



Maryland Health Care Commission: Nursing Home Acquisitions Transparency Study

WORKGROUP MEETING 1

JULY 14, 2023



Agenda

1. Welcome and Introductions
2. Review of SB509/CH0288
 - a. Timeline for the Workgroup-5 Meetings
 - b. Final Report Due December 1, 2023
 - c. Workplan review
3. Review Current Federal/State of Initiatives/Literature: How Do Nursing Home Acquisitions Impact Quality?
4. Nursing Home Acquisitions Process: Heather Reed, Office of Health Care Quality
5. Review of the Comprehensive Care Facility State Health Plan ([COMAR 10.24.20](#))
 - a. Quality Standard State Health Plan
 - b. Change of Ownership/Acquisition Form
6. Discussion and Comments
7. Next Steps



Workgroup Charge

- ▶ The purpose of the work group is to look at the current role of the MHCC in working with nursing home acquisitions and how acquisitions are impacting quality of care in nursing homes. The work group will also make recommendations regarding the breadth of the MHCC's authority over acquisitions and if more time is required (30 vs. 60 days) to complete a review. The work group will look at two main areas related to acquisitions that are impacting quality of care: private equity and multiple-bed rooms (defined as nursing home rooms with more than two beds in a room).



SB509 Summary and Requirements

- ▶ MHCC will provide summary information and basis for its recommendation to OHCQ, requiring the Secretary of Health to consider this information before taking certain action regarding licensure of the NH
- ▶ MHCC's evaluation shall include quality rating (most recent CMS 5-star rating) for all facilities currently and previously owned in or outside Maryland, evidence of a quality assurance/assessment committees that meet at least quarterly, inspection reports/action plans, licensing surveys/action plans, lawsuit/arbitration filings, tax ID, Medicare/Medicaid certification number
- ▶ Applicant shall include anyone with ownership interest in the facility (management company/landlord/business entity), its ability to comply with medical care/nursing care/financial conditions and other applicable regulations
- ▶ Based on the findings of the MHCC and OHCQ, the Secretary of Health may approve/deny or revoke a NH license, or impose conditions to a NH license
- ▶ By December 1, 2023, MHCC in consultation with other stakeholders shall assess the elimination of rooms with more than two beds and any other issues related to acquisitions of NHs



Workplan

1. Membership development work
 - a. Review legislation regarding membership and scope of authority: MHCC (represents the State) stakeholders, nursing homeowners, health care facilities, consumer representatives, organized labor, patient advocacy, HFAM, Lifespan, Medicare, Maryland Department on Aging, Medicaid, OHCQ
2. Available Resources (collect for work group):
 - a. Previous MHCC nursing home studies on acquisitions
 - b. National level nursing home studies/studies in other states on acquisitions
 - c. 2019-2022 MHCC data on acquisitions in Maryland
 - d. COMAR 10.24.20 (Nursing Home Chapter)
3. Tentative Meeting Schedule
 - a. Meeting 1 (July 14, 2023)- Review, Heather Reed (OHCQ)
 - b. Meeting 2- (~July 28, 2023) – Private Equity, Speaker Atul Gupta
 - c. Meeting 3 (~August 18, 2023)- Multiple Rooms (Discuss elimination of multiple-bed rooms within two years after an acquisition)
 - d. Meeting 4 (~September 22, 2023)- Review draft report prior to Commission meeting
 - e. Meeting 5 (~October 27, 2023)
4. Present to Commission October 19, 2023 or November 16, 2023

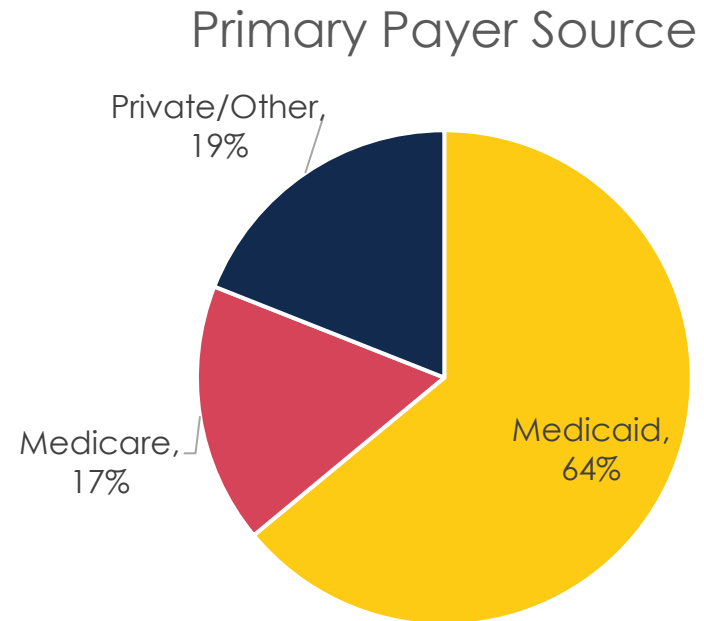
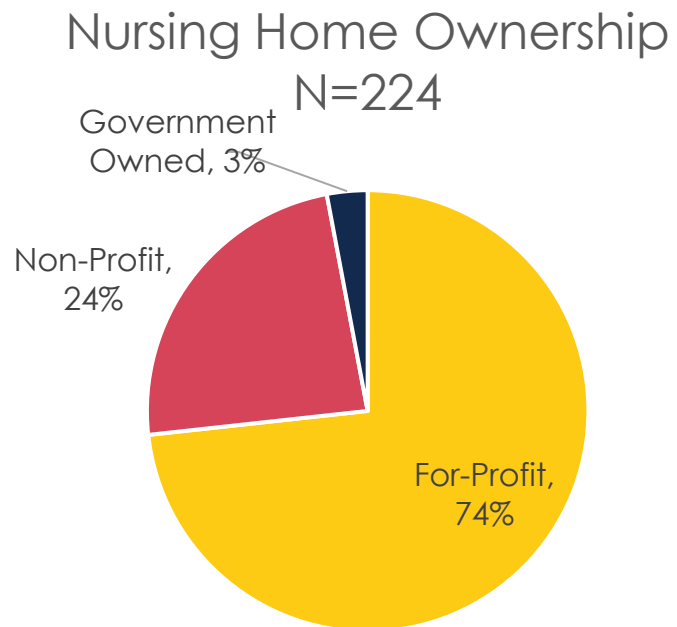


Current State of Nursing Home Industry

- ▶ 224 nursing facilities
 - ▶ 27,910 certified nursing beds
 - ▶ 77% occupancy
 - ▶ 9,082,078 patient days
- ▶ 62% are owned by chains, and 2% are hospital-based
- ▶ Of Medicare patients who are discharged from the hospital to a nursing home, 19.3% are readmitted to the hospital within 30 days.



Nursing Home Ownership and Payer Source





Background and Federal Initiatives

- ▶ MedPAC 2021: found that PE firms own about 11% of nursing homes.
- ▶ JAMA 2021: Study suggests that private equity nursing homes provided somewhat lower quality long-term care than other for-profit homes.
- ▶ CMS 2022: Began to release self-reported data on NH ownership changes including profit status, and names of individual/organizational/chain owners.
- ▶ White House Fact Sheet 2023: NH Residents 11.1% more likely to have a preventable ED visit, 8.7% more likely to have a preventative hospitalizations.
- ▶ GAO 2023: Found CMS database does not allow consumers to easily identify relationships/patterns among ownership and requires more transparency.
- ▶ CMS 2023: Put on Federal Register a proposed rule that NHs would be required to disclose expanded ownership/managerial information than they are currently providing- the rule would also define PE and REITS. Comments on the proposed rule were due in April 2023. If it becomes a final rule, it will take effect 60 days after the final ruling.



Background and State Initiatives

- ▶ ASPE 2022: For acquisitions 2016-2021, Maryland ranks 5th in the nation with 33% turnover of NHs
- ▶ OHCQ uses Civil Money Penalties from non-compliance to fund Health Care Quality Grants Program
- ▶ OHCQ CHOW Dashboard
- ▶ Changes of ownership of health care facilities do not require Certificate of Need approval by MHCC
- ▶ MHCC must be notified on a timely basis of “acquisitions” of health care facilities – includes any transfer of stock or assets that results in a change of the person or persons who control a health care facility or the transfer of any stock or ownership interest in excess of 25 percent
- ▶ The State Health Plan regulations (COMAR 10.24.20) add nursing home-specific requirements related to acquisition of nursing homes
- ▶ MHCC Nursing Home Acquisition reported on Monthly report to Commission



Nursing Home Acquisitions in Other States

- ▶ **New York** -AG supports proposed rule by HHS and CMS that would require the disclosure of certain ownership, managerial, and other information regarding nursing facilities, particularly from private equity investors and real estate investment trusts. The attorneys general notes that the quality of care delivered by nursing facilities operated on a for-profit basis, particularly when those for-profit owners and/or operators include private equity investors, is often worse than at non-profit nursing facilities. The AG states that buyers continue to structure acquisitions of nursing facilities to avoid disclosing to CMS the extent of their ownership or involvement in the facilities' operations. This lack of transparency hampers and delays law enforcement efforts from identifying the true decision makers at nursing facilities — who may be responsible for the root causes of substandard care.
- ▶ **California** - State Sen. Sydney Kamlager introduced bill SB 642, the Patients Over Profits Act which would expand on the state's existing restrictions and protect patient's medical decisions by preventing PE from interfering or limiting a patient's medical care for non-medical reasons.
- ▶ **Rhode Island**- is establishing important post-sale conditions, requiring the new owners to maintain quality levels at each facility. As part of the conditions, each facility must maintain a specific quality rating for five years, at risk of increased state scrutiny. Rhode Island asserts that all states should consider limits on how facility revenue is spent. For example, limits on fees and debt-funded dividends to private equity owners can reduce incentives to implement policies that prioritize profit over quality of care. Another way to protect patients is to require that operators spend a certain percentage of revenue on resident care.



COMAR 10.24.20 Acquisition Rules

These rules require disclosure of the:

- Identity of each person with an ownership interest in the acquiring entity, or a related or affiliated entity;
- Percentage of ownership interest of each such person; and
- History of each person's experience in ownership or operation of health care facilities.

The rules also require an:

- Affirmation that services will not change as a result of the proposed acquisition;
- Affirmation that the commitment to Medicaid participation will not change as a result of the proposed acquisition; provide information on corporate structure and affiliations of purchaser, purchase price, source of funds; and
- Report the number and percentage of NH beds in the jurisdiction and region controlled before and after the acquisition



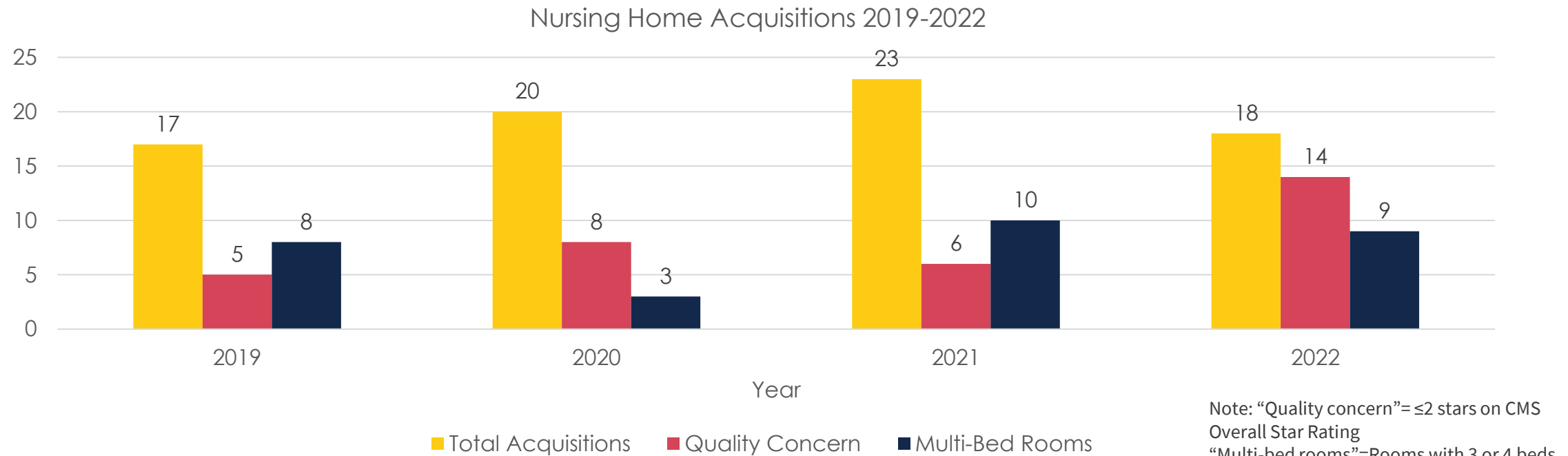
COMAR 10.24.20 Affirmation – Felonies, Crimes, and Civil Penalties

The SHP acquisition rules for nursing homes require:

- ▶ Affirmation, under penalties of perjury, that within the past 10 years, no owner, former owner, or member of senior management or management organization, or a current or former owner or senior manager of any related or affiliated entity has been convicted of a felony or crime or pleaded guilty, nolo contendere, entered a best interest plea of guilty, received a diversionary disposition regarding a felony or crime, and that the applicant or a related or affiliated entity has not paid a civil penalty in excess of \$10 million dollars that relates to the ownership or management of a health care facility.



2019-2022 Nursing Home Acquisitions



Since 2019, 37 nursing homes have had quality issues, and 30 had multi-bed rooms. Of those 30 multi-bed rooms, 9 had quality issues. The number of nursing homes that have both multi-bed rooms and quality issues ranged from 0 to 3 per year.

In 2023, 15 nursing homes have had quality issues so far, and 5 have had multi-bed rooms. Of those 5, 4 had quality issues.



CMS 5-Star Rating System





CMS 5-Star Scoring Process





Quality Rating CON COMAR 10.24.20

- (a) An applicant shall demonstrate, at the time of letter of intent submission, that at least 70 percent of all the comprehensive care facilities owned or operated by the applicant or a related or affiliated entity for three years or more had an average overall CMS star rating of three or more stars in CMS’s most recent five quarterly refreshes for which CMS data is reported.**
- (i) If the applicant or a related or affiliated entity owns or operates one or more comprehensive care facilities in Maryland, the CMS star ratings for Maryland facilities shall be used.
 - (ii) If the applicant or a related or affiliated entity does not own or operate comprehensive care facilities in Maryland, CMS star ratings for such facilities in the states in which it operates shall be used.
- (b) An applicant that is an existing Maryland comprehensive care facility shall document, at the time of letter of intent submission, that it had an average overall star rating of three or more stars in CMS’s most recent five quarterly refreshes for which CMS data is reported, unless the facility has been owned or operated by the applicant for fewer than three years.**
- (c) An applicant shall demonstrate that it has an effective program of quality assurance functioning in each comprehensive care facility owned or operated by the applicant or a related or affiliated entity.**
- (d) An applicant that has never owned or operated a comprehensive care facility shall demonstrate its ability: COMAR 10.24.20 17**
- (i) To develop and implement a quality assessment and performance improvement plan, consistent with requirements of the Maryland Office of Health Care Quality; and
 - (ii) To produce high-level performance on CMS quality measures



Current Acquisition Form/Process

MARYLAND HEALTH CARE COMMISSION

Notice of Acquisition / Transfer of Ownership Interest of a Comprehensive Care Facility (i.e., nursing home).

Please submit this form to MHCC at least thirty (30) days prior to desired closing date in order to assure that you provide all of the information MHCC needs in order to issue a determination of CON coverage under COMAR 10.24.01.03A and 10.24.20.04D when a person intends to acquire a comprehensive care facility (CCF), or when there is a 25% or greater change in ownership of a CCF. Note that an affirmation regarding the accuracy of the information provided must be signed by an authorized individual. *Supplying MHCC with a Word version of your letter and this form, if utilized, would help assure a timely response.*

Facility Name (i.e., trade name under which the facility currently operates): _____

Address: _____

Please provide a separate narrative summarizing the proposed acquisition / transfer of ownership interest.

Information that the prospective purchaser/ acquiring entity must file with MHCC when seeking to acquire a CCF or when there is a 25% or greater change in ownership of a CCF.

Information Required Under COMAR 10.24.01.03A: Acquisition of an Existing Health Care Facility	
1.	Describe the health care services provided by the facility.
2.	Bed capacity
3.	Number of admissions for the prior calendar year.
4.	Gross operating revenue generated during the last fiscal year.

Information Required Under COMAR 10.24.20.04D: Acquisition of a Comprehensive Care Facility and other relevant information.	
5.	Identify each person with an ownership interest ¹ in the acquiring entity or a related or affiliated entity; percentage of ownership interest of each such person; and the history of each such person's experience in ownership or operation of health care facilities.
6.	Provide affirmation that the services provided will not change as a result of the proposed acquisition.
7.	Provide affirmation that the commitment to Medicaid participation will not change as a result of the proposed acquisition.

COMPLETE ATTACHMENT A TO FULFILL THIS REQUIREMENT

¹ "Ownership Interest" is defined as an owner, former owner, member of senior management or management organization, or current or former owner or senior manager of any related or affiliated entity during the past ten years. CCF acq info form revised April 2021

	a) Does the existing CCF currently have a Medicaid MOU? If so, what is the required Medicaid percentage?		
	b) Will the purchaser/acquiring entity agree to continue to be bound by the MOU?		
8.	Purchase price		
9.	Source of funds		
10.	Number and percentage of nursing home beds in the jurisdiction and planning region controlled by the purchaser (or by an entity in which a person in the ownership structure of the purchaser has an interest, specifying each person, facility, and interest) before and after the proposed purchase.	In Jurisdiction Before	In Jurisdiction After
		In Planning Region Before	In Planning Region After
11.	Disclose whether any of the purchaser's principals — i.e., any owner or former owner, member of senior management or management organization, or current or former owner or senior manager of any related or affiliated entity during the past ten years has: <ul style="list-style-type: none"> been convicted of felony or crime; pleaded guilty, nolo contendere, or entered a best interest plea of guilty; received a diversionary disposition regarding a felony or crime that relates to the ownership or management of a health care facility; or has paid a civil penalty in excess of \$10 million dollars. 	(NOTE: this disclosure refers to each person identified in Question 5 above.)	
Additional Information Requested by MHCC			
12.	The name and address of the owner of the real property and improvements.	Current	After transaction
13.	The owner of the bed rights (i.e., the person/entity that could sell the beds to a third party).	Current	After transaction
14.	The operator of the facility (and the relationship of the operator to the owner). Attach a chart that completely delineates the ownership structure.	Current	After transaction
15.	Will the acquiring entity be taking automatic assignment of the existing Medicare provider number?		
16.	Anticipated date of closing or transfer.		

Affirmation of Purchaser/Acquiring Entity/Transferee

I solemnly affirm under penalties of perjury that within the last ten years no owner or former owner, or member of senior management or management organization, or a current or former owner, senior manager of any related or affiliated entity has been convicted of felony or crime, or pleaded guilty, nolo contendere, entered a best interest plea of guilty, received a diversionary disposition regarding a felony or crime, and that the applicant or a related or affiliated entity has not paid a civil penalty in excess of \$10 million dollars that relates to the ownership or management of a health care facility.

I solemnly affirm under penalties of perjury that the information provided to the Maryland Health Care Commission regarding the proposed acquisition or transfer of ownership interests of the above-named facility is true and correct to the best of my knowledge, information, and belief, and that I have been duly authorized by the purchaser/ acquiring entity/ transferee to provide this information on its behalf.

Date signed: _____

Signature
[Name and Title]
[Company]
[Address]
[Phone]
[E-Mail]

cc: [local health officer]
Margie Heald, Office of Health Care Quality
Cherisa Moore, DHMH
Marquis Finch, DHMH
Ruby Potter, MHCC

The Notice of Acquisition must be accompanied by an affirmation attesting to the truthfulness of the information provided by the purchaser. The form for the affirmation is below.



Next Steps

- ▶ Schedule the next meeting for late July/early August
- ▶ Speaker Atul Gupta: Private Equity