



Maryland Health Care Commission: Nursing Home Acquisitions Transparency Study

WORKGROUP MEETING 6

DECEMBER 7, 2023



Agenda

1. Welcome
2. Review current recommendations and comments
3. Discuss any remaining comments/concerns
4. Next Steps



Recommendation 1: Pre-Acquisition MHCC Responsibilities

1. The Maryland Health Care Commission (MHCC or Commission) staff shall provide the *MHCC Report and Recommendation* to the Office of Health Care Quality (OHCQ) and the Secretary of Health and the Maryland Office of the Attorney General. For each proposed nursing home acquisition. The findings and recommendations required under Health- General §19-115(a)(3) shall include a summary of the findings and the basis for the recommendations. To implement this recommendation, Commission staff will write a report to include the following data for each nursing home acquisition. The report would be done for both Maryland and non-Maryland-based owners/operators if appropriate.

Specific Actions on Recommendation Follow



Recommendation 1: (continued)

- a) Most recent Centers for Medicare and Medicaid (CMS) Overall 5 Star Rating;
- b) Results of the review of Public Access to Court Electronic Records (PACER), including a review of court cases for any violations of the Federal False Claims Act;
- c) Status in the Office of the Inspector General (OIG) Exclusions Program;
- d) Status or existence of a Memorandum of Understanding (MOU) with Medicaid and the percentage of Medicaid patients served in comparison to the threshold in both the jurisdiction and the health planning region (HPR);
- e) The Overall Rating of Satisfaction and the Percentage Who Would Recommend the Nursing Home measures from the most recent results of the Maryland Health Care Commission's Nursing Home Facility Experience of Care Survey;
- f) The Special Focus Facility and abuse flag status in the most recent refresh of the Centers for Medicare and Medicaid Services Care Compare data; and
- g) **Fines/payment denials for the last three years available in the most recent refresh of the Centers for Medicare and Medicaid Services Care Compare data.**



Recommendation 2: Pre-Acquisition MHCC Responsibilities

2. Commission staff shall continue to provide information on pending nursing home acquisitions in the *Maryland Health Care Commission Update of Activities*. This update will be provided to Commissioners monthly for each Commission meeting and posted on the Commission website and will include the *MHCC Report and Recommendation* if completed.



Recommendation 3: Pre-Acquisition Seller Responsibilities

3. The seller shall notify all residents and their families of the pending acquisition. The acquiring entity shall include the notice in the Notice of Acquisition/Transfer of Ownership Interest of a Comprehensive Care Facility (question 17). The response to question 17 shall include the date and method the notice was shared. The State Ombudsman and the Office of the Attorney General shall be copied on the Notice of Acquisition.

Comments from the Work Group Participants on Pre-Acquisition Recommendations



- ▶ Copy Ombudsman on *MHCC Report and Recommendation* (State Ombudsman's Office)
- ▶ The star rating has been impacted by pandemic-related annual survey delays since 2019
- ▶ Outreach to residents and families to improve transparency when there is a pending nursing home acquisition (Marylanders for Patient Rights and MaCCRA)
- ▶ Allow enough notice for CCRC residents to review acquisition materials (MaCCRA)



Recommendation 4: Post-Acquisition MHCC Responsibilities

4. The Commission staff shall update the Commissioners regarding the progress of each nursing home acquisition for **three years** after the acquisition date using the *Nursing Home Acquisition Follow-Up Report* to collect data on recently acquired nursing homes to study trends that can inform future policy decisions. In this report, the MHCC will include an update of the metrics previously included in the *MHCC Report and Recommendation*. Additionally, the *Nursing Home Acquisition Follow-Up Report* will contain the following metrics on the acquired facility:



Recommendation 4: Post-Acquisition MHCC Responsibilities (continued)

- a) **Detailed plan and** progress toward reduction of multiple-bed (3+ bed) rooms;
- b) Net Operating Revenue;
- c) Total Operating Expenses;
- d) Net Income;
- e) **Ratio of Total Direct Care Staffing FTEs to Patients;**
- f) Hours of Bedside Care per Licensed Bed per Day;
- g) **Maintenance of Occupancy Levels;**
- h) **Percent of Hospital Admissions and Readmissions**



Recommendation 4: Post-Acquisition MHCC Responsibilities (continued)

- ▶ The information needed for the *Nursing Home Acquisition Follow-Up Report* shall be submitted in the form of end of year financial statements that compare the facility performance to its operating budget at the end of each fiscal year for the **first three years after the acquisition date**.
- ▶ Failure to comply with the provision of this information to the Commission will result in the acquiring entity having to appear before the Commission and report on its progress publicly.
- ▶ **The Commission will use its existing authority to impose monetary fines for non-compliance.**
- ▶ **The *Nursing Home Acquisition Follow-Up Report* shall be shared with the Office of Health Care Quality and the Office of the Attorney General.**

Comments from the Work Group Participants on Post-Acquisition Recommendations



- ▶ Add direct care FTEs staff to patient ratio (Marylanders for Patient Rights)
- ▶ Add occupancy levels, length of stay, % readmissions to hospital, and % return to independent and assisted living (MaCCRA)
- ▶ Add % of revenue being spent on direct care (United Healthcare Workers East)
- ▶ **Define direct care staffing (State Ombudsman's Office)**
- ▶ Quantify how often the progress on reducing rooms with more than two beds will be reviewed (Marylanders for Patient Rights)



Recommendations 5-7: Statutory Changes for MHCC

5. The Commission shall recommend the denial of an acquisition based on quality metrics, and other standards as appropriate, required in Certificate of Need (CON) reviews (COMAR 10.24.20) to align CON quality standards with nursing home acquisition regulations.



Recommendations 5-7: Statutory Changes for MHCC

6. The Commission shall increase the timeframe that the acquiring owner must submit all required documents to the Commission to 45 days prior to the transaction closing. MHCC staff will complete its review within 45 days of receiving a complete Notice of Acquisition/Transfer of Ownership Interest of a Comprehensive Care Facility.



Recommendations 5-7: Statutory Changes for MHCC

7. The Commission shall expand its authority to require an acquiring entity of a nursing home to eliminate or reduce, to the maximum extent possible, the number of multiple-bed (3+ beds) rooms within three years from the acquisition date. These transitions shall be incremental and implemented with appropriate planning.



Comments from Work Group on Statutory Changes

- ▶ The bar in CON reviews (70% of all affiliated CCFs 3 stars or greater) is already too low (Marylanders for Patient Rights)
- ▶ Caution recommending the OHCQ do post-acquisition surveys when there is not enough staff - OHCQ is stretched too thin (Leading Edge and Marylanders for Patient Rights)
- ▶ **The Ombudsman office is available if there are concerns about the timeframes for eliminating rooms with more than 2 beds per room (State Ombudsman's office)**
- ▶ Eliminate rooms with more than two beds sooner (Leading Edge)
- ▶ Acquisitions should not impact occupancy levels or result in the displacement of occupants of CCRCs (MaCCRA)
- ▶ Due to infection control, there should be a strategy for reducing rooms with more than two beds per room without disrupting residents (Marylanders for Patient Rights)
- ▶ MHCC should require facilities to reduce the number of rooms with more than two beds per room by 10% (Lorien)
- ▶ **CCFs need time to phase out rooms with more than two beds per room (HFAM)**



Recommendation 8-9: Policy Changes for Other Agencies

► **THE DEPARTMENT OF HEALTH**

8. OHCQ shall implement the current statutory requirements set forth in Health General §19-1408, by conducting a full survey within three months after the date of transfer, followed by an unannounced follow-up for any deficiencies within 120 days. OHCQ shall report the findings of the survey to the Commission and the public.

► **THE OFFICE OF THE ATTORNEY GENERAL**

9. The Office of the Attorney General shall evaluate expanding their authority to play a role in the acquisition process.



Comments from Workgroup on Policy Changes

- ▶ The Ombudsman Office shall evaluate expanding its authority to play a role in the acquisition process (State Ombudsman's Office)



Next Steps

- ▶ Presentation to Commission on December 14
- ▶ Submit report to legislature by January 2, 2024