



Larry Hogan | Governor    Boyd K. Rutherford | Lt. Governor    Rona E. Kramer | Secretary

January 5, 2022

The Honorable Larry Hogan  
State House  
100 State Circle  
Annapolis, Maryland 21401

The Honorable Bill Ferguson  
President  
Senate of Maryland  
State House, H-107  
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones  
Speaker  
Maryland House of Delegates  
State House, H-101  
Annapolis, Maryland 21401

**RE: Report required by HG §19-1409(j), SB4/Ch. 473, 2018 (MSAR #11716) 2021 Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities**

Dear Governor Hogan, President Ferguson, and Speaker Jones:

In compliance with Health General Article §19-1409(j), MSAR #11716, the following is the required annual report of the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities for activity from January to December 2020. The committee met five times during this period.

Please note that though by statute the Department of Aging chairs and staffs the Oversight Committee, the resultant report is not in any way endorsed by said department. The role of the department of Aging is strictly administrative.

Please do not hesitate to contact Alexandra Baldi, Legislative Liaison, [alexandra.baldi@maryland.gov](mailto:alexandra.baldi@maryland.gov) or (410) 767-1102 with any questions.

Very truly yours,

Rona E. Kramer  
Secretary

cc: Sarah Albert, Department of Legislative Services

## SECTION ONE: Reflecting on Key 2020 Areas of Concern That Remain

This Committee begins its 2021 annual report with its current thoughts on key areas identified one year ago – workforce, industry stabilization, and COVID-19. They remain focal points for the improvement of quality in the long-term care industry.

### Workforce:

FINDING: Maryland regulations rightfully have a minimum number of nursing hours per resident, along with a ratio of nursing service personnel on duty to provide bedside care (1:15), yet the staffing solution is more complicated; decisions on staffing hours can also consider the individual patient’s need, the current medical acuity in a nursing home, and market conditions.

FINDING: Chapter 161 of 2021, which authorizes a certified nurse assistant (CNA) to renew their CNA certificate if they have completed a refresher program (as an alternative to the current 16 hours of active practice), recognizes the need for and importance of workplace incentives that will help long-term care providers increase and retain their workforce.

FINDING: As providers work to maintain sufficient staffing--in compliment with other measures to recruit and retain staff-- elected officials should consider examining the pricing of staffing agencies [both health care staff agencies and nurse referral agencies].

FINDING: The documented shortages of workers in long-term care settings creates a renewed urgency to explore and address targeted funding streams for worker retention.

Prior to addressing the specific workforce concerns, it is important to put the workforce shortage in a broader national context, as this is a concern across our country:<sup>1</sup>

- District of Columbia - 35.3 percent
- **National average in the shortage of nurses and/or direct care aides - 30.3 percent**
- Virginia - 29.4 percent
- Delaware - 22.7 percent
- Maryland - 19 percent [43 lowest shortage of 51 states]
- West Virginia - 10.9 percent

*Staffing Hours:* The Committee believes that nurse staffing hours is a complex question that requires further consideration; COMAR 10.07.02, a 2019 revision of Maryland’s code for nursing homes, instituted this nurse staffing hour minimum and was negotiated over the terms of two governors. While there is a commonly understood association between higher levels of staff and higher quality of care, the solution for residents is more complicated. Maryland regulations rightfully have a minimum number of nursing hours per resident, along with a ratio of nursing service personnel on duty to provide bedside care (1:15), yet decisions on staffing hours can also consider the individual patient’s need, the current medical acuity in a nursing home, and market conditions.

The Committee heard from Jarrod Terry, Assistant Director of Long-Term Care Services for Maryland Medicaid. He shared the nurse staffing hours per resident in nursing homes regionally:

- Virginia - 3.94 [Virginia is one of 19 states that have no minimum staffing requirements]
- Pennsylvania - 4.02 [required minimum is 2.7 hours per resident]
- **National average of nurse staffing hours per resident - 4.09**
- Maryland – 4.21 [required minimum is 3.0 hours per resident]

- Delaware - 4.77 [required minimum is 3.28 hours per resident]
- District of Columbia - 5.34 [required minimum is 4.1 hours per resident]

As this Committee evaluates staffing, it is pleased that Maryland's nursing homes exceeded the required minimum staffing requirements. This was aided by resident trends; there were fewer residents, for reasons including fewer non-COVID hospitalizations. In addition, providers have been able to maintain sufficient staffing standards during the pandemic, due to the significant direct aid provided by the federal and state government. In a normal year of Medicaid patient volume, provider representatives to this Committee note that the ability of Maryland's nursing homes to provide 4.0 direct care hours would require additional Medicaid funding of more than \$150 million annually; in comparison, a four percent Medicaid rate increase generates \$26 million for nursing homes.

Answers to the question of how sufficient staffing can be sustained are multi-fold. Can the State of Maryland develop an acuity-based model to evaluate staffing hours, based on a person-centered assessment and effective care planning? While researchers have recommended an average of 4.1 hours per resident, can the resident assessment be more effectively utilized to analyze whether nursing homes have staff sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident?<sup>ii</sup> And what role do private duty nurse aides have in this equation, who families continue to hire to supplement the care received at a particular facility?

*Removing Workforce Barriers to Entry:* The Committee welcomes the enactment of Maryland Chapter 161 of 2021, which authorizes a certified nurse assistant (CNA) to renew their CNA certificate if they have completed a refresher program (as an alternative to the current 16 hours of active practice). This measure—along with the existing work done by the EARN Maryland program—recognizes the need for and importance of workplace incentives that will help long-term care providers increase and retain their workforce.

*Cost of Agency Staffing Firms:* Amid workforce shortages, provider representatives to this committee note that staffing agencies [health care staff agencies and nurse referral agencies] are charging double and--in some cases--as much as quadruple to long-term care facilities that need workers. This reported pricing trend is disconcerting, especially as these staffing agency workers only make a fraction of what the agency charges the provider for that worker.

A national survey conducted by the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), projected that 2022 contract labor costs are expected to increase on average by 106 percent for a sample of 752 buildings; AHCA also recently wrote to the FTC requesting assistance with direct care staffing agency practices.<sup>iii</sup> Massachusetts and Minnesota have enacted pricing limits on agencies which provide nurses; yet that was not enough to protect Massachusetts providers, as the caps were recently raised over 23 percent, because demand is so great for staff.

It is the belief of this Committee, as providers work to maintain sufficient staffing and 80 percent of revenue in nursing homes is paid through non-negotiable Medicare and Medicaid rates--in compliment with other measures to recruit and retain staff--that elected officials should consider examining the pricing of these staffing agencies.

*Explore Targeted Funding Streams for Worker Retention:* The documented shortages of workers in long-term care settings creates a renewed urgency to explore and address this issue. States across the country have prioritized the use of American Rescue Plan Act (ARPA) stimulus money to directly improve the training and wages for direct care workers. For example, Massachusetts stipulated that

90 percent of its first \$100 million in enhanced federal funding from the one-time Home and Community Based Services rate increase (which was part of ARPA) must be used for financial assistance to direct care workers to improve retention. Maine, California, Illinois, and Nevada specified bonus amounts in their plans submitted to CMS ranging from \$500-\$1500. Maryland's long-term care providers are in competition with fast food chains and big box retailers, who provide similar bonuses, making it even more of a challenge to support its direct care workforce.

### Industry Stabilization

**FINDING:** There is further study needed about how changes in nursing home ownership impact the quality of care provided. This should consider the need for effective transitions between owners, and how other states have approached addressing these quality concerns.

*Funding:* Mr. Terry also noted that as of June 30, 2020, the federal government provided \$121 million in funding under the CARES Act to assist Maryland nursing facilities in covering costs related to COVID-19. Additionally, in April 2021, Governor Hogan authorized a one-time \$26 million supplement to nursing home rates from ARPA funding. Provider members on the Committee noted the importance of this funding, along with federal Department of Health and Human Services provider relief funding, for ongoing COVID-19-related concerns.

*Transfer of Ownership and Quality of Care:* The Committee also reflected on the enactment of Chapter 159 and 160, a new law which requires the Maryland Department of Health to conduct additional surveys of nursing homes, if ownership is transferred to a person that does not own or operate another nursing home in the State at the time of the transfer.

The Maryland Department of Health's Office of Health Care Quality (OHCQ) reports that the state's nursing home industry had 27 change of ownerships in FY 2020 and 24 in FY 2021. OHCQ anticipates ten nursing home change of ownerships in FY 2022, all of which will require these additional surveys. There is further study needed about how these changes impact the quality of care provided, which should consider the need for effective transitions between owners, and how other states have approached addressing these quality concerns.

### **SECTION TWO: Thinking Ahead: 2021 Areas for Further Consideration**

**FINDING:** Maryland must consider how it can better promulgate and build awareness about the Maryland Health Care Commission's Family Experience of Care survey in nursing homes.

**FINDING:** There is value in finalizing and promulgating the update to Maryland's assisted living facility regulations that is currently underway, including added clarity about caring for vulnerable Marylanders in memory care units, as 42 percent of these residents have Alzheimer's or another form of dementia.

**FINDING:** There were 1,650 assisted living providers in the fiscal year 2020. At the close of the fiscal year 2021, there were 1,672, including 142 providers that closed and 164 providers that opened assisted living programs. The size and turnover of providers in the industry--including the 1,276 smaller providers with 10 or fewer beds--warrants further exploration, to better understand its impact on the quality of care.

### Build Awareness and Capture More Long-Term Care Quality Data:

The Committee heard from Stacy Howes, who coordinates the Family Experience of Care Survey for the Maryland Health Care Commission (MHCC). Ms. Howes expressed a desire and plans to build awareness about her survey, which only four states in the country conduct, and is utilized for

Maryland Medicaid's disbursement of pay for performance funds for skilled nursing facilities. She also shared, however, that MHCC does not have similar quality data about assisted living facilities; the survey has not been expanded to the AL industry, and MHCC solely has purview of assisted living facilities with 10 or more beds (less than 25 percent of our state's providers). That said, Maryland must consider how it can better promulgate and build awareness about the existing Family Experience of Care information.

#### Engagement with Maryland's Update to its Assisted Living Facility Regulations:

This Committee also urges policymakers to remain engaged with Maryland's current update to its assisted living facility regulations. We express gratitude to the General Assembly and Governor Hogan for the enactment of Chapters 479 and 480, which requires an update to these regulations by December of 2022, including specific language related to dementia training and sufficient staffing at Memory Care units. There is value in finalizing and promulgating this regulatory update, including adding clarity about caring for vulnerable Marylanders in memory care units (especially as 42 percent of older adults in assisted living facilities have Alzheimer's or other forms of dementia).<sup>iv</sup> Assisted living regulations were last comprehensively updated in 2004; this is an opportunity for elected officials--working collectively with consumers, providers, and state agency staff--to elevate the quality of care provided.

#### Progress of Nursing Home and Assisted Living Facility Inspections to Improve Quality

In her annual report to this Committee, Dr. Nay also spoke of her unit's vital work to oversee the quality of care across Maryland's nursing homes and assisted living providers. The Maryland Department of Health instituted a seven-year plan that incrementally increases OHCQ staff through fiscal year 2024 to meet legislative mandates. Yet they are challenged by the increasing number of facilities they regulate. In the fiscal year 2017, OHCQ had roughly 17,000 facilities under its regulatory purview. Two years later, that number jumped to roughly 19,000.

Specific to assisted living, OHCQ data presented to this Committee showed 1,650 assisted living providers in the fiscal year 2020. At the close of the fiscal year 2021, there were 1,672, including 142 providers that closed and 164 providers that opened assisted living programs. The turnover of providers in the industry warrants further exploration. Of note, during the COVID pandemic, there was an increase in assisted living applications received at OHCQ.

As of November 2021, OHCQ notes that Maryland has 1,276 assisted living providers with 10 or fewer beds, comprising 76 percent of our state's assisted living providers. That said, while these smaller providers dot the landscape of our state, they have a minority of the patient population. Generally, the same regulations apply to all assisted living providers (including the need for an annual survey by OHCQ), although some regulations are limited to providers above or below a certain number of licensed beds. How can these inspections be sustained, when there is this surveyor deficiency, yet this industry (and legislative mandates on OHCQ) continues to grow?

Providers deserve gratitude for their staff's heroic work during this unprecedented time; yet OHCQ maintains an essential role in the oversight of the quality of care provided to residents. For example, data presented to this Committee showed that OHCQ levied an increasing number of civil monetary penalties; 49 in the fiscal year 2020, 86 in the fiscal year 2021, and 108 in the fiscal year 2022. How can we work collaboratively to get that number to decline in coming years?

The progress in improving the quality of care is not black and white; it is--much like the current assisted living regulations update indicates--a multi-stakeholder conversation to identify solutions.

We then must work collaboratively to educate, recruit, and retain staff who implement these solutions, and help provide quality care to residents in need.

### **SECTION THREE: Moving Forward**

As this Committee moves forward to 2022, we believe that nursing home and assisted living facility policy must remain a heightened priority for Maryland. The following speakers can be considered for briefings by Maryland policymakers, including this Committee. They can share a detailed perspective about how, working together, we can continue to elevate the quality of care provided.

#### **STAFFING AGENCY PRICING**

- Representatives from Maryland’s nursing home industry
- Representatives from Maryland’s health care staffing and nurse referral agencies
- Maryland’s Office of the Attorney General (to consider price complaints)

#### **EXPANDING THE DIRECT CARE WORKFORCE**

- Judy Levy, coordinator, DC Coalition on Long Term Care and a regional leader on long-term care workforce solutions
- Claudia Schlosberg, former District of Columbia Director of Healthcare Finance
- Lindsay Schwartz, Associate Vice President, Workforce and Quality Improvement Programs, American Health Care Association, and co-author of “[State Strategies For Sector Growth And Retention Of The Direct Care Health Workforce](#).”

#### **QUALITY OF CARE STANDARDS AT NURSING HOMES AND ASSISTED LIVING FACILITIES**

- Stacy Howes, Maryland Health Care Commission, project lead for MHCC’s Family Experience of Care Survey
- Douglas Pace, Director of Mission Partnerships, Alzheimer’s Association
- Robyn Stone, LeadingAge, Director of Research and noted researcher and leading authority on aging and long-term policy

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<sup>i</sup> AARP Nursing Home COVID-19 Dashboard”. <https://www.aarp.org/ppi/issues/caregiving/info-2020/nursing-home-covid-dashboard.html>. Information is a four-week snapshot as of October 17, 2021.

<sup>ii</sup> Harrington, C., Dellefield, M. E., Halifax, E., Fleming, M. L., & Bakerjian, D. (2020). Appropriate Nurse Staffing Levels for U.S. Nursing Homes. *Health services insights*, 13, 1178632920934785. <https://doi.org/10.1177/1178632920934785>

<sup>iii</sup> “AHCA/NCAL Sends Letter To Federal Trade Commission On Staff Agency Price Gouging.” <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/AHCANCAL-Sends-Letter-To-Federal-Trade-Commission-On-Staff-Agency-Price-Gouging.aspx>. 21 October 2021

<sup>iv</sup> “Oversight of the Trump Administration's Response to the COVID-19 Pandemic”. Statement for the United States House Committee on Energy and Commerce. <https://alzimpact.org/media/serve/id/5ef20d843a4f5>. 23 June 2020.