

SNF OR NO SNF... A QUESTION FOR TODAY'S LIFE PLAN COMMUNITIES

JENNA MAGAN, PARTNER AND CO-HEAD OF ORRICK PUBLIC FINANCE

KATHERINE KIRCHHOFF, MANAGING DIRECTOR, CAIN BROTHERS

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Speakers



Partner and Co-Head Public Finance
Orrick, Herrington & Sutcliffe LLP
jmagan@orrick.com



Managing Director
Cain Brothers
kkirchhoff@cainbrothers.com



Discussion Objectives

This presentation will:

1. Review market trends and challenges related to SNF sector
2. Discuss role of nursing care within Multi-Level Retirement Communities (MLRCs), specifically Life Plan Communities (LPCs) and strategic options both on and off campus
3. Identify potential organizational, financial, accounting, regulatory and disclosure requirements and consequences, especially tax-exempt bond considerations

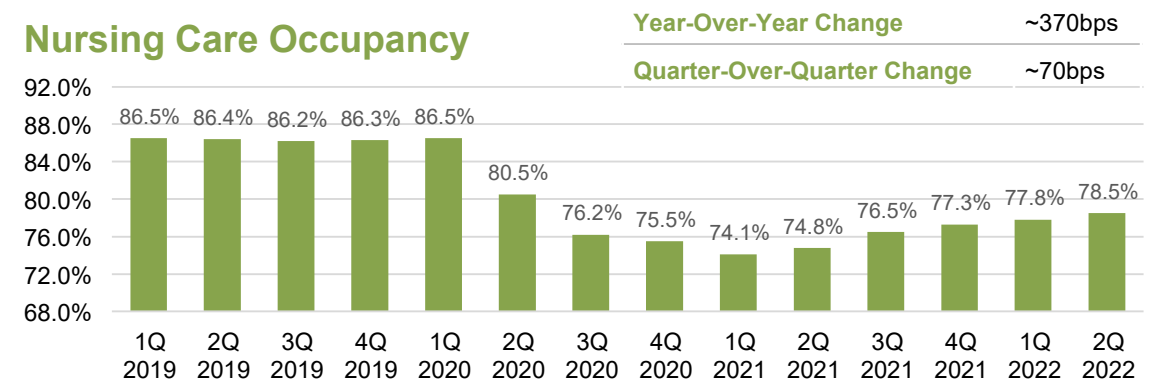
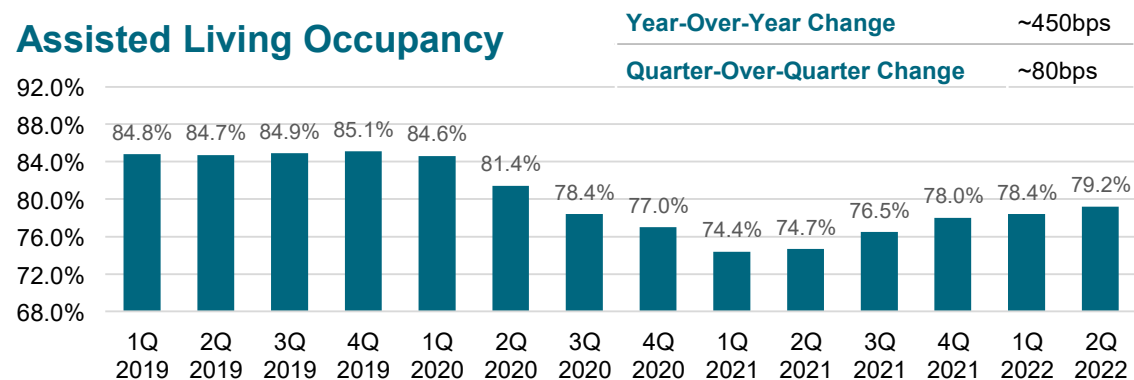
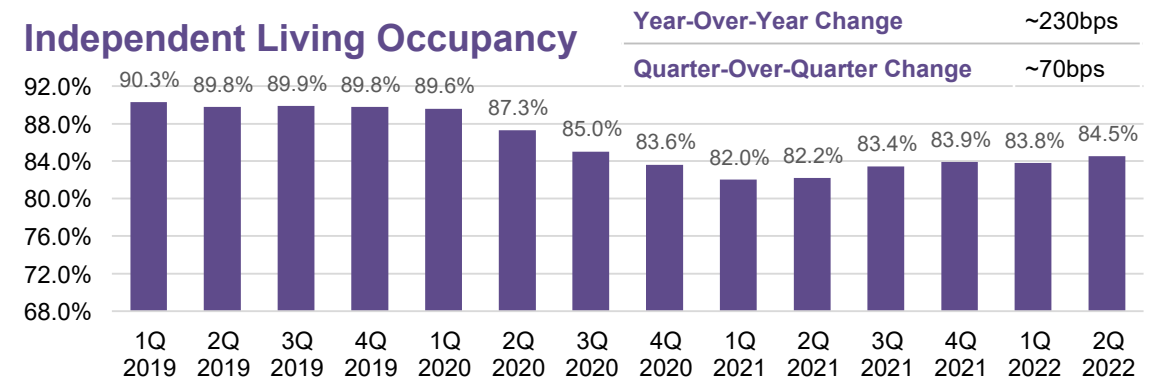
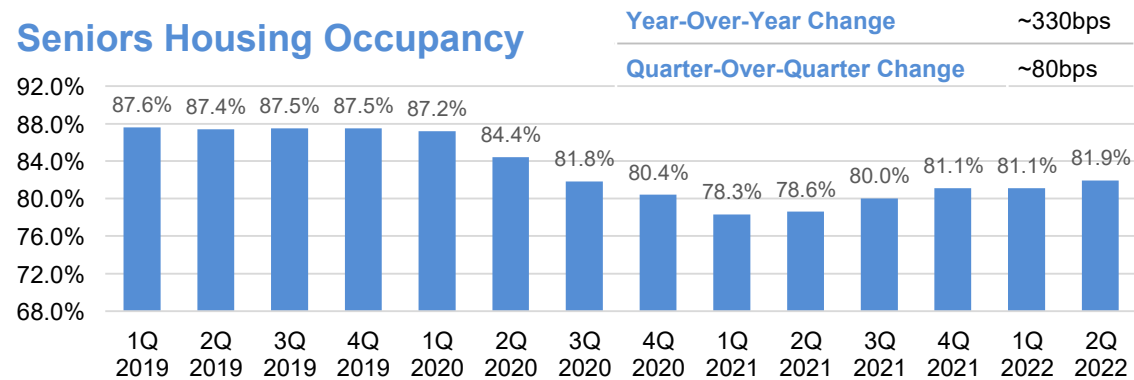
MARKET TRENDS AND CHALLENGES

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COVID-19's Impact on Occupancy

Occupancy across all seniors living subsectors has been meaningfully impacted by the pandemic, but is recovering although nursing care sector still has the largest gap to return to pre-COVID levels



Source(s): NIC MAP® Data Service

Note: Occupancy figures denote average occupancy in primary and secondary markets

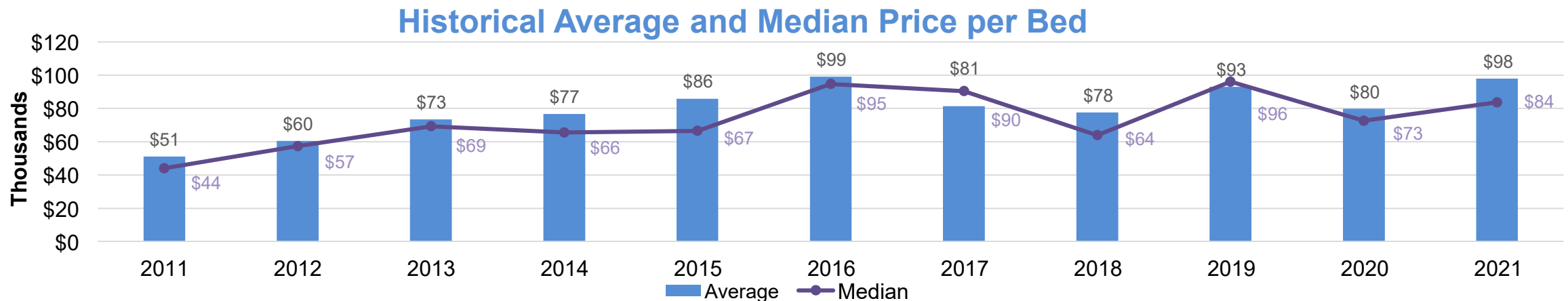


SNF Challenges Post COVID-19

- Stimulus funding temporarily addressed lower census and higher costs, but will not continue
- Staffing
- Reimbursement
- Litigation
- Contracting/direct admissions
- Technology/EMR
- Aging properties needing CapEx investment

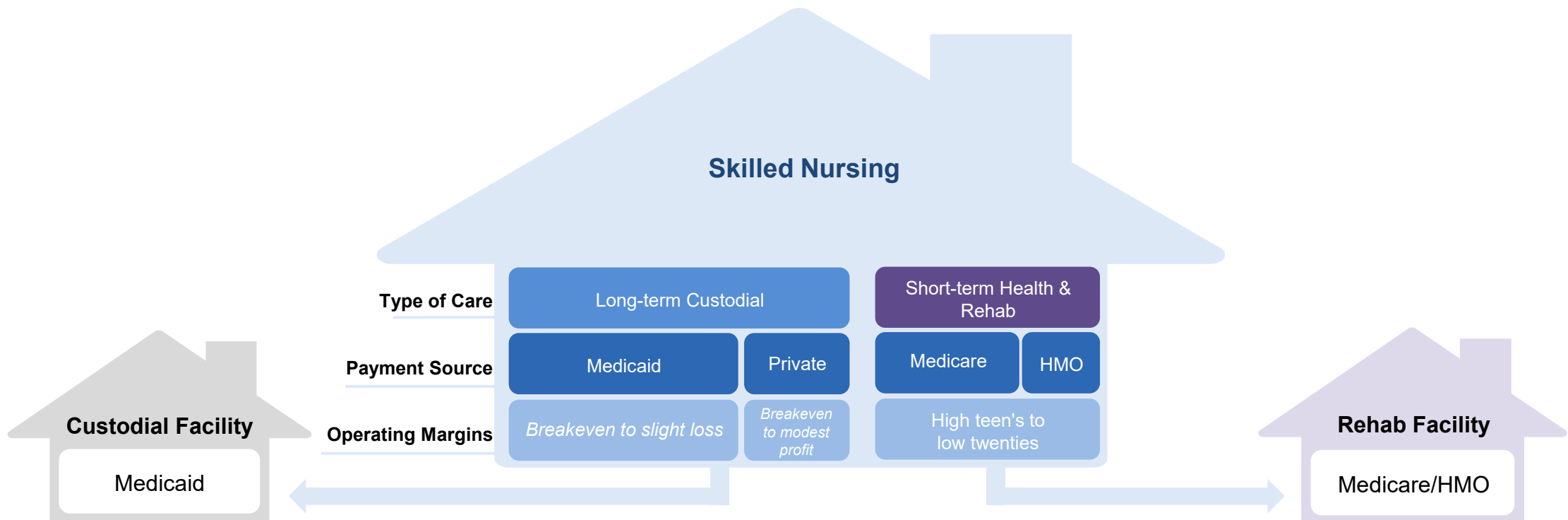
Skilled Nursing M&A Market Update

- Despite the headwinds, average and median prices increased notably
 - Buyers pushed pricing with a view towards ancillary revenue streams including pharmacy, therapy, home health and hospice, and laboratory services
 - Buyers viewed governmental support during the pandemic as a net positive
 - Some states realized all-time highs in terms of prices per bed
- Long term trends show a bifurcated sector: 1) long-term care with a heavy Medicaid census and 2) more medically complex, Medicare census with ventilators, dialysis, etc.



Bifurcated SNF Operations in LPCs

- Maintaining two businesses under one roof is challenging as proprietary providers build state-of-the-art “rehab exclusive” facilities or offer geographic scale
- Specific and distinct programs with tailored performance metrics are necessary to effectively serve LPC long-term custodial residents **and** short-term rehab patients



ROLE OF SKILLED NURSING IN NEW LPC DEVELOPMENTS

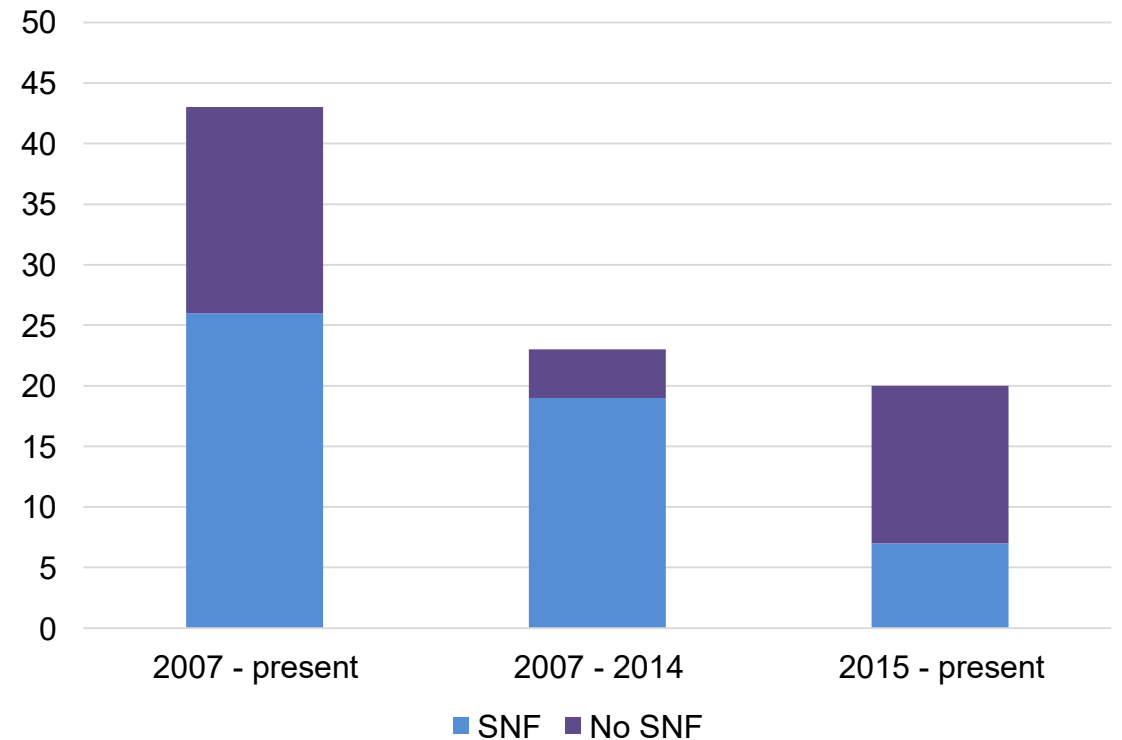
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SNF in New Developments?

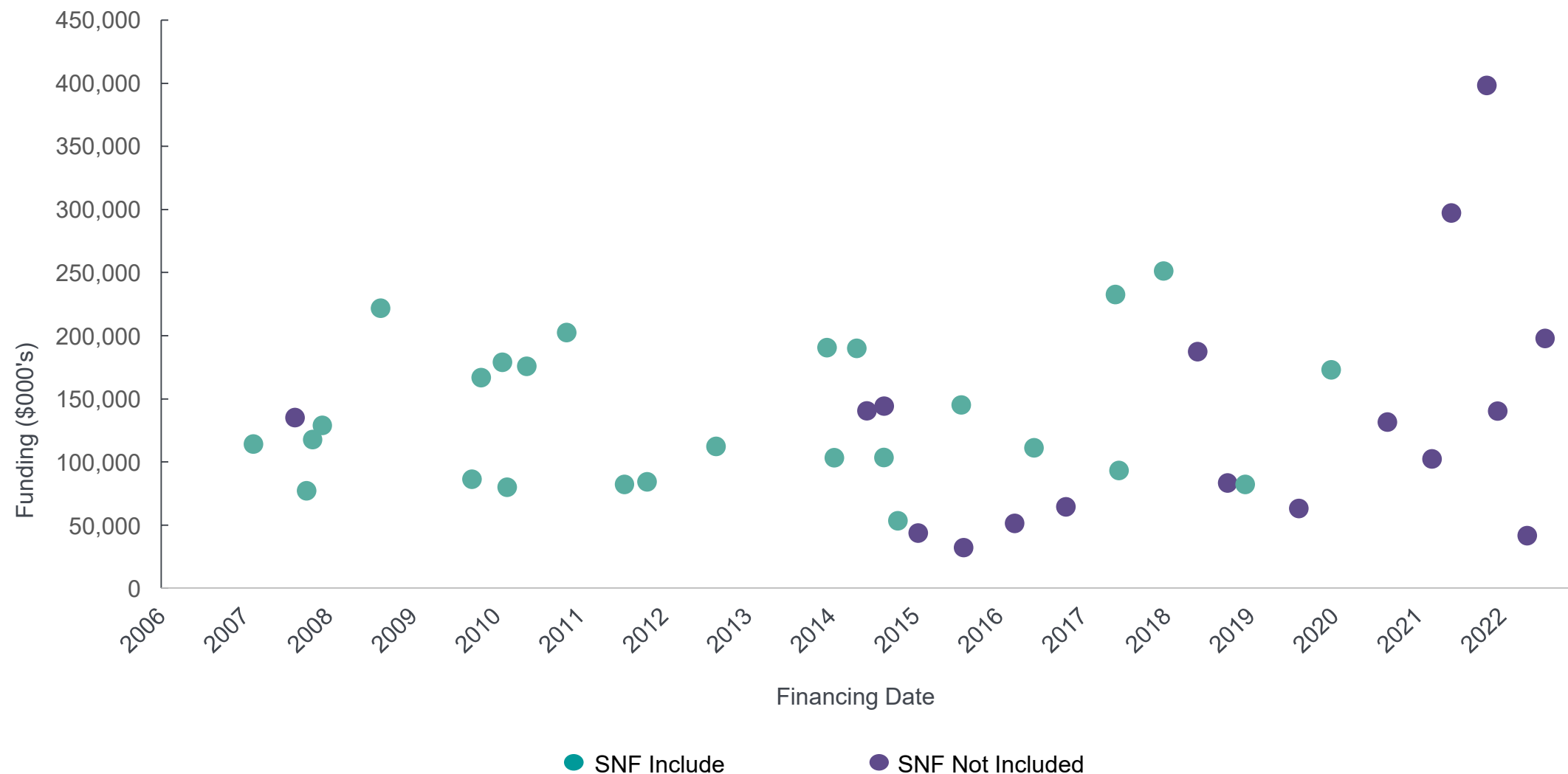
LPC Development Trends

- **2007 – present: 43 start-up LPCs**
 - 26, or 60% include SNF
- **2007 – 2014: 23 start-up LPCs**
 - 19, or 83% include SNF
- **2015 – present: 20 start-up LPCs**
 - 7, or 35% include SNF



SNF in New Developments?

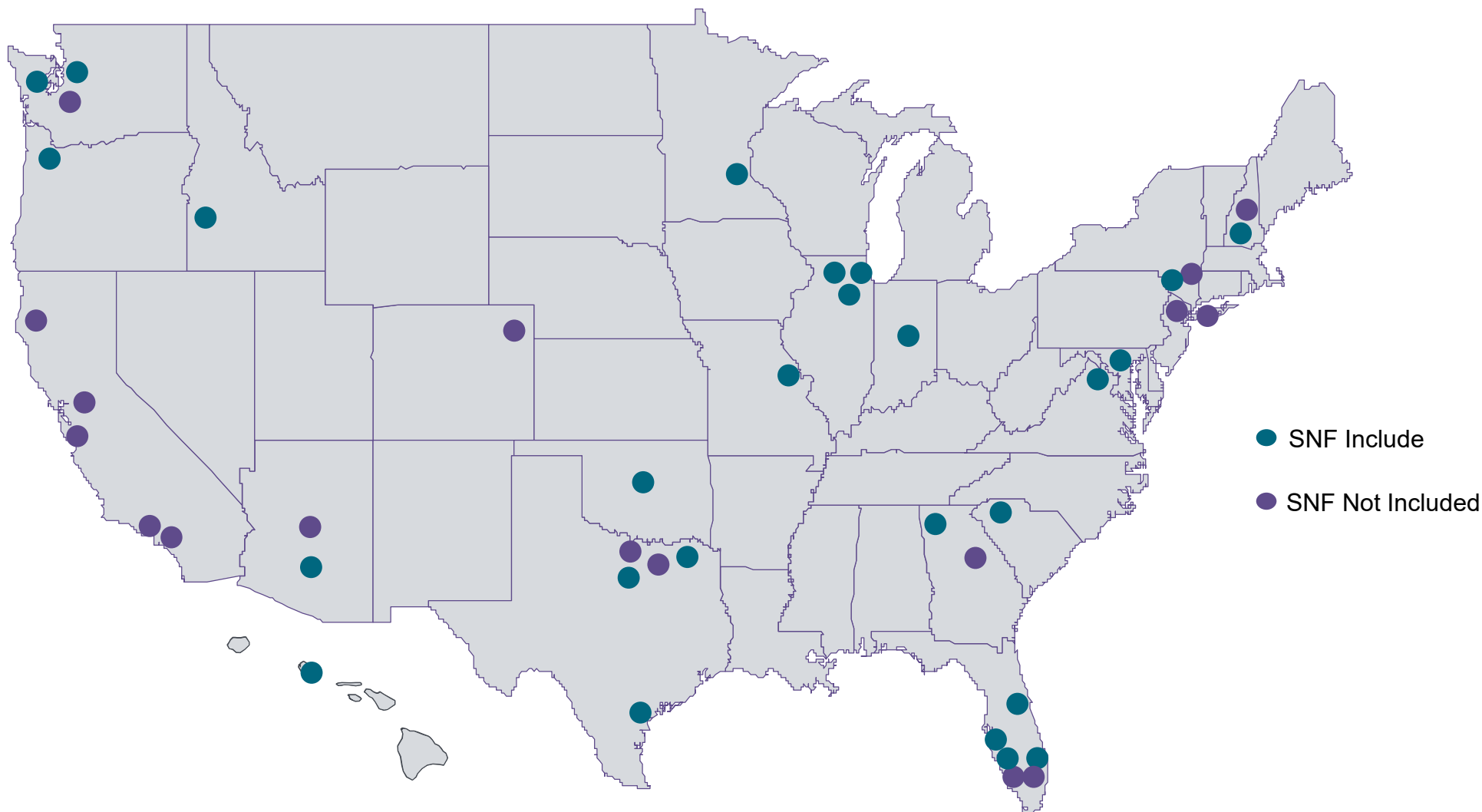
SNF Included vs. Not Included in Start-up LPC: Change Over Time



Source: EMMA/Bloomberg/Official Statements

SNF in New Developments?

SNF Included vs. Not Included in Start-up LPC: Geographic Trends



SKILLED NURSING STRATEGIES EXISTING LPCS

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Recent CLA Survey:

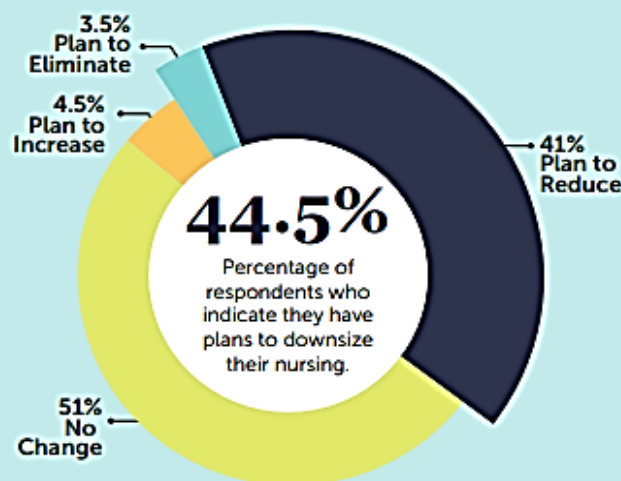
Nursing in Life Plan Communities



Nursing in Life Plan Communities (LPC)

What plans are in place for nursing beds on your campus?

As expected, most providers believe nursing is very important to their campus. Conversely, a significant percentage are reducing — or have plans to reduce — the size of their nursing footprint. This possibly highlights operational challenges associated with nursing, and — as our survey of other trends highlights — the desire to support aging in place.



Observations:

Payment reform appears to be a big concern for providers. About a third of respondents indicated they did not believe their communities were appropriately equipped to handle some of the business models that may be required by those with significant census derived from government-paid sources.

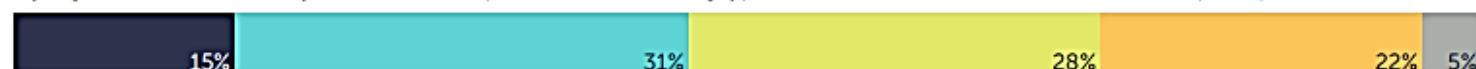
Having a skilled nursing unit/facility in an LPC campus will be important in the future.



My organization uses operational data to understand and improve our competitive position in the market.



My organization has the ability to understand capitated and risk-sharing types of contracts with insurers or other market participants.



Strongly agree Agree Neutral Disagree Strongly disagree

Note: Data on graphs may not total 100% due to rounding of numbers.

SNF in Existing Retirement Communities?

Trend to De-license SNF on Multi-level Campuses

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TERWILLIGER
PLAZA



Horizon House



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RIVERVIEW
RETIREMENT COMMUNITY

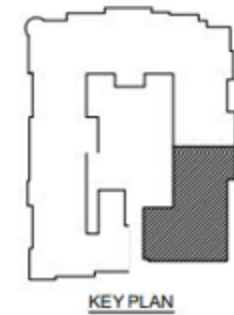
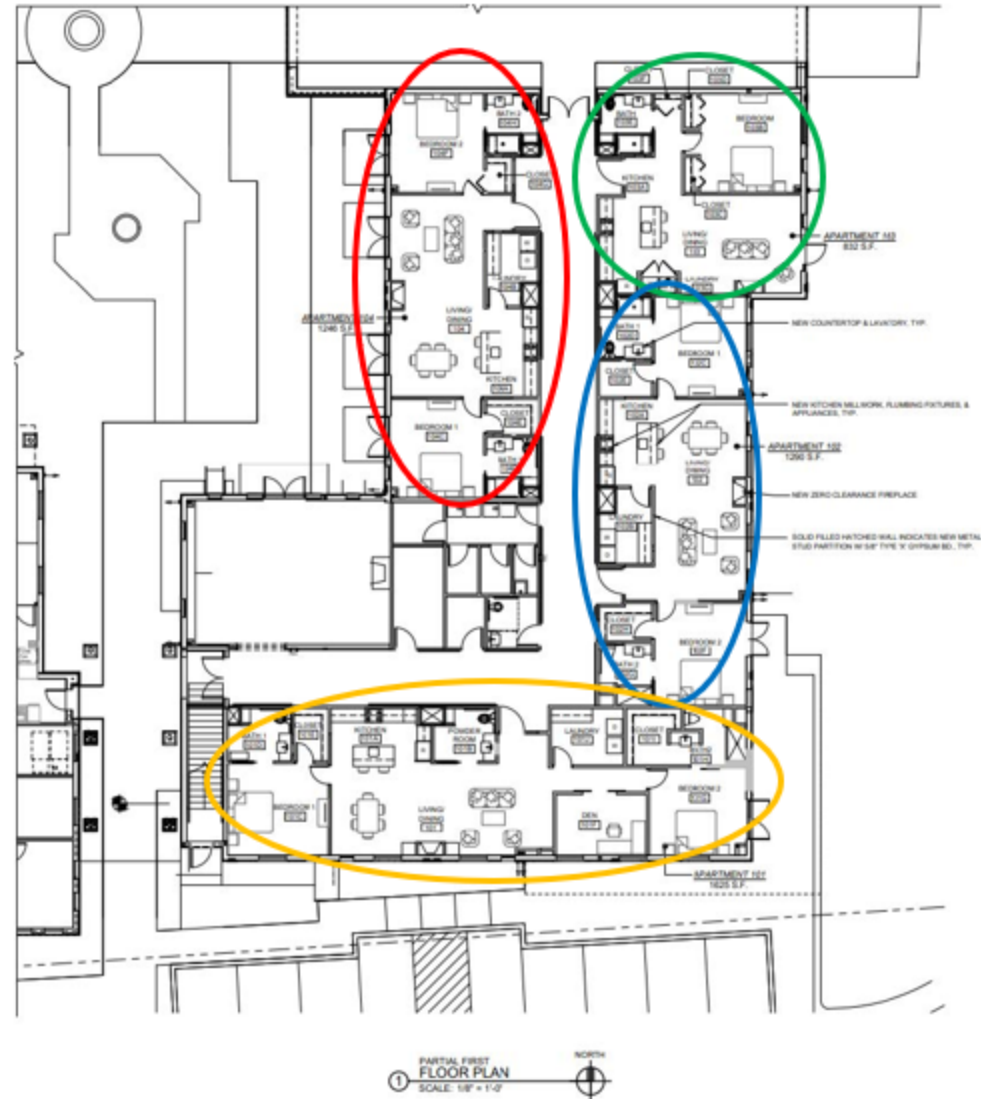


Christian Care
Communities
Since 1884

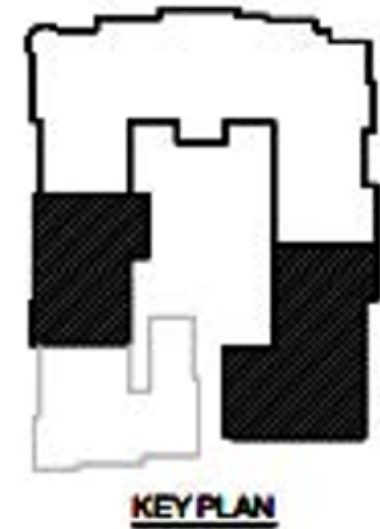


WATERMARK
RETIREMENT COMMUNITIES®

66-Bed SNF Conversion to 23 IL Apts



66-Bed SNF Conversion to 23 IL Apts



66-Bed SNF Conversion to 23 IL Apts



SNF in Existing Retirement Communities?

Trend to Modify Nursing Bed Configuration or Sublease Operations

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SNF in Existing Retirement Communities

Keep SNF on Campus

- Reconfigure SNF beds
 - Reduce licensed capacity
 - More private rooms
 - Specialty programs
- Utilize consultants to support facility staff
- Collaborate with other area SNFs
- Outsource management of SNF to third party management company
- Lease SNF to third party owner/operator
- Sell SNF to third party owner/operator

Eliminate SNF from Campus

- Repurpose SNF space
 - Memory Care
 - Assisted Living
 - Independent Living
 - Adult Day Care
 - Wellness Center

ORGANIZATIONAL, LEGAL, FINANCIAL, CONSIDERATIONS FOR CHANGES IN SNF STRATEGY

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Consider Impact on 501(c)(3) Status

- Are the options consistent with the charitable purpose of your organization? If not, is the unrelated trade or business activity from the options substantial as to jeopardize the 501(c)(3) status of your organization?
 - Repurposing the space
 - Management contract
 - Lease
 - Sale
- Consult Auditor: Will lease payments or sale proceeds be considered UBTI to the c3?
- **Note:** There is no IRS blessed measurement technique for determining when UBTI jeopardizes c3 status (measure income? measure time dedicated to activity? etc.)

Consider Impact on 501(c)(3) Status (cont.)

- Do the options under consideration create an undue benefit for a private entity?
- Private inurement is when a nonprofit's money benefits private uses instead of charitable purposes
 - Examples are:
 - Below market sale price
 - Above market compensation

Consider Impact on Tax-Exempt Debt

- Were proceeds of tax-exempt debt used to finance or refinance the SNF?
 - If yes, identify the sources of funding for the SNF project where tax-exempt debt was involved
 - Tax-exempt proceeds
 - Non-tax-exempt proceeds (equity, donations, grants, etc.)
 - Work with Bond Counsel to determine if non-tax-exempt proceeds can be allocated to the SNF
 - It will greatly simplify the analysis if no tax-exempt bond proceeds were used for the SNF (either because no tax-exempt debt was involved or if equity can be allocated to the SNF)

Consider Impact on Tax-Exempt Debt (cont.)

- If tax-exempt proceeds are allocated to the SNF, the structure of the options you are considering will impact the analysis
 - Repurpose the space: As long as it is still owned and operated by the c3 for its charitable purpose, will not impact tax-exempt on bonds
 - Management contract: If structured as a qualified management agreement under federal tax law, will not impact tax-exemption on bonds
 - Lease: Private Use, unless lease is to another c3 for use consistent with its charitable purpose and your charitable purpose
 - Sale: Private Use and Private Ownership
- Use by another c3 for use consistent with its charitable purpose and your charitable purpose will not constitute Private Use
- Unrelated trade or business use involving bond financed property will constitute Private Use

Consider Impact on Tax-Exempt Debt (cont.)

- The amount of Private Use is Limited
 - For 501(c)(3) bonds, at least 95% of the “net proceeds” of the bond issue must be used in a manner related to the exempt purposes of the Section 501(c)(3) organization
 - No more than the lesser of 5% or \$15M of the “net proceeds” of the bond issue can be used for a “private use” or an “unrelated trade or business use”
 - For this purpose, costs of issuance (COI) of the bonds paid with bond proceeds are treated as a private business use (5% - 2% = 3%)
 - No more than 2% of proceeds can be used to fund costs of issuance
- No Private Ownership is allowed



Consider Impact on Tax-Exempt Debt (cont.)

- The IRS asks you to report the annual calculation of private use on Schedule K of your Form 990s
- If the option creates too much private use, you may need to redeem or defease an allocable portion of the bonds
- Consult Bond Counsel: This is a high stakes issue. Your tax-exempt bonds may become taxable if the private use analysis is not done correctly.



Consider Impact on Outstanding Debt

- Covenant Compliance
 - Consider whether elements to the transaction trigger covenant compliance, such as covenants limiting the disposition of property or cash (Sale) or limiting liens on property (Lease)?
 - Consider doing a projection of the debt service coverage ratio to make sure your financial covenants will not be breached as a result of entering into this transaction
 - If contract requirements can't be met, consider requesting consent of the lender
 - Check documents to determine if there are requirements to notify the lender or obtain the lender's consent for the transaction



Consider Required Regulatory Approvals

- State Attorney General Approval
 - Can be triggered by a change in control of assets owned and operated by a nonprofit
 - Not likely to be required for a management agreement, but the requirement can be triggered by a lease or sale especially if the SNF is a material amount of the assets or operations of the LPC
- Licensing
 - Consider whether the manager or lessee needs to be licensed or if SNF license can remain with LPC
 - State laws differ and the answer to this will be dictated by the level of control
- Governmental Payor Contracts
- Changes to the Resident Contracts

Disclosure Considerations

- Bond Investors: Are you subject to any continuing disclosure agreements requiring filings on the EMMA system of Municipal Securities Rulemaking Board (MSRB)?
 - A material event notice is required to be posted on EMMA within 10 business days of the consummation of merger, consolidation, acquisition or sale of substantially all assets involving obligated person
 - A material event notice may not be triggered by a management agreement or lease
 - Notice only required if “material”
 - Consider Investor relations: Even if you are not required to file a material event, the LPC may want to include disclosure of the transaction in a voluntary EMMA notice or in the next required annual or quarterly continuing disclosure report on EMMA



Disclosure Considerations (cont.)

- Other Lenders
- Rating Agencies
- Other Stakeholders
 - Residents
 - Employees
 - Donors
- Timing and Content: Generally, want to ensure consistent messaging internally within the organization and externally to investors and other external stakeholders



Accounting Considerations

- How will the transaction be reflected on the financial statements of the LPC?
- Will any income from the proposed transaction be classified as UBTI?
- If a lease is contemplated, consider the impact of the new lease accounting standards



Resident Contracts

- Are any changes needed to the Resident Contracts?
- How will the changes be communicated to the Residents?
- Is any regulatory approval needed for the changes to the Resident Contracts?



Board Evaluation of Options

- What process will be undertaken to identify, solicit and evaluate the options?
- What is the most effective way to provide the governing board with sufficient information to make an informed decision between the options?

Checklist May Provide a Helpful Framework

- Strategy and business analysis first, and then legal considerations of the options

CHECKLIST FOR CHANGE IN CONTROL OF ASSETS* OF LIFE PLAN COMMUNITY (LPC)

501(c)(3) STATUS

☐ Is the Proposed Transaction consistent with your charitable purpose?

☐ Does the Proposed Transaction constitute an unrelated trade or business activity?

☐ Could the Proposed Transaction create an undue benefit for a private entity (i.e. below market rate sale price or above market rate compensation)?

DEBT

☐ Does the Proposed Transaction involve space that was financed/refinanced with tax-exempt debt?

☐ Are the LPC actions in the Proposed Transaction covered by any covenants in the debt documents, such as the limitation on the disposition of assets or the limitation on encumbrances?

☐ What is the impact of the Proposed Transaction on ongoing financial covenant calculations, such as the debt service coverage calculation?

☐ Are there any required EMMA filings or other notices of the Proposed Transaction to bond investors or other lenders?

☐ If LPC has a credit rating, have the rating agencies been notified of the Proposed Transaction?

REGULATORY APPROVALS

☐ Does the Proposed Transaction need to be approved by the State Attorney General?

☐ Does the Proposed Transaction change the holder of the license?

☐ Does the Proposed Transaction change the Resident Contracts?

☐ Do any other regulators need to approve the Proposed Transaction?

BOARD EVALUATION OF OPTIONS

☐ What process will be undertaken to identify, solicit and evaluate the options?

☐ What is the most effective way to provide the governing board with sufficient information to make an informed decision between the options?

AUDITORS

☐ Have the auditors advised on whether any income received from the Proposed Transaction will be classified as UBTI?

RESIDENTS

☐ Are any changes needed to the Resident Contracts due to the Proposed Transaction?

☐ How will the changes be communicated to the Residents?

☐ Are any regulatory approvals needed for the changes to the Resident Contracts?

EMPLOYEES

☐ How will employees be affected by the Proposed Transaction? What is the expected impact on employee staffing requirements, union agreements, etc.?

☐ What is the plan for communicating to employees?

DONORS

☐ Does the Proposed Transaction need to be communicated to any existing or potential donors?

* Includes sale, lease or management of a portion of the LPC's facilities.

For more information, please contact:



JENNA MAGAN
Partner | Orrick
jmagan@orrick.com
+1 916 329 7980



KATHY KIRCHHOFF
Managing Director | Cain Brothers,
a division of KeyBanc Capital Markets
kkirchhoff@cainbrothers.com
+1 562 264 0300





This checklist is solely intended to provide insights and best practices - it does not constitute client advice and each LPC should tailor their approach consistent with the specifics of their business and jurisdictional requirements.

QUESTIONS?

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