H</td>
<td>I</td>
</tr>
<tr>
<td>No actual harm with potential for more than minimal harm that is not immediate jeopardy</td>
<td>D</td>
<td>E</td>
<td>F</td>
</tr>
<tr>
<td>No actual harm with potential for minimal harm</td>
<td>A</td>
<td>B</td>
<td>C</td>
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</tbody>
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Notes:
- A, B, and C are substantially compliant and constitutes compliance with Conditions of Participation
- Solid shaded boxes indicate substandard quality of care (SQC)
- Level F deficiencies may, but not always, indicate SQC
### Administrative Penalties

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<th>Violations of federal law</th>
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<td>Plan of correction (POC)</td>
<td>POC</td>
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<tr>
<td></td>
<td>Directed POC (DPOC)</td>
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<td></td>
<td>Directed in-service</td>
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<td>State monitoring</td>
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<td>Temporary management</td>
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<td></td>
<td>Civil monetary penalties</td>
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<tr>
<td>Restricting new admissions</td>
<td>Discretionary denial of payment for new admissions</td>
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<td></td>
<td>Denial of payment for all individuals</td>
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<tr>
<td>License suspension or revocation</td>
<td>Termination</td>
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### Federally-Mandated Transparency

VDH is required to post on its website all certified nursing facility federal survey reports, effective January 1, 2018

- Includes the COVID-19 Focused Infection Control surveys
- Includes hospital distinct part SNFs, SNF/NFs, and NFs
- Includes POCs

This requirement was imposed by the Affordable Care Act

VDH also voluntarily posts:

- State inspection reports and POCs for 8 nursing homes that are not certified
- Federal survey reports for intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs)
Structure

VDH utilizes home-based medical facilities inspectors (MFIs) organized into 5 regional teams – no field offices.

All non-MFI staff are based out of the OLC main location.

VDH carries on average 10 LTC MFI vacancies because of difficulty attracting qualified applicants, travel demands on MFIs, and lack of funding.

These positions are funded by a mix of state LTC licensure fee revenue, other programs’ application fee revenue, and federal funds because of additional duties outside the LTC program.
CMS Personnel Qualifications for MFIs

CMS requires an MFI to be:
- Hospital administrator;
- Industrial hygienist;
- Laboratory or medical technologist, bacteriologist, microbiologist, or chemist;
- Medical record librarian;
- Nurse;
- Nursing home administrator;
- Nutritionist;
- Pharmacist;
- Physical Therapist;
- Physician;
- Qualified Intellectual Disabilities Professional;
- Sanitarian;
- Social worker; or
- Any other health professional category used within Virginia, provided Virginia has determined it to be commensurate with the other listed professions.

Training Qualifications

CMS training requirements:
- CMS Orientation program
- Basic Health Facility Surveyor Training Course
- Basic Long Term Care Health Facility Surveyor Training Course (BLTCC)
- Quality Indicator Survey (QIS) training
- Pass the Surveyor Minimum Qualifications Test (SMQT)

VDH utilizes same MFIs to conduct state inspections and federal surveys.
LTC management also meet CMS minimums since they periodically go on-site with the regional teams.
Training can take over a year to complete.
VDH Staff Time and Effort (in Hours)

Why Federal Certification Takes Priority

There is very little revenue and appropriations to support the licensing program
  • SFY2022 revenue and NGF appropriation for NHs was $60,905
  • Fees haven’t changed in 43+ years
CMS provides the bulk of the funding for VDH’s MFIs and other staff in OLC
Failure to meet CMS’s State Performance Standards System metrics can result in fines for VDH
There is significant overlap between federal requirements of participation and state licensure regulations
  • This is by design (see Va. Code § 32.1-127(A))
  • Facilities both licensed and certified follow the stricter requirements, regardless of whether they are state or federal
  • In almost all areas, federal requirements are stricter