**MEMORANDUM**

**FROM:** Richie Farran, V.P. of Government Services, Health Care Association of Michigan

**DATE:** May 6, 2022

**SUBJECT:** HB 5609 – Major Provisions

House bill 5609 will help ensure that Michigan’s providers are evaluated and regulated in a fair, accurate, and timely manner, and with the same equality as national peers. Michigan’s regulatory process should be reviewed with an eye to adherence to the guidelines within state statute, equity with other states and the nation, to a level of professionalism and collaboration to provide the absolute best care to our seniors, and to support our communities across the State of Michigan.

To be clear, the bill does not reduce oversight or a change to regulations. Providers support a robust process of regulatory oversight. Nursing facilities across the nation all operate under the same federal regulations – state agencies, such as LARA, enforce these uniform regulations which are developed and issued by the Centers for Medicare and Medicaid Services (CMS). These regulations are comprehensive, covering issues such as resident rights, infection control protocols, training requirements for staff, and more.

Unfortunately, challenges with the survey *process* have persisted over the years, and seem to have worsened recently. Providers continue to experience uncoordinated and untimely revisits for annual and complaint surveys, leaving survey cycles open. This results in increased enforcement actions, including financial penalties and denial of payment of new admissions – leaving facilities without reimbursement for newly admitted residents. Inconsistencies of scope and severity determination exists across survey teams, making compliance for facilities dependent on the interpretation of each individual surveyor.

House Bill 5609 will make improvements to the survey process, and contains provisions resulting from collaboration between the department, surveyors, and providers through workgroup meetings conducted in 2021, including:

* Using CMS guidance to determine the number of surveyors and the duration of surveys to help ensure survey timelines are met.
* Establishing a quality assurance workgroup and quality assurance monitors within survey teams to ensure that the survey process is conducted in compliance with state and federal regulations.
* Establishing progressive enforcement actions, building up to the most severe enforcement actions after repeated citations.
* Honoring the findings of the peer review organization in the independent dispute resolution process for citations being challenged by facilities, and requiring the department to conduct a quality assurance review of amended and deleted citations each quarter.
* Issuing guidance on what rises to a facility reported incident to reduce the number of complaint investigations – the vast majority (approximately 84%) do not result in a finding of noncompliance.
* Requiring regular and frequent communication between LARA and facilities, both during the survey process through entry and exit exams and potential findings of immediate jeopardy citations, and through the quality assurance committee meetings.
* Establishing requirement of desk reviews when federal regulations allow – saving surveyor time and increasing efficiency in the process.
* Requiring the director of the long-term care division of LARA to review and authorize the issuance of an immediate jeopardy citation – ensuring greater consistency in citations across survey teams.
* Requiring the department to make every reasonable effort to close an open survey cycle before initiating the standard survey.
* Establishing timelines for releasing form CMS-2567 reports, accepting/rejecting a plan of correction, and letters of compliance.
* Requiring at least one surveyor to remain on-site for as long as practical until a finding of immediate jeopardy is abated.
* Updating and ensuring accuracy of data contained in the annual report to the legislature to provide necessary information on the efficacy and timeliness of the survey process.

If you have any questions or concerns regarding this proposed legislation, please do not hesitate to contact me at 517-627-1561 or via email at RichFarran@hcam.org.