MARYLAND
Department of Health

Pre-Proposal Concept Paper – 2020 Departmental Legislation

Administration: Boards and Commissions

Title of Proposed Legislation: State Board of Examiners of Nursing Home Administrators — Renaming and Licensing Assisted Living Facility Managers

Statutes to be Amended or Added: Amending: Health Occupations Article, §§ 9-101, 9-201—9-203, 9-315—9-316.1, 9-401—9-403, and 9-501, Annotated Code of Maryland

Adding: Health Occupations Article, §§ 9-3A-01—9-3A-15, Annotated Code of Maryland

Priority Order: 1
Date: May 24, 2019

Concept:

Establishes a license for assisted living facility managers (ALFMs) within the Maryland Department of Health (MDH); renames the "Board of Examiners of Nursing Home Administrators (BENHA)" to the "Board of Long Term Care Administrators (BLTCA)"; amends the composition of the Board by adding 3 actively-practicing ALFMs with a minimum of 5 years of practice experience and 2 consumers who have relevant experience with relatives residing in assisted living facilities; requires BLTCA to develop and require a State's Standards Exam for licensure of ALFMs; sets forth criteria for provisional licensure of current ALFMs beginning July 1, 2020 through December 31, 2022; requires applicants to meet the current provisions of COMAR 10.07.14.15A, with the following modifications: 1) Instead of an 80-hour training course, applicants will be required to participate in a Board-approved manager-in-training (MIT) program under a Board-certified preceptor; 2) Applicants will be required to pass the State Standards Exam and the National Residential Care/Assisted Living Exam (both exams are administered by the National Association of Long Term Care Administrator Boards, or "NAB"); requires applicants to have a criminal history records check completed prior to initial licensure.

This proposed legislation seeks to close an existing regulatory gap by strengthening State support of the public protection mandate that BENHA has been committed to since its formation in 1970. Following the national model, nursing home administrators (NHAs) and ALFMs fall under the purview of the long term care administrator board. Currently, the following states require ALFMs to take either a state exam, the national exam (or both), and be licensed, regulated, and disciplined by their respective boards of long term care: Arizona, Florida, Idaho, Indiana, Maine, Missouri, Nevada, Ohio, Oklahoma, South Carolina, and Virginia. Additionally, the District of Columbia is currently finalizing ALFM licensure legislation and the Oregon General Assembly recently passed their legislation (Oregon House Bill 4129) in the 2018 Legislative Session.

Having more accountability and an actual license that is subject to official sanctioning will increase the awareness of ALMs, who very frequently operate within a current system where inconsistent and intermittent oversight allows for a climate in which abuse, neglect, and exploitation of residents may take place, with very low potential for any significant consequences.

For proper context, it is important to note that America's assisted living facilities (ALFs) are not regulated by the federal government; and therefore there is no federal statutory oversight or regulatory program that is analogous to those governing our nation's nursing home facilities, despite many that are participating in Medicaid programs (which do have a federal regulatory component, due to joint funding by individual states and the federal government). Therefore, Maryland's current 1,554 ALFs are only fully-regulated by and accountable to the State (unlike Maryland's 230 nursing homes, which are fully regulated by the State and the federal government). The onus to ensure adequate protection and safety of a large segment of Maryland's most vulnerable citizens rests solely within the resources of the State.

For over a decade or more, it has been widely-known in the industry that the residents in ALFs consistently present acuity levels that were previously only seen among nursing home residents. The Maryland Office of Health Care Quality (OHCQ), in its report entitled ***Maryland's 2005 Assisted Living Evaluation*** noted: "The DHMH has confirmed, from a review of national and Maryland-specific studies, that individuals in assisted living programs are more frail than was anticipated when the program was implemented in 1996. According to studies detailed more specifically herein, up to two-thirds of residents in assisted living programs have moderate to severe dementia and less than half receive adequate treatment for this condition. Most residents have multiple medical diagnoses, some debilitating, and take, on average, 9-14 medications per day." [1] A 2015 American Health Lawyers Association analysis of rising acuity levels in ALFs echoed OHCQ's findings by noting that 87% of providers responding to a ***McKnight's Long Term Care News*** survey indicated there was clearly a rise in ALF acuity levels; it went on to indicate that 45% of the respondents were unsure how to respond to this sobering reality[2].

A review of Maryland's acuity levels in ALFs compared to other states and national averages was quite telling. The ***2014 National Study of Long-Term Care Providers*** (via the National Center for Health Statistics) provided that at 53%, Maryland has the nation's highest percentage of ALF residents who suffer with Alzheimer's or other dementia-related conditions. Furthermore, Maryland's percentage of this particular segment of ALF residents is also 13% higher than the national average, which is 40%. No other state is 50% or over; Michigan is just slightly below Maryland, at 49%[3]. The study also found that 54% of Maryland's ALF residents are 85 years of age or older; the national average is 53%.

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[1] Maryland Office of Health Care Quality *Maryland's 2005 Assisted Living Evaluation*, pg. 10.

[2] Berdzik, Segalla, & McMillen, *Best Practices for Managing Acuity Creep in Assisted Living*, 2015.

[3] Sengupta, Harris-Kojetin, & Caffrey, *2014 National Study of Long-Term Care Providers Web Tables of State Estimates About Residential Care Community Residents.* Supplement to: *Variation in Resident Characteristics, by Size of Community: United States, 2014.* NCHS Data Brief No. 223. National Center for Health Statistics, 2015.

The chart below highlights a comparison of Maryland, neighboring states, and the national averages for the industry's acuity benchmark, activities of daily living (ADLs). It details the percentage of the ALF population that requires help with ADL's:

National Center for Health Statistics Data Brief No. 223 – Data Collected 2014
Percentage of ALF Residents Needing Assistance with ADL's

Population	Bathing	Walking	Dressing	Toileting	Transferring to and from Bed	Eating
National Average	62	29	47	39	30	20
Maryland*	68	36	53	47	35	29
Virginia	64	37	49	42	33	13
District of Columbia	69	26	61	38	29	21
Delaware	50	15	37	32	21	19
Pennsylvania	59	28	45	36	27	21
New Jersey	61	33	51	38	30	18
New York	60	11	37	25	10	9

***Maryland has a higher percentage in each ADL category, versus the national average, and is higher than all listed states in 4 of the 6 ADL categories (bathing, toileting, transferring to and from bed, and eating).**

The ***State Long Term Care Ombudsman's June 2018 Fact Sheet*** reports that nursing home facilities and ALFs generate the identical number one complaint received, which is "discharge/eviction-planning, notice, procedures, abandonment" yet there is no license required and no licensing board to address these issues with respect to ALFs. Additionally, 44% of complaints made to the State Long Term Care Ombudsman were made by residents[4]. It follows that many more significant, and likely dangerous/egregious, scenarios are taking place without being reported due to the frail and vulnerable residents' incapacity to report or fear of potential staff retaliation.

OHCQ continues to be understaffed and, therefore, incapable of conducting the required number of ALF surveys. For example, the ***Office of Health Care Quality Annual Report and Staffing Analysis for Fiscal Year 2018*** reported that, of the 1,546 ALFs in Maryland that existed at the time of the report, OHCQ conducted: 218 "initial" surveys (for ALFs that are being initially licensed and are not yet providing resident care); 570 "renewal" surveys; 64 "other" surveys; and investigated 1,137 of 1,315 complaints and self-reports received. **It should be noted that a category of "annual" surveys are not listed in this report as being conducted in Fiscal Year 2018**; however, annual surveys are listed as a category in Appendix A[5]. The report stated that OHCQ had 29 surveyors for ALFs and planned to increase its surveyor staff by 5.83 FTEs. This is based upon a formula that assumes that each surveyor will spend a minimal amount of time on each survey. For example, 16 hours is anticipated for a surveyor to work on an annual survey. Among the top 10 frequently cited deficiencies noted in the above-referenced report are:

Alternate Assisted Living Manager – **127 deficiencies**
COMAR 10.07.14.18 requires that assisted living facilities have a qualified alternate individual available to assume the responsibilities of the duties of the assisted living manager.

[4] Maryland Department of Aging, *Long-Term Care Ombudsman Program Fact Sheet June 2018*
[5] Maryland Office of Health Care Quality *Annual Report and Staffing Analysis Fiscal Year 2018*, pp. 29.

Administration – **97 deficiencies**
COMAR 10.07.14.13 requires that assisted living managers implement quality assurance plans and work with the delegating nurse **(every 6 months)** to discuss the change in residents' status, pharmacy reviews and service plan requirements.

Assisted Living Manager – **96 deficiencies**
COMAR 10.07.14.15 requires that assisted living facilities have a qualified manager who meets the requirements set forth in the regulation.

Requiring licensure of ALMs will allow BENHA to partner with OHCQ, thereby fortifying public protection and allowing for appropriate review, investigation, and discipline of ALMs, when necessary. Requiring a license for ALMs will send a clear message to the citizens of Maryland that ALF residents are just as worthy and deserving of **full protection** as our nursing home residents. As we know, many residents in ALFs have conditions that are analogous to their counterparts in nursing home facilities. NAB's ***2014 Practice Analysis of Long Term Care Administrators across Multiple Lines of Service*** validated the fact that 82% of the competencies of NHAs and ALMs are common and that ALMs require a high level of competency, one that is similar to NHAs[6].

Implementing an actual ALM license will both legitimize and further standardize the profession. As our state's population continues to age and require services such as ALFs, it is clear that this step is imperative and will allow the State to operate from a proactive position versus one that is reactive. We must put the protection and care of the citizens of Maryland first.

Fiscal and Operational Impact:

1. ***Department*** – This proposal will have a fiscal and operational impact on the Department. However, the operational impact of needing to increase the BENHA staff will be minimal and offset by the increased revenue due to ALFM applications, licensing and renewal fees for over 1,550 potential licensees.

2. ***Other State agencies or local governments*** – No anticipated direct financial impact.

3. ***Small businesses***- No anticipated direct financial impact.

Legislative Strategy:

1. ***Prior introductions*** SB 471 (2009), introduced by Senator Delores Kelley, also proposed licensing ALFMs.

2. ***Anticipated support or opposition*** - The support of the following advocates/entities is anticipated: State and local county Long Term Care Ombudsmen; National Association of Boards of Long Term Care; Voices for Quality Care; AARP; United Seniors of Maryland; Alzheimer's Association of Greater Maryland; National Association of Social Workers

[6] National Association of Long Term Care Administrator Boards, *Final Report: Practice Analysis of Long Term Care Administrators across Multiple Lines of Service*, 2014, Professional Examination Service.

Maryland Chapter; Gerontological Advanced Practice Nurses Association; Nurse Practitioner Association of Maryland; Mid-Atlantic Society for Post-Acute and Long-Term Care Medicine; Society for Post-Acute and Long-Term Care Medicine; National Association of Directors of Nursing Administration; American Geriatrics Society; Baltimore City Medical Society; Maryland State Medical Society; and other senior advocacy groups.

Opposition from owners' advocacy groups and professional associations, such as HFAM, Lifespan, and Leading Age is anticipated.

3. ***Stakeholder strategy –*** BENHA will reach out to the stakeholder groups to invite discussions and feedback in order to better understand their concerns and make all possible changes that do not compromise the Board's mission of public protection.