

2024 Legislation - SB 1000 - Nursing Home Acquisit

Uploaded by: Ben Steffen

Position: FAV



2024 SESSION
POSITION PAPER

BILL NO: SB 1000
COMMITTEE: Senate Finance Committee
POSITION: Support
TITLE: Health Care Facilities - Nursing Homes - Acquisitions

BILL ANALYSIS

SB 1000 requires a person, before making a contractual agreement for the acquisition of a nursing home, to submit a request for acquisition to the Maryland Health Care Commission (MHCC or Commission). The bill also requires that notice be given to Residents and staff of an impending acquisition of a nursing home. Additionally, *SB 1000* establishes the requirements regarding the approval or denial of a request for acquisition and provides for judicial review of a final decision of the Commission.

POSITION AND RATIONALE

The MHCC is in support of *SB 1000- Maryland Health Care Commission - Nursing Homes – Acquisitions*. *SB 1000* seeks to codify recommendations made by the Nursing Home Acquisitions Workgroup (Workgroup) in its [final report](#).¹ Legislation passed in the 2023 legislative session *SB509/Chapter 288 and HB 702/Chapter 289* required MHCC, in consultation with stakeholders, to study and make recommendations regarding the expansion of the MHCC’s authority over acquisitions of nursing homes. The Workgroup was also charged to assess the elimination of patient rooms with more than two beds and address any other issues related to acquisitions of nursing homes. The Workgroup issued its report in January 2024 which provided recommendations broken out in several categories: pre-acquisition, post-acquisition, statutory changes, and recommendations specific to the Maryland Department of Health, the Office of the Attorney General, and the Long-term Care Ombudsman.

In recent years, Maryland has seen an increase in private equity (PE) acquisitions of nursing homes, and this has raised concerns about how these transactions impact the quality of care. The increase is due to four reasons. The first is that Maryland has a lower penetration of

¹ Nursing Home Acquisitions and Licensures Recommendations Report, January 2024, Maryland Health Care Commission available at https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/nh_acq/wkgrp_nh_acq_final_rpt_01102024.pdf

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. Third, the regulatory environment in Maryland is not viewed to be overly contentious when compared to other states. Lastly, Maryland seniors have higher incomes making it more likely that residents will pay for a greater share of nursing care out-of-pocket rather than through Medicaid. These four factors make Maryland attractive to PE firms, real estate investment trusts, and high net worth individuals who wish to invest in nursing homes.

Given these concerns, the MHCC added a review of the performance and quality of care track record of those acquiring persons by using the Centers for Medicare and Medicaid Services (CMS) Five-Star Quality Rating System (Nursing Home Compare). The addition of the quality rating analysis was codified in the legislation passed last session. MHCC's review of CMS' quality ratings track record of persons acquiring nursing homes in Maryland has found that the quality ratings would disqualify a proportion of acquiring purchasers from obtaining a certificate of need to establish, relocate, or expand a nursing home however MHCC did not have the authority to deny the transaction. There have been six acquisitions in the year to date in 2024, and three of the six purchasers would not have passed the quality standard in a CON review.

SB 1000 expands the MHCC's authority to consider the track record of a person seeking to acquire a nursing home, including the quality of other facilities. MHCC's review will focus on the quality and compliance history of the acquiring person's other nursing homes. Additionally, this bill retains the elements of the nursing home acquisition review passed during the 2023 legislative session and requires the MHCC to provide a copy of their findings and decision to the Secretary of Health, and the Maryland Department of Health's, Office of Health Care Quality (OHCQ). The MHCC also supports the added protections and transparency for facility Residents and staff with notice requirements of an acquisition and allowing for an opportunity to participate in the review. Based on information compiled by staff or submitted by the purchaser, the MHCC Executive Director or the Commission must conclude that the acquisition is consistent with the State Health Plan; will result in the delivery of more efficient and effective health care services; and is in the public interest.

This bill would also require the acquired facility to submit annual reports for three years post-acquisition, which will provide valuable information to monitor the impact of the acquisition. Finally, the MHCC will adopt regulations to further refine the requirements of *SB 1000*, including the requirement to reduce rooms with 3 or 4 beds, as well as requiring a review and appeal process for parties to the acquisition, and annual report requirements. The MHCC has worked with the industry stakeholders, Department of Health, Office of Health Care Quality, and the Department of Aging, to come to a consensus on amendments to the bill. Therefore, we support the sponsor amendments.



For these reasons we support *SB 1000* and ask the Committee for a favorable report.



SB 1000 - Nursing Home Acquisitions - MSCAN Testim

Uploaded by: Carol Lienhard

Position: FAV



Maryland Senior Citizens Action Network

MSCAN

AARP Maryland

*Alzheimer's
Association,
Maryland Chapters*

*Baltimore Jewish
Council*

Catholic Charities

*Central Maryland
Ecumenical Council*

Church of the Brethren

*Episcopal Diocese of
Maryland*

*Housing Opportunities
Commission of
Montgomery County*

*Jewish Community
Relations Council of
Greater Washington*

*Lutheran Office on
Public Policy in
Maryland*

*Maryland Association of
Area Agencies on Aging*

*Maryland Catholic
Conference*

*Mental Health
Association of Maryland*

Mid-Atlantic LifeSpan

*National Association of
Social Workers,
Maryland Chapter*

Presbytery of Baltimore

*The Coordinating
Center*

*MSCAN Co-Chairs:
Carol Lienhard
Sarah Müicke
410-542-4850*

Testimony in SUPPORT of SB 1000 – Maryland Health Care Commission – Nursing Home - Acquisitions Senate Finance Committee March 7, 2024

The Maryland Senior Citizens Action Network (MSCAN) is a statewide coalition of advocacy groups, service providers, faith-based and mission-driven organizations that supports policies that meet the housing, health and quality of care needs of Maryland's low and moderate-income seniors.

MSCAN Supports SB 1000 because it provides legislative authority to ensure that Maryland's nursing home residents are protected when a nursing home is sold to another entity. It requires that a purchasing organization must submit documentation that they have adequate financial resources to ensure quality care. It must also submit evidence that any nursing homes they own within or outside Maryland are well-maintained, with positive up-to-date inspection reports, licensing and certification surveys, and to show how effectively any deficiencies have been handled. The bill wisely gives oversight responsibility to the Maryland Health Care Commission for the acquisition process.

Uniquely, Maryland's bill requires input from nursing home residents who would be directly affected. It requires that families and nursing home staff to weigh in before an acquisition is approved. It also allows for the involvement of the Attorney General's Office as necessary to ensure that the acquisition is in the public interest.

MSCAN commends the sponsors for development of this legislation which will help to protect Maryland nursing home residents from becoming victims of unscrupulous acquisitions. Unfortunately, there is national evidence that some private equity firms acquire nursing homes just for the revenue they generate, without the intention of utilizing that revenue to ensure continuity in the quality of care for the residents. With approval of this legislation, Maryland will have valuable tools to ensure that our most vulnerable citizens will be protected when they need protection the most.

MSCAN respectfully requests a favorable report on SB 1000. Thank you for your consideration.

SB1000_NursingHomeAcquisitions_Support.pdf

Uploaded by: Jake Whitaker

Position: FAV



Maryland
Hospital Association

Senate Bill 1000 - Maryland Health Care Commission - Nursing Homes - Acquisitions

Position: *Support*

March 7, 2024

Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) hospitals and health systems, we appreciate the opportunity to comment in support of Senate Bill 1000.

Maryland hospitals have expressed concerns with the declining health of patients who are unable to be discharged to nursing homes when they no longer need hospital care. Often patients' conditions deteriorate due to isolation and inability to be placed in the appropriate treatment setting. The risk of infection, sepsis, and the like rises when overstaying in hospitals. Although the delays in discharges are multifactorial, hospitals are vested in exploring and developing solutions for patients to receive prompt, appropriate care. When a patient who no longer needs acute care cannot be discharged, it limits access to care for those who need to be admitted.

Nursing homes play a critical role in discharge processes and emergency department throughput. The lack of available post-discharge facility beds leads to long-term hospital occupancy and impacts the ability to adequately discharge patients to the right level of care at the right time. MHA participated in the Maryland Health Care Commission's (MHCC) Nursing Home Acquisitions Transparency Workgroup and appreciated the opportunity to engage in thoughtful dialogue with nursing home representatives and other stakeholders. We appreciate SB 1000's codification of certain recommendations from that work group and the subsequent work group report. Specifically, the bill expands MHCC's authority to review and adjudicate the appropriateness of a nursing home acquisition prior to its finalization. This promotes equitable access for patients across the health care system and ensures nursing home ownership changes do not harm the quality of care.

For these reasons, we request a *favorable* report on SB 1000.

For more information, please contact:
Jake Whitaker, Director, Government Affairs
Jwhitaker@mhaonline.org

SB1000-FIN-FAV-CARE.pdf

Uploaded by: Nina Themelis

Position: FAV



COMMISSION ON AGING, RESOURCES AND EMPOWERMENT

James Campbell, Co-Chair

Olivia Farrow, Co-Chair

Brandon M. Scott, Mayor

SB1000

March 7, 2024

TO: Members of the Senate Finance Committee

FROM: James Campbell, Co-Chair
Olivia Farrow, Co-Chair
Baltimore City Commission on Aging, Resources and Empowerment

RE: Senate Bill 1000 – Maryland Health Care Commission - Nursing Homes - Acquisitions

POSITION: FAVORABLE

Chair Beidle, Vice Chair Klausmeier, and Members of the Committee, please be advised the Baltimore City Commission on Aging, Resources and Empowerment (CARE) **supports** Senate Bill (SB) 1000.

SB 1000 requires that a person or entity acquiring a nursing home submit a request for acquisition to the Maryland Health Care Commission 120 days before making the necessary contractual arrangements, provide notice to the residents and staff of the nursing home of the request, and inform them that they will have an opportunity to submit comments on the request. Further, SB 1000 requires that the Executive Director of the Commission determine whether the acquisition is in the public interest before approving an acquisition. In making this determination, the Executive Director must solicit and consider input from residents, their families, and employees of the nursing home. SB 1000 is a major step toward assuring that the people most affected by nursing home acquisitions – residents, family members, and employees – have input into whether acquisitions should be approved.

CARE is concerned about the quality of care in nursing homes in our city and across the state, and notes that nursing homes are not just health care facilities, they are the homes of the residents. As a result, residents, their families, and the workers that support them should have a voice when ownership of the home changes hands. A number of observers have linked acquisition of nursing homes by private equity entities with subsequent staffing reductions, and poor care.¹ SB 1000 will enable those most affected by nursing home acquisitions to have input in these transactions.

For these reasons, CARE respectfully requests a **favorable** report on SB 1000.

¹ Guta, A. (2023). Private Equity and its growth in healthcare. University of Pennsylvania. Retrieved from https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/nh_acq/nh_acq_Gupta_20230804.pdf

SB1000 Testimony.pdf

Uploaded by: Pamela Beidle

Position: FAV

PAMELA G. BEIDLE
Legislative District 32
Anne Arundel County

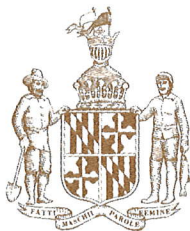
Chair, Finance Committee

Executive Nominations Committee

Joint Committee on Gaming Oversight

Joint Committee on Management
of Public Funds

Spending Affordability Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 7, 2024

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Pamela.Beidle@senate.state.md.us

Senate Bill 1000
Maryland Health Care Commission – Nursing Homes - Acquisitions

Good afternoon, Vice Chair Klausmeier and Members of the Finance Committee;

Thank you for the opportunity to present Senate Bill 1000, Maryland Health Care Commission – Nursing Homes - Acquisitions. During the 2023 interim, the Maryland Health Care Commission convened a workgroup to discuss the private equity nursing home acquisition process and changes that could be made to ensure transparency of the purchase.

Senate Bill 1000 will ensure greater accountability but at the same time are not overly restrictive to discourage acquisitions, especially for nursing homes that need to be sold for financial or quality of care reasons. There are amendments to the bill that address timeframes, the appeal processes and make other technical and clarifying changes. The changes:

- Grants authority to the Maryland Health Care Commission to approve or disapprove an acquisition rather than only being able to make a recommendation to the Office of Health Care Quality.
- Allows the Commission to approve with conditions for one year, when approving an acquisition. This is important because it will ensure greater accountability following an acquisition.
- Requires the acquiring entity to submit an annual report for three years to the Commission, the Office of Health Care Quality and other state partners which will allow the State to continue to monitor the post-acquisition.
- Establishes a process for beginning to reduce multi-bed units following an acquisition.

The Office of Health Care Quality will continue to have responsibility for licensing and survey activities. I am hopeful that with the addition of new positions in the budget that the Office will finally implement my bill from a few years ago requiring OHCQ to conduct an inspection within three months of an acquisition.

Personally, I would like to see this done sooner given the number of acquisitions that have occurred over the last several years.

I appreciate the work that the stakeholders did throughout the interim. I respectfully request a favorable report on SB1000.

Testimony in support of SB1000.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB1000_RichardKaplowitz_FAV
3/07/2022

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON SB#1000 - POSITION: FAVORABLE
Maryland Health Care Commission – Nursing Homes – Acquisitions

TO: Chair Beidle, Vice Chair Klausmeier and members of the Finance Committee
FROM: Richard Keith Kaplowitz

My name is Richard Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of SB#1000, Maryland Health Care Commission – Nursing Homes – Acquisitions

This bill is an attempt to ensure that the most vulnerable populations, those persons confined in a nursing home, are protected by the state from predatory corporations that put profits before people.

McKnights Long-Term Care News, reporting on nursing home acquisitions, noted: ¹

“Public health and epidemiology researchers from five universities in three countries reviewed dozens of studies on private equity ownership and found that an escalation in private equity takeovers across healthcare settings has led to higher costs for patients and payers. Several studies also found more ensuing harmful health outcome impacts than beneficial ones.”

Politico, reporting on a nursing home implosion in Wisconsin after a private equity firm took over a series of nursing homes, ²

“When Atrium Health and Senior Living in the Midwest teetered in September 2018, triggering the sudden closure of the Weston home and three others several months later, the chaos capped years of mismanagement, with Atrium’s owners enriched at the expense of vulnerable residents.”

This bill, introduced by my Delegate, Ken Kerr, would assist Maryland by mandating that acquisitions of a nursing home become public knowledge and receive an evaluation by the Maryland Health Care Commission before approval or denial of an application. Requirements for that decision, subject to judicial review, would add protection to patients and staff alike. My family member is in a long-term care facility, it was taken over with no advance notice to residents and staff and the level of care has been degraded since then. This bill would add needed oversight of corporate takeovers within the Maryland health care system.

I respectfully urge this committee to return a favorable report on SB1000.

¹ <https://www.mcknights.com/news/costs-rise-quality-falls-after-nursing-home-acquisitions-review/>

² <https://www.politico.com/news/magazine/2023/12/24/nursing-homes-private-equity-fraud-00132001>

14b - SB 1000 - MHCC - LOS.pdf

Uploaded by: State of Maryland (MD)

Position: FAV



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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. Third, the regulatory environment in Maryland is not viewed to be overly contentious when compared to other states. Lastly, Maryland seniors have higher incomes making it more likely that residents will pay for a greater share of nursing care out-of-pocket rather than through Medicaid. These four factors make Maryland attractive to PE firms, real estate investment trusts, and high net worth individuals who wish to invest in nursing homes.

Given these concerns, the MHCC added a review of the performance and quality of care track record of those acquiring persons by using the Centers for Medicare and Medicaid Services (CMS) Five-Star Quality Rating System (Nursing Home Compare). The addition of the quality rating analysis was codified in the legislation passed last session. MHCC's review of CMS' quality ratings track record of persons acquiring nursing homes in Maryland has found that the quality ratings would disqualify a proportion of acquiring purchasers from obtaining a certificate of need to establish, relocate, or expand a nursing home however MHCC did not have the authority to deny the transaction. There have been six acquisitions in the year to date in 2024, and three of the six purchasers would not have passed the quality standard in a CON review.

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For these reasons we support *SB 1000* and ask the Committee for a favorable report.



SB 1000 Maryland Health Care Commission – Nursing

Uploaded by: Tammy Bresnahan

Position: FAV



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aarp.org/md | md@aarp.org | twitter: @aarpmd
facebook.com/aarpmd

SB 1000 Maryland Health Care Commission – Nursing Homes – Acquisitions
Senate Finance Committees
FAVORABLE
March 7, 2024

Good afternoon, Chair Beidle and members of the Senate Finance Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP Maryland advocates on behalf of two million Marylanders age 50 and over. AARP Maryland supports SB 1000. We thank Chair Beidle for introducing this very important bill.

SB 1000 requires a person, at least 120 days before making a contractual arrangement for the acquisition of a nursing home, to submit a request for “acquisition” to the Maryland Health Care Commission (MHCC) and provide specified notice to the residents and staff of the nursing home. The Executive Director of MHCC must review a completed request for acquisition within 60 days and, in consultation with the Secretary of Health, may (1) approve the acquisition; (2) approve the acquisition with conditions; (3) deny the acquisition; or (4) refer the request for acquisition to MHCC for a final decision. The bill removes the requirements for (1) MHCC to provide specified written findings and recommendations to the Office of Health Care Quality (OHCQ) when evaluating a notice of acquisition or transfer of interest of a nursing home and (2) the Secretary of Health to consider MHCC’s findings and recommendations before taking action to approve, deny, approve with conditions, or revoke a nursing home license.

The institutions that serve so many older and infirm Americans were created based on rules and laws passed decades ago, when needs and expectations were different. Nursing home funding and oversight come in large part from government budgets that can be stingy. But most nursing homes are privately owned, meaning there is [little transparency into their finances](#) and operations. Are they, as they claim, pinching pennies to survive, or are they profiting at the expense of quality care?

According to the final MHCC report, 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. Secondly, Maryland has a comparatively higher Medicaid reimbursement rate than most states. And 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.

AARP Maryland supported a 2023, SB509/Chapter 288 and HB 702/Chapter 289 required the Maryland Health Care 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.

SB 1000 codifies recommendations from the workgroup report.

1. The Commission shall seek to expand its authority to 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.
2. 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.
3. 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.

AARP Policy

Federal and state governments should work closely with consumer groups to develop and implement a standardized format for nursing facilities to disclose the names of all parties with ownership control or lease, financial, or operational interest in the facility. This data should be submitted to federal and state governments, the state long-term care ombudsman, and the public. Federal and state governments should notify the public of the availability of this information and make it readily accessible to the public.

Nursing facilities should be required to notify prospective and current residents, their families, and resident councils of the availability of ownership information and provide them with this information upon request.

AARP Maryland was represented on the workgroup in 2023. We support the recommendations and provisions in SB 1000. We respectfully ask the Senate Finance to issue a favorable report on SB 1000. If you have questions on follow up, please contact me at tbresnahan@aarp.org or by calling 410-302-8451.

2024 Legislation - SB 1000 - Nursing Home Acquisit

Uploaded by: Wynee Hawk

Position: FAV



2024 SESSION
POSITION PAPER

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For these reasons we support *SB 1000* and ask the Committee for a favorable report.



SB 1000 - FIN - MDH - LOSWA .docx (1).pdf

Uploaded by: Jason Caplan

Position: FWA



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 7, 2024

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 1000– Health Care Facilities - Nursing Homes - Acquisitions– Letter of Support with Amendments

Dear Chair Beidle and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of support with amendments for Senate Bill (SB) 1000– Health Care Facilities - Nursing Homes -Acquisitions. SB 1000 will require a person to submit a request for acquisition to the Maryland Health Care Commission (MHCC) before making a contractual agreement for the acquisition of a nursing home. In the submission of this acquisition request MHCC shall review and approve, approve with conditions, or deny these requests in consultation with the Secretary of Health. Additionally this bill will require that notice be provided to Residents and staff of an impending acquisition of a nursing home.

In a report by the Assistant Secretary for Planning and Evaluation (ASPE), Maryland had the 5th most nursing home acquisitions in the country between 2016-2021 with 33% of nursing homes going through a Change of Ownership (CHOW) transaction.¹ According to the MHCC report issued in January 2024 subject to SB 509/HB 702 (2023) from this legislature, Maryland has identified a high number of these CHOWs as private equity firms purchasing these nursing homes.² Some of the effects we are seeing are Medicare patients being discharged from nursing homes and being readmitted to hospitals at a rate of about 19%.³

The Department supports the intent of SB 1000 in providing additional layers of oversight for nursing home acquisitions. The requirements from this legislation will help to ensure some of the most vulnerable populations are properly protected. We are working with the sponsor as well as stakeholders on amendments to help strengthen the goals outlined in SB 1000.

¹ “Changes in Ownership of Skilled Nursing Facilities from 2016 to 2021: Variations by Geographic Location and Quality” July 7, 2022
<https://aspe.hhs.gov/sites/default/files/documents/78aae3d6d528e77a729288746ccc2e84/changes-ownership-snf.pdf>

² Nursing Home Acquisitions and Licensures Recommendations Report January 2024
https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/nh_acq/wkgrp_nh_acq_final_rpt_01102024.pdf

³ Nursing Home Acquisitions and Licensures Recommendations Report January 2024
https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/nh_acq/wkgrp_nh_acq_final_rpt_01102024.pdf

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura Scott", enclosed in a faint rectangular border.

Laura Herrera Scott, M.D., M.P.H.
Secretary

HFAM Testimony SB 1000 (with attachments).pdf

Uploaded by: Joseph DeMattos

Position: FWA



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

March 7, 2024

Senate Bill 1000: Maryland Health Care Commission – Nursing Homes – Acquisitions

POSITION: FAVORABLE WITH AMENDMENTS

I am Joe DeMattos, President and CEO of the Health Facilities Association of Maryland (HFAM). On behalf of our members, I appreciate the opportunity to express our support with amendments to Senate Bill 1000: Maryland Health Care Commission – Nursing Homes – Acquisitions.

HFAM is the oldest long-term and post-acute care association in Maryland and is affiliated with the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), which is the largest association in the United States representing long-term and post-acute care providers. HFAM skilled nursing members provide nearly 3 million days of care across all payer sources annually, including approximately 2 million days of Medicaid care.

During the 2023 session of the Maryland General Assembly, the legislature passed SB 509/HB 702: Health Care Facilities – Nursing Homes – Acquisitions and Licensure. This legislation mandated a workgroup to study issues related to nursing home acquisitions and submit a report to the General Assembly. This workgroup became the MHCC Nursing Home Acquisitions Workgroup and its “Nursing Home Acquisitions and Licensures Recommendations Report” was released on January 10, 2024. I appreciate that I had the opportunity to sit on this workgroup representing HFAM, our members, and the sector while serving as an advocate for access to quality care and transparency. This previous legislation, the workgroup, and subsequent report are the genesis of Senate Bill 1000.

Senate Bill 1000 is an important piece of legislation. The sponsors and each of you can be proud that this legislation will bring unprecedented transparency to mergers and acquisitions among Maryland nursing homes.

Most pieces of legislation and issues of public policy have both intended and unintended consequences when enacted and after the promulgation of accompanying regulations. Regarding this legislation, we have considered possible unintended consequences related to continued access to quality nursing home care for Marylanders in need, appropriate funding to sustain much-needed care in nursing homes that currently have three- and four-bed rooms, protecting nursing home jobs, being prepared for the aging of Baby Boomers with multiple chronic illnesses, and mitigating the risk of future litigation arising from this legislation.

Thanks to the stakeholder process coordinated by Delegate Kerr and Senator Beidle, which included legislative leaders, industry representatives, the Maryland Health Care Commission (MHCC), and other government agencies, most issues from the original draft of this legislation have been resolved. However, the two issues outlined below remain.

Concerning rooms with more than two beds (“triples” and “quads”), it is important to note that these rooms have been vital to both access to care and financial viability of nursing homes in urban and rural settings. Most nursing home operators wish to phase out these rooms – especially quads. Additionally, triple and quad rooms in Maryland nursing homes come in all different layouts and sizes, so there is likely value to look at the issue of quad rooms differently than triples.

Driven by a diverse group of aging Boomers, operators are on track to meet emerging market demand by reducing triple and quad rooms. At the same time, these operators are rightfully concerned about access to care in their communities – especially for Marylanders in need who face multiple chronic health conditions.

Contracting with accounting firm Schiavi, Wallace & Rowe PC, we reviewed state Medicaid data to compare medical acuity in nursing homes that included both triple and quad rooms with medical acuity in nursing homes that did not include triple and quad rooms. There are 25 nursing homes in Maryland that have both triple and quad rooms; state data was available for 23 of them. Among those centers, 61% have a higher Medicaid acuity average than the state average. Marylanders in centers that have both triple and quad rooms are dealing with more chronic medical conditions and need to be in a nursing home or they would otherwise likely be cared for in a hospital.

Operators are also concerned about the financial viability of their centers absent those triple and quad beds, along with increasingly high construction and remodeling costs. In terms of lending, underwriting, and ownership, nursing homes are defined by the number of rooms and the number of beds they have.

In its most recent form, SB 1000 calls for the reduction of triple and quad rooms triggered by the sale of a nursing home. It allows the new operator to reduce triple and quad beds and re-purpose them in a three-year timeframe. The bill also includes a Waiver process to protect access to care and the financial viability of a nursing home; this Waiver process will become more detailed during the regulatory process.

The bottom line is that the reduction in triple and quad beds in Maryland nursing is coming, but nursing home beds should be available without a time limit for future use to create single or double rooms. Additionally, it is important to recognize that this legislation tells us the “what” of future changes to be enacted, but most of the “how” will be defined in the regulatory process. Therefore, we respectfully request the following amendments:

Amendment 1

Section 19-120.2(K)(2)(II).

Remove (II) PERMIT THE PERSON THAT ACQUIRED OWNERSHIP OF A NURSING HOME TO TEMPORARILY DELICENSE BEDS FOR AT LEAST 3 YEARS FOLLOWING THE ACQUISITION IF NECESSARY TO REDUCE ROOM DENSITY.

Instead, insert:

(II) PROVIDED THAT IF A REDUCTION IS PLANNED BY THE PERSON ACQUIRING THE NURSING HOME, SUCH REDUCTION CAN BE ACCOMPLISHED IN A MANNER THAT DOES NOT IMPAIR THE VIABILITY OF THE NURSING HOME. COMPLIANCE SHALL BE DEEMED TO OCCUR IF ANY BEDS ARE TAKEN OUT OF ACTIVE SERVICE, IN WHICH CASE THE NURSING HOME SHALL BE PERMITTED TO MAINTAIN THE BEDS

ON ITS LICENSE OR ELECT TO DELICENSE THE BEDS, WITH THE BEDS MAINTAINED BY THE COMMISSION AS AVAILABLE TO THAT NURSING HOME FOR USE BY THE NURSING HOME OR TRANSFER TO ANOTHER NURSING HOME OR SITE. IN NO INSTANCE SHALL THE RIGHTS AND OWNERSHIP TO THE BEDS BE IMPAIRED OR REMOVED BY MARYLAND STATE GOVERNMENT.

Our second amendment addresses the implementation of this major legislation. It is vital that those affected by it have the ability to adapt to the implementing regulations.

Amendment 2

Remove “SECTION 2. AND BE IT FURTHER ENACTED, That the Maryland Health Care Commission shall adopt the regulations required under § 19–120.2(j) of the Health–General Article, as enacted by Section 1 of this Act, on or before January 1, 2025 to be applicable to requests for acquisition submitted after the adoption of the regulations.”

Instead, insert:

SECTION 2. AND BE IT FURTHER ENACTED, That the Maryland Health Care Commission shall adopt the regulations required under § 19–120.2 of the Health–General Article, as enacted by Section 1 of this Act, on or before January 1, 2025 to be applicable to contracts executed after the adoption of the regulations.

HFAM’s two proposed amendments are positive and focused. They aim to ensure this legislation is enacted in a way that is operational while increasing transparency and reaffirming the importance of access to quality care in Maryland nursing homes. Attached to this testimony is correspondence HFAM sent to the MHCC at the beginning and end of the Nursing Home Acquisitions Workgroup mandated by earlier legislation. These letters outline deeper thinking on these important issues, highlight possible future challenges and opportunities, and serve as a gratifying reminder of the progress we’ve made together.

Again, I appreciate the opportunity to express our support with amendments to Senate Bill 1000: Maryland Health Care Commission – Nursing Homes – Acquisitions. HFAM supports this legislation with revisions we believe are important to ensure an effective approach to the review of nursing home acquisitions.

For these reasons, and with the proposed amendments, we respectfully request a favorable report from the Committee on Senate Bill 1000.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132



April 20, 2023

SENT VIA EMAIL

Mr. Ben Steffen
Executive Director, Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Dear Ben:

Thank you for all you do. I hope this letter finds you well at work and at home. With the passage of SB 509/HB702, Health Care Facilities - Nursing Homes - Acquisitions and Licensure, and the Governor's impending signature, we look forward to working with you and other stakeholders on the important issues outlined in the legislation.

As you know, covering a broad list of points and areas of focus regarding the acquisition of nursing homes, the legislation also calls for the Maryland Health Care Commission (MHCC) to work with stakeholders to produce a report to make recommendations regarding the expansion of the certificate of need program over acquisitions of nursing homes on or before December 1, 2023. This study required shall also assess the elimination of patient rooms with more than two beds and address any other issues related to acquisitions of nursing homes.

All of this is especially relevant given President Biden's recent Executive Order directing the US Secretary of Health and Human Services to research and develop new federal policies related to some of the areas covered in this Maryland legislation.

Skilled nursing and rehabilitation centers are a critical part of the public healthcare safety net, providing quality care for Marylanders most in need. If not cared for in our setting, these Marylanders would likely otherwise receive care in a hospital at a much higher cost – putting at risk our Total Cost of Care Contract with the federal government.

Unfortunately, many people living in and receiving quality care in nursing homes have spent a lifetime fighting healthcare inequity. As they age, they find themselves dealing with multiple chronic conditions such as diabetes, congestive heart failure, kidney disease, obesity, and dementia.

There are 225 skilled nursing and rehabilitation centers in Maryland. We estimate that from 2019 to January 1, 2022, 103 skilled nursing centers were sold, with a few being sold more than once. Such extreme turnover in ownership can present challenges to consistent quality care.



However, it is important to note that in healthcare – and specifically in skilled nursing facilities – sales are not inherently negative and not all new operators are of poor quality. Often, a sale can be a positive step toward new capital improvements and investments in quality care.

Regarding the assessment of rooms with more than two beds in nursing homes, we wanted to offer some additional background and context for the record.

First, the sector is not dominated by such rooms. Of the estimated 27,854 nursing home beds in Maryland, it is estimated that about 1,354 of those beds are distributed in triple or quad rooms. We would note that we do not have an estimate of triple and quad rooms in Maryland hospitals.

There was a time in the evolution from community convalescent centers to skilled nursing and rehabilitation centers when triple and quad rooms were highly valued, and in some communities and settings, they continue to meet community needs.

Triple and quad rooms are still federally permitted in existing centers, and allowable in existing centers in Maryland. From a communicable disease standpoint, a triple or quad room can present more challenges; from a socialization and community standpoint – to fight isolation— triples, and quads can provide benefits.

Additionally, there are financial, revenue, and bank underwriting considerations relative to triple and quad rooms. Imagine buying a five-bedroom home, getting a mortgage, and then being told by a regulator that you could only use three bedrooms while still paying the mortgage for all five.

Of all these concerns, we believe that meeting community needs and protecting quality care is of the utmost priority. We look forward to data-driven work together on these issues.

Members of our association value working in partnership with government leaders on appropriate and effective outcome-focused regulation to ensure quality care and a safe environment. We look forward to working with you and others on the issues related to this legislation.

Be well,

A handwritten signature in black ink, appearing to read "Joe DeMattos". The signature is fluid and cursive, with a large initial "J" and a smaller "al" at the end.

Joe DeMattos
President and CEO

CC: HFAM Board of Directors
Howard Sollins, DLA Piper
Ashlie Bagwell, Harris, Jones, & Malone



January 12, 2024

SENT VIA EMAIL & FEDEX

Mr. Ben Steffen
Executive Director
Maryland Health Care Commission (MHCC)
4160 Patterson Avenue
Baltimore, MD 21215

Dear Ben:

First, genuine thanks to you and your team for your hard work, open partnership, and dedication to public service – all are deeply appreciated. I am writing today on behalf of the Health Facilities Association of Maryland (HFAM) to offer three points of short and constructive advice relative to the Maryland Health Care Commission (MHCC) Nursing Home Acquisitions and Licensures Recommendations Report (the “Report”) to the Legislature shared on January 10, 2024.

The MHCC, HFAM, public officials, and other stakeholders worked diligently during a series of meetings during which there was an open and well-intentioned free exchange of ideas. Conversations were mostly driven by data, the expertise of workgroup members, and expert witnesses such as Robert “Bob” Kramer, the Founder of the National Investment Center; however, at times, anecdotal information not supported by data drove conversations.

Regarding the final report, we would like to offer constructive feedback on staff reporting, debt ratio, and planning for the phase-out of triple and quad rooms. On each of these three points, HFAM is committed to transparency.

1. **Staff Reporting:** We all want staff reporting that indicates federal and state staffing requirements are being met with a dedication to both quality care and the workforce. Nursing home staffing data, including nursing hours and labor costs, are already publicly available via the Centers for Medicare and Medicaid Services (CMS) Payroll-Based Journal (PBJ) data and state Medicaid Cost Reports. Because nursing homes have limited resources, we recommend that instead of creating a new reporting requirement, we use the already publicly available PBJ data.
2. **Debt Ratio:** On the debt ratio, it is our shared goal to ensure that the debt service of a nursing home does not crowd out the dedication of adequate resources to requirements for quality care such as the workforce, wages and benefits, food, activities, medical supplies, or the physical state of the center (such as cleanliness or temperature). We recommend that the denominator in the ratio should be revenue rather than net income. A ratio of debt to net income could be driven lower (and therefore appear better from a policy standpoint) because of reduced staffing costs that would be disadvantageous to quality care. But if revenue is used as the denominator instead, a truer picture of the debt burden on the facility would be available.



- 3. Phase Out of Multi-Bed Rooms:** The Report proposes that upon the sale of a nursing home, the new owner must present a plan to phase out triple and quad rooms. This approach is measured and incremental – from a public policy standpoint, it should be applauded. However, it will also serve to devalue the nursing home being sold, which results in a lower sale price. This would appear to constitute a taking by the state government, which would therefore require compensation to the seller.

It should also be noted that, in reviewing Maryland Medicaid cost reports, we estimate annual Medicaid payments to nursing homes for Marylanders receiving quality care and occupying a third or third and fourth bed in a triple or quad room to be over \$50 million.

HFAM's position on phasing out triples and quads has been consistent and clear:

- Triple and quad rooms are still federally permitted in existing centers, and allowable in existing centers in Maryland. From a socialization and community standpoint – to fight isolation— triples and quads can provide benefits.
- As we consider a phase out of triple and quad rooms, we must recognize that they may benefit Marylanders in need of quality care, and generate much-needed Medicaid revenue to underwrite care. Also, they are an asset to the owner of a nursing home. Again, a government taking of these beds must be avoided.

We look forward to our continuing partnership and are certain that together we can advance this important work to ensure continued quality care for Marylanders in need.

Be well,



Joe DeMattos
President & CEO

CC: The Honorable Laura Herrera Scott, Secretary, Maryland Department of Health
Stacy Howes, Ph.D., CPHQ, Chief, Long Term Care and Health Plan Quality Initiatives, Maryland Health Care Commission
The Honorable Bill Ferguson, President, Maryland Senate
The Honorable Adrienne Jones, Speaker, Maryland House of Delegates
The Honorable Pamela Beidle, Chair, Senate Finance Committee
The Honorable Joseline Peña-Melnyk, Chair, House Health and Government Operations Committee
Joshua Auerbach, Assistant Attorney General
HFAM Board of Directors
Howard Sollins, Baker Donelson
Ashlie Bagwell, Harris Jones and Malone

SB1000_CoA_fav+amend.pdf

Uploaded by: Leslie Frey

Position: FWA



COMMISSION ON AGING

March 6, 2024

Finance Committee
Chair, Senator Pamela Beidle
Vice Chair, Senator Katherine Klausmeier
3 East Miller Senate Office Building
Annapolis, Maryland 21401

SB 1000 SUPPORT WITH AMENDMENT

Dear Chair Beidle and Vice Chair Klausmeier:

I am writing on behalf of the Montgomery County Commission on Aging in support of SB 1000 with amendment. The Commission is authorized by the Older Americans Act, P.L. 116-131, and was established by Montgomery County in 1974 to advise County government on the needs, interests, and issues of older adult residents, and to advocate on their behalf at the local, state, and national levels.

To avoid the burden of an unfunded mandate and to ensure the bill achieves its stated goals, we respectfully urge you to consider amending the bill to include corresponding funding for the Maryland Health Care Commission (MHCC) and the Office of Health Care Quality (OHCQ).

SB 1000 reflects the recommendations of the [final report](#) of the Maryland Nursing Home Acquisitions Workgroup (Workgroup) to address the potentially negative impacts associated with the increasing role of private equity in nursing home ownership. According to the Workgroup, Maryland has seen a high number of private equity acquisitions of nursing homes in recent years. The Workgroup concluded that low penetration of Medicare Advantage plans and comparatively higher Medicaid reimbursement, coupled with a less contentious regulatory environment has made Maryland more attractive to private equity, real estate investment trusts, and high-income individuals who wish to purchase nursing homes than most states.

A seminal study¹ from 2021 showed private equity acquisition of nursing homes was associated with higher costs and increases in emergency department visits and hospitalizations for ambulatory sensitive conditions. By requiring both review and approval of contracts of sale by the State, coupled with a requirement to elicit input from

Department of Health and Human Services

401 Hungerford Drive, 4th Floor, Rockville, Maryland, 20850 240-777-1120, FAX 240-777-1436

www.montgomerycountymd.gov/hhs

residents and staff about the sale, the bill will ensure that the sale is in the public's interest and resident and staff rights are protected.

It's our understanding that one issue that emerged from the Workgroup's deliberations had to do with the increased workload anticipated for the Maryland Health Care Commission (MHCC) and the Office of Health Care Quality (OHCQ). We note that there is no additional funding in the bill to hire additional MHCC and OHCQ staff to conduct the due diligence and analysis required for contracts of sale, or to bring on consultants/experts who can advise the MHCC and OHCQ as regulations and policies are promulgated.

In conclusion, the Montgomery County Commission on Aging supports SB 1000 with the above amendment, recognizing it as a vital measure to protect the interest of nursing home residents and staff and hold purchasers accountable should a nursing home be sold, in part or in full. The Commission urges a favorable vote with amendments.

Sincerely,

David Engel

David Engel, Chair

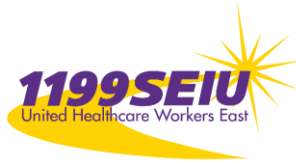
Montgomery County Commission on Aging

ⁱ Braun RT, Hye-Young J, Casalino LP, Myslinski Z, Unruh MA. Association of Private Equity Investment in US Nursing Homes With the Quality and Cost of Care for Long-Stay Residents. JAMA Health Forum; [10.1001/jamahealthforum.2021.3817](https://doi.org/10.1001/jamahealthforum.2021.3817). Published November 19, 2021.

SB1000-Nursing Home Acquisitions-1199SEIU Testimon

Uploaded by: Loraine Arikat

Position: FWA



Official Testimony – House Health and Government Operations Committee
Maryland Health Care Commission – Nursing Homes – Acquisitions
SB 1000
Position: **FWA**

Dear Chair Beidle, Vice Chair Klausmeier and Members of the Committee,

My name is Claudia Balog, I am the Assistant Director of Research for 1199SEIU United Healthcare Workers East. We are the largest healthcare workers union in the nation, and represent 10,000 workers in long-term care facilities, hospitals and clinics throughout Maryland and the District of Columbia. 1199SEIU urges this Committee to issue a favorable report on SB1000 with Amendments.

1199SEIU has been sounding the alarm on the lack of transparency in Nursing Home ownership and the rapid pace of transfers of ownership in Maryland’s nursing homes. We are also a member of the Moving Forward Nursing Home Quality Coalition’s Committee on Ownership Data Transparency and Accountability Work Group. Our calls for increased transparency on these transactions have been echoed nationally.

In 2022, the National Academy of Sciences, Engineering and Medicine (NASEM) identified nursing home ownership transparency as a crucial component to improving the quality of care in skilled nursing facilities. In 2023 the Center for Medicare & Medicaid Services (CMS) issued a final rule on nursing home ownership transparency that includes asking states to establish change of ownership reporting requirements and to collect data related to the increasingly complicated ownership structures of skilled nursing facilities. This bill launches a good start for Maryland to join states like California and Connecticut in setting more rigorous review standards for changes in ownership.

Understanding who owns a skilled nursing facility and makes the kinds of operational decisions that impact staffing and care quality, is crucial, and yet, currently, quite challenging. Questions to ask: Who makes the financial decisions that impact staffing levels? Who makes the decisions that impact things like the quality of food that residents receive? Are nursing home operators contracting with related third parties who financially benefit their common owners? Based on the ways that both the Federal Government and some states are attempting to address ownership transparency we believe that SB1000 can be strengthened with the following Amendments:

1. Creating a 5 percent threshold for ownership review.

The bill currently defines acquisition as “the transfer of more than 25 percent of stock or ownership interest.” That threshold may not be high enough to give the Health Care Commission meaningful oversight over the nursing home market. As the nursing home market rapidly constricts – with complex and often highly distributed entities (e.g., REITs and Private Equity firms) playing a big role – states and the federal government are moving to a five percent threshold for reporting, oversight, and intervention of the kind Maryland is considering. We encourage Maryland to consider a similar threshold not only to ensure this bill achieves its goals, but also to ensure Maryland is in line with national standards as licensure and data systems become increasingly integrated across state lines. We are very concerned that setting a threshold of 25 percent will allow many potentially detrimental transactions to fly under the radar of the state. We have discussed the 5 percent threshold with the Maryland Health Care Commission (MHCC) and we understand the challenges in implementing a 5 percent threshold for the Acquisition side of the process while the Office of Healthcare Quality (OHCQ) uses a 25 percent threshold for licensure review. Therefore, we would also support statutory language that would require a nursing home to give the MHCC notice of a 5 percent change of ownership and allow the MHCC to collect additional data around such a transaction. We hope for continued discussion around developing a state review process where a 5 percent threshold is the standard for both acquisition and licensure.

2. Ensure a robust scope of review by the Maryland Health Care Commission.

When evaluating a notice of acquisition or transfer of interest in a nursing home, the Maryland Health Care Commission reviews the applicant including their CMS star-ratings, inspection reports, surveys, and lawsuits. However, this review has been removed from the proposed statute, along with the requirement that the findings and recommendations of the MHCC are transmitted to the Office of Health Care Quality (OHCQ). We understand that the MHCC plans to look at the scope of review in future regulations. However, California and Connecticut have intentionally placed these standards and scope of review in statute. We believe that it is appropriate for Maryland to do so as well. Furthermore, we encourage the state to collect more information from nursing home owners for this review, including any lease agreements and management contracts that would go into effect upon acquisition.

3. Ensure that the Office of Healthcare Quality continues to evaluate the recommendations of the Maryland Health Care Commission.

The current statute states that the Office of Healthcare Quality will consider any findings or recommendations of the MHCC before taking any action on a license. Once again, SB1000 removes this requirement, and we strongly suggest putting this language back into the statute. 1199SEIU has taken notice of activities reports generated by MHCC Staff to MHCC Commissioners detailing information gathered about applicants seeking acquisition of Maryland's skilled nursing facilities. We are impressed with the MHCC's attempts to untangle ownership in our nursing homes, including tracking down the quality records of these applicants in other states.

Speaking as a union research director, my colleagues and I are often asked to identify the ownership of a facility when workers and/or residents inform us of issues related to care quality. There are facilities where ownership is straightforward, and discerning how operational decisions are made is equally straightforward. Unfortunately, ownership of nursing homes is increasingly tangled by design. We look forward to conversations with both MHCC and OHCQ Staff about ways both agencies can improve their scope of review. We urge the state to consider other ways control of nursing homes may change hands that could affect quality of care. Some common examples to consider are exchange of ownership within a family, the sale of real property on which a nursing home is situated, the purchase of debt against the nursing home, change of management companies, and other exchanges of beneficial ownership that may not be classified as acquisition. Legislation in other states has addressed some of these concerns.

Finally, we applaud language in SB1000 that ensures that those who reside in a nursing home, their family members and nursing home employees will be made aware of -and can comment- when an application is submitted for a change in ownership. Workers such as GNAs, housekeepers and dietary aides have reported to us that they often are not even aware that the nursing facility they work for has changed hands until they see a sign on the door, or worse, until they receive a communication from management that their benefits are being changed due to new ownership. Notice to -and input from- the very people whose daily lives are impacted by these decisions are necessary. This language is also in line with the CMS Final Rule, which directs that the public have improved access to ownership data.

For these reasons 1199SEIU urges you to issue a Favorable report on SB1000 with Amendments. I am happy to provide any additional information on this topic and can be reached at claudia.balog@1199.org.

Sincerely,

Claudia Balog
Assistant Director of Research
1199SEIU United Healthcare Workers East

SB1000 SLTCOP 3.6.24.pdf

Uploaded by: Stevanne Ellis

Position: FWA

Bill: SB1000 Maryland Health Care Commission – Nursing Homes – Acquisitions

Position: Favorable with Amendments

March 6, 2024

The Maryland Long-Term Care Ombudsman program advocates for residents in nursing homes and assisted living facilities in Maryland including residents that reside in continuing care retirement communities. Ombudsmen work to resolve complaints that can have adverse effects on the quality of care, safety, health, and quality of life of the citizens that reside in these facilities. In Maryland, ombudsmen provide these services to the over 50,000 citizens that live and receive services in nursing homes and assisted living facilities.

This bill is a consumer protection bill. The importance of ownership and fiscal transparency cannot be stressed enough. When long-term care and long-term care residents are viewed as a commodity, it is not about resident care, it is about profit. In these cases, resident care suffers. This has been shown in studies about care provided in private equity companies. In Maryland, there are serious issues in facilities because of a financial based model of care rather than a resident focused model of care. In these cases, individualized care is not provided, corners are cut for profit, and quality is not given which can lead to hospitalization or even deadly consequences.

It is critical to understand who owns and who wants to purchase a nursing home. The information related to who owns the nursing home whether it is an individual, a family, or a corporation should be publicly available and accessible. If there are relationships with related parties (and who owns those businesses), if the nursing home is considered a private equity company, real estate investment trust or has a similar financial model, the public should know. This provides understanding about how the nursing home does business and who the nursing home is fiscally beholden.

This is a national level concern that even the White House is watching. The need for nursing home transparency is crucial right now with the growing rise of private equity companies taking over, cutting costs, and then selling the nursing homes. I have provided a list of resources that provide detailed information related to the need for increased transparency in the acquisition of nursing homes and nursing home finances as a reference to the committee.

I am supporting this bill, but requesting the following amendments:

The definition for acquisition should be changed from 25% to 5% of stock or ownership in a health care facility. This is the requirement in other states. In California, the definition includes the transfer, purchase, or sale of ownership interest in a facility or licensee of 5 percent or more. This is also the minimum requirement in the final rule issued by the Centers for Medicare and Medicaid Services related to nursing home acquisitions. This will allow for greater transparency in the acquisition process.

When evaluating a notice of acquisition or transfer of interest in a nursing home, the Maryland Health Care Commission (MHCC) reviews the applicant including their CMS star-ratings, inspection reports, surveys, and lawsuits. However, this review has been removed from the proposed statute, along with the requirement that the findings and recommendations of the MHCC are transmitted to the Office of Health Care Quality (OHCQ). The omitted language beginning on page two, line 23 through the following page ending at line 21 should not be omitted. The information should be required as part of the vetting process during the acquisition. The Office of Healthcare Quality will consider any findings or recommendations of the MHCC before taking any action on a license.

Additionally, the State Long-Term Care Ombudsman should be consulted during the acquisitions process along with the Attorney General whether the acquisition raises public interest concerns. The Long-Term Ombudsman Program is aware of complaints in nursing homes across the state as well as trends in corporations. Additionally, the State Long-Term Care Ombudsman works on advocacy at both a local, state and national level and may have information vital to the acquisition process.

Lastly, the recommendations from the Nursing Home Acquisitions and Licensures Recommendations Report should be adopted specifically the pre-acquisition and post-acquisition comments provided on pages 9-10 in that report.

To protect residents in Maryland, this bill is essential. Maryland should be a state where residents want to seek out rehabilitation and long-term care in nursing homes. Maryland should not be a state where private equity firms see an easy cash grab. This bill will help ensure that the nursing homes that do business in Maryland are not just fiscally transparent, but that it is clear who owns the nursing homes and the business relationships that the facilities have. Maryland citizens have a right to know who is doing business in Maryland and who is accountable for the care provided to residents in nursing homes in the state.

Having a more thorough acquisition process will help ensure that the companies that provide care for residents in nursing homes are concerned about providing quality services in Maryland and are not here just to make a profit.

I respectfully ask for my comments to be considered and offer favorable report for this bill with amendments that I have suggested.

Sincerely,

Stevanne Ellis

Maryland State Long-Term Care Ombudsman

Resources:

NASEM Recommendations which include that HHS must ensure accurate and comprehensive real-time data on finances, operations and ownership of nursing homes, and that the data is readily usable and searchable by consumers: [The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff | The National Academies Press](#)

CMS Final Rule on Ownership Disclosure frequently reinforces that 5% is the threshold for ownership disclosure: [2023-25408.pdf \(govinfo.gov\)](#)

California Assembly Bill 1502: [Bill Text: CA AB1502 | 2021-2022 | Regular Session | Amended | LegiScan](#)

Connecticut House Bill 6731: [Bill Text: CT HB06731 | 2023 | General Assembly | Chaptered | LegiScan](#)

OWNER INCENTIVES AND PERFORMANCE IN HEALTHCARE: PRIVATE EQUITY INVESTMENT IN NURSING HOMES <http://www.nber.org/papers/w28474>

2024-03-07 SB1000 Support Ltr_.pdf

Uploaded by: Zak Shirley

Position: FWA

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

CAROLYN A. QUATTROCKI
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

LEONARD J. HOWIE III
Deputy Attorney General

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

March 6, 2024

To: The Honorable Pamela Beidle
Chair, Senate Finance Committee

From: W. Zak Shirley
Director, Medicaid Fraud & Vulnerable Victims Unit

Re: Senate Bill 1000 – Maryland Health Care Commission-Nursing Homes-
Acquisitions

Position: Support with Amendments

SB 1000 seeks to enhance the important role of the Maryland Health Care Commission (“MHCC”) in regulating nursing home acquisitions and the impact of those acquisitions on the quality of care in nursing homes.

SB 1000 expands the definition of “acquisition” to include a change in who controls a health care facility or the transfer of a certain percentage of stock or ownership of the health care facility. In expanding what transactions constitute an “acquisition” subject to MHCC approval, SB 1000 allows the MHCC to exercise greater oversight of nursing homes and advance quality of care.

Importantly, SB 1000 requires that, prior to approving or denying the acquisition of a nursing home, the MHCC must consider the applicant’s track record over the prior three-year period and whether (1) a quality assessment and quality assurance committee were maintained; (2) whether there were any enforcement actions, special focus designations, or plans of corrections instituted against the applicant, and (3) if any lawsuits or judgments against the applicant occurred. If, for example, the applicant did not maintain some type of quality-of-care oversight, was cited by a state or federal agency for poor quality of care, or if a private party filed a lawsuit alleging

injury to a resident caused by substandard care, any of these circumstances would be indicia that approval of an acquisition may not be appropriate.

What SB 1000 does not require, but should, is disclosure of financial data that clarifies the nature and extent of all interests that will be involved in owning, operating, and/or managing the nursing home; the transactional structure of the party/parties seeking to acquire a nursing home; and the consolidated financial reports for the three-year period prior to the proposed acquisition. These additional elements are essential to the work of nursing home oversight, standards enforcement, and patient advocacy across the state.

Private equity investments in nursing homes have been associated with a decline in staffing, a decline in quality of care, a lack of transparency regarding the percentage of revenue spent on patient care, and high debt burdens imposed after acquisition that divert money away from resident care. One study found that residents in nursing homes acquired by private equity were 11.1% more likely to have a preventable emergency department visit and 8.7% more likely to experience a preventable hospitalization, when compared to residents of for-profit nursing homes not associated with private equity.¹

At present, there are 224 nursing home facilities in Maryland. As documented in the January 2024, “Nursing Home Acquisitions and Licensures Recommendation Report,” Maryland has seen a high number of nursing homes acquired by private equity in recent years.² As set forth in that Report, this is due, in part, to the fact that Maryland has a lower penetration of Medicare Advantage plans than many other states meaning that more patients utilize traditional Medicare which yields higher reimbursement for investors. Maryland also has a comparatively higher Medicaid reimbursement rate than most states.

In order for the Maryland Office of the Attorney General (OAG) to investigate and enforce nursing home residents’ rights, prosecute occurrences of abuse and neglect of these residents, and to recover funds expended by Maryland Medicaid when the care provided is inadequate, OAG must be able to identify those parties responsible. As outlined in a New York Times article from 2007 which described how private equity can avoid responsibility by using various financial and organizational schemes, this problem is not merely academic.³ Transparency as to the finances and organizational structures of those operating nursing homes and all related parties is crucial. Unfortunately, SB 1000, in its current form, does not address these issues.

How financial and transactional transparency provide the means to hold responsible parties accountable for substandard care is exemplified by the nursing home fraud and abuse cases filed

¹ Braun RT, Jung H, Casalino LP, Myslinski Z, Unruh MA. Association of Private Equity Investment in US Nursing Homes With the Quality and Cost of Care for Long-Stay Residents. JAMA Health Forum. 2021;2(11):e213817. doi:10.1001/jamahealthforum.2021.3817.

² January 2024 Nursing Homes Licensures and Acquisitions Recommendations Report.

³ Duhigg C. At many homes, more profit and less nursing. New York Times. September 23, 2007.

in 2023 by the New York Attorney General's Office.⁴ As a result of the ability of the New York Attorney General's Medicaid Fraud Control Unit to conduct an in-depth analysis of the finances and transactional relationship among nursing homes' owners and operators, the lawsuit asserted that more than \$83 million in Medicaid and Medicare funds were used to enrich the facility owners, their families, and business associates through an elaborate network of related companies and collusive, fraudulent transactions. These acts lined the pockets of unscrupulous operators with funds intended to provide sufficient staffing and resources for quality resident care. The lawsuit documented collusive real estate arrangements, unnecessary and exorbitant loans with inflated interest rates, phony fees paid to companies owned by family members, and inflated salaries for "no-show jobs," all of which resulted in abysmal care for the residents of these facilities.

OAG is requesting a favorable report with the following amendments to SB 1000:

- The definition for acquisition should be changed from 25% to 5% of stock or ownership in a health care facility. This threshold ensures that all parties to the acquisition request are documented and comports with other states' provisions as well as the requirements of CMS in its recent final rules to promote transparency in nursing home ownership.
- In the language of proposed Health-General §19-120(a), an additional defined term should be added. "Related party" includes, but is not limited to, home offices; management organizations; owners of real estate; entities that provide staffing, therapy, pharmaceutical, marketing, administrative management, consulting, and insurance services; providers of supplies and equipment; financial advisors and consultants; banking and financial entities; any and all parent companies, holding companies, and sister organizations; and any entity in which an immediate family member of an owner of those organizations has an ownership interest of 5% or more.
- In the language of proposed Health-General §19-120.2(b), the applicant should submit information (1) as to the three prior years' annual consolidated financial reports which shall include financial information from all operating entities, license holders, and related parties in which the organization has an ownership or control interest of 5% or more and that provides any service, facility, or supply to the nursing home, and (2) information as to all ownership or control interests of any related parties, including direct or indirect interests and shall include the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, if the interest is equal to or exceeds 5% of the total property or assets of the entirety and that provides any service, facility, or supply to the nursing home.

⁴ <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-owners-and-operators-four-nursing-homes-financial>.

See also,

[https://urldefense.com/v3/_https://lnks.gd/l/eyJhbGciOiJIUzU1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDAsInVyaSl6ImJwMjppbGJjayIsInVybCl6Imh0dHBzOi8vYWwucubnkuZ292L3NpdGVzL2RlZmF1bHQvZmlsZXMvY291cnQvZmVsaW5ncy9jZW50ZXJzLWZpbGVkLXBldGl0aW9uLnBkZiIsImJ1bGxldGluX2lkIjojMjAyMzA2MjguNzg5MjIwNTUeifQ.FZRoMhZ1g0U18_VnavXrOWRMYYj95pnSfd_8cBHRIWno/s/959752070/br/210514987702-l_!!Ke5ujdWW74OM!-gY_AmmytdCHpdln2zgcBZoeUn4QiKCDcg9vGs39lgeml7ej4jGKvYBfKKV-1hC5e96oOotXMdZbzolT9jQg8N7NE5sTIYfAUrdqtPw\\$](https://urldefense.com/v3/_https://lnks.gd/l/eyJhbGciOiJIUzU1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDAsInVyaSl6ImJwMjppbGJjayIsInVybCl6Imh0dHBzOi8vYWwucubnkuZ292L3NpdGVzL2RlZmF1bHQvZmlsZXMvY291cnQvZmVsaW5ncy9jZW50ZXJzLWZpbGVkLXBldGl0aW9uLnBkZiIsImJ1bGxldGluX2lkIjojMjAyMzA2MjguNzg5MjIwNTUeifQ.FZRoMhZ1g0U18_VnavXrOWRMYYj95pnSfd_8cBHRIWno/s/959752070/br/210514987702-l_!!Ke5ujdWW74OM!-gY_AmmytdCHpdln2zgcBZoeUn4QiKCDcg9vGs39lgeml7ej4jGKvYBfKKV-1hC5e96oOotXMdZbzolT9jQg8N7NE5sTIYfAUrdqtPw$)

INF - MDOA HB1122_SB1000 NH Acquisitions (1).pdf

Uploaded by: Carmel Roques

Position: INFO



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Date: March 6, 2024

Bill Number: **SB1000**

Bill Title: Maryland Health Care Commission - Nursing Homes - Acquisitions

Committee: Senate Finance

MDOA Position: INFORMATION

The Department of Aging (MDOA) respectfully submits this letter of information on Senate Bill (SB) 1000 - Maryland Health Care Commission - Nursing Homes - Acquisitions.

The Maryland Department of Aging (MDOA) serves as Maryland's State Unit of Aging, administering federal funding for core programs, overseeing the Area Agency on Aging (AAA) network at the local level that provides services, and planning for Maryland's older adult population. Pursuant to a recent Executive Order, in January 2024, MDOA launched the Longevity-Ready Maryland Initiative,¹ which will build upon existing efforts across state agencies, private and philanthropic sectors and other stakeholders to tackle real-life challenges throughout the lifespan, taking a whole-of-life and whole-of-government approach.

Skilled nursing facilities are a critical component of the long-term care ecosystem and an important component of longevity-readiness. MDOA has a regulatory role over acquisitions of some skilled nursing facilities in the state where they are also part of a licensed continuing care retirement community (CCRC). MDOA expects to be able to adjust its acquisition review timelines as needed around any new MHCC skilled nursing facility acquisition review timelines adopted.

¹ See, Maryland Department of Aging: Longevity-Ready Maryland Initiative *available at*: <https://aging.maryland.gov/Pages/LRM.aspx>



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Since summer 2023, MDOA participated in the Nursing Home Acquisitions workgroup convened by MHCC pursuant to House Bill 702 and Senate Bill 509 of 2023. MDOA remains concerned about the presence of triple and quad rooms in skilled nursing facilities and suggests MHCC and OHCQ continuously work towards their phase out in Maryland. MDOA suggests that Maryland would be well-served by looking to the Moving Forward Coalition² for guidance on strengthening acquisition review standards. California³ and Connecticut⁴ recently passed legislation that may provide helpful guidance for our state.

If you have any questions, please contact Andrea Nunez, Legislative Director, at andrea.nunez@maryland.gov or (443) 414-8183.

Sincerely,

Carmel Roques
Secretary
Maryland Department of Aging

² Moving Forward Coalition, “Increasing Transparency and Accountability of Ownership Data,” *available at*: <https://movingforwardcoalition.org/wp-content/uploads/2023/07/Increasing-Transparency-and-Accountability-of-Ownership-Data.pdf>

³ California AB1502, Freestanding Skilled Nursing Facilities, (2021), *available at*: <https://legiscan.com/CA/text/AB1502/id/2598935#:~:text=This%20bill%20would%20prohibit%20a.the%20department%20for%20that%20purpose.>

⁴ Connecticut HB06731, An Act Concerning The Department Of Public Health's Recommendations Regarding Change In Ownership Of Health Care Facilities (2023), *available at*: <https://legiscan.com/CT/text/HB06731/2023>



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary