**TO:** House Health Policy Committee

**FROM:** Health Care Association of Michigan (HCAM)

**DATE:** February 10, 2022

**SUBJECT:** House Bill 5609

Thank you Chair Kahle and committee members for the opportunity to testify, and for your consideration of House Bill 5609. I’m Richie Farran, V.P. of Government Services for the Health Care Association of Michigan (HCAM), we represent 362 nursing facilities across the state. I’m joined today via Zoom by Bob Norcross, CEO of Prestige Healthcare.

I would also like to thank Chair Kahle for her sponsorship and work on this very important bill, and echo her sentiments that we understand there are still conversations to be had and we are willing to work with LARA and all stakeholders on the bill.

I am here today to ask for your support of legislation to ensure a fair, consistent, and timely survey process for Michigan’s skilled nursing facilities. Our state’s facilities have stepped up throughout the pandemic, partnering with the state and hospital systems to ensure Michigan’s seniors receive the care they need. These providers support their local communities, offering services to the elderly needing a skilled level of care, and are oftentimes the largest employer in rural areas of the state.

We are asking for LARA to improve the regulatory process in a way that avoids unnecessary adverse action on facilities, as they work to recover from the most difficult time the profession has ever experienced.

Through actions, comments, failure to follow an established survey process & protocol, and inconsistent application of regulation, *Michigan surveyors are creating public policy from the ground upwards, as well as placing providers into unsustainable economic situations*. The outcome of allowing these practices to continue will have far reaching impact on providers and the residents and communities they serve.

To be clear, we are not asking for less oversight or a change to regulations. HCAM supports 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.

Michigan continues to be an outlier compared to other states and nationally in the regulatory process. The number of citations per facility is double in Michigan compared to the national average, with the severity of the citations being higher than the national average.

Michigan had the second highest level of civil money penalties levied against providers in CMS Region V over the past two years – the more than $14 million in CMP fines paid by Michigan providers alone in 2021 exceeds amounts paid by entire CMS regions.

Michigan has double the national average of standard and complaint survey citations. The average citations in Michigan are higher than the averages in every CMS region. Michigan is also a national outlier in facility reported incidents – much of which is likely due to the fear on the provider side of citation for failure to report.

In addition to the statistics cited above, the survey process is oftentimes so adversarial and punitive that it impacts the morale of staff already experiencing burnout – causing many to leave the profession. Resulting citations have a significant impact on the reputation of the facility and staff in the community.

In spite of the survey challenges, data shows Michigan facilities are delivering quality care – exceeding the national average in key quality measures according to CMS.

House Bill 5609 will make improvements to the survey process, and includes provisions resulting from collaboration between the department, surveyors, and providers through workgroup meetings conducted in 2021. The bill ensures regular communication between surveyors and providers to improve consistency of citations, creates guidance on what should be reported by providers, codifies the informal dispute resolution process, and offers options for the department to ensure timelines are met.

We are respectfully requesting that Michigan’s providers be 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. HB 5609 can achieve these goals, and we ask for the committee’s support.