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30-10-1b. Nursing facility program providers. (a) The nursing facility program providers shall include the following types of care facilities:

(1) Nursing facilities; and

(2) nursing facilities for mental health, which shall have been operating in accordance with a provider agreement with the agency on June 30, 1994.

(b) Each provider shall meet the following requirements with regard to any change in the structure of the business entities involved in the ownership, operation, or management of the nursing facility:

(1) The current provider or prospective provider shall notify the agency in writing by certified mail of a proposed change of providers at least 60 days in advance of the closing transaction date. If the current or prospective provider fails to submit a timely notification, the new provider shall assume responsibility for any overpayment made to the previous provider before the transfer. Failure to submit timely notification shall not release the previous provider from responsibility for the overpayment.

(2) Before the dissolution of the provider business entity or a transaction involving a change of ownership of the nursing facility or the change of lessee of the nursing facility, the provider shall notify the agency in writing at least 60 days before the change. If the provider fails to submit a timely notification, the new provider shall assume responsibility for any overpayment made to the previous provider before the

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transfer. Failure to submit timely notification shall not release the previous provider from responsibility for the overpayment. Other overpayment recovery terms may be expressly agreed to in writing by the secretary.

(3) The provider shall submit an application to be a provider of services to the agency for any addition or substitution to a partnership or any change of provider resulting in a completely new partnership. An application shall not be required when a partnership is dissolved and at least one member of the partnership remains as the provider of services.

(4) If a sole proprietor that is not incorporated under applicable state law transfers title and property to another party, a change of ownership shall have occurred. The new owner shall submit an application to be a provider of services to the agency.

(5) Each consolidation of two or more unrelated corporations that creates a new corporate entity through an arm's-length transaction shall constitute a change of provider. The new corporate entity resulting from the consolidation shall submit an application to be a provider of services to the agency.

(6) Each change or creation of a new lessee acting as a provider of services shall constitute a change of provider. The new lessee shall submit an application to be a provider of services to the agency.

(7) Each provider shall submit documentation of any other change in the ownership or corporate structure of the business

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entities involved in the ownership, operation, or management of the nursing facility.

(c) Only a change in or creation of a provider of service through a bona fide transaction shall be recognized as resulting in a new provider. The following situations shall not be recognized as resulting in a change of provider, and the facility shall be treated as an ongoing entity:

- (1) A transfer of participating provider corporate stock;
- (2) a merger of one or more corporations with the participating provider corporation surviving;
- (3) the purchase of the facility by the lessee;
- (4) the change or creation of a sublessee acting as the provider of services;
- (5) the creation of a new lessee that is related to the old owner of the facility;
- (6) the creation of a new lessee acting as the provider of services that is related to the old lessee;
- (7) the change or creation of a management firm acting as the provider of services ; and
- (8) the takeover of the lessee's operations by an owner of the facility.

(d) Each new provider shall be subject to a certification survey by the state licensing agency. If certified, the period of certification shall be established by the state licensing agency.

(e) This regulation shall be effective on and after May 1,

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