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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

March 5, 2024

To: The Honorable Joseline Peña-Melnyk
Chair, Health & Government Operations Committee

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

Re: House Bill 1122 – Maryland Health Care Commission-Nursing Homes-
Acquisitions

Position: Support with Amendments

HB 1122 seeks to enhance the important role of the Maryland Health Care Commission (“MHCC”) in regulating nursing home acquisitions and the impact those acquisitions have on the quality of care in nursing homes.

HB 1122 expands the definition of “acquisition” to include both a change in who controls a health care facility or the transfer of a certain percentage of stock or ownership of the health care facility. In expanding what transactions constitute an “acquisition” subject to MHCC approval, HB1122 allows the MHCC to exercise greater oversight of nursing homes and advances quality of care.

Importantly, HB 1122 requires that, prior to approving or denying the acquisition of a nursing home, the MHCC must consider the applicant’s track record over the prior three-year period and whether (1) a quality assessment and quality assurance committee were maintained; (2) whether there were any enforcement actions, special focus designations, or plans of corrections instituted against the applicant, and (3) if any lawsuits or judgments against the applicant occurred. If, for example, the applicant did not maintain some type of quality of care oversight, was cited by a state or federal agency for poor quality of care, or if a private party filed a lawsuit alleging injury

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

What HB 1122 does not require, but should, is disclosure of financial data that clarifies the nature and extent of all interests that will be involved in owning, operating, and/or managing the nursing home; the transactional structure of the party/parties seeking to acquire a nursing home; and the consolidated financial reports for the three-year period prior to the proposed acquisition. These additional elements are essential to the work of nursing home oversight, standards enforcement, and patient advocacy across the state.

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

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

In order for the Maryland Office of the Attorney General (OAG) to investigate and enforce nursing home residents’ rights, prosecute occurrences of abuse and neglect of these residents, and to recover funds expended by Maryland Medicaid when the care provided is inadequate, OAG must be able to identify those parties responsible. As outlined in a New York Times article from 2007 which described how private equity can avoid responsibility by using various financial and organizational schemes, this problem is not merely academic.³ Transparency as to the finances and organizational structures of those operating nursing homes is crucial. Unfortunately, HB 1122, in its current form, does not address these issues.

Financial and transactional transparency provides the means to hold responsible parties accountable for substandard care as exemplified by the nursing home fraud and abuse cases filed

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

² January 2024 Nursing Homes Licensures and Acquisitions Recommendations Report.

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

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

OAG is requesting a favorable report with the following amendments to HB 1122:

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

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

See also,

[https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDAsInVyaSl6ImJwMjpbGjJaylsInVybCl6Imh0dHBzOi8vYWwucubnkuZ292L3NpdGVzL2RlZmF1bHQvZmlsZXMvY291cnQtZmlsaW5ncy9jZW50ZXJzLWZpbGVkLXBldGl0aW9uLnBkZiIsImJ1bGxldGluX2lkIjojMjAyMzA2MjguNzg5MjIwNTUeifQ.FZRoMhZ1g0U18_VnavXrOWRMYj95pnSfd_8cBHRIWno/s/959752070/br/210514987702-l_!!Ke5ujdWW74OM!-gY_AmmytdCHpdln2zgcBZoeUn4QiKCDcg9vGs39lgeml7ej4jGKvYBfKKV-1hC5e96oOotXMdZbzolT9jQg8N7NE5sTlYfAUrdqtPw\\$](https://urldefense.com/v3/_https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDAsInVyaSl6ImJwMjpbGjJaylsInVybCl6Imh0dHBzOi8vYWwucubnkuZ292L3NpdGVzL2RlZmF1bHQvZmlsZXMvY291cnQtZmlsaW5ncy9jZW50ZXJzLWZpbGVkLXBldGl0aW9uLnBkZiIsImJ1bGxldGluX2lkIjojMjAyMzA2MjguNzg5MjIwNTUeifQ.FZRoMhZ1g0U18_VnavXrOWRMYj95pnSfd_8cBHRIWno/s/959752070/br/210514987702-l_!!Ke5ujdWW74OM!-gY_AmmytdCHpdln2zgcBZoeUn4QiKCDcg9vGs39lgeml7ej4jGKvYBfKKV-1hC5e96oOotXMdZbzolT9jQg8N7NE5sTlYfAUrdqtPw$)

thereof, if the interest is equal to or exceeds 5% of the total property or assets of the entirety and that provides any service, facility, or supply to the nursing home.