

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1122

(Delegate Kerr, *et al.*)

Health and Government Operations

Finance

Maryland Health Care Commission – Nursing Homes – Acquisitions

This bill requires a person, at least 60 days before the closing date of the acquisition of a nursing home, to submit a request for “acquisition” to the Maryland Health Care Commission (MHCC) and provide specified notice to the residents, resident representatives, and employees of the nursing home. The executive director of MHCC must review a completed request for acquisition within 45 days and, in consultation with the Secretary of Health (or their designee), may approve the acquisition, approve the acquisition with conditions, deny the acquisition, or refer the request for acquisition to MHCC for a final decision. The bill (1) removes the requirement for MHCC to provide specified written findings and recommendations to the Office of Health Care Quality (OHCQ) when evaluating a notice of acquisition or transfer of interest of a nursing home and (2) alters the requirement for the Secretary of Health to consider MHCC’s findings and *decisions* before taking action to approve, deny, approve with conditions, or revoke a nursing home license. By January 1, 2025, MHCC must adopt specified regulations, to be applicable to nursing home acquisitions executed after the adoption of the regulations.

Fiscal Summary

State Effect: MHCC special fund expenditures increase by \$107,100 in FY 2025 for staff, as discussed below. Future years reflect annualization and ongoing operating costs. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	107,100	130,200	135,900	141,900	148,100
Net Effect	(\$107,100)	(\$130,200)	(\$135,900)	(\$141,900)	(\$148,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Acquisition” means (1) a transfer or stock of assets that results in a change of the person that controls a health care facility or (2) the transfer of more than 25% of stock or ownership interest in a health care facility.

A person must provide notice to MHCC at least 30 days before the closing of a change of ownership of a nursing home that (1) involves at least a 5% transfer in ownership interest and (2) is not an acquisition that requires approval under the bill.

At least 60 days before the closing date of the acquisition of a nursing home, a person must submit to MHCC a request for acquisition and provide notice to the residents, resident representatives, and employees of the nursing home that (1) the request for acquisition was submitted to MHCC and (2) there will be an opportunity to submit comments. This requirement does not apply to an acquisition that involves only changes of ownership interests among existing owners of a nursing home.

The executive director of MHCC must review a completed request for acquisition within 45 days after receiving the request from the applicant. To approve a request, the executive director must find that the acquisition is consistent with the State Health Plan and is in the public interest. In determining if the acquisition is in the public interest, the executive director must consult with the Attorney General on whether the acquisition raises public interest concerns and solicit and accept comments from individuals who (1) reside in the nursing home; (2) have family members who reside in the nursing home; or (3) are employees of the nursing home.

If the executive director refers a request for acquisition to MHCC, the commission must use the criteria specified in the bill and regulations adopted by MHCC to make a final decision within 60 days after receiving the completed request from the applicant. If the executive director denies a request for acquisition or imposes a condition on the approval of the acquisition, a person that is a party to the acquisition may submit a written request for MHCC to review the decision in accordance with regulations adopted by MHCC.

The executive director’s decision must be a final decision for the purpose of judicial review. A person that is a party to the acquisition may take a direct judicial appeal within 30 days after MHCC makes a final decision. MHCC must send each final decision to the Secretary of Health, the Secretary of Aging, OHCQ, the Office of the Attorney General (OAG), and the State Long-Term Care Ombudsman.

Required Reporting

By July 1 immediately following the acquisition of a nursing home and each year for three years thereafter, the person that acquired the nursing home must submit a report to MHCC in accordance with regulations. MHCC must provide the report required to the Secretary of Health, the Secretary of Aging, OHCQ, OAG, and the State Long-Term Care Ombudsman.

Required Regulations

MHCC must adopt regulations through an update to the State Health Plan for Facilities and Services that:

- require the person that acquired ownership of a nursing home to (1) reduce the number of resident rooms that contain more than two beds in accordance with standards established by MHCC or (2) receive a waiver from this requirement;
- (1) if necessary, allow the person that acquired ownership of a nursing home to temporarily delicense beds for at least three years immediately following the acquisition to reduce the number of resident rooms that contain more than two beds and (2) authorize MHCC to extend the period the beds are temporarily delicensed beyond three years for good cause shown, including demonstrated progress toward eliminating multibedded rooms by expanding the existing facility or transferring the beds to another facility within a merged asset system in the same jurisdiction;
- establish standards for the evaluation of the quality of the nursing homes currently or previously owned, whether in the State or outside the State, by the person that submitted a request for acquisition; and
- establish criteria for the executive director and MHCC to consider when making a decision regarding a request for acquisition.

The established criteria must require that MHCC take into consideration whether any nursing home currently or previously owned, within or outside the State, by the person submitting the request, for the period of three years immediately preceding the submission of the request (1) maintained a quality assessment and assurance committee that met at least quarterly; (2) was the subject of an enforcement action, a special focus facility designation, or a deficiency involving serious or immediate threat, actual harm, or immediate jeopardy to a resident; or (3) was the subject of a lawsuit, a judgement, or an arbitration finding, following a complaint filed by a resident, resident representative, or a government agency.

Nursing Home Licensure

An applicant for licensure as a nursing home must submit evidence that a request for acquisition for the nursing home was approved as specified under the bill.

Current Law: A nursing home is a facility that offers nonacute care to patients suffering from a disease, chronic illness, condition, disability of advanced age, or terminal disease requiring maximal nursing care without continuous hospital services. In Maryland, nursing homes are licensed by OHCQ within the Maryland Department of Health (MDH).

MHCC is an independent commission within MDH with a mission to plan for health system needs, promote informed decision making, increase accountability, and improve access in a rapidly changing health care environment by providing timely and accurate information on availability, cost, and quality of services to policymakers, purchasers, providers, and the public.

Certificate of Need

The Certificate of Need (CON) program, located within MHCC, requires review and approval of certain types of proposed health care facility and service projects by MHCC, including before a person acquires a health care facility, with specified exceptions. A CON is not required for acquisition of a health care facility if, at least 30 days before making the contractual arrangement to acquire the facility, written notice of intent is filed with MHCC and MHCC finds, within 30 days of receipt of the notice, that the health services or bed capacity of the facility will not change.

As part of the nursing home licensure process, the person acquiring a nursing home must also provide MDH with written notice of the acquisition or change in the operator of a nursing home at the same time the written notice of intent is filed with MHCC.

Nursing Home Ownership Interest

A nursing home must include in the application for licensure the identity of any person with an ownership interest in a nursing home and any management company, landlord, or other business entity that will operate or contract with the applicant to manage the nursing home. If there are any changes to this information, a nursing home must notify MDH within 30 days after the effective date of the change. On review of the required ownership information, (and other information that affirmatively demonstrates an applicant's ability to comply with specified standards) the Secretary of Health may approve or deny a nursing home license application, as specified, or revoke a license to operate a nursing home.

Nursing Home Acquisition Requirements

Chapters 288 and 289 of 2023 required MHCC, when evaluating a notice of acquisition or transfer of interest of a nursing home, to provide specified written findings and recommendations to OHCQ, including:

- the quality ratings of facilities currently or previously owned, within or outside the State, by the purchaser, as specified;
- for the immediately preceding three-year period, for facilities currently or previously owned, within or outside the State, by the purchaser (1) evidence that facilities maintained quality assessment and assurance committees that met at least quarterly; (2) inspection of care reports and corrective action plans; (3) licensing and certification surveys and corrective action plans; and (4) lawsuits or arbitration filings by any patient or patient representative against facilities;
- the tax identification number of each purchaser;
- the personal Centers for Medicare and Medicaid Services certification number of each purchaser; and
- a summary of the findings and the basis for the recommendations.

The Secretary of Health must consider MHCC's findings and recommendations before taking action to approve, deny, approve with conditions, or revoke a nursing home license.

Chapters 288 and 289 also required MHCC, in consultation with specified stakeholders, to (1) complete a specified study regarding the expansion of the CON program over the acquisition of nursing homes and (2) submit a specified report to the Senate Finance Committee and the House Health and Government Operations Committee. The [report](#) recommended, among other things, (1) for MHCC to provide a report to the Secretary of Health, OHCQ, and OAG for each nursing home acquisition; (2) a seller to notify all residents and their families of a pending acquisition; and (3) MHCC to provide an update regarding the nursing home acquisition for three years after the acquisition date.

State Expenditures: The bill requires MHCC to adopt regulations, review and make decisions regarding completed requests for acquisition, and periodically review specified reports from the person that acquired the nursing home. MHCC advises that the bill's nursing home acquisition regulations require in depth analysis and expertise that cannot be absorbed within existing staff. Therefore, MHCC special fund expenditures increase by \$107,058 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring one program manager to review and analyze nursing home acquisitions. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$99,802
Operating Expenses	<u>7,256</u>
Total FY 2025 State Expenditures	\$107,058

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Comments: MDH advises that the bill is consistent with MHCC's January 2024 report *Nursing Home Acquisitions and Licensures Recommendations* required under Chapters 288 and 289. The Maryland Department of Aging (MDOA) advises that MHCC's acquisition review process will run parallel to MDOA's acquisition review process for continuing care retirement communities when those facilities also licensed as nursing homes.

Additional Information

Recent Prior Introductions: Similar legislation has been not introduced within the last three years.

Designated Cross File: SB 1000 (Senator Beidle) - Finance.

Information Source(s): Maryland Department of Aging; Office of the Attorney General; Maryland Department of Health; Department of Legislative Services

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