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March 7, 2023

**TO:** The Honorable Joseline Peña-Melnyk  
Chair, House Health and Government Operations Committee

**FROM:** Office of the Attorney General, Health Education and Advocacy Unit

**RE:** HB0702 – Health Care Facilities – Nursing Homes – Acquisitions and  
Licensure: **Letter of Support with Amendments**

The Office of the Attorney General, Health Education and Advocacy Unit, writes this Letter of Support for House Bill 702 with recommendations to strengthen its intent to ensure robust review of nursing home acquisitions and transfers of interest.

This bill amends the Health General Article, Title 19-Health Care Facilities, to add to the Maryland Health Care Commission (MHCC) duties relating to nursing homes. MHCC would be required, when evaluating a notice of acquisition or transfer of interest of a nursing home, to provide written findings and recommendations, including the basis for such recommendation, to the MDH Office of Health Care Quality (OHCQ), including CMS established quality ratings of other facilities owned by the purchaser and tax identification and CMS certification numbers of the purchaser. The bill further requires the Secretary of Health to consider the findings and recommendations provided by MHCC to the OHCQ before taking any action regarding licensure to operate the nursing home.

The HEAU supports the intent of this bill because it would serve Marylanders to have MHCC and MDH develop a robust process to vet operators of nursing homes at the change of ownership stage. However, limiting the review to the CMS established quality ratings omits many other sources of discoverable information about the quality of care nursing home operators offer in other facilities, especially those operated outside the

State.<sup>1</sup> A number of research studies have shown the quality of care provided by a nursing home can be related to its ownership characteristics,<sup>2</sup> so a robust evaluation of potential nursing home owners/operators by State regulators is vital to protecting disabled and aged Marylanders. Calls for greater transparency, particularly of private equity acquisition of health care entities and better oversight of health system consolidation, are also increasing at the federal level. See, <https://khn.org/news/article/private-equity-ownership-of-nursing-homes-triggers-federal-probe/>.

Other information appropriate to form the basis for a recommendation for licensure should include:

- Evidence that facilities currently or previously owned, within or outside the State, by the purchaser of the health care facility, maintained a quality assessment and assurance committee that met or meets regularly, no less than quarterly, within the preceding three-year period;
- IOC (Inspection of Care) Reports and any resulting corrective action plans of facilities currently or previously owned, within or outside the state, by the purchaser of the health care facility, within the preceding three-year period;
- Licensing or certification surveys and any resulting corrective action plans of facilities currently or previously owned, within or outside the State, by the purchaser of the health care facility, within the preceding three-year period;
- Licensing or disciplinary actions against any individual agent or employee of facilities currently or previously owned, within or outside the State, by the purchaser of the health care facility, within the preceding three-year period; and
- Lawsuits or arbitration filings by any patient or patient representative against facilities currently or previously owned, within or outside the State, by the purchaser of the health care facility, within the preceding three-year period.

With this amendment to add additional indicia of nursing home quality and regulatory compliance to the review of licensure applications, the HEAU would request a favorable report for HB702. We have shared this proposed amendment with staff at the MHCC and they are in accord.

cc: Delegate Ken Kerr, Sponsor

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<sup>1</sup> The CMS “Five Star Quality Rating System” gives each nursing home a rating between 1 and 5 stars. Nursing homes with 5 stars are considered to have much above average quality and nursing homes with 1 star are considered to have quality much below average. There is one Overall 5-star rating for each nursing home, and separate ratings for health inspections, staffing and quality measures. As these rating mechanisms are based on averages, they are not necessarily accurate reflections of significant under-performance in important areas of quality of care and regulatory compliance. In addition, the ratings are based on data submitted by the nursing homes, which is not always accurate. See, <https://www.advisory.com/daily-briefing/2021/03/16/nursing-homes-ratings>

<sup>2</sup> <https://www.gao.gov/products/gao-23-104813>