

Governor Lawrence Hogan

100 State Circle
Annapolis, MD 21401

Senate President Bill Ferguson

State House, H-107
100 State Circle, Annapolis, MD 21401

Speaker Adrienne Jones

State House H-101, State Circle
Annapolis, MD 21401

December 1, 2022

Dear Governor Hogan, Senate President Ferguson and Speaker Jones:

Subject to §2-1246 of the State Government Article and to comply with Health General Article §191409(j) (Chapter 473 of the Laws of Maryland 2018), this is the required annual report of the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities, which evaluates the progress in improving nursing home care quality and assisted living facility quality.

The Committee has identified key areas of concern including: quality of care standards for nursing homes and assisted living facilities; and staffing patterns and standards and the impact on health care quality. The Committee also notes that, in 2022, it did not receive its legislatively mandated annual presentation from the Maryland Department of Health Office of Healthcare Quality.

This multi-stakeholder committee welcomes the opportunity to provide this information. It is also important that our elected representatives and state officials hear from residents, families, providers, advocates, caregivers, and others involved with these facilities. Policymakers must continue to fully engage the public, to help determine the needs and rights of residents in nursing home and assisted living residents, during and after the current public health emergency.

We welcome the opportunity to further discuss these areas with you. If you have any questions, please contact Lisa O'Connor, staff for the Oversight Committee, at lisa.oconnor@maryland.gov.

Sincerely,

The Oversight Committee on the Quality of Care in
Nursing Homes and Assisted Living Facilities

cc: Dennis Schrader, Secretary, Maryland Department of Health

Senator Sarah Elfreth, Chair, Joint Committee on Administrative, Executive & Legislative Review

Delegate Samuel Rosenberg, Chair, Joint Committee on Administrative, Executive & Legislative Review

Senator Delores Kelley, Chair, Senate Committee on Finance

Delegate Joseline Pena-Melnyk, Chair, House Health and Government Operations Committee

Michael DiGiacomo, Executive Director, Governor's Workforce Development Board

The Oversight Committee, in 2022, heard from presenters including: Stevanne Ellis, Maryland's Long-Term Care Ombudsman, regarding consumer issues about long-term care; Janine Finck-Boyle, Vice President for Regulatory Affairs at LeadingAge, on federal nursing home regulations; Leslie Flaim, Vice President at the Beacon Institute, regarding staff training opportunities; and Ari Houser, Senior Methods Adviser at AARP, about COVID-19 data trends in long-term care facilities.

From these Committee meetings, and subsequent conversations of an informal subcommittee, the following findings and recommendations are submitted about the progress of improving nursing home and assisted living facility quality statewide.

Area of Concern: Quality Standards for Nursing Homes and Assisted Living Facilities

FINDING: We encourage the prompt multi-stakeholder development of new regulations for assisted living facilities and a conversation about existing standards for nursing homes. These requirements should both serve a public good and not be unduly burdensome on facilities, toward the common goal of elevating the quality of care for Marylanders.

COVID-19 Data Reporting

The Committee welcomed hearing from Mr. Houser, regarding data trends around COVID-19. As the pandemic shifts to endemic stage, however, we encourage the Maryland Department of Health (MDH) to convene a multi-stakeholder conversation (including consumers, caregivers, industry, and government regulators) about the daily reporting requirements for COVID-19. These requirements—some of which emanate from the state, and others are national Centers for Medicaid and Medicare Services (CMS) requirements—have helped decrease morbidity and mortality during the pandemic. The requirements have allowed for a strategic allocation of resources, informed family decisions about where their loved one will live, and ideally served an impetus for quality improvement.

Yet it is also appropriate to now ask—with vaccines and PPE more readily available—whether the reporting requirements are serving the same purpose as earlier stages in the pandemic. What is the current compliance rate with reporting? How is MDH, at this stage, leveraging this data to allocate resources? How often is the COVID-19 dashboard being utilized? What is the vision—and the potential stopping point—for this daily mandate on providers? Or, as data provided to this Committee showed only four Civil Monetary Penalties for non-reporting assessed in the first half of 2022 (as opposed to 62 assessed in the first half of 2021), is this mandate something providers can and should live with? And, with a likely winter spike in case rates for a disease that has some of its most dire consequences for the elderly, is it worth considering what information is needed and the appropriate frequency of reporting moving forward.

Assisted Living Facility Regulations

Chapters 479 and 480 of 2021 is Maryland law which requires MDH's Office of Healthcare Quality (OHCQ) to convene, make revisions, and enact an update to Maryland regulations governing assisted living facilities (including Alzheimer's special care units). Regulations for assisted living programs (COMAR 10.07.14) were significantly rewritten in 2008. Proposed regulations were discussed in 2015 and 2016; however, those regulations were not enacted. This Committee—which is grateful to have heard from OHCQ Director (and Committee Member) Patricia Nay in 2022—understands that

the regulations were delayed by the December 2021 ransomware attack, and urges new incorporated regulations to be drafted and completed promptly. This update is particularly important for Alzheimer’s special care units, which house some of our most vulnerable Marylanders, and yet have sparse codified requirements in statute.

Area of Concern: Staffing Patterns and Standards and the Impact on Health Care Quality

FINDING: There should be further exploration about how well-known workforce shortages, and the cost to provide care, has impacted health care quality at facilities.

Legislation enacted during the 2022 Maryland General Assembly aimed to provide incentives to the nursing workforce (who serves long-term care facilities and other settings), and also formed workgroups to consider broader solutions. The Committee also acknowledges work done by MDH; the agency, along with providing funding to address staffing costs, submitted an 1135 waiver to Medicaid (recently extended through March 20, 2023) of the training and certification of nurse aides. The state’s Board of Nursing also passed emergency regulations to allow for more temporary nurse aides. Yet this Committee recommends more permanent solutions to the prevalence of staffing shortages at long-term care facilities, which consider worker-administered surveys, OHCQ data, and MHCC’s Family Experience of Care Survey.

We also assert that workforce development is a prime area for further state investment; while the EARN Maryland program has generated positive results, we note the presentation from Ms. Flaim, who shared that LifeSpan does not receive state funding for its training programs [and with funding, could expand its offerings to cultivate more and qualified staff for nursing homes and assisted living facilities]. Additionally, more can be done to publicize the availability of Civil Monetary Penalty funds, as a means to aid workforce development. This Committee also encourages analysis and public conversation about how the payments to Maryland’s nursing homes during the COVID-19 pandemic were used, including the extent to which they were used to develop and retain their workforce.

This workforce concern—perhaps looking at the actual impact of shortages, besides simply the cost of care going up—was prompted by hearing from our long-term care ombudsman Ms. Ellis, and the in-person visitation and calls received by her staff. They have seen the impact of facilities struggling to hire people, coupled with varying occupancy rates in long-term care facilities; for example, instead of visitation rules, Ms. Ellis reported that a core complaint now is call bell response times.ⁱ As such, this Committee asserts that the reduced workforce supply has forced staffing adjustments which have lessened progress to improve the quality of care statewide.

Areas for Future Exploration

The Committee encourages further exploration and discussion, during its own 2023 meetings and within the General Assembly, about the quality of care in nursing homes and assisted living facilities.

Specific topics can include:

- *Maryland’s for-profit nursing home industry*, annually, has significant changes in ownership; each year, according to MDH, 19 facilities change hands to an owner from outside of the state, including proprietors who do not currently operate in Maryland.ⁱⁱ As this industry

continues to manage COVID-19, and faces significant financial pressures, how can quality be maintained with these new operators in our state?

Committee members, including those from industry, raised questions about the growing impact of private equity companies on nursing home care, in terms of the perceived lack of collaboration from these new operators and their commitment to healthcare quality (as for-profit organizations). They asked about inspection data trends from operators new to Maryland, who have newly mandated inspection requirements (as a result of Chapter 159/160 of 2022). Finally—noting the importance of recent legislation which would provide a synthesized report of the cost, labor, and financial performance of Maryland’s nursing homes (HB 747 of 2022)—they urged further exploration as to whether there has been sufficient public dialogue about how skilled nursing facilities address staffing and quality.

- *Maryland’s Health Care Commission* conducts significant work on nursing home and assisted living facility quality. Policymakers, annually, would benefit from hearing the results of the Family Experience of Care Survey (conducted at our state’s nursing home facilities) and the Commission’s quality reporting website. In addition, any analysis MHCC has conducted on the change of ownership and health care quality would be beneficial¹ for policymakers.
- *Maryland’s State Board of Long-Term Care Examiners*, as a result of Chapters 689 and 690 of 2022, have significant new responsibilities in the licensing of assisted living managers. How has the agency begun to consider implementation of this new responsibility?

¹ Subcommittee members heard from HFAM representatives, who noted that nursing home occupancy rates were at 70 percent during large parts of 2020 and 2021, and have since risen to 81.5 percent as of October 9, 2022.

ⁱⁱ Department of Legislative Services, “Fiscal and Policy Note: Nursing Homes – Transfer of Ownership – Surveys.” https://mgaleg.maryland.gov/2021RS/fnotes/bil_0004/sb0704.pdf