



Final Report: 2023 Nursing Home Acquisitions Study

CENTER FOR HEALTH CARE FACILITIES PLANNING AND DEVELOPMENT

CENTER FOR QUALITY MEASUREMENT AND REPORTING

MARYLAND HEALTH CARE COMMISSION

DECEMBER 14, 2023



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House Bill 702/ Senate Bill 509



Legislatively Mandated Study

- ▶ The purpose of the work group is to review the current role of the MHCC in evaluating nursing home acquisitions and how acquisitions are impacting quality of care in nursing homes. The work group will also make recommendations regarding 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 three or more beds in a room).



Scope of Work

- ▶ MHCC will provide written findings and recommendations to OHCQ, and the Secretary of Health shall consider this information before taking certain action regarding nursing home licensure
- ▶ 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 and 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 MHCC and OHCQ findings, the Secretary of Health may approve, deny or revoke a nursing home license, or impose conditions to 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 nursing home acquisitions



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Implementation Approach: Workgroup Process



Nursing Home Acquisition Workgroup Membership

- ▶ State agencies (e.g., OHCQ, Department of Aging, MHCC, Medicaid, Office of the Attorney General, LTC Ombudsman)
- ▶ State legislators
- ▶ Nursing home representatives
- ▶ AARP
- ▶ Maryland Hospital Association
- ▶ Leading Age
- ▶ Patient's rights advocate
- ▶ Health Facilities Association of Maryland
- ▶ Alzheimer's Association
- ▶ LifeSpan
- ▶ Disability Rights Maryland
- ▶ 1199SEIU United Health Care Workers East



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Implementation Approach: Environmental Scan



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.



State Initiatives Addressing Nursing Home Acquisitions

- ▶ Between 2016-2021 Maryland ranked 5th in the nation with 33% of nursing home's changing ownership/being acquired (ASPE 2022)
- ▶ OHCQ maintains a Change of Ownership (CHOW) dashboard
- ▶ MHCC reports nursing home acquisitions monthly to the Commission



Federal Initiatives Addressing Nursing Home Acquisitions

- ▶ Multiple Federal sources including MedPAC, JAMA, CMS, GAO and the White House published articles, data, and fact sheets analyzing the recent growth in private equity ownership in nursing homes
 - ▶ 11% of nursing homes, nationally, were owned by a private equity company in 2021 (MedPAC)
 - ▶ Publications suggest a lower quality of care post acquisition
- ▶ On November 17, CMS published a final rule on the Federal Register defining private equity company (PEC) and real estate investment trusts (REITs) and requiring the disclosure of these investment types
 - ▶ PEC: A publicly traded or non-publicly traded company that collects capital investments from individuals or entities (that's, investors) and purchases a direct or indirect ownership share of a provider
 - ▶ REIT: Real estate investment trust means a corporation, trust, or association— which is managed by one or more trustees or directors; the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest



Work Group Meeting Agendas

- ▶ Meeting 1 (July 14, 2023)
 - ▶ Charge for workgroup, review of the bill and State Health Plan
 - ▶ Review of current Federal and State initiatives
 - ▶ Heather Reed, Deputy Director of Long-Term Care, Office of Health Care Quality
 - ▶ Presented on The Nursing Home Change of Ownership Process
 - ▶ Displayed and demonstrated the CHOW dashboard



Work Group Meeting Agendas

- ▶ Meeting 2 (August 4, 2023)
 - ▶ Atul Gupta, Ph.D., University of Pennsylvania
 - ▶ Presented on: Understanding Private Equity in Health Care
 - ▶ Discussed how private equity growth in the last ten years/why the growth has been rapid/location of growth
 - ▶ Discussed 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, Office of the Attorney General, Consumer Protection Division
 - ▶ Presented on: Private Equity: Looking Toward the Future
 - ▶ Discussed undesirable outcomes seen with private equity investing such as decline in quality, lack of transparency and operators with high debt burdens
 - ▶ Defined the challenge and proposed multiple safeguards



Work Group Meeting Agendas

- ▶ Meeting 3 (August 25, 2023)
 - ▶ Robert Kramer, Founder, Chair and Fellow at Nexus Insights
 - ▶ Presented on:
 - ▶ 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.
 - ▶ “red flags” to look for in investments.
 - ▶ private equity and how it is different than REITS and explained why Maryland has been so heavily infiltrated with private equity firms.
 - ▶ why Maryland should remain neutral about private equity and focus on transparency.



Workgroup Meeting Agendas

- ▶ Meeting 4 (September 15, 2023)
 - ▶ Discussed multi-bed rooms (3+beds) and current laws
 - ▶ Discussed options for including additional quality oversight for nursing home acquisitions

- ▶ Meeting 5 (November 15, 2023)
 - ▶ Presented recommendations to workgroup
 - ▶ Received feedback which will be discussed throughout this presentation

- ▶ Meeting 6 (December 7, 2023)
 - ▶ Presented final recommendations to workgroup for final consideration



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Recommendations



Recommendation 1: Pre-Acquisition MHCC Responsibilities

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

Specific Actions on Recommendation Follow



Recommendation 1: (continued)

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



Recommendation 2: Pre-Acquisition MHCC Responsibilities

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



Recommendation 3: Pre-Acquisition Seller Responsibilities

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

Comments from the Work Group Participants on Pre-Acquisition Recommendations



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



Recommendation 4: Post-Acquisition MHCC Responsibilities

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



Recommendation 4: Post-Acquisition MHCC Responsibilities (continued)

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



Recommendation 4: Post-Acquisition MHCC Responsibilities (continued)

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

Comments from the Work Group Participants on Post-Acquisition Recommendations



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



Recommendations 5-7: Statutory Changes for MHCC

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



Recommendations 5-7: Statutory Changes for MHCC

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



Recommendations 5-7: Statutory Changes for MHCC

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



Comments from Work Group on Statutory Changes

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



Recommendation 8-10: Policy Changes for Other Agencies

▶ **THE DEPARTMENT OF HEALTH**

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

▶ **THE OFFICE OF THE ATTORNEY GENERAL**

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

▶ **The OFFICE OF 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.



Comments from Workgroup on Policy Changes

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



Next Steps

- ▶ Review and Approval by Commission (December 14, 2023)
- ▶ Submission to Governor and General Assembly: Final Report due January 2, 2024