

Licensing, Oversight & Regulation of Nursing Homes

Office of Licensure and Certification
Virginia Department of Health

VDH 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

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LICENSING



Establishing a Freestanding Nursing Home

Process

Step 1: Apply for and obtain a Certificate of Public Need

- 1% of capital expenditure, capped at \$20K

Step 2: Build new nursing home

Step 3: Apply for and obtain a nursing home license

- \$1.50/bed, min. \$75 and max. \$500

Optional Step 4: Apply for and become certified as a NF, SNF, or SNF/NF

Timeframes

Step 1: max. 120 days

Step 2: Variable

Step 3: Variable

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

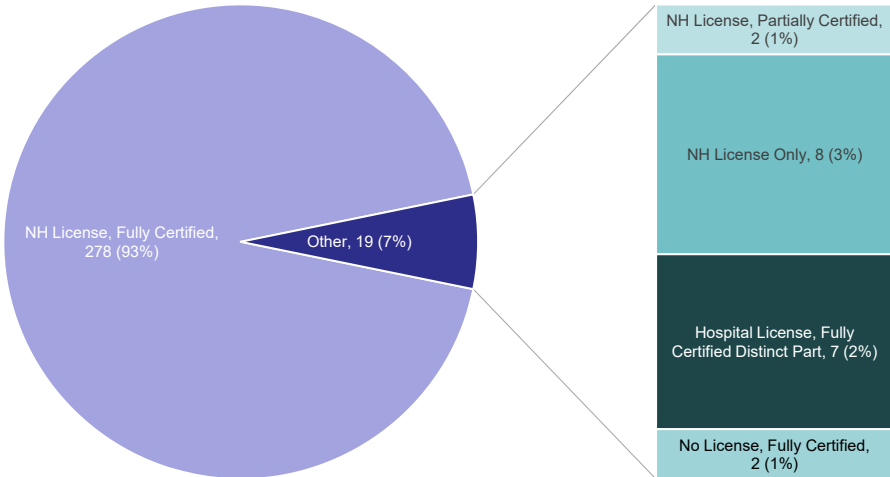
Step 2: Variable

Optional Step 3: Variable

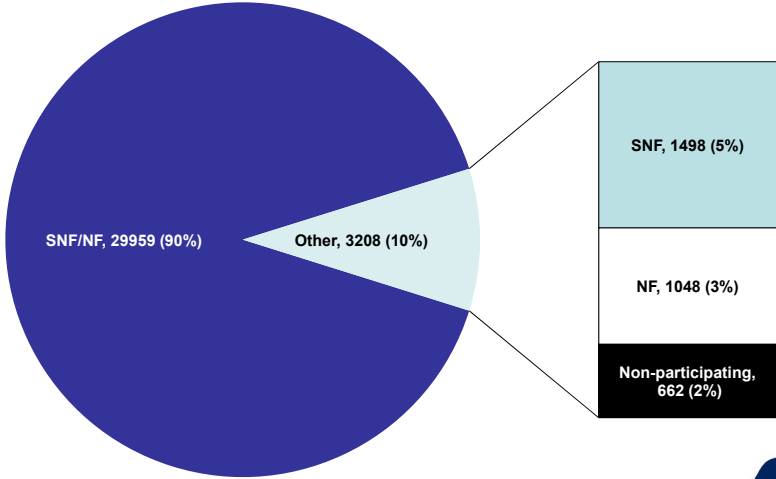
**Nursing units operate under a hospital's license



LTC by Facility, Licensure, and Certification



Distribution of 33,167 LTC Beds in Virginia



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



OVERSIGHT & REGULATION

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

****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

| | | SCOPE | | |
|----------|--|-----------------|----------------|-------------------|
| | | <i>Isolated</i> | <i>Pattern</i> | <i>Widespread</i> |
| SEVERITY | <i>Immediate jeopardy to resident health or safety</i> | J | K | L |
| | <i>Actual harm that is not immediate jeopardy</i> | G | H | I |
| | <i>No actual harm with potential for more than minimal harm that is not immediate jeopardy</i> | D | E | F |
| | <i>No actual harm with potential for minimal harm</i> | A | B | C |

- 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

Violations of state law

Plan of correction (POC)

Restricting new admissions

License suspension or revocation

Violations of federal law

POC

Directed POC (DPOC)

Directed in-service

State monitoring

Temporary management

Civil monetary penalties

Discretionary denial of payment for new admissions

Denial of payment for all individuals

Termination



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)



STAFFING

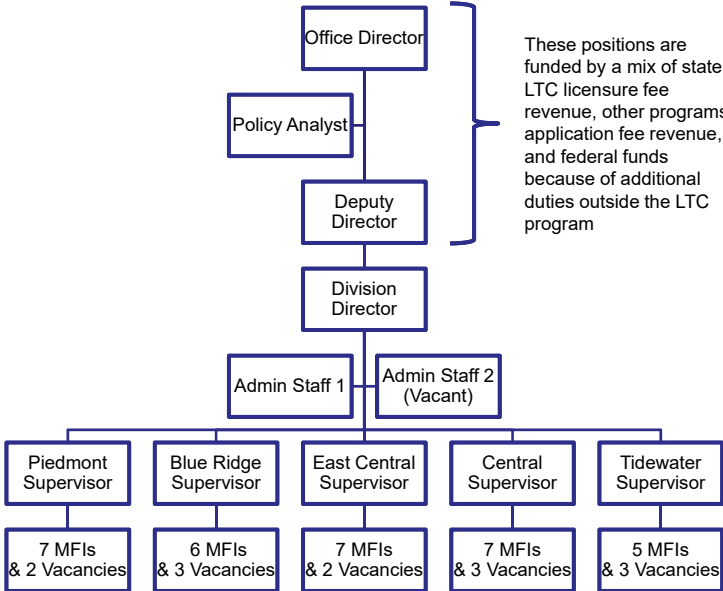


Structure

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



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:

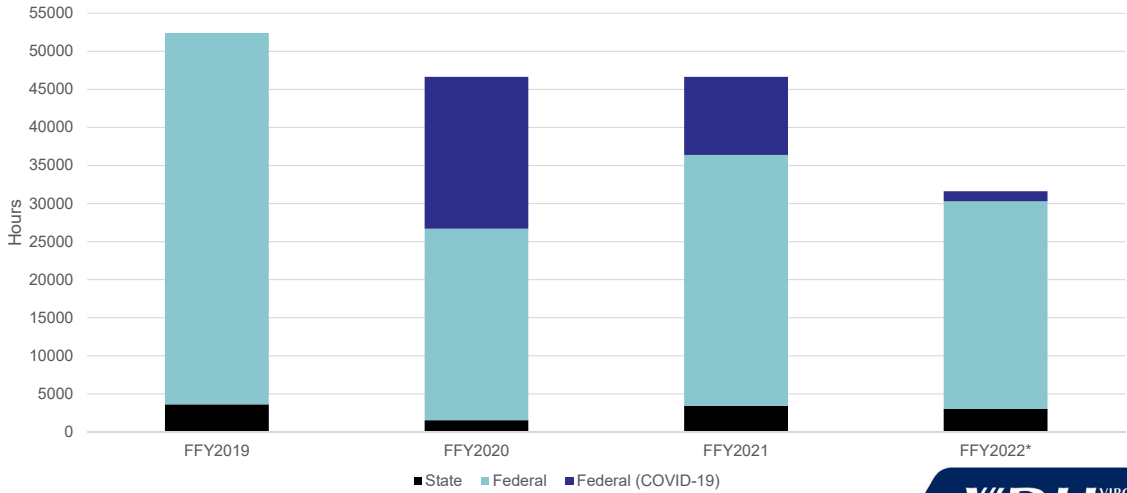
- CMS Orientation program
- Basic Health Facility Surveyor Training Course
- Basic Long Term Care Health Facility Surveyor Training Course (BLTCC)
- Quality Indicator Survey (QIS) training
- Pass the Surveyor Minimum Qualifications Test (SMQT)

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

