



# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

March 25, 2022  
DAL NH 22-08

Dear Nursing Home Administrator and Operators:

The purpose of this letter is to notify nursing homes of new notice requirements for nursing home establishment applications in accordance with the new Subdivision 2-b of Article 2801-a of the Public Health Law (PHL). Any application made to the Department of Health (Department) that establishes a different nursing home operator for an existing facility or establishes a change of ownership interest in an existing nursing home operator and requires consideration by the Public Health and Health Planning Council (PHHPC) is subject to this requirement. Nursing homes must provide the following notifications when their facility is the subject of such an application.

### **1<sup>st</sup> Notification Requirement Event to Resident, Staff, and Others**

The current operator of the facility and the applicant must notify the residents, their designated representatives, and the staff, including their union representatives, if applicable, of the application **within thirty (30) days of the Department's acknowledgement of a CON application**. Notification must be completed by regular mail, email, or the delivery method designated by the resident, their designated representative, the staff, and union representatives.

Nursing homes must work collaboratively with applicants to obtain confirmation of the Department's acknowledgement of an application and ensure notification to required parties within thirty (30) days of the acknowledgement date. Applicants and nursing homes can provide joint or separate notices, but it shall remain the responsibility of both parties to ensure notice is provided to the required persons and the notice must contain the following information:

- details of the pending change of ownership, including the legal entity and individual name(s) of the proposed operator.
- the CON application number.
- instructions on how to submit comments about the application. The notification should instruct comments to include the CON application number and be submitted electronically to [CONS@health.ny.gov](mailto:CONS@health.ny.gov) or by mail to:  
Bureau of Project Management  
NYS Department of Health  
Room 1842 Corning Tower  
Albany NY 12237
- a link for the general public to view the application using New York State Electronic Certificate-of-Need (NYSE-CON) system where the applications are submitted:  
<https://www.health.ny.gov/facilities/cons/nysecon/>.

Nursing homes must maintain written records of the content and method of the notification to required persons, regardless of the party that ultimately sends the notification.

Applicants are required to submit, as part of the CON application, a copy of the notice and an affidavit as proof that it and the nursing home have provided the first notification, prior to the CON application being scheduled for consideration by PHHPC. Applicants must submit these documents as additional information in the "Other" section of the Application tab in the NYSE-CON application. The form of the affidavit for the first notification is provided as Attachment A.

## **2<sup>nd</sup> Notification Requirement Event to Resident, Staff, and Others**

**Within twenty-four (24) hours** of a CON application being scheduled for consideration by a committee designated by the PHHPC, the nursing home and the applicant must notify the residents, their designated representatives, and the staff, including their union representatives, if applicable, by regular mail, email, or the delivery method designated by the resident, their designated representative, the staff, and union representatives. The notification must contain the date, location(s), and time of the meeting of the committee designated by the PHHPC. Applicants and nursing homes can provide joint or separate notices, but it shall remain the responsibility of both parties to ensure notice is provided to the required persons. Nursing homes must maintain written records of the content and method of the required notification to required persons, regardless of the party that ultimately sends the notification.

The notification must also include the instructions for filing written public comment to the PHHPC or for making public comment in person to the committee designated by the PHHPC that will consider the application. The following statement should be included in the notification:

*Public Comment on a CON application scheduled for consideration by a committee designated by the PHHPC can be made in writing, via email to [PHHPC@health.ny.gov](mailto:PHHPC@health.ny.gov). Written comments should include the CON application number and be filed no later than seventy-two (72) hours in advance of the meeting. Oral comments on a CON application scheduled for consideration by a committee designated by the PHHPC can be made on the date, time, and location of the meeting.*

Applicants are required to submit a copy of the notice and an affidavit as proof that it and the nursing home have provided the second notification before an application is formally presented for consideration by the committee designated by the PHHPC. Applicants must submit these documents as a response to the PHHPC notification in the correspondence tab in NYSE-CON. The form of the affidavit for the second notification is provided as Attachment B.

Questions related to this correspondence should be forwarded for response to [CONS@health.ny.gov](mailto:CONS@health.ny.gov). Thank you in advance to your attention and compliance with the new notice requirements in accordance with Public Health Law.

Sincerely,

Shelly Glock  
Deputy Director  
Center for Health Care Facility Planning,  
Licensure & Finance

**Attachment A**

Affidavit of (Applicant)

State of New York                      )  
  ) SS:

County of (County)

Re: CON Application No. (CON Number)

(Name), being duly sworn, does hereby declare the following:

1. I am the (Title) of the (Applicant) and am duly authorized to make and deliver this affidavit on behalf of the (Applicant).
2. I am submitting this affidavit on behalf of (Applicant) in connection with its application for Certificate of Need (CON) approval to become the established operator of (Nursing Home), pursuant to Article 28 of the Public Health Law.
3. The (Applicant) and the (Nursing Home) have provided notification to residents, their designated representatives, and staff, including union representatives, as applicable, of CON Application No. (CON Number) within thirty (30) days of its acknowledgement by the Department of Health, in accordance with the requirements Public Health Law §2801-a(2-b)(c) and 10 NYCRR §600.1(d)(2)
4. The (Applicant) and the (Nursing Home) will maintain written records of the content and method of notification pursuant to applicable law, regulations, and requirements, and will make such records available to the Department of Health, upon request.
5. I declare, under penalty of perjury, that the forgoing is true and correct.

SIGNATURE:	DATE
PRINT OR TYPE NAME	
TITLE	

NOTARY	DATE

**Attachment B**

Affidavit of (Applicant)

State of New York )  
 ) SS:

County of (County)

Re: CON Application No. (CON Number)

(Name), being duly sworn, does hereby declare, the following:

1. I am the (Title) of the (Applicant) and am duly authorized to make and deliver this affidavit on behalf of the (Applicant).
2. I am submitting this affidavit on behalf of (Applicant) in connection with its application for Certificate of Need (CON) approval to become the established operator of (Nursing Home), pursuant to Article 28 of the Public Health Law.
3. The (Applicant) and the (Nursing Home) have provided notification to residents, their designated representatives, and staff, including union representatives, as applicable, of CON Application No. (CON Number) within twenty-four (24) hours of its being scheduled for consideration by a committed designated by the Public Health and Health Planning Council, in accordance with the requirements Public Health Law §2801-a(2-b)(c) and 10 NYCRR §600.1(d)(2).
4. The (Applicant) and the (Nursing Home) will maintain written records of the content and method of notification pursuant to applicable law, regulations, and requirements, and will make such records available to the Department of Health, upon request.
5. I declare, under penalty of perjury, that the forgoing is true and correct.

SIGNATURE:	DATE
PRINT OR TYPE NAME	
TITLE	

NOTARY	DATE