

November 12, 2020

The Honorable Larry Hogan
Governor of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable Bill Ferguson
President
Maryland State Senate
H-107 State House
100 State Circle
Annapolis, MD 21401

The Honorable Adrienne Jones
Speaker
Maryland House of Delegates
H-101, State House
100 State Circle
Annapolis, MD 21401

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 §19-1409(j) (Chapter 473 of the Laws of Maryland 2018), the following 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 met regularly in 2020—including monthly over the summer—and have determined the following areas of concern, viewed through the lens of the unprecedented COVID-19 pandemic:

- 1) Long-Term Care Workforce: Recruitment, Retention, and Development
- 2) COVID-19: Testing and Personal Protective Equipment
- 3) Industry Stabilization: Consistent Guidelines and Prioritization of Funding

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. These 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: Robert Neall, 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 Shane Pendergrass, Chair, House Health and Government Operations Committee
Michael DiGiacomo, Executive Director, Governor’s Workforce Investment Board

Area of Concern: Workforce Recruitment, Retention and Development

FINDING: We encourage staff development through initiatives such as use of voluntary training programs offered at local community colleges, and the use of the personal information forms about residents, which can ease transitions between care settings and enable more person-centered care;

FINDING: The expansion and promotion of affordable wellness options can help staff to address the pressures of their work environment, particularly during this unprecedented time;

FINDING: Existing initiatives—such as the Governor’s Workforce Investment Board and the EARN Maryland program—can be leveraged to focus more on recruitment and retention of the long-term care workforce, including a review of wages, recruitment and retention;

FINDING: The Maryland Board of Nursing can further consider how to address the long-term care workforce, by expediting the process, and increasing the number of credentialed certified nursing assistants (CNAs) and geriatric nursing assistants (GNAs) that work in our nursing homes.

The ability to attract, recruit and maintain a permanent and robust direct care workforce is the cornerstone in ensuring that quality care can be delivered to residents of nursing homes and assisted living communities. Prior to the COVID-19 pandemic, Maryland was facing a workforce crisis; the state will need 40 percent more direct care workers to meet this increased need for care.ⁱ The population is aging faster than our expansion of this crucial workforce.

The COVID-19 pandemic has exacerbated this issue. At the onset, many organizations had to hire individuals from nurse staffing agencies or train unlicensed individuals (authorized by CMS blanket waivers) to fill the void created by staff leaving due to illness, the need to care for a child or elderly relative, fear of contracting the virus or for higher pay from unemployment. While many have returned to employment, there remains a significant need to increase and retain the workforce; direct care workforce retention is challenged by low wages in the long-term care industry.ⁱⁱⁱⁱ The wages offered by providers, in turn, are complicated by Medicaid funding not commensurate with their expenses; this emphasizes the critical need to sustain Maryland’s planned four percent increase in the reimbursement rate, passed alongside the state’s minimum wage increase.

The issue for this workforce is larger than just wages; it is career advancement, education, training, and tuition incentives which help attract and keep the right people working at Maryland’s nursing homes and assisted living facilities. As we move forward to improve workforce quality, we welcome collaborative and voluntary approaches to help develop the workforce.^{iv} For example, Maryland’s nursing home industry has partnered with the state’s hospital association, to promulgate personal information forms which are a voluntary part of transfers between hospitals and nursing homes; these are a method to educate staff about their residents, and their use can be encouraged to facilitate staff development, to educate them on providing more person-centered care at nursing homes during this

unprecedented time.^v We also applaud voluntary county-level programs, such as the free Anne Arundel Community College CNA/GNA training certificate program. Additionally, as providers work to adequately staff their facilities, industry can consider wellness options to help staff and reduce workforce shortages; we applaud the Maryland Institute for Emergency Medical Services Systems “Maryland COVID-19 Crisis Support Program: Free Mental Health for Frontline Workers”, and hope that industry and policymakers can work to build awareness and uptake about this initiative by their staff.^{vi} We also encourage consideration, by the Governor’s Workforce Investment Board, of how nursing homes and assisted living facilities can incentivize recruitment from other sectors impacted by the pandemic, such as hospitality and food service.

We believe, through a greater focus by existing programs, this issue can be better addressed. For example, we would welcome the Department of Labor further prioritizing the EARN Maryland program, to incentivize individuals to enter the direct care workforce. In addition, the Oversight Committee believes there is a broader opportunity for the Maryland Board of Nursing to work with the long-term care industry on measures such as expedited credentialing of entry-level staff for safe practice, to allow a greater number of individuals to receive CNA and GNA training.

Area of Concern: COVID-19: Testing and Personal Protective Equipment

FINDING: The State of Maryland can further subsidize testing and personal protective equipment (PPE) for nursing homes and assisted living facilities including increasing access to and training for rapid, point of care testing, along with existing mandated PCR testing;

FINDING: Guidance to keep facilities safe have been a significant administrative challenge for the long-term care industry, which have drawn resources from providers, impacting their ability to maintain high-quality care;

FINDING: We support the need for continued COVID-19 testing that is clinically appropriate and clearly communicated; it must be administratively and financially sustainable for facilities, and also prioritize the health and safety of residents, staff, and visitors;

FINDING: The Maryland Department of Health’s COVID-19 data dashboard excludes case information from assisted living facilities with 10 or fewer beds (due to privacy protections), therefore the public does not have case information about the supermajority of these communities.

The COVID-19 pandemic has had a disproportionate impact on Maryland’s long-term care facilities, including the need for and costs associated with personal protective equipment (PPE) and COVID-19 testing. Providers have struggled to acquire these resources, and will be further strained as the growing number of cases across the country increases demand for these resources. For example, standard PCR tests cost anywhere between \$40 to \$100 in Maryland, depending on what lab is used. As such, in our state with nearly 22,000 nursing home residents and 37,000 nursing home staff, these costs to sustain safe, quality care are significant.^{vii}

The State’s guidance to keep facilities safe—and the figures above only refer to COVID-19 tests and not PPE—while necessary, has been a significant administrative challenge which have drawn resources from other areas and impacted the quality of care facilities’ staff can provide. That administrative challenge is reflected in citations given to 45 nursing home facilities for not completing mandatory testing, and not reporting records to the state. Industry representatives on this committee note that those cited did not understand proper procedures, and have stated that the original order did not contain the reporting mechanism.^{viii} Additionally, MDH’s COVID-19 testing

guidance covered just eight percent of the assisted living industry—as it omitted required testing for providers with 50 or fewer beds—so it difficult to assess the quality of care they have provided.^{ix}

Moving forward, as an essential component of securing both nursing homes and assisted living facilities and to facilitate safe in-person visitation, we support continued COVID-19 testing as a baseline to sustain quality and verify that facilities are free of infection. We hope that the State will continue to prioritize and subsidize testing and PPE. A core focus should be on expanded access to and training for rapid point of care tests to administer at nursing homes and assisted living facilities, so that the virus can be quickly recognized, along with existing mandated PCR testing.

Lastly, MDH’s Office of Outbreak Investigation maintains a COVID-19 “Nursing Home Cases” dashboard. This site, as a result of state and federal privacy laws, does not include cases from assisted living facilities with 10 or fewer beds. This is a structural challenge to data reporting on Maryland’s assisted living facility industry; just eight percent of locations statewide have more than 10 beds.. The end result—as policymakers try to assess the need for COVID-19 testing and PPE, and consumers try to make life-altering choices for their loved ones—is an unfortunate lack of public information during this unprecedented time, particularly for Marylanders who do not live near large facilities.^x

Area of Concern: Industry Stabilization: Consistent Guidelines, Prioritization of Funding

FINDING: Industry operations have been taxed by frequently shifting guidelines during the pandemic, which require significant ongoing resources and staff education; this threatens the ability of smaller providers to stay in business, and shifts attention from other areas of patient care; As clinical guidance and best practices continue to evolve, continued support is needed to navigate changes and implement policies that protect residents, patients, staff, and visitors;

FINDING: The Administration must prioritize new and untapped funding to aid the quality of the long-term care industry—and the residents they serve—during this time. Existing issues which the state has worked to address, such as social isolation, have only been exacerbated by this pandemic, and demand continued resources and solutions;

FINDING: The quality of care in nursing homes and assisted living facilities can improve from OHCQ’s planned update to assisted living regulations, and revisions to nursing home residents’ rights in COMAR.

Our last core area of concern presented is overarching; amidst an unprecedented pandemic, we must recognize the need to stabilize the industry as a means toward improving healthcare quality. The State of Maryland has long been an innovator in healthcare transformation, and long-term care plays a key role in ensuring the success of our Total Cost of Care Model by reducing hospital readmissions.

Governmental guidance for long-term care facilities during the pandemic has shifted frequently and necessitated a significant amount of staff education.^{xi} These changes (and the education required to implement them) have taxed larger providers’ ability to implement quality initiatives, and threaten the overall stability of smaller assisted living providers.

As we look to solutions, we must look to funding to stabilize the industry, and appropriate guidance to facilitate quality care during and after the current public health emergency. Ongoing testing policies must be sustainable, both financially and administratively, for nursing homes and assisted living centers; the planned four percent Medicaid rate increase necessarily underlies these efforts to improve quality. We appreciate the work of the MDH’s Office of Healthcare Quality during this extraordinary time, and we welcome and stress the urgency of OHCQ’s planned update to assisted

living regulations, and the need for it to update nursing home residents' rights. The quality of care in nursing homes and assisted living facilities can improve from these updates—to reflect recent laws passed related to discharge, abuse and other rights—and, at the appropriate time, adding language incorporating lessons learned about the emergency situation we now face.

ⁱ Berkheimer, George, "Maryland Faces Direct Services Worker Crisis." *The Business Monthly*. <http://www.bizmonthly.com/maryland-faces-direct-service-worker-crisis/>. February 20, 2020

ⁱⁱⁱ 2019 Maryland-specific data notes that the mean hourly wage for a Nursing Assistant was \$14.80/Hour with a mean annual salary of \$30,920. See "May 2019 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates: Maryland nonmetropolitan area" Federal Bureau of Labor Statistics. https://www.bls.gov/oes/current/oes_2400006.htm#31-0000.

^{iv} Particularly important, as noted in this report, because nearly 50 percent of the direct care workforce have not received education past high school. "The Direct Services Workforce in Long Term Services and Supports in Maryland and the District of Columbia." PHI <https://phinational.org/wp-content/uploads/2018/09/DSWorkers-Maryland-2018-PHI.pdf>. September 2018.

^v N.B. – this form only applies to nursing homes. We welcome the existing, state-required personal information that Assisted Living facilities have in their service plan, which can be sent to hospitals or nursing homes.

^{vi} "Maryland COVID-19 Crisis Support Program: Free Mental Health for Frontline Workers", *Maryland Institute for Emergency Medical Services Systems*. <https://www.miemss.org/home/Portals/0/Docs/Executive-Orders/Letter-Maryland-COVID-19-Crisis-Support-Program-20200531.pdf?ver=2020-05-31-172815-783>. Accessed October 2020.

^{vii} Data on testing costs comes from the Maryland Department of Health. In addition, the number of residents and staff come from an MDH analysis of the state's certified residents list, done in August 2020. *Personal Communication with author*. November 2, 2020.

^{viii} Cohn, Meredith, "Dozens of Maryland's Nursing Homes Found with Deficient Infection Control During Coronavirus Pandemic." *Baltimore Sun*. <https://www.baltimoresun.com/coronavirus/bs-hs-nursing-home-covid-inspections-20200902-ajvxf176lba6xn6u7bitx7crpm-story.html>. September 2, 2020. Please note, many of those receiving deficiencies have disputed the finding, and those cases have not all yet been resolved.

^{ix} Ibid – referencing not the assessment of quality, but the source for the MDH guidance covering 8 percent of assisted living facilities

^x "Maryland COVID-19 in Congregate Facility Settings." *Maryland Department of Health*. <https://coronavirus.maryland.gov/pages/hcf-resources>. Accessed October 2020. .

^{xi} For example, the latest October 27th guidance for nursing homes replaces and supersedes directives from October 1st, July 24th, June 19th, April 29th, April 24th, April 9th, and April 5th. "Amended Directive and Order Regarding Assisted Living Program Matters" and "Amended Directive and Order Regarding Nursing Home Program Matters". *Maryland Department of Health*. <https://coronavirus.maryland.gov/pages/hcf-resources>. Accessed October 2020.