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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 25, 2021

SB 704
Nursing Homes – Transfer of Ownership – Site Visits and Surveys

Chairman Kelley, Vice Chair Feldman and Members of the Committee;

Thank you for the opportunity to present SB704, Nursing Homes – Transfer of Ownership – Site Visits and Surveys.

Nursing Homes should be a place for our elderly population to feel safe and for their loved ones to have confidence that their elderly family members are provided with good quality care. To accomplish this, the Office of Health Care Quality (OHCQ) does *unannounced* surveys for the nursing homes in our State annually, sometimes every fifteen months. The surveys are carefully conducted and any corrections needed are made as required.

Recently, out-of-state REITS and investment firms are purchasing nursing homes, frequently ones that are failing financially. However, instead of enhancing and improving the home, cost cutting measures are put in place in an effort to provide a return for their investors.

What happens when an investment company or REIT purchases a nursing home? Here are some headlines from articles and links describing the results:

Washington Post, December 21, 2020 - *"An investment firm snapped up nursing homes during the pandemic. Employees say care suffered."*
https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html

Institutional Investor, March 11, 2020 - *"Private Equity Firms are Bad for Patients"*
https://www.institutionalinvestor.com/article/b1kq79bp4nv79t/Private-Equity-Backed-Nursing-Homes-Are-Bad-for-Patients-Research-Shows

New York Times, May 7, 2020 - *"Push for Profits Left Nursing Homes Struggling for Care"*
https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html

International Health, Economics and Finance - *"What Happens to Nursing Home Chain when a Private Equity Takes Over"* https://journals.sagepub.com/doi/pdf/10.1177/0046958017742761

This is occurring all over the country. It is not practical to prohibit this practice—as you may hear later from the Health Care Commission or OHCQ, when a nursing home is failing the worse possible solution is to have it close. When this happened in Hagerstown, patients were moved all over the State and some even to Pennsylvania, making it difficult for families to visit their loved ones.

SB 704 simply requires that OHCQ inspect the recently purchased nursing homes more frequently, at one month, three months and six months. This only applies to nursing homes purchased by a "person" that is not already operating in Maryland. However the House amended House Bill 674 to require inspections only at 3 months and 6 months. This provides the purchasing company time to correct any deficiencies that may exist.

There are some issues with the fiscal note. The fiscal note uses numbers that are different from the numbers:

- Emily Berg of The Department of Health states: "There were 13 nursing homes change of ownerships in 2020 and 24 in 2019"
- The Fiscal Note uses 19 nursing home transfers in 2020 and 30 anticipated in 2021. The Fiscal Note however does not spell out if these transfers are from out if state investors or unknown purchasers, as the bill specifies.

If you have any doubt about the importance of this bill, you simply need to read this article in the **Washington Post** that describes the issues the nursing home in Chestertown experienced after being purchased by Portopiccolo and managed by their wholly owned management company, PEAK.
https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html

Also, if you would like to see the 64 pages of Federal violations or the 73 pages of State violations, I can share those with you. The Office of Heath Care Quality assessed $730,000 in fines. Just to outline a few of the most egregious violations when Portopiccolo purchased the nursing home in Chestertown:

- Employees were expected to keep working after testing positive for Covid-19
- Failure to secure local suppliers
- Employees scrambling for medications and FOOD
- Software prohibiting employees from accessing patient records
- Weeks without hot water!

Portopiccolo purchased 20 nursing homes during the pandemic, EIGHT in Maryland

This bill is an attempt to protect or most vulnerable senior citizens. Thank you for your consideration of SB 704 and I urge the committee to move this bill with a favorable report.

An investment firm snapped up nursing homes during the pandemic. Employees say care suffered.

By
Rebecca Tan and
Rachel Chason
Dec. 21, 2020 at 11:00 a.m. EST
https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html

An investment firm has bought more than 20 nursing homes during the coronavirus pandemic, leading to disruptions at multiple facilities that weakened care for vulnerable residents amid the worst health crisis in generations, interviews and documents show.

From April through July, the New Jersey-based Portopiccolo Group — which buys troubled nursing homes and tries to make them profitable — paid hundreds of millions of dollars to acquire facilities in Maryland, Virginia and elsewhere.

The purchases drew scant scrutiny from regulators despite poor safety records at dozens of the company's other nursing homes, including hefty fines for infection-control lapses and shortages of staff.

Many of Portopiccolo's existing facilities were struggling to contain outbreaks of the coronavirus when its leaders went seeking new properties, state health records show. At a Virginia nursing home, staff hosted a hallway dance party for residents in April, weeks after federal guidelines had cautioned against such events. Conditions were so bad at one North Carolina facility that it was placed on a federal watch list even after the Centers for Disease Control and Prevention dispatched a strike team to help.

At its new nursing homes in Maryland, Portopiccolo's operating companies made major changes to insurance and time-off benefits, failed to buy enough supplies and protective equipment and asked some employees to keep working after testing positive for coronavirus, said 14 current and former employees from four of the eight facilities.

Many veteran staffers quit as a result of the changes, said the employees, most of whom spoke on the condition of anonymity because they feared reprisals. Those who remained found themselves tending to dozens of residents at a time, the employees said.

"It was hair on fire," said Katrina Pearthree, a former social worker at two facilities purchased by Portopiccolo over the last 15 months. She resigned from her job after losing health insurance coverage and disagreeing with new managers on patient care.

Portopiccolo spokesman John Collins denied that caregiving suffered and said that while benefits changed, they remained competitive within the industry. The firm, he said, wants to fill the gap left by nursing home owners exiting the industry because of the pandemic.

"Our company was founded by people who share a passion for caring for the sick, elderly and forgotten," Collins said in a statement. "Any attempts to characterize our work or the work of our teams differently is flat out wrong."
Elder-care advocates say Portopiccolo's record of fines at other facilities, and the timing of its acquisitions, should have raised red flags for regulators, especially as the virus decimated the country's nursing home population.

But the Centers for Medicare and Medicaid Services (CMS), the main federal agency regulating nursing homes, said the only way it tracks ownership changes is when facilities report the information for Medicare enrollment.

President-elect Joe Biden has said he wants to increase federal oversight through mandatory audits of nursing home cost reports and ownership data. Typically, such monitoring has fallen to state regulators, said Charlene Harrington, a professor emerita of sociology and nursing at the University of California at San Francisco. But even before the coronavirus crisis, she said, most states did a poor job.

In Maryland, the commission that oversees changes in nursing home ownership said the sale of a facility requires little more than "timely notification." Virginia officials said they don't closely monitor such sales, either.

"Your history indicates what you're going to do in the future," said Richard Mollot, executive director of a national advocacy group called the Long Term Care Community Coalition. "There needs to be more oversight of these purchases."

'From bad to worse'

Portopiccolo founders Simcha Hyman, 31, and Naftali Zanziper, 38, bought their first nursing home in 2016 after selling their medical supplies company to a private equity firm. They have since purchased more than 70 facilities in nine states, including 18 in Virginia. The nursing homes are run by operating companies set up and financed by the firm, including Peak Healthcare, Accordius Health and Pelican Health — a trend first reported by the business magazine Barron's.

For years, Hyman and Zanziper described Portopiccolo as a private equity firm. But that description, along with the group's promise to swiftly turn "distressed assets" profitable, was removed from the Portopiccolo website in early December after inquiries from The Washington Post about the firm's nursing home acquisitions.

Collins said the label "private equity" — which typically describes groups that raise funding from private investors — is inaccurate. He declined to explain why the group described itself that way for months, including in news releases, and still does on its LinkedIn page.

Atul Gupta, a professor of health-care management at the Wharton School at the University of Pennsylvania, said it is possible Portopiccolo is trying to rebrand itself because of the increasingly negative stigma tied to private equity groups — which have been criticized for slashing costs at nursing homes, then selling them off to new owners. Studies, by Gupta and others, show that private equity ownership correlates with declines in staffing and quality of care.

Collins declined to say how many facilities Portopiccolo owns, how many it has sold or how much the firm has profited. Neither Peak Healthcare nor Accordius Health responded to multiple requests for comment.

An analysis of federal data shows that nearly 70 percent of facilities Portopiccolo owned before the pandemic have Medicare ratings of one or two stars out of five — based on patient-care metrics such as staffing ratios and infection control.

Two Portopiccolo facilities last month were placed in a federal monitoring program for having "a history of serious quality issues"; two others were listed as candidates because of severe deficiencies. Prior to the pandemic, the firm's facilities in North Carolina were fined more than $480,000 for violating state and federal rules, federal data shows.

One facility placed in the monitoring program was the Citadel Salisbury, a one-star nursing home in Salisbury, N.C., where more than 150 staff and residents have contracted the virus, according to state data. Employees and residents alleged in a lawsuit filed in Rowan County Superior Court that Portopiccolo, which bought the facility from Genesis HealthCare on Feb. 1, left the nursing home woefully unprepared for the pandemic.

Employees testified in sworn affidavits that managers from Accordius, the operating group, prohibited staff from wearing masks in March, saying that doing so would scare residents. Nurses sometimes had to care for more than 50 residents at a time, employees alleged.

The lawsuit asks that the facility be required to improve conditions or be closed or put under new ownership. But lawyers for Portopiccolo asserted that staffing and equipment have been adequate. Hyman, Zanziper and Accordius executives sought to downplay their role at the Citadel, claiming in a motion to dismiss that daily operations were the responsibility of staff on site.

At the same time, Portopiccolo sued the families in federal court, arguing that they had signed agreements that preclude litigation against the nursing home.
Such arbitration clauses have become increasingly common at for-profit nursing homes, studies show, and have been criticized by consumer advocates as well as lawmakers as a way for facilities to avoid accountability. Biden said he wants to restore an Obama-era ban on the practice that was overturned by the Trump administration.

In June, North Carolina officials identified a slew of violations at the Citadel that they said placed residents in "immediate jeopardy," including a systemic failure to control infection and failing to inform the families of those who tested positive. Some found out their relatives had the virus from an emergency room physician. One man said he learned his aunt had died only when a funeral director called, asking what to do with her body.
Two hundred miles away in Virginia, staff shortages at Accordius Health in Harrisonburg were so dire before the pandemic that residents sometimes went days without showers, inspection records show.

"This place has gone from bad to worse," one resident told an inspector. "They cut costs at our expense."

After Accordius took over the facility in 2019, Ruth Simmers-Domzalski said, she noticed fewer staff members tending to her mother-in-law, Mary Domzalski, whose family twice found her lying on soiled bedsheets. On April 6, the facility held a hallway dance party where residents interacted without masks.

Domzalski, 88, attended. Three weeks later, she died of covid-19.

When asked about the event, Collins said the dance party did not conflict with federal guidelines at the time. CMS said on April 2 that all nursing home residents should cover their noses and mouths while interacting with staff; nearly a month before, it told facilities to cancel all group activities.

Tumultuous takeovers

Portopiccolo declined to say how many nursing homes it has bought during the pandemic, but The Post used CMS records to identify at least 22 facilities — eight in Maryland — that reported that Hyman and Zanziper had become owners since April.

Three of the Maryland facilities were bought from Genesis HealthCare, one of the largest skilled-nursing operators in the country. Amid plummeting occupancy rates and ballooning expenses, Genesis told stockholders this year that the firm would "improve its liquidity position" by selling off nearly two dozen of its roughly 400 nursing homes.

One was the Sligo Creek Center in Takoma Park, Md., where Pearthree, 59, worked part time as a social worker.

She had spent 18 years full time at another Genesis nursing home, the Fox Chase Rehabilitation Center in Silver Spring, leaving months after Portopiccolo bought it in 2019.

That sale was a "nightmare," said Pearthree, recalling that new managers failed to secure local suppliers, leaving employees scrambling for medication and food. One afternoon, she said, staff members were unable to access digital patient records because Peak Healthcare had not put a new software system in place.

Less than a year after she left Fox Chase, Pearthree found herself facing another Portopiccolo takeover — this time amid a pandemic.

Again, the transition was chaotic. Peak did not actively recruit employees or offer them competitive packages prior to the takeover, leading to the departure of longtime staffers, including the administrator and director of nursing, said Pearthree and a senior Sligo Creek employee who spoke on the condition of anonymity because she feared reprisals. The former administrator and director of nursing did not respond to requests for comment.

Pearthree, a graduate student who worked 30 hours a week, was told she would have to increase her hours to keep her health insurance, she and Collins said.

Pearthree and the current employee also said Peak stopped providing hazard pay for contract employees and laid off a group of nonmedical staff Genesis had assembled to take temperatures and wipe down surfaces at the onset of the pandemic.

The facility has been cited twice by Maryland regulators since Peak took over, state inspection records show — in June for failing to test all residents and staff, and in August for failing to consistently inform family members of viral outbreaks.

Collins said staffing gaps were part of a nationwide shortage of nursing home workers and disputed the accounts from Pearthree and the current employee, saying supplies at both Sligo and Fox Chase were adequate and benefits were fair.

Eleven workers at three other Maryland nursing homes acquired by Portopiccolo during the pandemic said they lost paid time off and were offered more limited insurance packages. One worker who has asthma and high blood pressure said her bimonthly health insurance co-pay increased from $67 to $113 when Peak took over.

At Peak Healthcare Chestertown, on Maryland's Eastern Shore, employees said the company offered a more limited benefits package than the facility's previous owners, Autumn Lake, including less paid time off for new employees and no paid time off on major holidays.
The company scrimped on supplies, including cutlery, cleaning materials and clothing for residents, said employees at three facilities, who also spoke on the condition of anonymity out of fear of retribution.

Three employees at another facility said nurses have had to use hand soap to clean residents and rip up towels or bedsheets to dry them off.

"We risk our lives every day, and we don't have proper supplies," said one geriatric nursing assistant who brings her own gloves to work. "At what point do we put the patients first?"

Collins denied there were shortages, adding that at Chestertown, the budget for supplies had actually increased. He also denied that employees lost time off to which they were entitled, but said he could not address specific claims without knowing the names of the employees.

Reducing operating costs appears to be part of Portopiccolo's business strategy, according to documents reviewed by The Post. In 2019, while acquiring three nursing homes in North Carolina, the group said it expected to save $360,000 by lowering expenses associated with employee benefits and insurance and $410,000 by cutting equipment and transportation costs. These measures, outlined in a mortgage loan contract, had allowed Portopiccolo to save more than $50 million across 37 facilities. Collins said Portopiccolo has invested more than $6.7 million to purchase cleaning supplies and protective equipment since the start of this year. In comparison, Genesis, which operates about three times as many nursing homes, said that as of September, it had spent about $40 million more than normal on cleaning supplies and protective equipment.

Little government scrutiny

A recent study by the Long Term Care Community Coalition identified 15 states as having some good oversight practices for nursing home purchases, including requiring companies to disclose what other assets they own. Of the nine states in which Portopiccolo operates, none made the list.

"If your facilities in other states have very low staffing or a history of citations, you should not be allowed to purchase another one," said Mollot, executive director of the coalition. "But states have a very hands-off approach to anything that happens outside their borders."

Maryland Department of Health spokesman Charles Gischlar said the agency saw "no reason to change" the way it tracks shifts in nursing home ownership during the pandemic.

The Maryland Health Care Commission, another entity meant to oversee the sale of nursing homes, last year started asking prospective owners to affirm that they have not been convicted of a felony within the past 10 years or penalized more than $10 million because of their ownership of nursing homes.

But this requirement, which was designed "to keep out poor performers," has not deterred a single transaction, said Paul Parker, a director at the commission.
For each facility that Hyman and Zanziper bought in Maryland, they declared to state regulators that they would not make substantive changes to services, staffing or bed ratios. State officials did not respond to questions asking how they ensured this would be true.

Gupta, the Wharton professor, said there should have been a moratorium on nursing home sales when the pandemic started because the changes that follow any acquisition can hamper a facility's pandemic response.

But federal and state lawmakers never considered such a move.
"Nobody knew what was going on, nobody was in control," Gupta said.
Joani Latimer, Virginia's long-term-care ombudsman, said her office has been concerned by Portopiccolo's pattern of buying facilities with low CMS ratings. Such facilities need more investment — not less — for conditions to turn around, she said.
"It's not a process that you can just streamline to machine-like efficiency," she said. "These are human needs with human challenges."

Officials at the Virginia Department of Health, however, said they did not pay particular attention to Portopiccolo's acquisition this year of Accordius Health at Courtland in Southampton County and Accordius Health at Waverly in Sussex County.
Such deals are "a business decision between the parties involved," said Kimberly Beazley, director of the state Office of Licensure and Certification. "And we do not regulate business decisions made by facilities."

Weeks with no hot water

Multiple employees at Portopiccolo-owned facilities, including one who worked in the kitchen at Chestertown, said their new managers had so much trouble filling staffing gaps this spring that employees were asked to work after learning they had the virus.
"It was a disaster," said the Chestertown employee, who said she tested positive May 15 and declined when asked to come to work three days later. "People were still testing positive, and we were being asked to reapply for our jobs because this new company was coming in."

Kent County Health Officer William Webb said local officials intervened that month after learning that a different employee at the facility who also had coronavirus was still working. "It was very concerning to me at the time, and we made sure to put a stop to it," he said.

The facility's water heater was broken from July to September, which meant there was no hot water for dishes or hand-washing. State inspectors fined the facility $730,000 for not fixing or reporting the problem, which they said posed "immediate jeopardy" to residents' health. Collins said the firm is disputing the fine.

Webb said Peak's decision not to promptly replace the water heater was "especially difficult" because the facility had seen scores of coronavirus cases and more than a dozen deaths in April and May. "If you're in the business," he said, "[you know] ample hot water is the core of any infection prevention program."

When Peak took over managing the facility, roommates Patricia Sparkman, 82, and Brenda Middleton, 79, were isolated in their ground-floor room after testing positive for the virus.

Sparkman said in an interview that staff members left after the transition. Those who remained seemed less able to help, she said, including with basic tasks like bringing her water.

Middleton's daughter, Tina Hurley, said the family moved Middleton a few months later to Peak Healthcare at Denton, about 30 miles away, so they could visit more frequently. But that facility had also been acquired by Portopiccolo on May 1.

Hurley said her mother is rarely checked on in Denton and has fallen several times while trying to get things for herself. At one point, she added, Middleton injured her leg but went without care from the facility's doctor for days.

"I wouldn't have brought her here if I knew how bad it would be," Hurley said.
For Pearthree, the social worker at Sligo Creek, the breaking point came when she was asked to transfer back to Fox Chase in mid-May as director of social work. By then, Peak was operating both facilities.

She found residents she had known for years alone in their rooms, she said, confused and despondent in some cases. Relatives of those who died, she added, were given little information about how or when their loved ones had gotten sick.

When she raised concerns with managers, she said, she was brushed aside.
"The families felt betrayed by us," Pearthree said. "And that was the part that overwhelmed me." She sent a resignation letter in June.

Collins said Fox Chase administrators were unaware of her resignation and said Pearthree was terminated after she stopped coming to work. But the executive director of Fox Chase left Pearthree a voice mail on June 3 acknowledging her resignation and pleading with her to return.

"You do your job great and I like that," director Eli Loloyan said in the voice mail, which Pearthree shared with The Post. Loloyan did not respond to an email requesting comment.

Collins said that Portopiccolo leaders see their employees as "health care heroes."
"We remain committed to putting care first," he added.

Days before Thanksgiving, as all but one of the firm's Maryland facilities reported new coronavirus outbreaks to the state, the firm closed on deals worth $37.7 million to acquire four more facilities in Florida.

Douglas MacMillan contributed to this report.

Private Equity-Backed Nursing Homes Are Bad for Patients, Research Shows

Researchers at New York University and the University of Pennsylvania say that staff cuts appear to be the cause of declines in patient health.

Alicia McElhaney
March 11, 2020
https://www.institutionalinvestor.com/article/b1kq79bp4nv79t/Private-Equity-Backed-Nursing-Homes-Are-Bad-for-Patients-Research-Shows

Private equity investments in nursing homes could spell trouble for patients and staff, according to new research.

Staff cuts at private-equity owned nursing homes appear to be responsible for declines in patient health and compliance with care standards, according to a paper published in February by researchers at the University of Pennsylvania, the University of Chicago, and New York University.

The research is particularly notable as nursing homes nationwide are struggling to handle coronavirus infections. Although none of the major nursing homes affected at present are private-equity owned, that could change as the virus rapidly spreads.

Nursing homes are a large sector in healthcare in the United States, according to the paper, "with $166 billion in spending in the U.S. in 2017 and projected to grow by about 50 percent to $240 billion in 2025."

The sector is dominated by public spending, with public programs accounting for 85 percent of insurer payouts, the paper said. This is compared with 55 percent for hospitals and 45 percent for physician services.

This dearth of public spending is one of the major reasons for the declines in care standards at nursing homes, according to one of the paper's authors, Sabrina Howell, who is the assistant professor of finance at New York University's Stern School of Business and a faculty research fellow at the National Bureau of Economic Research.

"When you have a lot of government subsidies in imperfect markets, coupled with product and price opacity, the drive to increase profits and firm value is not as well-aligned with consumers," Howell said by phone Wednesday.

Howell contrasted this with a consumer buying a hamburger at McDonald's.

"You are the source of the revenue and you consume the hamburger," she said. "The revenue and the consumer are closely tied together. In the case of nursing homes, you have the separation of care and revenue."

Howell — along with her fellow researchers, Atul Gupta, Constantine Yannelis, and Abhinav Gupta — used several sources of data to compile the research. These included data from the Center for Medicare & Medicaid Services, a proprietary list of deals in the "elder and disabled care" sector compiled by Pitchbook, a list of deals from market intelligence firm Levin Associates, and other data found via internet searches.

The group analyzed a total of 119 unique private equity deals starting in the year 2004, the paper showed, with the authors noting that it was difficult to determine whether they comprehensively captured private equity activity in the sector during the period. The biggest nursing home investors during that time period were Onex

Partners, with 325 investments; Hillview Capital, with 162 investments; the Carlyle Group, with 140 investments; and Stockwell Capital, with 140 investments.

The research showed that private equity-owned nursing homes were able to fill more beds than their peers, as patient volume at these acquired facilities increased by eight percent. At the same time, nursing staff declines following buyout deals. Total nursing staff hours fell by 1.4 percent, the research showed.

These measures combined resulted in the addition of nearly $770,000 to the average private equity-owned nursing home each year, according to the paper.

As this all happened, though, five-star ratings from the Center for Medicare & Medicaid Services declined. These ratings measure "non-compliance with federal guidelines on quality of care, facility infrastructure, managerial quality, and patient rights; nurse staffing compliance with guidelines; and patient health outcomes computed using administrative data," according to the paper.
On average, the five-star rating following buyouts declined by 7.7 percent of the mean rating, according to the paper. Another quality measure, re-hospitalization rate after 30-days, increased by 0.5 percentage points post-buyout, the paper said.

"The particular incentives of PE managers appear responsible, as quality does not decline after acquisitions by non-PE corporates and chains," the authors wrote.

The New York Times

Push for Profits Left Nursing Homes Struggling to Provide Care

Some with private equity owners, focused on making money, were particularly ill equipped and understaffed to handle Covid-19.

By Matthew Goldstein, Jessica Silver-Greenberg and Robert Gebeloff

May 7, 2020

When the pandemic struck, the majority of the nation's nursing homes were losing money, some were falling into disrepair, and others were struggling to attract new occupants, leaving many of them ill equipped to protect workers and residents as the coronavirus raged through their properties.

Their troubled state was years in the making. Decades of ownership by private equity and other private investment firms left many nursing homes with staggering bills and razor-thin margins, while competition from home care attendants and assisted-living facilities further gutted their business. Even so, many of their owners still found creative ways to wring profits out of them, according to an analysis of federal and state data by The New York Times.

In many cases, investors created new companies to hold the real estate assets because the buildings were more valuable than the businesses themselves, especially with fewer nursing homes being built. Sometimes, investors would buy a nursing home from an operator only to lease back the building and charge the operator hefty management and consulting fees. Investors also pushed nursing homes to buy ambulance transports, drugs, ventilators and other products or services at above-market rates from other companies they owned.

These strategies paid off handsomely for investors, but they forced nursing homes to skimp on quality. For instance, for-profit nursing homes — roughly 70 percent of the country's 15,400 nursing homes and often owned by private investors — disproportionately lag behind their nonprofit counterparts across a broad array of measures for quality, The Times found. Also, they are cited for violations at a higher rate than nonprofit facilities.

The toll of putting profits first started to show when the outbreak began. No nursing home could be completely prepared for a pandemic as devastating as Covid-19, but some for-profit homes were particularly ill equipped and understaffed, which undercut their ability to contain the spread of the coronavirus, according to interviews with more than a dozen nursing home workers and elder-care lawyers.

The Burbank Rehabilitation Center has a one-star rating — the lowest ranking in the federal government's five-star rating system for nursing home care. Taylor Glascock for The New York Times

The pandemic "has brought a lot of these issues to the forefront," said David Grabowski, professor of health care policy at Harvard Medical School. "With this huge health crisis and economic downturn, we are all of a sudden seeing how risky it is to have the ownership split between the real estate side that has the most valuable asset and the operator, who is left with much less."

Controlling the real estate gives investors, including real estate investment trusts, leverage to raise rents. Separating the real estate from the operating business can also help limit liability in wrongful-death lawsuits, because the latter typically has little cash and few assets.

"The structure is designed to keep liability on the company that has the fewest assets and the most debt," said William Murray, a plaintiffs lawyer who specializes in suing nursing homes.

Private equity firms and other investors first gravitated to nursing homes more than a decade ago, betting that aging baby boomers would create demand irrespective of economic cycles and counting on a steady stream of Medicare and Medicaid reimbursements.

A recent report on private equity buyouts of nursing homes, which studied 119 transactions from 2000 to 2017, said private equity owners tended to put "high-powered profit maximizing incentives" first. The researchers found that after private equity stepped in, nursing staff hours per patient fell 2.4 percent, and staff quality as measured by federal regulators fell 3.6 percent.

"The quality of care declines after the private equity buyout, which seems to reflect staffing cuts," said one of the report's authors, Sabrina T. Howell, assistant professor of finance at New York University's Stern School of Business.

Nursing Home Quality Ratings

Facilities operated by non profit entities are far more likely to score 4 or more stars on the federal government's five-star rating system, especially on metrics related to staffing levels.

	Overall Rating	Staffing Rating
Non Profit, Faith-related	68%	65%
Non Profit, Secular	63%	58%
Government	52%	48%
For Profit, Corporation	39%	23%
For Profit, LLC/Other	36%	20%

Source: CMS Nursing Home Compare • By Karl Russell

Ruthie Moore, a 68-year-old certified nursing assistant who works at Burbank Rehabilitation Center, a for-profit nursing home in Illinois owned by a prominent local investor, said she had been overwhelmed with patients even before the pandemic. The facility provided below-average staffing that was also highly inconsistent, records show. On some days, there was one certified nursing assistant for every 10 residents, according to payroll records. On other days, there was one for every 19.

Ruthie Moore, a certified nursing assistant who works at Burbank.

Things got much worse when the virus hit, Ms. Moore said. Residents, including ones with possible symptoms of Covid-19, were mixing with other patients. Personal protective equipment was scarce, and members of the staff were told to wear the same mask for up to two weeks, she said.

Six residents of the Burbank facility have died of Covid-19 and 41 others have fallen sick, according to local reports citing state health officials. The facility gets a one-star rating — the lowest ranking in the federal government's five-star rating system for nursing home care. In a document filed with federal regulators for 2018, Burbank's operator listed assets of $4.4 million and liabilities of $10 million.

The Coronavirus Outbreak ›

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"Had we had more staff and protective equipment, there would have been fewer deaths," said Ms. Moore, who recently began showing symptoms and is awaiting a diagnosis.

Burbank's owner is a Chicago-area investor, William Rothner. He and his family run a network of companies that have stakes — owning a piece of either the operating business or the building — in at least 60 nursing homes across the country, according to disclosures and other documents. Companies owned by Mr. Rothner also provide ventilators, pharmaceuticals, management services and payroll services to many of those facilities, according to financial filings with Illinois.

Most of the nursing homes in which Mr. Rothner has an interest in Illinois reported a net loss from operations in 2018, regulatory filings show. For instance, the Parc at Joliet, which has had at least seven coronavirus-related deaths, reported an operating loss of $714,000. But other companies that Mr. Rothner owns charged the home $1.4 million in rent as well as $138,000 in professional fees and $335,000 in fees to an affiliated pharmaceutical supply company, among other charges, according to those filings.

Mr. Rothner said in an email that there had been no "recent citations for inadequate staffing" and "no valid assertions or claims on inadequate P.P.E." at Burbank. He also said his firm, Altitude Health Services, monitored management fees taken by the separate firms that run the nursing homes to make sure they were not excessive. He added that his firm provided ancillary services at competitive prices that were often lower than other companies and complied with all regulations.

The Coronavirus Outbreak ›

Let Us Help You Better Understand the Coronavirus

- Are coronavirus case counts rising in your region? Our maps will help you determine how your state, county or country is faring.
- Vaccines are rolling out and will reach many of us by spring. We've answered some common questions about the vaccines.
- Now that we are all getting used to living in a pandemic, you may have new questions about how to go about your routine safely, how your children will be impacted, how to travel and more. We're answering those questions as well.
- So far, the coronavirus outbreak has sickened more than 106 million people globally. More than two million people have died. A timeline of the events that led to these numbers may help you understand how we got here.

Mr. Rothner's company also owns the buildings for two nursing homes in Sussex County, N.J., where more than 60 residents have died of Covid-19 and where 17 of the bodies were hidden in a small on-site morgue. His company leases the facilities for about $8 million a year to Alliance Healthcare, which runs the nursing homes.

On Thursday, federal health regulators said they had fined the operator $220,000, and that the fine could keep growing until the problems are remedied. Specifically, regulators found that one of the facilities was not following infection control safety practices and guidance recommended by federal officials during the pandemic.

Medical workers with a patient from Andover Subacute and Rehabilitation Center. The building is owned by Altitude Health Services. Eduardo Munoz Alvarez/Getty Images

The nursing home industry is pushing for broad immunity in the wake of the pandemic. So far, 16 states, including New York, New Jersey, Michigan, Georgia and Illinois, have already approved measures granting immunity from lawsuits — a development that worries longtime critics of the industry.

“A lot of these nursing homes are trying to get immunity because of Covid, and that is really scary because some of these companies are so negligent,” said Charlene Harrington, a professor emerita of nursing at the University of California, San Francisco. Many for-profit nursing home operators report meager profits only because income is “drained off in their management contracts,” she said.

Not all nursing home buyouts have worked well for private equity firms. In 2018, HCR ManorCare, which was the nation’s second-largest nursing home operator, filed for bankruptcy protection — a decade after the Carlyle Group, a big private equity firm, acquired it. When it filed, ManorCare had $7.1 billion in debt, and its facilities had racked up numerous citations for failure to treat infections and properly monitor residents’ medications, records show.

Years before ManorCare declared bankruptcy, Carlyle sold the homes for $6.1 billion to a real estate investment trust, a move that largely wiped out the debt of the nursing homes. ManorCare then rented many of those facilities.

Serious Deficiencies

Nursing homes flagged as "Special Focus" facilities have persistently under-performed in government quality metrics. Regulators also flag homes that have recently been cited for patient abuse. These situations are rare, but are more common among for-profit entities.

	Special Focus Facility	Cited for Abuse
Non Profit, Secular	1.5%	3.0%
Non Profit, Faith-related	2.2%	4.2%
Government	2.3%	5.3%
For Profit, Corporation	4.0%	5.7%
For Profit, LLC/Other	4.5%	6.0%

Source: CMS Nursing Home Compare • By The New York Times

In November, Senators Elizabeth Warren of Massachusetts and Sherrod Brown of Ohio sent letters to four private equity firms, including Carlyle, seeking information about their involvement with nursing homes. Carlyle, in its response to the two Democrats, said that patient care had not been affected during the bankruptcy and that all employees were paid. A spokeswoman for Carlyle, which no longer owns any nursing homes in the United States, declined to comment.

A representative for Ms. Warren said that only Formation Capital, an Atlanta private equity firm that specializes in nursing home investments, hadn't responded.

Formation led the buyout of Genesis Healthcare, the nation's largest nursing home operator, in 2007; Genesis returned to the public markets seven years later. The private equity firm has a consulting arm that sells services to nursing homes, including some that Formation owns or has a financial interest in.

Formation has said in a filing that it had policies "that are intended to mitigate this potential conflict of interest." The firm did not respond to requests for comment.

SB704_FAV_AlzheimersAssociationMD.pdf
Uploaded by: Colchamiro, Eric
Position: FAV

alzheimer's association®
1850 York Road, Suite D
Timonium, MD 21093

Testimony of the Alzheimer's Association Greater Maryland and National Capital Area Chapters
SB 704 – Nursing Homes - Transfer of Ownership - Site Visits and Surveys
Position: Favorable

Chair Kelley and Vice-Chair Feldman,
I am Eric Colchamiro, Director of Government Affairs for the Alzheimer's Association in Maryland, and here to ask for your support of SB 704. This legislation requires the Maryland Department of Health's Office of Healthcare Quality (OHCQ) to conduct site visits and conduct full surveys—within 1, 3, and 6 months after the date of transfer, of a licensed nursing home—if the ownership of the nursing home is transferred to a person that does not own or operate another nursing home in the State at the time of the transfer.

The Alzheimer's Association, a member of Maryland's Oversight Committee for the Quality of Care in Nursing Homes and Assisted Living facilities, has long been concerned about the long-term care industry. Over 40 percent of the residents in nursing homes and assisted living facilities have Alzheimer's or another dementia. More than 95 percent of those residents have another chronic condition; their care is complicated. It is essential that all long-term care facilities have the means to provide good care for these residents.

This issue of for-profit ownership of nursing homes gained attention regionally following a December 2020 Washington Post article, which told the story of Portopiccolo, an investment firm which bought over 20 properties in our region to make a profit. And it speaks to a systemic issue; long-term care facilities—and especially nursing homes—are moving away from being small, family owned businesses. They are managed by corporations, and transfers of nursing home licenses happen frequently; 24 in 2019, and 13 in 2020.

A May 2020 New York Times article found that roughly 70 percent of the U.S.'s 15,400 nursing homes are owned by private investors. In particular, real estate investment trusts (REITs)—by definition, a company that owns and, in most cases, operates, income producing real estate— have dramatically expanded their ownership of nursing homes in the U.S. since 2008, when Congress passed legislation that allowed REITs to buy health care facilities including nursing homes. Yet these for-profit companies, including REITs, disproportionately lag behind their nonprofit counterparts in the quality of care they provide.

This bill puts a straightforward system into place. It says that the current system, where out-of-state owners have to solely fill out a disclosure form to the Maryland Health Care Commission, is not working. The bill instead puts a system into place where OHCQ is required to proactively check on these facilities, for owners that have not operated in our state. This is not a huge burden on OHCQ; yet the benefits are significant to ensure a better standard of care, and to put people over profits.

After receiving a complaint, OHCQ went in to Portopiccolo's Peak Healthcare facility in Chestertown. Their inspection results found multiple "immediate jeopardy" situations, where the facility was at the risk of being closed immediately. The facility was found to be not in substantial compliance with Federal requirements regarding maintaining essential equipment, dietary services, infection prevention and control, and facility administration. The facility was found to have not appropriately documented a hospital transfer. The facility was found to have not reported a sexual abuse allegation. There are over 70 pages of findings; yet the conclusion important for today is that we can do more to prevent the next Portopiccolo.

We need to create a more significant infrastructure for how we evaluate the business of long-term care in Maryland. The pandemic, and its disproportionate impact on long-term care facilities, has heightened the importance of this issue. We need MHCC to look further into whether new owners of facilities that care for our greatest generation have had significant violations. We need OHCQ, empowered with more funding, to help seniors more. And we need this legislation to put a standard in place, so real estate companies are not in the business of flipping nursing homes to make money.

I ask for a favorable report on this legislation.

REFERENCES:

Tan, Rebecca and Chason, Rachel, “An investment firm snapped up nursing homes during the pandemic. Employees say care suffered.” https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html. 20 December 2020.

Goldstein, Matthew, et. al. “Push for Profits Left Nursing Homes Struggling to Provide Care.” https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html. 7 May 2020.

State of Maryland - Office of Healthcare Quality. “peak chestertown 9.30.20 idr results state form2567 - Redacted-Final.pdf.” Personal Communication with the Office of Senator Pamela Beidle. 11 January 2020

LeadingAge Maryland - 2021 - SB 704 - NH Out of St
Uploaded by: Greenfield, Aaron
Position: FAV

6811 Campfield Road
Baltimore, MD 21207

TO: The Honorable Delores Kelley
Chairwoman, Finance Committee

FROM: LeadingAge Maryland

SUBJECT: Senate Bill 704, Nursing Homes – Transfer of Ownership – Site Visits and Surveys

DATE: February 25, 2021

POSITION: **Favorable**

LeadingAge Maryland supports Senate Bill 704, Nursing Homes – Transfer of Ownership – Site Visits and Surveys.

LeadingAge Maryland is a community of not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. We represent more than 120 not-for-profit organizations, including the vast majority of CCRCs in Maryland. Our mission is to expand the world of possibilities for aging in Maryland. We partner with consumers, caregivers, researchers, faith communities and others who care about aging in Maryland.

This bill requires the Maryland Department of Health to conduct site visits and conduct full surveys, within 1, 3, and 6 months after the date of transfer, of a licensed nursing home if the ownership of the nursing home is transferred to a person that does not own or operate another nursing home in the State at the time of the transfer.

Ensuring quality care in nursing homes and other care settings is of paramount importance. We support the intent of this bill and would also suggest that the Maryland Health Care Commission (MHCC) and Office of Health Care Quality conduct a study and convene a work group to discuss how the state of Maryland can best understand, prevent, and respond to potential quality issues related to transfers of ownership. We understand from discussions with the MHCC that there may be Interstate Commerce Clause factors that would prohibit the state from only imposing additional oversight on out-of-state buyers and would encourage the Sponsor to explore this potential conflict further.

There are certainly situations where a nursing home may be experiencing financial trouble, and the transfer of ownership protects both the residents and staff of the home from having to move or seek employment elsewhere. This may be even more common as we enter a post-COVID era. There should be a clear process and standards in place for ensuring that buyers are capable of and prepared to effectively manage nursing home operations.

A recent Health Affairs article details practical solutions that could "improve nursing home ownership and financial transparency in the post COVID-19 period". Many of these solutions require a collaborative process between the federal government through CMS and the individual state. While LeadingAge Maryland is an Association of non-profit providers, about 70 percent of nursing homes are operated by for-profit corporations. 24% of those facilities are not-for-profit and 7 percent are government-owned, while 58 percent are operated by corporate chains. An increase in investor-owned regional and national chains has led to complex organizational structures. Private equity firms own about 11 percent of nursing facilities nationwide as investments have increased by $5.3 billion since 2015, compared to $1 billion between 2010 and 2014. [1]

As noted in this article, Real estate investment companies (REITs) have dramatically expanded their ownership since the Housing and Economic Recovery Act of 2008 allowed REITs to buy health care facilities. Reportedly, these companies lease their facilities and property to nursing home operating companies at sometimes exorbitant rents. Many nursing homes separated their operating companies from their asset and property companies in an effort to shield parent companies from liability and reduce regulatory oversight. By contracting with related-party individuals and organizations (which have the same owners) for services that include management services, nursing and therapy services, and lease agreements and loans, companies are able to legally pull money out of the nursing homes as expenses and hide the profits through these third-party contractors. As many as half of all nursing homes use separate management companies that are owned by the same owner or separate owners.

Some of the solutions suggested in the Health Affairs article include steps that Center for Medicaid and Medicare Services (CMS) should take. Briefly, here are some of the key points that may be relevant to these bill discussions:

[1] These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency In The Post COVID-19 Period, Health Affairs, February 11, 2021

- A prior approval process for changes in ownership or management. The article suggests that CMS should regulate this and establish a centralized application unit for ownership and management evaluations, with processes delineated to work with state agencies, state attorneys general, and the DOJ.
- Minimum criteria for the purchase (or change of ownership) or management of any nursing home.
- Criteria that prevent individual or corporate owners from purchasing, operating, or managing additional facilities if they have a history of owning or operating other facilities with chronically low staffing and poor-quality care in any state.
- Criteria that would prevent companies with corporate settlements for fraud or for "worthless services" from purchasing new nursing homes for five years.
- CMS's Care Compare website should present information that is searchable not only by individual facilities but also by chain and common ownership, and an annual compendium should be published on the quality of care in nursing home chains.

In closing, we applaud the Sponsor's goal to ensure quality care in nursing homes through greater oversight and standards of new owners and operators within the state.

For these reasons, LeadingAge Maryland respectfully requests a favorable report for Senate Bill 704.

For additional information, please contact Aaron J. Greenfield, 410.446.1992

Alice Houchens Testimony Senate Bill 704 .pdf

Uploaded by: Hochens, Alice

Position: FAV

Testimony of Alice Houchens in SUPPORT of Senate Bill 704: Nursing Homes – Transfer of Ownership – Site Visits and Surveys

Members of the committee, my name is Alice Houchens and I live in West Baltimore. I have worked for 32 years in the housekeeping department of a Baltimore-area nursing home and am a proud member of 1199SEIU. I like my job and the residents become like family to us.

The nursing home where I work has been sold twice. Each time, we have had to deal with uncertainty about what the new owners would do. Would we keep our jobs? Would we keep the same pay rate and hours? What would happen to our benefits?

For the residents, we were concerned about whether the new owner would follow the regulations about patient care.

I believe House Bill 674 is a good idea that would make sure the state is carefully monitoring any company that buys a nursing home in Maryland from out of state. The bill would require at least three state inspections in the first six months, and that would be a smart step.

Inspections would ensure that the staff has the right equipment, the facility has the correct amount of staffing to take care of the residents properly, including enough geriatric nursing assistants and dietary and housekeeping staff.

Having the state come in to document a new owner’s practices would help protect our residents and staff.

We care for elderly people who are extremely vulnerable. This legislation would help the state protect them when a nursing home is sold. I urge you to support Senate Bill 704.

Thank you.

SB704_FAV_TinaHurley.pdf
Uploaded by: Hurley, Tina
Position: FAV

Chair Kelley and Vice Chair Feldman,

My name is Tina Hurley, and I am the daughter of Brenda Middleton, who is a patient at Peak Health Care in Denton, MD. After I placed my mother at Peak Health Care, I learned that it was one of 20 properties in our region purchased by Portopiccolo, a New Jersey based investment firm.

I am here today to tell the same story that I told to the Washington Post, in a December article they did on this company, and how they buy facilities to try to make money off people like my mother. I can share that my mother was brushed off or ignored at Peak multiple times. My mother has a history of DVTs and factor 5, and at one point, her roommate there fell onto my mother's leg which created a huge hematoma. I talked to her doctor several times about sending her to the hospital, but her doctor dismissed the request. Over a period of time, my mother ended up with cellulitis, major infection, and the doctor still prolonged getting her to the hospital. After a painful six weeks, she had to get a pick line put into her upper chest to get antibiotics into her blood stream. To this day, her leg is still swollen with lots of fluid and is a discolored a deep purple.

About three weeks ago, my mother's roommate tested positive for COVID19, and in response was told to just stay there in the same room, but put on a mask. Staff came into the room three or four days later and finally moved my mother into a different room for about four days. They then proceeded to move her back into her old room.

I am here today because the big business that runs my mom's facility, can do a lot better for my mom – even if COVID wasn't happening. I ask for you to please support this legislation today, SB 704.

I sincerely hope that writing this letter and communicating these conditions and events will not prompt any retaliation or willful neglect of towards my mother.

Sincerely,

Tina Hurley

SB0704_FAV_LifeSpan_ Transfer of Ownership.pdf
Uploaded by: Kauffman, Danna
Position: FAV

LifeSpan Network
Keeping You Connected…Expanding Your Potential…
In Senior Care and Services

TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Pamela Beidle

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
410-294-7759

DATE: February 25, 2021

RE: **SUPPORT** – Senate Bill 704 – *Nursing Homes – Transfer of Ownership – Site Visits and Surveys*

On behalf of the LifeSpan Network, the largest and most diverse senior care provider association in Maryland representing the continuum of senior care, including nursing homes, we support Senate Bill 704. Senate Bill 704 requires that, if ownership of a licensed nursing home is transferred to a person that does not own or operate another nursing home in the State at the time of the transfer, the Department must make site visits and conduct a full survey of the licensed nursing home at one month, three months and six months after the date of the transfer.

There has been growing concern regarding the increase in investor-owned organizations purchasing nursing homes.[1] Often these purchases result in complex ownership structures where the operating company is separate from the property company. Federal law requires Medicare-reimbursed nursing homes to report both direct and indirect ownership over five percent to Medicare's Provider Enrollment, Chain, and Ownership System database. Maryland's reporting is more stringent and requires disclosure of ownership of two percent or more. However, the federal government does not have specific standards for states to use for approving changes in ownership or management.

Senate Bill 704 seeks to address the issue of change of ownership by ensuring that, once a Maryland nursing home is transferred to an out-of-state entity, there is no diminution of care or other reduction in services through the survey process. We urge a favorable report.

[1] The federal the Housing and Economic Recovery Act of 2008 allowed real estate investment trusts to buy health care facilities.

7090 Samuel Morse Drive, Suite 400, Columbia, MD 21046
410-381-1176 Fax 410-381-0240 www.LifeSpan-Network.org

SB704Testimony of ReebaMcenny .pdf

Uploaded by: Stevenson, Christopher

Position: FAV

<u>Testimony on SB704 by Reeba McEnny</u>

<u>Nursing Homes – Transfer of Ownership – Site Visits and Surveys</u>

<u>Position: Favorable</u>

Madam Chair & Members of the Senate Finance Committee:

My name is Reeba McEnny, and I live in Baltimore, Maryland. I am a Certified Nursing Assistant/Geriatric Nursing Assistant, and I am also a proud member of 1199SEIU. Come this June, I will have been a caregiver for 20 years.

I have been employed at the nursing home where I currently work for 8 years. Recently, this nursing home was sold to a new owner, one who is not based in Maryland. My co-workers and I were shocked when our facility was sold, it felt like we were the last to learn about it. Without warning, the building and our livelihoods were transferred to a new owner.

Many of us were worried about our future and the residents we cared for.

The two years that have followed since our new ownership came into effect have been chaotic. We have seen many administrators and staff come and go. We have also had to fight to maintain the wages that we were supposed to be paid under our union contract. I don't believe we would have gotten any wage increases even during the pandemic when our jobs were most hazardous, if we hadn't had a contract and the ability to fight for them together with our union.

Workers aren't the only ones affected when new owners take over a nursing home. Staffing and scheduling changes occur as well, and aides are often moved around to different units. This can upset residents, who develop relationships with their caregivers. Their family members also worry when these changes occur.

I believe that state inspections are important to make sure that we have what we need to provide the best care we can. We need the correct amount of staffing, and not just for CNA/GNAs like me, but dietary workers and housekeepers as well. Having the state come in more often during the first year of an ownership change to review the new owner's practices would be a great step to protect staff and residents.

Extra monitoring of any company that buys a nursing home in Maryland from out-of-state is a smart thing to do. I urge this committee for a **favorable report** of Senate Bill 704.

Thank you,

Reeba McEnny

Testimony-SB704-Nursing Homes – Transfer of Owners
Uploaded by: Stevenson, Christopher
Position: FAV

Testimony on SB704
Nursing Homes – Transfer of Ownership – Site Visits and Surveys
Position: Favorable

Dear Madam Chair and Members of the Senate Finance Committee:

My name is Ricarra Jones, and I am the Political Director with 1199SEIU- the largest healthcare union in the nation, where we represent over 10,000 healthcare workers in Maryland and the District of Columbia. 1199SEIU supports HB 674 and requests a favorable report by this committee.

For our members who work in Maryland's Skilled Nursing Facilities - in job titles ranging from Licensed Practical Nurses and Geriatric Nursing Assistants, to dietary and housekeeping workers – the current COVID-19 pandemic has exposed a number of vulnerabilities in our long-term care institutions. Our union has been sounding the alarm about troubling data that has been emerging in the long-term care industry as skilled nursing facilities increasingly change ownership hands to out-of-state private equity owners.

A recent article published in the Washington Post, described the failures to maintain quality standards when Maryland nursing homes were purchased by the New Jersey-based Portopiccolo Group.[1] Unfortunately, evidence is mounting that Private-equity buyouts of financially distressed nursing homes are linked to worsening staff shortages, lower quality care, poorer inspections and declines in resident health outcomes. A new paper published by researchers at New York University and the University of Pennsylvania during the height of the pandemic showed that nursing home staffing levels declined following private equity buyout deals, a trend that bodes poorly for patient quality.[2] This research is particularly troubling when we consider that many of our state's nursing homes are struggling with reduced census numbers, and are thus, appealing to out-of-state investors and operators.

Like the family members of residents in these homes, our members sometimes do not learn that their facility is changing operators until a new manager walks through the building, or a new sign goes on the door. Our members who have worked in this industry for decades are wary of

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[1] Rebecca Tan and Rachel Chason, "An investment firm snapped up nursing homes during a pandemic. Employees say care suffered," The Washington Post, December 21, 2020.
[2] See, https://www.institutionalinvestor.com/article/b1kq79bp4nv79t/Private-Equity-Backed-Nursing-Homes-Are-Bad-for-Patients-Research-Shows and https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537612

acquisitions by firms such as Portopiccolo. We know that these transfers of ownership are not seamless. From the perspective of the workers, an out of state ownership change often means that pay will be cut, benefits will be cut, and sadly, critical investments in the facility will fall short. From the perspective of the skilled nursing facility's residents and their family members, short-staffing in an industry already marked by prevalent short-staffing, will worsen.

The COVID-19 pandemic is providing our state with the opportunity to address systemic vulnerabilities in our long-term care industry. We believe that strengthening our inspection system, is a proactive step towards addressing the problems that too frequently arise when nursing homes change hands. We respectfully ask this committee for a favorable report of SB704.

Thank you,

Ricarra Jones, Political Director
1199SEIU United Healthcare Workers East

HFAM Testimony SB 704 Final.pdf
Uploaded by: DeMattos, Joseph
Position: FWA

HFAM
Health Facilities Association of Maryland
Partners in Quality Care

TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE
February 25, 2021
Senate Bill 704: Nursing Homes - Transfer of Ownership - Site Visits and Surveys
Written Testimony Only

POSITION: FAVORABLE WITH AMENDMENTS

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support with amendments for Senate Bill 704: Nursing Homes - Transfer of Ownership - Site Visits and Surveys. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers.

Our members provide services and employ individuals in nearly every jurisdiction in the state. HFAM members provide the majority of post-acute and long-term care to Marylanders in need: 6 million days of care across all payer sources annually, including more than 4 million Medicaid days of care and one million Medicare days of care. Thousands of Marylanders across the state depend on the high-quality services that our skilled nursing and rehabilitation centers offer every day.

We thank the sponsors for their leadership on Senate Bill 704. We appreciate and support the intent of this legislation, and recognize the challenge to crafting it.

It is incredibly important to understand that, under current state and federal law and regulation, the Maryland Office of Health Care Quality (OHCQ) can already visit and conduct unannounced survey inspections of nursing homes at any time, including at the frequency that would be mandated in SB 704. Existing law supports the longstanding OHCQ regulation at COMAR 10.07.02.07 that "Licensed nursing homes and any premises that an applicant for a license proposes to operate shall be open at all times to inspection by the Secretary and by any agency designated by the Secretary." The regulation goes on to specify that the surveys are unannounced. There is no limitation on number and duration.

Ownership changes of nursing homes are already tightly regulated. OHCQ has oversight over any change of ownership under COMAR 10.07.02.04B(4). It has an extensive change of ownership process with online instructions at:

https://health.maryland.gov/ohcq/ltc/docs/MDH_LTC_CHOW_Submission_Combined_Instructions.pdf.

OHCQ will also require demonstration that any change of ownership has been signed off by the Maryland Health Care Commission (MHCC) under the certificate of need (CON) process, which includes vetting of the proposed new owner. This process is detailed under the MHCC's regulations at COMAR 10.24.01.03A, which apply to any acquisition of a health care facility. For nursing homes, there is even stricter oversight under the MHCC's State Health Plan at COMAR 10.24.20. These extensive requirements were only recently updated in July 2019 through an extensive, public process.

Specifically, the MHCC process includes a requirement for disclosure "(a) The identity of each person with an ownership interest in the acquiring entity or a related or affiliated entity; (b) The percentage of ownership interest of each such person; and (c) The history of each such person's experience in ownership or operation of health care facilities." A favorable determination is required for OHCQ to act. OHCQ and the MHCC already jointly and in collaboration obtain extensive information about a new owner and OHCQ can follow up with as many unannounced surveys of the new owner's operations as it wishes.

The COVID-19 pandemic has shone a bright light on many of the trends, challenges, issues, and opportunities faced in settings across the care continuum, and specifically in nursing homes and assisted living centers. One of those trends has been the marketplace consolidation of nursing homes in Maryland, as well as in other states.

Generally speaking, about 75-80 percent of residents receiving care in any given nursing homes are long-term residents. The remaining 20-25 percent are represented by a changing group of short-term residents, each with a length of stay of less than 30 days.

To ensure continuity of care and proper financial resources, Maryland must maintain its current process for nursing home changes of ownership.

While the visits, surveys, and inspections proposed in SB 704 are allowed under current federal and state law and rule, this bill makes a linkage specifically for providers who enter the Maryland healthcare delivery system without previous ownership experience in the state.

We propose amending Senate Bill 704 to remove the 30-day required inspection. Very little can be learned about a new operator in 30 days. More than a month is needed to demonstrate performance by the new operator. However, if OHCQ wants to survey a facility sooner, it has existing authority to do so under current law.

(C) IF OWNERSHIP OF A LICENSED NURSING HOME IS TRANSFERRED TO A

PERSON THAT DOES NOT OWN OR OPERATE ANOTHER NURSING HOME IN THE STATE

AT THE TIME OF THE TRANSFER, THE DEPARTMENT SHALL MAKE SITE VISITS AND

CONDUCT A FULL SURVEY OF THE LICENSED NURSING HOME:

[DELETE: (1) WITHIN 1 MONTH AFTER THE DATE OF TRANSFER;]

[(2)] (1) WITHIN 3 MONTHS AFTER THE DATE OF TRANSFER; AND

[(3)] (2) WITHIN 6 MONTHS AFTER THE DATE OF TRANSFER.

For these reasons and with this amendment, we request a favorable report from the Committee on Senate Bill 704.

Submitted by:

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