



**TESTIMONY BEFORE THE
HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE**

March 7, 2024

House Bill 1122: 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 House Bill 1122: 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 House Bill 1122.

House Bill 1122 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, HB 1122 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 House Bill 1122: 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 House Bill 1122.

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 polices 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