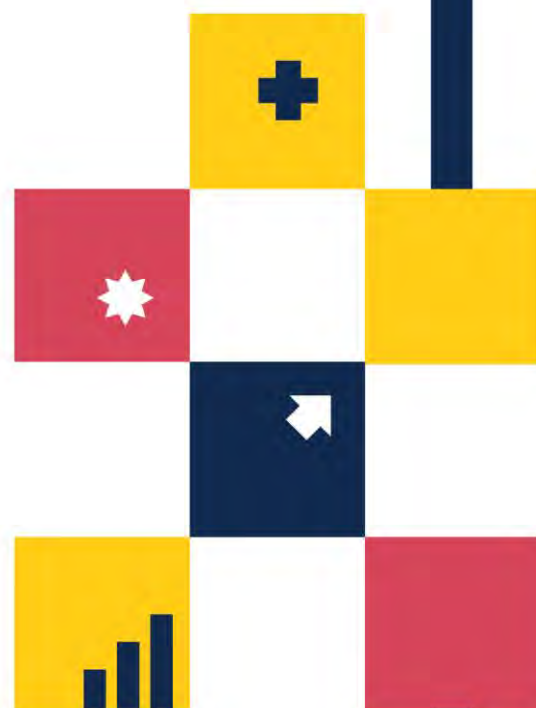


# Nursing Home Acquisitions and Licensures Recommendations Report

## January 2024

Senate Bill 509/Chapter 288,  
House Bill 702/Chapter 289 (2023)  
Report to the Legislature



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## Background

SB509/Chapter 288 and HB 702/Chapter 289 of 2023 required the Maryland Health Care Commission (MHCC or Commission), in consultation with stakeholders, including Maryland Medicaid, the Office of Health Care Quality (OHCQ), nursing homeowners, consumer representatives, and representatives of organized labor to study and make recommendations regarding expanding the Certificate of Need (CON) program's authority to review acquisitions of nursing homes. MHCC is required to report the findings and recommendations to the Senate Finance Committee and the House Health and Government Operations Committee in accordance with § 2-1257 of the State Government Article.

MHCC created the Nursing Home Acquisitions Workgroup (Workgroup) which reviewed the current role of the MHCC in regulating nursing home acquisitions and the impact of acquisitions on the quality of care in nursing homes. The Workgroup was also required to look at two areas related to the effect of acquisitions on the quality of care: multiple-bed rooms (defined as nursing home rooms with more than two beds in a room), and any other issues related to acquisitions of nursing homes.

## The Current Nursing Home Industry

In Maryland, there are 225 nursing facilities, with an occupancy rate of 81 percent. Nursing home chains own 60 percent of nursing homes, and 2 percent are hospital-based.<sup>1</sup> The portion of patient care paid by Medicare is 18 percent, 64 percent by Medicaid, and 19 percent by private pay or/other. Of the percentage of Medicare patients who are discharged from the hospital to a nursing home, 19.3 percent are readmitted to the hospital within 30 days. Of the 225 nursing homes in Maryland, 61 have rooms with triple or quadruple beds. The counties with the highest number of rooms with triple and quadruple beds are Carroll County (29 percent of beds), Somerset County (24.6 percent of beds), Prince George's County (19.3 percent of beds), Wicomico County (19.2 percent of beds), and Baltimore County (13.8 percent of beds). Several counties do not have any triple or quadruple beds such as Cecil, Charles, Dorchester, Garrett, Howard, Kent, Queen Anne's, St. Mary's, Talbot, and Worcester Counties. See [Appendix A](#) for a detailed table of the number of beds per county.

In recent years, Maryland has seen a high number of private equity acquisitions of nursing homes. This is due to three main reasons. The first is that Maryland has a lower penetration

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<sup>1</sup> State Health Facts: Providers and Service Use. Kaiser Family Foundation, accessed October 19, 2023, <https://www.kff.org/state-category/providers-service-use/>

of Medicare Advantage plans than most states and more traditional Medicare, which yields higher reimbursement for investors. Secondly, Maryland has a comparatively higher Medicaid reimbursement rate than most states. Lastly, the regulatory environment in Maryland is not viewed to be overly contentious when compared to other states. These three factors make Maryland attractive to private equity (PE) firms, real estate investment trusts, and high net worth individuals who wish to invest in nursing homes.

### **Federal and State Initiatives to Address Nursing Home Acquisitions**

To facilitate discussion, a literature review was conducted regarding the regulatory and policy trends related to nursing home acquisitions. In the literature review, a MedPAC article from 2021 found that PE firms own about 11 percent of nursing homes.<sup>2</sup> Another article from the Journal of the American Medical Association (JAMA) from 2021 suggests PE owned nursing homes provided somewhat lower quality long-term care than other for-profit homes.<sup>3</sup> For the State of Maryland, the workgroup identified a 2022 article by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) looking at acquisitions from 2016-2021 and concluding that Maryland ranks 5<sup>th</sup> highest in the nation for nursing home acquisitions with a 33 percent turnover of nursing homes.<sup>4</sup>

In 2022 the Centers for Medicare & Medicaid Services (CMS) began to release self-reported data on nursing home ownership changes, including profit status and names of individual/organizational/chain owners.<sup>5</sup> This information culminated in a White House Fact Sheet published in 2023 that found PE owned nursing home residents are 11.1 percent more likely to have a preventable Emergency Department visit and 8.7 percent more likely to have a preventative hospitalization.<sup>6</sup> Even after the release of data from CMS in 2023, the Government Accountability Office (GAO) found that the CMS database still does not allow consumers to identify relationships or patterns among owners easily and requires more

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<sup>2</sup> [https://www.medpac.gov/wp-content/uploads/import\\_data/scrape\\_files/docs/default-source/default-document-library/jun21\\_ch3\\_medpac\\_report\\_to\\_congress\\_sec.pdf](https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/default-document-library/jun21_ch3_medpac_report_to_congress_sec.pdf)

<sup>3</sup> <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786442>

<sup>4</sup> <https://aspe.hhs.gov/sites/default/files/documents/78aae3d6d528e77a729288746ccc2e84/changes-ownership-snf.pdf>

<sup>5</sup> <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-makes-more-medicare-nursing-home-ownership-data-publicly-available>

<sup>6</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/01/fact-sheet-biden-harris-administration-takes-steps-to-crack-down-on-nursing-homes-that-endanger-resident-safety/>

transparency.<sup>7</sup> Recently, CMS released a proposed rule in the Federal Register that would require nursing homes to disclose additional ownership and managerial information than they are currently providing.<sup>8</sup> Even more recently in November of 2023 CMS published a final rule in the Federal Register defining both private equity and real estate investment trusts. The rule also requires self-disclosure of this information. This final rule will make it possible in the future to more easily identify nursing homes that are owned by a private equity investor.

On the policy side, OHCQ uses Civil Money Penalties for non-compliance with nursing home regulations to fund the Health Care Quality Grants Program, which funds grants to improve quality in Maryland nursing homes.<sup>9</sup> Previous grants have funded projects such as accelerating the adoption and use of a health status assessment tool, educating professional caregivers in the appropriate use of evidence-based tools to assess the cognitive status of residents, and hosting an educational program for geriatric nursing assistants. OHCQ also maintains a Change of Ownership (CHOW) dashboard with data from 2019 to current. The dashboard shows each acquisition that has transpired. If a person or entity intends to acquire a nursing home or when there is a 25 percent or greater change in ownership of a nursing home, MHCC requires a formal request under Certificate of Need (CON) regulations. MHCC looks at the OHCQ acquisition dashboard each month and then compares the numbers of acquisitions it received with OHCQ to make sure none are missed. The OHCQ dashboard data shows that from 2019 to 2022, nursing home acquisitions have averaged 20 each year.<sup>10</sup> The Commission currently publishes the *Maryland Health Care Commission Update of Activities* to inform the Commission of any pending nursing home acquisitions.

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<sup>7</sup> <https://www.gao.gov/products/gao-23-104813#:~:text=Transparent%20for%20Consumers-,Nursing%20Homes%3A%20CMS%20Should%20Make%20Ownership%20Information%20More%20Transparent%20for,participating%20in%20the%20Medicare%20program.>

<sup>8</sup> <https://www.cms.gov/newsroom/fact-sheets/disclosures-ownership-and-additional-disclosable-parties-information-skilled-nursing-facilities-and#:~:text=On%20February%2013%2C%202023%2C%20the,other%20information%20regarding%20Medicare%20skilled>

<sup>9</sup> <https://health.maryland.gov/ohcq/docs/Grants/HCCA%20FAQs%20For%20HCCA%20Website%20Revised%20By%20TN%20JP%204%2020%202015.pdf>

<sup>10</sup> <https://app.smartsheet.com/b/publish?EQBCT=94a019649f3649e68af14c6f81fb25a7>

## **Senate Bill 509/Chapter 288, House Bill 702/Chapter 289**

In 2023, the Maryland Legislature passed Senate Bill 509/House Bill 702. This legislation requires that, beginning October 1, 2023, MHCC provide information regarding the acquisition of a nursing home to OHCQ. The bill also requires the Secretary of Health to consider the information before taking action regarding licensure to operate a nursing home. The following information is required:

- The quality ratings of facilities currently or previously owned by the purchaser within or outside the State as specified:
- For the immediately preceding three-year period, for facilities currently or previously owned, within or outside the State, by the purchaser: (1) evidence that facilities maintained quality assessment and assurance committees that met at least quarterly; (2) inspection of care reports and corrective action plans; (3) licensing and certification surveys and corrective action plans; and (4) lawsuits or arbitration filings by any patient or patient representative against facilities;
- The tax identification number of each purchaser;
- The CMS certification number of each purchaser;
- The 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; and
- Documentation of 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.

In addition, the bill required MHCC to form a workgroup to examine MHCC's current role in approving nursing home acquisitions and how acquisitions are impacting quality of care in nursing homes. See [Appendix B](#) for a full text of the Senate Bill and [Appendix C](#) for a full text of the House Bill. The workgroup will:

- 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.
- Examine 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).

The bill also requires the Secretary of Health to consider MHCC's findings and recommendations before taking action to approve conditions or revoke a nursing home license. 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 nursing homes.

## Approach

The Commission identified and contacted potential candidates from various industries. All workgroup members were officially appointed to the Workgroup and notified via a letter from the Commission. See [Appendix D](#) for a full list of official workgroup members. Additional interested parties were added to a contact list and included in all communications and invitations to meetings. A total of six meetings were held to identify the scope of the problem and generate recommendations for the legislature. All meeting materials and recordings are available on the [MHCC Nursing Home Acquisitions Workgroup](#) webpage.

- *Meeting 1 – July 14, 2023.* The introductory meeting included presentations that established the scope of the problem, the goals for the workgroup, and preliminary discussion and brainstorming. MHCC staff presented an overview of the current state of the nursing home industry and the scope of the problem. MHCC presented an overview of state and federal initiatives. OHCQ gave a comprehensive presentation on the OHCQ change of ownership (CHOW) process including the CHOW dashboard and related CHOW forms.
- *Meeting 2 – August 4, 2023.* Dr. Atul Gupta of the University of Pennsylvania presented on the impact of private equity on the nursing home industry. He discussed the definition of private equity, how private equity differs from conventional for-profit ownership, private equity growth in the last ten years and why the growth has been rapid/location of growth, the main sectors of healthcare that private equity is investing in and what the concerns are regarding negative outcomes with private equity investing in nursing homes. Shelly Martin of the Office of the Attorney General presented information on the undesirable outcomes seen with private equity investing such as decline in quality, lack of transparency



and operators with high debt burdens. She then defined the challenge and proposed multiple safeguards.

- *Meeting 3 – August 25, 2023.* Robert Kramer of Nexus Insights discussed the changing landscape of the nursing home industry, how it has been impacted since the pandemic, and what Maryland could put in place to prevent “bad actors.” Mr. Kramer discussed private equity and how it is different than real estate investment trusts and explained why Maryland has experienced a significant increase in private equity firms that are seeking to own nursing homes. He also stated Maryland should remain neutral about private equity and focus on transparency.
- *Meeting 4 – September 15, 2023.* MHCC presented information about the current procedures and requirements for multiple-bed rooms (3+ beds). MHCC presented options for and encouraged discussion about abolishing, phasing out, or not making changes to requirements for multiple-bed rooms during the nursing home acquisition process. Additionally, MHCC presented the identified concerns of the workgroup and encouraged discussion to develop recommendations.
- *Meeting 5 – November 13, 2023.* MHCC presented 8 recommendations for the workgroup to consider. As a result of the meeting, most recommendations were unchanged, but some were updated with the group’s suggestions. Also, one recommendation was added. The following is a list of changes incorporated or issues that were resolved.
  - Recommendation 3 was added instructing sellers to notify residents and their families of the pending acquisition. The Commission, Office of the Attorney General, and the State Ombudsman must be copied on the notice.
  - Recommendation 4 includes new metrics, and the follow-up report shall be shared with the Office of the Attorney General and the Office of Health Care Quality. The Commission will use its existing authority to impose monetary fines for non-compliance. The timeframe for oversight was increased from 2 years to 3 years.
  - Senator Beidle commented that she requested that funds be allocated to the upcoming budget so that OHCQ can fulfill recommendation 8.
  - Recommendation 9 wording was changed to “shall evaluate expanding their authority to play a role in the acquisition process.”

- *Meeting 6 – December 7, 2023.* MHCC presented 10 updated recommendations and received final comments from the workgroup.

## Recommendations

### PRE-ACQUISITION

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 will include both Maryland and non-Maryland-based owners/operators if appropriate. MHCC shall continue to evaluate additional metrics to include in the *MHCC Report and Recommendation* (e.g., Quality of Life).
  - 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;
  - 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; and
  - h. Current debt to income ratio.
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 at each Commission meeting and posted on the Commission website. It will include the *MHCC Report and Recommendation* if completed.
3. The seller shall notify all residents and their families of the pending acquisition. The notice must include information regarding what the residents and families can expect

throughout the acquisition process and a timeline for completion of the acquisition process. 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.

## **POST-ACQUISITION**

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*. This report will be used to collect data on recently acquired nursing homes to study trends to 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:
  - 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<sup>11</sup> 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; and
  - i. Infection survey results obtained from the Office of Health Care Quality

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, or more frequently if needed, for the first three years after the acquisition date. Failure to submit this report 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.

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<sup>11</sup> Direct Care Staff. Direct Care Staff are those individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. CMS Electronic Staffing Data Submission Payroll-Based Journal Long Term Care Policy Manual 2022

## **STATUTORY CHANGES**

5. The Commission shall seek to expand its authority to deny an acquisition based on quality metrics, and other standards as appropriate, required in Certificate of Need (CON) reviews (COMAR 10.24.20) to better align CON quality standards with nursing home acquisition regulations.
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.
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,<sup>12</sup> 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.

## **RECOMMENDATIONS FOR 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.

## **RECOMMENDATIONS FOR 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.

## **RECOMMENDATIONS FOR THE LONG-TERM CARE OMBUDSMAN**

10. The Office of the Long-Term Care Ombudsman shall evaluate expanding their authority to play a role in the acquisition process.

## **Summary**

This report and recommendations will be submitted by January 2024 to the Senate Finance Committee and the House Health and Government Operations Committee.

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<sup>12</sup> The Commission recognizes that more specific language is needed to draft legislation for the process of reducing the number of 3- and 4-bed rooms in nursing homes.

## Appendix A. Number of Nursing Homes and Beds in Maryland

Jurisdiction	Triple Beds	Quad Beds	Total Triple/Quad Beds	Total Number of Nursing Home Beds	% of Beds that are Triple/Quad	Number of Nursing Homes
Allegany	9	52	61	908	6.7%	8
Anne Arundel	87	48	135	1,762	7.7%	15
Baltimore County	654	68	722	5,244	13.8%	45
Baltimore City	183	148	331	3,717	8.9%	27
Calvert	15	16	31	292	10.6%	3
Caroline	6	0	6	193	3.1%	2
Carroll	99	168	267	921	29.0%	10
Cecil	0	0	0	442	0.0%	3
Charles	0	0	0	507	0.0%	4
Dorchester	0	0	0	233	0.0%	2
Frederick	9	24	33	1,082	3.0%	8
Garrett	0	0	0	317	0.0%	4
Harford	15	0	15	817	1.8%	6
Howard	0	0	0	604	0.0%	6
Kent	0	0	0	228	0.0%	3
Montgomery	36	132	168	4,567	3.7%	34
Prince George's	498	76	574	2,973	19.3%	20
Queen Anne's	0	0	0	120	0.0%	1
St. Mary's	0	0	0	571	0.0%	3
Somerset	0	52	52	211	24.6%	2
Talbot	0	0	0	269	0.0%	2
Washington	57	48	105	1,007	10.4%	10
Wicomico	30	88	118	613	19.2%	4
Worcester	0	0	0	307	0.0%	3

## Appendix B. Senate Bill 509/Chapter 288 Text

### SENATE BILL 509

J3

3lr1565  
CF HB 702

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By: Senators Augustine, Beidle, Hettleman, and Kramer

Introduced and read first time: February 3, 2023

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2023

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#### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Care Facilities – Nursing Homes – Acquisitions and Licensure**

3 FOR the purpose of requiring the Maryland Health Care Commission to provide certain  
4 information regarding the acquisition of a nursing home to the Office of Health Care  
5 Quality; requiring the Secretary of Health to consider the information before taking  
6 certain action regarding licensure to operate a nursing home; and generally relating  
7 to nursing homes.

8 BY repealing and reenacting, with amendments,  
9 Article – Health – General  
10 Section 19–115 and 19–1401.2  
11 Annotated Code of Maryland  
12 (2019 Replacement Volume and 2022 Supplement)

13 BY repealing and reenacting, without amendments,  
14 Article – Health – General  
15 Section 19–120(k)(6)(ii) and 19–1401.1  
16 Annotated Code of Maryland  
17 (2019 Replacement Volume and 2022 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
19 That the Laws of Maryland read as follows:

20 **Article – Health – General**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 19-115.

2 (a) In addition to the duties set forth elsewhere in this subtitle, in this Part II of  
3 this subtitle, the Commission shall:

4 (1) Act as the State agency to represent the State under Title VI of the  
5 federal Public Health Service Act; [and]

6 (2) Periodically participate in or perform analyses and studies that relate  
7 to:

8 (i) Adequacy of services and financial resources to meet the needs of  
9 the population;

10 (ii) Distribution of health care resources;

11 (iii) Allocation of health care resources;

12 (iv) Costs of health care in relationship to available financial  
13 resources; or

14 (v) Any other appropriate matter; AND

15 (3) WHEN EVALUATING A NOTICE OF ACQUISITION OR TRANSFER OF  
16 INTEREST OF A NURSING HOME IN ACCORDANCE WITH § 19-120(K)(6)(II) OF THIS  
17 TITLE, PROVIDE THE COMMISSION'S WRITTEN FINDINGS AND RECOMMENDATIONS  
18 TO THE OFFICE OF HEALTH CARE QUALITY, INCLUDING:

19 (I) QUALITY RATINGS OF FACILITIES CURRENTLY OR  
20 PREVIOUSLY OWNED, WITHIN OR OUTSIDE THE STATE, BY THE PURCHASER OF THE  
21 HEALTH CARE FACILITY, BASED ON THE MOST RECENT FIVE-STAR QUALITY  
22 RATING SYSTEM ESTABLISHED BY THE CENTERS FOR MEDICARE AND MEDICAID  
23 SERVICES;

24 (II) FOR THE IMMEDIATELY PRECEDING 3-YEAR PERIOD:

25 1. EVIDENCE THAT FACILITIES CURRENTLY OR  
26 PREVIOUSLY OWNED, WITHIN OR OUTSIDE THE STATE, BY THE PURCHASER OF THE  
27 HEALTH CARE FACILITY MAINTAINED QUALITY ASSESSMENT AND ASSURANCE  
28 COMMITTEES THAT MET AT LEAST QUARTERLY;

29 2. INSPECTION OF CARE REPORTS AND CORRECTIVE  
30 ACTION PLANS OF FACILITIES CURRENTLY OR PREVIOUSLY OWNED, WITHIN OR  
31 OUTSIDE THE STATE, BY THE PURCHASER OF THE HEALTH CARE FACILITY;



1                                   3.   LICENSING AND CERTIFICATION SURVEYS AND  
2   CORRECTIVE ACTION PLANS OF FACILITIES CURRENTLY OR PREVIOUSLY OWNED,  
3   WITHIN OR OUTSIDE THE STATE, BY THE PURCHASER OF THE HEALTH CARE  
4   FACILITY; AND

5                                   4.   LAWSUITS OR ARBITRATION FILINGS BY ANY PATIENT  
6   OR PATIENT REPRESENTATIVE AGAINST FACILITIES CURRENTLY OR PREVIOUSLY  
7   OWNED, WITHIN OR OUTSIDE THE STATE, BY THE PURCHASER OF THE HEALTH CARE  
8   FACILITY;

9                                   ~~(HH)~~ (III)   THE TAX IDENTIFICATION NUMBER OF EACH  
10   PURCHASER; AND

11                                   ~~(HH)~~ (IV)   THE PERSONAL CENTERS FOR MEDICARE AND  
12   MEDICAID SERVICES CERTIFICATION NUMBER OF EACH PURCHASER.

13                   (B)   THE FINDINGS AND RECOMMENDATIONS REQUIRED TO BE PROVIDED  
14   TO THE OFFICE OF HEALTH CARE QUALITY UNDER SUBSECTION (A)(3) OF THIS  
15   SECTION SHALL INCLUDE A SUMMARY OF THE FINDINGS AND THE BASIS FOR THE  
16   RECOMMENDATIONS.

17                   [(b)] (C)   In addition to the duties set forth elsewhere in this Part II of this  
18   subtitle, the Governor shall direct, as necessary, a State officer or agency to cooperate in  
19   carrying out the functions of the Commission.

20                   [(c)] (D)   This State recognizes the federal act and any amendment to the federal  
21   act that does not require State legislation to be effective. However, if the federal act is  
22   repealed or expires, this Part II of this subtitle remains in effect.

23   19-120.

24                   (k)   (6)   This subsection does not apply to:

25                                   (ii)   Acquisition of a health care facility if, at least 30 days before  
26   making the contractual arrangement to acquire the facility, written notice of the intent to  
27   make the arrangement is filed with the Commission and the Commission does not find,  
28   within 30 days after the Commission receives notice, that the health services or bed  
29   capacity of the facility will be changed, provided that, for a merger with or acquisition of an  
30   existing general hospice, the purchaser of the general hospice may only acquire the  
31   authority to provide home-based hospice services in jurisdictions in which the seller of the  
32   general hospice is licensed to provide home-based hospice services;

33   19-1401.1.



- 1           (a)   (1)   In addition to the requirements for licensure of a related institution as  
2 provided in this title, an applicant for licensure of a nursing home shall include in the  
3 application the identity of:
- 4                   (i)   Any person with an ownership interest in the nursing home; and
- 5                   (ii)   Any management company, landlord, or other business entity  
6 that will operate or contract with the applicant to manage the nursing home.
- 7           (2)   (i)   The person acquiring a nursing home shall provide the  
8 Department with written notice of the acquisition or change in operator at the same time  
9 as the notice required under § 19–120(k)(6)(ii) of this title is filed with the Maryland Health  
10 Care Commission.
- 11                   (ii)   For other changes to the information required under paragraph  
12 (1) of this subsection, the nursing home shall notify the Department within 30 days after  
13 the effective date of the change.
- 14           (b)   An applicant for licensure shall submit to the Secretary or the Secretary's  
15 designee evidence:
- 16                   (1)   That affirmatively demonstrates the ability of the applicant to comply  
17 with minimum standards of:
- 18                           (i)   Medical care;
- 19                           (ii)   Nursing care;
- 20                           (iii)   Financial condition; and
- 21                           (iv)   Other applicable State or federal laws and regulations; and
- 22           (2)   Regarding the regulatory compliance history and financial condition of  
23 any health care facility owned or operated by the applicant in other jurisdictions.
- 24   19–1401.2.
- 25           (A)   On review of the information required under § 19–1401.1 of this subtitle and  
26 any other information that is relevant to the ability of the applicant to operate a nursing  
27 home, the Secretary may:
- 28                   (1)   Approve an application for a license;
- 29                   (2)   Deny an application for a license;
- 30                   (3)   Approve an application for a license subject to conditions; or

1 (4) Revoke a license.

2 (B) BEFORE TAKING ACTION ON A LICENSE UNDER SUBSECTION (A) OF THIS  
3 SECTION, THE SECRETARY SHALL CONSIDER ANY FINDINGS AND  
4 RECOMMENDATIONS OF THE MARYLAND HEALTH CARE COMMISSION PROVIDED TO  
5 THE OFFICE OF HEALTH CARE QUALITY UNDER § 19-115 OF THIS TITLE.

6 SECTION 2. AND BE IT FURTHER ENACTED, That:

7 (a) The Maryland Health Care Commission, in consultation with stakeholders,  
8 including the Medicaid Administration, the Office of Health Care Quality, nursing home  
9 owners, consumer representatives, and representatives of organized labor, shall study and  
10 make recommendations regarding the expansion of the certificate of need program over  
11 acquisitions of nursing homes.

12 (b) The study required under subsection (a) of this section shall:

13 (1) assess the elimination of patient rooms with more than two beds; and

14 (2) address any other issues related to acquisitions of nursing homes.

15 (c) On or before December 1, 2023, the Maryland Health Care Commission shall  
16 report the findings and recommendations to the Senate Finance Committee and the House  
17 Health and Government Operations Committee, in accordance with § 2-1257 of the State  
18 Government Article.

19 ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
20 take effect October 1, 2023.

21 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section  
22 3 of this Act, this Act shall take effect July 1, 2023.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.

## HOUSE BILL 702

J3

3lr1566  
CF SB 509

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By: **Delegate Kerr**

Introduced and read first time: February 6, 2023

Assigned to: Health and Government Operations

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### A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Nursing Homes – Acquisitions and Licensure**

3 FOR the purpose of requiring the Maryland Health Care Commission to provide certain  
4 information regarding the acquisition of a nursing home to the Office of Health Care  
5 Quality; requiring the Secretary of Health to consider the information before taking  
6 certain action regarding licensure to operate a nursing home; and generally relating  
7 to nursing homes.

8 BY repealing and reenacting, with amendments,  
9 Article – Health – General  
10 Section 19–115 and 19–1401.2  
11 Annotated Code of Maryland  
12 (2019 Replacement Volume and 2022 Supplement)

13 BY repealing and reenacting, without amendments,  
14 Article – Health – General  
15 Section 19–120(k)(6)(ii) and 19–1401.1  
16 Annotated Code of Maryland  
17 (2019 Replacement Volume and 2022 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
19 That the Laws of Maryland read as follows:

20 **Article – Health – General**

21 19–115.

22 (a) In addition to the duties set forth elsewhere in this subtitle, in this Part II of  
23 this subtitle, the Commission shall:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) Act as the State agency to represent the State under Title VI of the  
2 federal Public Health Service Act; [and]

3 (2) Periodically participate in or perform analyses and studies that relate  
4 to:

5 (i) Adequacy of services and financial resources to meet the needs of  
6 the population;

7 (ii) Distribution of health care resources;

8 (iii) Allocation of health care resources;

9 (iv) Costs of health care in relationship to available financial  
10 resources; or

11 (v) Any other appropriate matter; AND

12 (3) WHEN EVALUATING A NOTICE OF ACQUISITION OR TRANSFER OF  
13 INTEREST OF A NURSING HOME IN ACCORDANCE WITH § 19-120(K)(6)(II) OF THIS  
14 TITLE, PROVIDE THE COMMISSION'S WRITTEN FINDINGS AND RECOMMENDATIONS  
15 TO THE OFFICE OF HEALTH CARE QUALITY, INCLUDING:

16 (I) QUALITY RATINGS OF FACILITIES CURRENTLY OR  
17 PREVIOUSLY OWNED, WITHIN OR OUTSIDE THE STATE, BY THE PURCHASER OF THE  
18 HEALTH CARE FACILITY, BASED ON THE MOST RECENT FIVE-STAR QUALITY  
19 RATING SYSTEM ESTABLISHED BY THE CENTERS FOR MEDICARE AND MEDICAID  
20 SERVICES;

21 (II) THE TAX IDENTIFICATION NUMBER OF EACH PURCHASER;  
22 AND

23 (III) THE PERSONAL CENTERS FOR MEDICARE AND MEDICAID  
24 SERVICES CERTIFICATION NUMBER OF EACH PURCHASER.

25 (B) THE FINDINGS AND RECOMMENDATIONS REQUIRED TO BE PROVIDED  
26 TO THE OFFICE OF HEALTH CARE QUALITY UNDER SUBSECTION (A)(3) OF THIS  
27 SECTION SHALL INCLUDE A SUMMARY OF THE FINDINGS AND THE BASIS FOR THE  
28 RECOMMENDATIONS.

29 [(b)] (C) In addition to the duties set forth elsewhere in this Part II of this  
30 subtitle, the Governor shall direct, as necessary, a State officer or agency to cooperate in  
31 carrying out the functions of the Commission.

1        **[(c)] (D)**        This State recognizes the federal act and any amendment to the federal  
2 act that does not require State legislation to be effective. However, if the federal act is  
3 repealed or expires, this Part II of this subtitle remains in effect.

4    19–120.

5        (k)    (6)    This subsection does not apply to:

6                    (ii)    Acquisition of a health care facility if, at least 30 days before  
7 making the contractual arrangement to acquire the facility, written notice of the intent to  
8 make the arrangement is filed with the Commission and the Commission does not find,  
9 within 30 days after the Commission receives notice, that the health services or bed  
10 capacity of the facility will be changed, provided that, for a merger with or acquisition of an  
11 existing general hospice, the purchaser of the general hospice may only acquire the  
12 authority to provide home-based hospice services in jurisdictions in which the seller of the  
13 general hospice is licensed to provide home-based hospice services;

14    19–1401.1.

15        (a)    (1)    In addition to the requirements for licensure of a related institution as  
16 provided in this title, an applicant for licensure of a nursing home shall include in the  
17 application the identity of:

18                    (i)    Any person with an ownership interest in the nursing home; and

19                    (ii)    Any management company, landlord, or other business entity  
20 that will operate or contract with the applicant to manage the nursing home.

21        (2)    (i)    The person acquiring a nursing home shall provide the  
22 Department with written notice of the acquisition or change in operator at the same time  
23 as the notice required under § 19–120(k)(6)(ii) of this title is filed with the Maryland Health  
24 Care Commission.

25                    (ii)    For other changes to the information required under paragraph  
26 (1) of this subsection, the nursing home shall notify the Department within 30 days after  
27 the effective date of the change.

28        (b)    An applicant for licensure shall submit to the Secretary or the Secretary's  
29 designee evidence:

30                    (1)    That affirmatively demonstrates the ability of the applicant to comply  
31 with minimum standards of:

32                    (i)    Medical care;

33                    (ii)    Nursing care;

- 1 (iii) Financial condition; and
- 2 (iv) Other applicable State or federal laws and regulations; and
- 3 (2) Regarding the regulatory compliance history and financial condition of
- 4 any health care facility owned or operated by the applicant in other jurisdictions.

5 19–1401.2.

6 **(A)** On review of the information required under § 19–1401.1 of this subtitle and

7 any other information that is relevant to the ability of the applicant to operate a nursing

8 home, the Secretary may:

- 9 (1) Approve an application for a license;
- 10 (2) Deny an application for a license;
- 11 (3) Approve an application for a license subject to conditions; or
- 12 (4) Revoke a license.

13 **(B) BEFORE TAKING ACTION ON A LICENSE UNDER SUBSECTION (A) OF THIS**

14 **SECTION, THE SECRETARY SHALL CONSIDER ANY FINDINGS AND**

15 **RECOMMENDATIONS OF THE MARYLAND HEALTH CARE COMMISSION PROVIDED TO**

16 **THE OFFICE OF HEALTH CARE QUALITY UNDER § 19–115 OF THIS TITLE.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

18 October 1, 2023.

## Appendix D. Workgroup Membership

<b>Jeanne-Marie Gawel, NHA, MA, MGS, Workgroup Co-Chair</b> Acting Chief, Certificate of Need Center for Health Facilities Planning and Development Maryland Health Care Commission	<b>Stacy Howes, Ph.D., CPHQ, Workgroup Co-Chair</b> Chief, Long Term Care Quality Initiatives Center for Quality Measurement and Reporting Maryland Health Care Commission
<b>Ben Steffen</b> Executive Director Maryland Health Care Commission	<b>Delegate Kenneth Kerr</b> Maryland State Delegate
<b>Senator Pamela Beidle</b> Maryland State Senate	<b>Delegate Sandy Rosenberg</b> Maryland State Delegate
<b>Tyler Brice</b> Representative for Senator Augustine Maryland State Senate	<b>Commissioner Marcia Boyle, MS</b> Founder Immune Deficiency Foundation
<b>Heather Reed</b> Deputy Director, Long Term Care Unit Office of Health Care Quality Maryland Department of Health	<b>Erin Davis</b> Director, Quality and Health Improvement Maryland Hospital Association
<b>Joseph DeMattos, MA</b> President and CEO Health Facilities Association of Maryland	<b>Jane Sacco</b> Chief, Division of Long-Term Care Services Medicaid of Long-Term Services and Supports
<b>David McShea</b> Executive Director Alzheimer's Association	<b>Paul Miller</b> LifeSpan Representative Schwartz, Metz, Wise and Kauffman
<b>Claudia Balog</b> Assistant Director of Research 1199SEIU United Healthcare Workers East	<b>Kimberly Cammarata</b> Director of the Health Education and Advocacy Unit Office of the Attorney General
<b>Ann MacKay</b> Former President Maryland Continuing Care Residents Association	<b>Anna Palmisano, Ph.D.</b> Marylanders for Patients' Rights
<b>Randi Ames, Esq.</b> Managing Attorney Disability Rights Maryland	<b>Stevanne Ellis</b> State Long-Term Care Ombudsman Maryland Department of Aging
<b>Alison Ciborowski</b> President and Chief Executive Officer LeadingAge Maryland	<b>Bonnie DiPietro, RN, MS, NEA-BC, FACHE</b> Vice President of Operations Maryland Patient Safety Center
<b>John Spadaro</b> Chief Operating Officer FutureCare Health and Management	<b>Lou Grimm</b> Chief Executive Officer Lorien Health
<b>Dorinda A. Adams, MSW</b> AARP	<b>Jennifer Crawley, MSW</b> Deputy Secretary Director, Multisector Planning and Age Friendly Initiatives Maryland Department of Aging



## Appendix E. Meeting Minutes

### Nursing Home Acquisition Workgroup

#### MEETING SUMMARY

Friday, July 14, 2023

10:00a.m. -12:00 p.m.

Recording Link: <https://youtu.be/rLL1cEgSBc>

#### Attendees

##### *In-person*

Stacy Howes  
Jeanne Marie Gawel  
Ben Steffen  
Tracey DeSheilds  
Julie Beard  
Wynee Hawk  
Howard Sollins  
John Spadaro  
Joe DeMattos  
Theressa Lee

Dorinda Adams  
Erin Davis  
Loraine Arikat  
Paul Miller  
Hope Morris  
James Buck  
Jim Forsyth  
Joshua Auerbach  
June Chung  
Kevin Heffner  
Lisa Simpson  
Randi Ames  
Sarah Hemming  
C. Boyd  
Alexandra Baldi  
Louis Grimmel  
Jane Sacco  
Ann McKay  
Henry Schwartz  
Anna Palmisano  
Tyler Brice  
Caitlin Tepe  
Heather Forsythe  
Andrea Nunez  
Dana Kauffman  
Alison Luitch  
Su Mi Ko

##### *Virtual*

Marcia Boyle  
Linda Cole  
Tricia Nay  
Heather Reed  
Stevanne Ellis  
Bonnie DePietro  
Claudia Balog  
Shelly Martin  
Catherine Victorine  
Del. Ken Kerr  
Del. Sandy Rosenberg  
Senator Pamela Beidle

#### Welcome and Introductions: 10:00 a.m.-10:10 a.m.

Stacy Howes, Chief of Long-Term Care and Health Plan Initiatives at the Maryland Health Care Commission, opened the meeting and conducted introductions.

#### Presentation: Slides 1-9: 10:10 a.m.-10:30 a.m. Nursing Home Acquisitions Transparency Study

Dr. Howes and Jeanne-Marie Gawel, Acting Chief of Certificate of Need, presented introductory information which included the review of the agenda, workgroup charge, SB509 summary/requirements, and the workplan. Dr. Howes then provided data on the current state of the nursing home industry which included a review of beds, occupancy, patient days, nursing home





ownership (for-profit vs. nonprofit) and primary payer sources. Following the data review, Ms. Gawel presented on current Federal/State initiatives which included a literature review of multiple relevant studies and articles.

This review was followed by a question-and-answer period that included a discussion of nursing home payer sources and revenues vs. days. Linda Cole shared that in Maryland the majority of patient days are Medicaid (60%). Mr. DeMattos commented that there is an increase in Medicare Advantage days which reimburse lower than traditional Medicare. Senator Beidle asked if private pay patients pay more than the other categories of payer sources, and Mr. DeMattos stated that they pay what the market will bear. Mr. Sollins commented some private pay residents are spending down their assets and will become eligible to Medicaid. There was also a discussion spurred on by a question from Delegate Rosenberg of why we rank 5<sup>th</sup> highest in acquisitions. Mr. Steffen commented that Maryland has higher Medicaid rates than other states making it an attractive state to acquire nursing homes. A question was also asked if a nursing home was moving and taking over a previous school site what factors would be considered. Wynnee Hawk responded that this would likely be a Determination of Coverage/Non-Coverage not a CON but would have to consult regulations.

**Presentation: Slides 10-53: 10:30 a.m. -11:00 a.m. OHCQ Change of Ownership Nursing Homes**

Dr. Howes introduced Heather Reed Deputy Director with the Office of Health Care Quality (OHCQ). Ms. Reed provided a comprehensive presentation on the OHCQ change of ownership (CHOW) process including the CHOW dashboard and related CHOW forms.

Ben Steffen thanked OHCQ for sharing their CHOW process.

**Presentation: Slides 54-63: 11:00 a.m.-11:35 a.m. Nursing Home Acquisitions Transparency Study**

Ms. Gawel shared information about what other states (New York, California, Rhode Island) are doing regarding the regulation of nursing home acquisitions. Mr. DeMattos stated that the NY Attorney General only has authorization over non-profit nursing homes. Ms. Gawel then reviewed COMAR 10.24.20 acquisition rules. Dr. Howes shared MHCC data on nursing home acquisitions from 2019-2022. The discussion then turned to quality of care, and Dr. Howes explained the CMS 5-star rating system and scoring process. Ms. Gawel reviewed the State Health Plan standard on Quality Rating and the Commission's current acquisition form/process.

This was followed by a question-and-answer period/discussion. One question was -can the 5-star ratings be compared across states and Dr. Howes stated that it could. It was also discussed if the facility had a poor survey, it could not achieve higher than 2 stars. Mr. Spadaro shared the system is geared toward a negative result. Mr. Sollins shared that the 5-star system is only one tool that should be used when looking at quality. Mr. Steffen commented that currently, if there were a new CON applicant, they could not build any new construction with rooms larger than single or double occupancy; and this applies to waiver beds as well.

**Next Steps: 11:35 a.m.-11:45 a.m.**

Stacy Howes reminded the group that the next meeting is on August 4, 2023. She said the presentations would be available on the workgroup webpage within a week.

Ben Steffen, Executive Director at MHCC, also thanked participants and presenters for their time and contribution to the discussion.



## Nursing Home Acquisition Workgroup

### MEETING SUMMARY

Friday, August 4, 2023

2:00 pm – 4:00 pm

Recording Link: [https://www.youtube.com/watch?v=W\\_r9VF35LFI](https://www.youtube.com/watch?v=W_r9VF35LFI)

#### Attendees

##### *In Person*

Ben Steffen  
Jeanne-Marie Gawel  
Joshua Auerbach (OAG)

Julie Beard  
Stacy Howes  
Theressa Lee  
Tracey DeShields

##### *Virtual*

Alexa Bertinelli  
Alexandra Baldi  
Alison Lutich  
Allison Ciborowski  
Amanda Celentano  
Aneena Patel  
Ann MacKay  
Anna Palmisano  
Atul Gupta (Presenter)  
Bob Kramer  
Bonnie DiPietro  
Bonnie DiPietro  
Catherine Victorine  
Claudia Balog  
Danna Kaufman  
Delegate Kenneth Kerr

Delegate Samuel Rosenberg  
Dorinda Adams  
Erin Davis  
Heather Forsyth  
Heather Reed  
Henry Schwartz  
Hope Morris  
Howard Sollins  
James Forsyth  
Jason Caplan  
Jennifer Crawley  
John Spadaro  
June Chung (MHCC  
Legislative Officer)  
Kevin Heffner  
Liam McGivern

Linda Cole  
Lisa Simpson  
Lou Grimmel  
Marcia Boyle  
(Commissioner)  
Maryanne Brennan  
Megan Peter  
Nancy Crawford  
Paul Miller  
Randi Ames  
Regan Bailey  
Senator Pamela Beidle  
Stevanne Ellis  
Shelly Martin (Presenter)  
Trisha Nay  
Tyler Brice  
Wynnee Hawk

1. Welcome
2. Meeting Minutes: July 14, 2023

Stacy Howes shared welcoming remarks, reviewed minutes and the agenda.

3. Review of What We Have Learned So Far: Ben Steffen, Executive Director, Maryland Health Care Commission

Ben Steffen reviewed what we have learned so far.



#### 4. Understanding the Growth & Influence of Private Equity in Health Care, Dr. Atul Gupta, University of Pennsylvania

Dr. Atul Gupta did a presentation on *Private Equity and its Growth in Healthcare*. He discussed the definition of private equity, how private equity differs from conventional for-profit ownership, private equity growth in the last ten years/why the growth has been rapid/location of growth, the main sectors of healthcare that private equity is investing in and what the concerns are in regard to negative outcomes with private equity investing in nursing homes.

Following the presentation there was a question-and-answer session with Dr. Gupta. Mr. Steffen asked if Dr. Gupta had ever developed a template to identify a good from bad private equity, and he also explained that Maryland is a target because lower MCO, higher MA rate, and more private pay. Dr. Gupta stated that he had not worked on a formal template but in his opinion, there is only bad and worse private equity. He explained that big private equity does better than health care private equity and as for the map, it shows a high focus in high urban areas.

Senator Beidle stated in 2021 we required surveys on private equity however they were never rolled out due to resource issues. She questioned if surveys are used in other states or if there are other models for increasing transparency. Dr. Gupta commented that we should look at what CMS has done for hospitals and on the nursing home side, the information is there but CMS needs to release it.

Anne McKay commented that when North Oaks was sold, quality was not considered, and quality should be linked to acquisitions. She also asked what the impact of ACOs has been on private equity, and Dr. Gupta stated that ACOs are based on changing behavior of physicians and ACOs reduce payment, while private equity increases it.

Claudia Balog stated we should be looking at patterns on behavior and red flags and suggested the use of cost reports. Dr. Gupta responded that more in-depth information and transparency could be gleaned from cost reports and that he would be in favor of an owner not being allowed to spin off real estate or going after bad actors more aggressively.

June Chung added that the presentation showed there is no “skin the game” for the private equity companies, and the system doesn’t encourage quality. Dr. Gupta responded that nursing homes care about five-star ratings and suggested expanding the rating to include mortality rates.

Howard Sollins asked if Dr. Gupta had looked at the updates to the nursing home compare website or value-based care, and Dr. Gupta stated that he has not studied that yet.

Jeanne Marie Gawel discussed pros and cons of private equity and the Antitrust Improvement Act and then introduced Shelly Martin.

#### 5. Private Equity: Looking Toward the Future, Shelly Martin, Office of Attorney General, Consumer Protection Division

Shelly Martin with the Office of the Attorney General presented on *Private Equity Looking Toward the Future*. She discussed undesirable outcomes seen with private equity investing such as decline in

quality, lack of transparency and operators with high debt burdens. She then defined the challenge and proposed multiple safeguards.

The presentation was followed by a question and answer with Ms. Martin. Mr. Steffan asked if the OIG has been involved with acquisitions, and Ms. Martin replied not specifically.

Delegate Rosenberg asked if other states imposed other restrictions, and Ms. Martin stated New York and California we are looking at it.

Senator Beidle asked if we look at insurance, and Ms. Martin stated that was a great thing to add to the list. Paul Miller stated Medicaid has information about this.

Josh Auerbach shared concern about split real estate ownership and stated that there is a substantial number of false claims. Catherine Victorine stated she is interested in complaints receive, and Ms. Martin stated they receive complaints of abuse, neglect, and employee concerns.

Mr. Steffen questioned if looking at getting rid of triple and quad rooms as a disincentive will be effective, and Maryanne Brennan shared another red flag is the outsourcing of services. Claudia Balog added in California, with a new acquisition there are barriers imposed to laying off staff.

## 6. Review and Discussion of Ownership Structures

Ms. Gawel discussed the strengths and weaknesses of the current Maryland approach and posed questions on workgroup goals. She stated we would post discussion questions ahead of time for the next meeting.

## 7. Next Steps

Dr. Howes stated that the next meeting will be at the end of August and Ben Steffen thanked everyone and closed the meeting.

## Nursing Home Acquisition Workgroup

### MEETING SUMMARY

Friday, August 25, 2023

2:30-4:30 pm

Recording Link: <https://youtu.be/EytK6JFGDok>

#### Attendees

##### *In Person*

Ben Steffen  
Howard Sollins  
Jeanne-Marie Gawel

Joe DeMattos  
Julie Beard  
Stacy Howes  
Wynee Hawk

##### *Virtual*

Allison Ciborowski  
Amanda Celentano  
Aneena Patel  
Ann MacKay  
Anna Palmisano  
Bob Kramer (Speaker)  
Bonnie DiPietro  
Claudia Balog

Daniel Shattuck  
Danna Kaufman  
Delegate Samuel Rosenberg  
Dorinda Adams  
Erin Davis  
Heather Forsyth  
Heather Reed  
Hope Morris  
James Forsyth  
Joshua Auerbach

Kevin Heffner  
LaWanda Edwards  
Liam McGivern  
Linda Cole  
Lou Grimmel  
Nancy Crawford  
Paul Miller  
Stevanne Ellis  
Teresa Brown  
Theresa Lee

1. Welcome
2. Meeting Minutes: August 4, 2023

Stacy Howes opened the meeting and reviewed the agenda and minutes from the last meeting. Jeanne Marie Gawel introduced Mr. Robert Kramer.

3. Robert Kramer, Founder, Chair and Fellow at Nexus Insights - Question and Answer Session

During his question-and-answer session, Mr. Kramer spoke about the changing landscape of the nursing home industry, how it has been impacted since the pandemic, and what Maryland could put in place to prevent bad actors. He also discussed red flags to look for in investments. Mr. Kramer also spoke about private equity and how it is different than REITS and explained why Maryland has been so heavily infiltrated with private equity firms. He also stated Maryland should remain neutral about private equity and focus on transparency. During the session, he gave examples of what lawmakers did in Oregon.

Joe DeMattos stated he agreed with Mr. Kramer and that care should be at the right place and time. He also stated he was familiar with what was done in Oregon and how nursing home beds were reduced using incentives. Erin Davis agreed with Mr. Kramer about looking into the future. Howard Sollins stated that Opco and Propco belonging to different owners was common and questioned



earlier remarks made about private equity causing an increase in mortality. Ben Steffen asked Mr. Kramer about dual advantage products. Mr. Kramer shared that he is an advocate of PACE programs. James Forsythe commented on how the pandemic impacted the nursing home industry. Mr. Steffen closed the question-and-answer session with final thoughts.

#### 4. Review of Workgroup-Identified Concerns

Ms. Gawel then discussed previous workgroup-identified concerns. Mr. DeMattos said it would be difficult to identify all nursing homeowners. He also stated that using contracted staff is a common practice. Mr. Sollins agreed. Mr. DeMattos stated mortality would be higher in facilities with more long-term care because the residents are sicker. Josh Auerbach stated that the Opco/Propco concern was related more to Opco/Propco being used to hide ownership. Ms. Davis stated she wanted to add her concern that the lack of staffed nursing home beds was impacting the ER wait times in hospitals. Stevanne Ellis stated that corporations need to be held accountable for their actions instead of passing the blame. Anna Palmisano added that staffing shortages are not the only problem but salaries and benefits, too.

Ms. Gawel then discussed possibilities for increased oversight. Claudia Balog stated if we wanted to look at a percentage of patient care, we would first need a benchmark based on data. Ms. Davis stated we should focus on getting surveys done on time. Mr. Forsythe said we should look at reducing triples and quads in all the Maryland facilities, not just through acquisitions. Mr. Sollins reiterated keeping a neutral view.

#### 5. Possibilities for Robust Quality Oversight

Dr. Howes then discussed the current MHCC quality standard for nursing homes and the possibilities for robust quality oversight. Ms. Kauffman added that only infection control was looked at during the pandemic, and a decline in 5-star ratings is inevitable. Mr. Sollins stated not all CONs are alike and a 5-star rating should not be a moratorium. Dorinda Adams asked if the Nursing Home Family Survey is on our website, and Dr. Howes confirmed it was.

#### 6. Next Steps: Next meeting will be September 15, 10 am-12 pm

In conclusion, Mr. Steffen asked how we would address concerns and suggested a ranking system. He also thanked everyone, and Dr. Howes closed the workgroup meeting.

## **Nursing Home Acquisition Workgroup**

### **MEETING SUMMARY**

Friday, September 15, 2023

12:00 pm – 2:00 pm

Recording Link: <https://www.youtube.com/watch?v=JGxZ4x8CsxQ>

#### **Attendees**

##### *In Person*

Ben Steffen  
Jeanne-Marie Gawel  
Julie Beard  
Joe DiMattos

John Spadaro  
LaWanda Edwards  
Stacy Howes  
Theresa Lee  
Tracey DeShields

##### *Virtual*

Alexa Bertinelli	Delegate Kenneth Kerr	Kevin Heffner
Amanda Celentano	Delegate Samuel Rosenberg	Linda Cole
Andrea Nunez	Dorinda Adams	Lisa Simpson
Ann MacKay	Erin Davis	Loraine Arikat
Anna Palmisano	Heather Reed	Lou Grimm
Catherine Victorine	Hope Morris	Paul Miller
Claudia Balog	Howard Sollins	Randi Ames
Commissioner Marcia Boyle	Isabella Shycoff	Regan Bailey
Daniel Shattuck	James Forsyth	Shelly Martin
Danna Kaufman	Jane Sacco	Teresa Brown
	Jennifer Crawley	Wynee Hawk
	Joshua Auerbach	

#### **Agenda Items 1 and 2: Welcome and Review of Minutes**

Dr. Stacy Howes opened the meeting and reviewed the agenda and last meeting minutes. Mr. Ben Steffen also welcomed participants.

#### **Agenda Item 3: Multi-Bed Rooms and Current Requirements**

Dr. Howes started the section of the presentation on multi-bed rooms and current requirements. Next, she reviewed the number of nursing homes and beds in Maryland, with rooms containing more than two beds. Mr. Joe Demattos commented that most of these beds were in Somerset and Carroll Counties, which demonstrates there are access issues. He also commented that what is not present on the slide is how many of the beds are occupied in Maryland. Comments were read from an online submission by Mr. Lou Grimm, making suggestions for the slide. Per Mr. Grimm's recommendations, the slide was updated with the number of nursing homes in each county and the total number of 3+ beds in each county. The slide deck sent to the workgroup members after the meeting reflects this change.

Next, Ms. Jeanne Marie Gawel discussed current laws surrounding multi - bed rooms in nursing homes. She stated that the slide references when and where the multi-bed rooms show up in current regulations. The first is the application of FGI guidelines for new construction and renovation. The second is for waiver

beds. She also read comments by Lou Grimm who had submitted them earlier in writing. He shared that there was another section to add from the state health plan that was in addition to FGI guidelines. Next, Ms. Gawel discussed multi-bed rooms benefits and drawbacks. Howard Sollins stated there is no research that shows the difference between two or three bedrooms when it relates to infection control. He added that this is a misconception because residents ambulate and go from room to room and hallway to hallway. There are also air handling techniques in facilities to help. Ms. Shycoff stated there are no benefits to multi-bed rooms and was alarmed to see the slide contain this information.

Next, Ms. Gawel discussed a slide on multi-bed room solutions to consider during within a three-year timeframe of the acquisition which included options for eliminating all multi-bed rooms, having multi-bed rooms removed to the extent possible, or making no changes. Mr. Demattos commented that if we require any elimination, the facilities will need some money back because these facilities have loans based on the number of beds. Then Mr. Stephens commented that we should look at a graduated approach for a smooth transition with appropriate planning. Ms. Palmisano stated that there is solid evidence of infection control problems with multi-bed rooms. Mr. James Forsyth commented that we should get studies on infection control in facilities with multi-bed rooms. Ms. Shycoff stated that she supports phasing out three or more bedrooms. Mr. Stephen then stated that we might look at the facilities that closed in Massachusetts and questioned if we might be able to use the three and four beds only in a surge situation. Ms. Dana Coffman stated for Massachusetts, it took one or two years to phase in the beds. Mr. Sollins stated in Massachusetts, they lost so much revenue that several facilities had to close their doors. Ms. Theresa Lee stated that it appeared the workgroup consensus was on removing beds to the extent possible.

#### **Agenda Item 4: Options for Robust Oversight**

The next slide was on options for quality oversight and Ms. Gawel reviewed the bill requirements that will begin on October 1, 2023. Howard Sollins commented that this will be a lot of new information to complete. Ms. Gawel stated we may need 60 days. Ms. Wynee Hawk agreed and commented that the number of facilities being reviewed may take longer to review. Mr. Demattos commented that the transparency is good. Ms. Dana Coffman commented that there is too much focus on five stars and questioned if it would be possible to focus on other quality measures. She stated that because of the pandemic, the nursing facility surveys will be looking back four years. Mr. Demattos agreed that this is an essential point. Ms. McKay questioned if it would even out over time. Mr. Demattos stated that there is still a third of the facilities in the country that have not been surveyed. Mr. Steffen stated that 60 days was a long time and was not sure if we could push it out that far.

Next, Dr. Howes discussed additional possibilities for robust quality oversight. Commissioner Boyer said she favored aligning the CON quality standards with nursing home acquisitions. Mr. Demattos stated we should caution, based on what Bob Kramer shared with us in the prior meeting about 5-star ratings. Commissioner Boyle agreed that we should look beyond the five-star rating as well. Ms. Shycoff stated she also supported aligning the CON and acquisition regulations. Howard Sollins stated if the current proposed staffing levels changes are enacted, there will be more deficiencies and lower scores. Mr. Steffen stated we should remain hopeful, but realistic, and we need more nuanced rules. Ms. Balog stated we should be looking at staffing stability data. Ms. Theresa Lee also stated we should align the principles with the CON. Ms. Erin Davis questioned if the survey component was the only measure out of date. Mr. Steffen stated yes but the survey star rating is the most heavily weighted. Ms. Davis commented that she agrees that if the rating is not accurate it is not helpful. Mr. Sollins stated all turnover is not bad and there can be good turnover too. Dr. Howes reviewed the next slide on possibilities for quality oversight through



financial requirements. Ms. McKay asked if the nursing home family satisfaction survey is public. Dr. Howes replied that it was. Mr. Demattos asked if the Commission would look at other settings other than just nursing homes. Mr. Steffen replied that sometimes regulations come out of a crisis. Mr. Steffen commented we may need additional pins to complete the work. Mr. Sollins commented that requiring letters of credit or bonds runs the risk of taking assets away from resident care. Ms. Baylog commented that we should explore the percentage of revenue spent on patient care. Mr. Demattos commented that the most significant cost center is direct care, which is mostly nursing care, and that it would be easy to access, and we could look at trends. Mr. John Spadaro stated people also look at RAC audits for this type of information. Mr. Sollins added regarding Propco/Opco if you own real estate, then you could be in trouble and in healthcare and nursing homes Propco/Opco division is normal and we should focus on the Opco. Ms. McKay asked how we see false claims. Ms. Gawel replied that we are able to see them on the sites we are looking at now such as PACER and the OIG exclusions.

Dr. Howes presented the slide on possibilities for quality oversight through staffing and legislative requirements. Mr. Demattos questioned if there are laws around layoffs. Mr. Spadaro stated there are federal laws and Mr. Sollins stated there are state laws. Ms. Davis stated we have to use caution, and we must be innovative. Ms. Balog stated in California, the law is 60 days where an owner cannot make material changes to staffing. Mr. Steffens questioned how widespread the nondisclosure agreements with residents are. Mr. Sollins stated he had not seen one and Ms. McKay stated she had also not heard of one.

#### **Agenda Item 5: Possible Pathway to Recommendations**

Ms. Gawel presented the last section on possible pathways to recommendations. She proposed 60 days to complete the work. Mr. Demattos stated we should assess cost, impact, and value. Next, Lou Grimmel spoke to the workgroup and presented figures on the nursing home industry and shared his opinion that three and four bedrooms in nursing homes are not appropriate living situations for nursing home residents. His suggestions and comments follow.

- There are 224 total NHs in Maryland operating 27,905 beds. Of that number, 2,571 are in 3 or 4 bed rooms according to MHCC's 2020 public use data.
- Those 2,571 Triples and Quads are operated by only 61 of 224 Maryland Nursing Homes (includes 2 Facilities operated by the State of Maryland: Deer's Head with 27 Triples and 44 Quads and Western MD Hospital Center with 12 Triples and 48 Quads).
- Of those 61 NHs, 45 are operated by only 6 Chain Operators counting those which operate 3 or more facilities each. 5 of the 6 are Out of State operators, only 1 is local. (Communicare@12NHs; Complete Care @4 NHs; Future Care @ 5NHs; Autumn Lake @ 17NHs; Peak Health Care @ 3NHs; and Vita Health Care @ 4NHs)
- Per MHCC 2020 data, those 6 Chain Operators account for a total of 2,035 triple and quad beds scattered among the 45 facilities they operate. This amounts to 79% of the State's 2,571 Triple and Quads bed total.
- There's also a racial equity aspect to this distribution of Triples & Quads since 1,627 beds, or 63.3% are located in jurisdictions with a large population of African Americans - Baltimore County, Baltimore City and PG County per MHCC 2020 data.
- Triple & Quad bed configurations are inappropriate living environments because the State Health Plan says so. See COMAR 10.24.20.05.A.(4)(a)(i) and (b)(i) standards.

#### **Agenda Item 6: Tentative Next Steps**



Finally, Dr. Howes reviewed the tentative next steps, which include draft recommendations, feedback to the workgroup, presentation to the commission, and another meeting if necessary. She also stated that a report is due to the general assembly on December 1, 2023. Then Mr. Steffen thanked everyone and closed the meeting.

After the workgroup, Ms. Shelly Martin, OAG sent an email communication we could require nursing homes to disclose any settlements that resolved allegations of violating the False Claims Act, and a lot of False Claims issues are resolved without filing suit and would not appear in court records.

After the workgroup meeting, Anna Palmisano sent an email with additional considerations for the group. Dr. Palmisano supports phasing out triple and quad nursing home rooms from an infection control perspective. She also shared concerns about which agency will be responsible for overseeing the oversight we are proposing. Past laws have not been diligently monitored for compliance, even when they are simple and low-cost. Dr. Palmisano stated that it will be critical to have oversight by a responsible party and transparency to the public.

## **Nursing Home Acquisition Workgroup**

### **MEETING SUMMARY**

Monday, November 13, 2023

10:00 am – 12:00 pm

Recording Link: <https://www.youtube.com/watch?v=L1euQgikTdk>

#### **Attendees**

##### *In Person*

Ben Steffen  
Jeanne-Marie Gawel  
Julie Beard  
Rachel Bervell

Stacy Howes  
Theressa Lee  
Tracey DeShields  
Wynee Hawk

##### *Virtual*

Alexa Bertinelli  
Alexandra Baldi  
Allison Ciborowski  
Amanda Celentano  
Andrea Nunez  
Ann MacKay  
Anna Palmisano  
Bonnie DiPietro  
Caitlin Tepe  
Catherine Victorine  
Claudia Balog  
Commissioner Marcia Boyle  
Daniel Shattuck

Danna Kaufman  
Delegate Samuel Rosenberg  
Dorinda Adams  
Erin Davis  
Heather Reed  
Henry Schwartz  
Hope Morris  
Howard Sollins  
Isabella (Izzy) Shycoff  
James Forsyth  
Jane Sacco  
Jim Sanders  
Joe DeMattos

John Spadaro  
Joshua Auerbach  
June Chung  
Kevin Heffner  
Linda Cole  
Lisa Simpson  
Lou Grimmel  
Paul Miller  
Randi Ames  
Senator Pamela Beidle  
Shelly Martin  
Stevanne Ellis  
Teresa Brown  
Tricia Nay

#### **10:15 am (late start due to technology)**

Dr. Stacy Howes opened the meeting with a welcome, updates, a review of the agenda and prior meeting minutes. Dr. Howes read each recommendation and Jeanne Marie Gawel added in any comments that were received in writing prior to the meeting. Written comments received were from Anna Palmisano, Claudia Balog, Jane Sacco, Lou Grimmel and Ann McKay.

#### **10:20 am Pre- Acquisition**

##### Recommendation 1

Dr. Anna Palmisano stated that this was a comprehensive list and showed commitment to transparency.

##### Recommendation 2



Dr. Patricia Nay stated that regarding ability to staff post-acquisition surveys that the AAGs are looking at the issues. Mr. Steffen stated that we need the legislation for MHCC to deny instead. Ms. Tracey DeShields stated that we need clarity around whether OHCQ can deny acquisitions. Wynnee Hawk stated that because OHCQ's licensure is after the acquisition the purchase is already complete.

### **10:25 am Post Acquisition**

#### **Recommendation 3**

Mr. Lou Grimmel stated it should be three years, and not two years of collected data; he also stated CCFs should be able to reduce multi-bed rooms by 10 percent. Mr. Howard Sollins stated we should have financial metrics reviewed by the accountant. He said we might want to look at the Payroll Based Journal (PBJ) on CMS or the 3.0 direct care staffing mandate already in place. Dr. Palmisano stated that we need to look at the ratio of direct care being provided for each resident. Ms. Stevanne Ellis added that the definition of "hands on care" is sometimes not clear. Ms. Balog added that we should look at the PBJ reports that give real-time data on staffing. She also stated that we need a measure of how many public dollars are being spent on patient care. Ms. McKay suggested adding occupancy levels to data collected because it shows the health of the facility. Ms. DeShields said if the information is not provided we should consider penalties. Mr. Steffen stated we can enrich the data and include utilization metrics.

### **10:30 am Statutory Changes**

#### **Recommendation 4**

Dr. Palmisano stated we should aim higher than the CON quality standard. Mr. Steffen replied that the Commission is looking at that standard. Ms. McKay stated we should tie ownership to quality. Ms. Erin Davis reminded the group of the ongoing struggle with hospital throughput (sometimes to nursing homes) and think about how workgroup recommendations might impact the benefit to the community. Mr. Joe DeMattos added that policies can have consequences even if they are unintended. Mr. Sollins stated we do not want to drive away new buyers. Mr. Steffen replied that Maryland is an attractive market to nursing home buyers because of our low Medicare advantage enrollment, better Medicaid rates and stable relationship with regulators.

### **10:50 am**

#### **Recommendation 5**

No comments

### **10:55 am**

#### **Recommendation 6**

Dr. Palmisano stated we need to clarify "incremental". Mr. Paul Miller added that the Medicaid Memorandum of Understanding (MOU) is outdated because all facilities take Medicaid and there is a current struggle with occupancy. Mr. Grimmel stated we should require facilities to reduce the multi-bed (more than two residents per room) rooms by 10%. Mr. James Forsythe said Medicaid patients should not be relegated to triple and quad rooms. Mr. DeMattos reminded the group that most nursing home residents are in double rooms.

### **11:15 Recommendations for the Department of Health**

#### **Recommendation 7**



Dr. Palmisano questioned if this is an unfunded mandate. Senator Beidle stated she had spoken with OHCQ and was going to request more staffing for them for post-acquisition surveys – she added this should be done in the next budget. Dr. Nay stated the staffing she needs is 1 coordinator and six surveyors per area.

### **11:30 am Recommendations for the Attorney General**

#### **Recommendation 8**

Mr. Steffen stated we are exploring the OAG authority in nursing home acquisitions. Ms. Shelley Martin (OAG) said that they currently do not have authority in this area and we should re-word this recommendation.

### **11:35 am**

Dr. Howes closed the meeting with the next steps. The final draft of the report will be distributed by November 17 and feedback will be due by November 29. The goal is to present to the Commission for the December meeting and submit the report to the legislature in early January 2024.



## **Nursing Home Acquisition Workgroup**

### **MEETING SUMMARY**

Monday, December 7, 2023

11:00 am – 12:00 pm

Recording Link: <https://www.youtube.com/watch?v=ZcAsEGeJsB8>

#### **Attendees (all virtual meeting)**

##### *MHCC Staff*

Ben Steffen  
Caitlin Tepe  
Catherine Victorine  
Jeanne-Marie Gawel  
Julie Beard  
Linda Cole

Commissioner Marcia Boyle  
Stacy Howes  
Theresa Lee  
Tracey DeShields  
Wynee Hawk

##### *Workgroup Members and Interested Parties*

Alexandra Baldi  
Amanda Celentano  
Ann MacKay  
Anna Palmisano  
Claudia Balog  
Dorinda Adams  
Erin Davis  
John Spadaro

Gary Attman  
Heather Reed  
Hope Morris  
Howard Sollins  
James Forsyth  
Jane Sacco  
Joe DeMattos  
Stevanne Ellis

Josie Ogaitis  
Delegate Ken Kerr  
Marta Harting  
Paul Miller  
Delegate Samuel Rosenberg  
Schonette Walker  
Shelly Martin

1. Welcome- Dr. Stacy Howes welcomed the workgroup.
2. Review current recommendations and comments-Dr. Howes and Jeanne Marie Gawel reviewed the recommendations and comments.

- **Recommendation 1**

Ms. Gawel disclosed that the only change on this slide was adding fines/payment denials, and we were already looking at this information. Howard Sollins stated that almost all nursing homes have received fines. Anne McKay replied that she surveyed many nursing homes who did not have fines. Joe DeMattos expressed concern that the discussion in the meetings was not represented in the recommendations.



- **Recommendation 2**

There were no comments on this slide.

- **Recommendation 3**

Ms. Gawel stated that this was a new recommendation in response to comments from the workgroup. Mr. DeMattos stated sometimes nursing home residents don't have family and it should say "or representative". Tracy DeShields asked how would you resolve that issue? Mr. DeMattos and Mr. Sollins replied that the nursing homes know who to contact. Ms. McKay agreed that the nursing home can get the word out. Dr. Howes reviewed comments.

- **Recommendation 4**

Ms. Gawel stated the first change here was from two years to three years after an acquisition. Mr. Sollins commented that the metrics should be run by a finance expert and direct care should be defined the same across the board. Mr. DeMattos stated CMS already defines the direct care ratio of staffing at 3.0. He also stated that we should look at how the state defines direct care. Ben Steffen stated that our intent is not to create more work and that much of this data is already available. Mr. Sollins stated that these changes will make the acquisition process more of a hurdle. Ms. Gawel continued that the other two changes were the addition of monetary fines and adding the OAG to the report. Stevanne Ellis also requested that the Ombudsman's office be copied on the report. Dr. Howes reviewed comments.

- **Recommendation 5**

Ms. Gawel stated recommendations 5-7 were statutory changes. Dr. Howes reviewed comments.

- **Recommendation 6**

Mr. DeMattos stated there is a difference between 3 bed rooms and 4 bed rooms and he is researching the issue.

- **Recommendation 7**

- **Recommendation 8**

Anna Palmisano expressed ongoing concern about OHCQ not being able to do post-acquisition surveys. Dr. Howes stated Senator Beidle was requesting more funds. Heather Reed stated that it was an unfunded mandate. Ms. Ellis said the Ombudsman is already involved in the whole acquisition process. Ms. Gawel stated that the last recommendations were for other agencies.

- **Recommendation 9**

No feedback on this slide. Dr. Howes reviewed workgroup comments.

3. Discuss any remaining comments/concerns

Gary Attman stated that facilities may have to be compensated if they have to reduce beds.

4. The Next Steps were reviewed by Dr. Howes. The recommendations will be presented to the Commission on December 14, 2023. The workgroup report is due January 2, 2024.

Dr. Howes and Mr. Steffen closed the meeting.