

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1322

(Delegate Mandel, *et al.*)

Health and Government Operations

Finance

Assisted Living Programs - Licensure

This bill requires assisted living program licensure applicants to submit additional information to the Department of Health and Mental Hygiene (DHMH) and clarifies that a person must be licensed to conduct, operate, or maintain an assisted living program in Maryland.

Fiscal Summary

State Effect: The bill's requirements could be absorbed within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Assisted living program licensure applications developed by the Secretary of Health and Mental Hygiene must include the name and address of each program officer, manager, alternate manager, and delegating nurse or case manager and must include the fee set in regulation. In addition to the application for initial licensure, a program applicant must submit: (1) information concerning any license or certification the applicant holds; (2) information demonstrating the applicant's ability to operate a program; (3) the policies and procedures the program will implement; (4) identification of the personnel and relief personnel the program will employ; and (5) any other relevant information.

The bill restates the statutory requirement that the Secretary must review the application and information and conduct an independent investigation of the program applying for initial licensure. It requires that, based on the review and investigation, the Secretary must authorize the unconditional approval of the application, authorize the conditional approval of the application, or deny the application. The bill also restates the statutory provision that an assisted living license is valid for two years.

The bill also requires DHMH, consulting with specified stakeholders, to develop a methodology based on resident need from criteria in the Resident Assessment Tool to determine when an assisted living program should not be required to have awake, overnight staff and on-site nursing. Nothing in the bill may prohibit DHMH from adopting regulations regarding on-site nursing or awake, overnight staff based on criteria other than the methodology developed under the bill. DHMH must adopt regulations as appropriate to implement recommendations developed under the bill.

DHMH must submit an interim report by June 30, 2006 and a final report by December 1, 2006 on the development of the methodology to specified legislative committees.

The bill specifies that an “assisted living program” does not include a program certified by the Department of Human Resources (DHR) as a certified adult residential environment program (Project Home). It also repeals a provision stating DHR may only provide housing under the care program in assisted living facilities licensed to operate under the Health-General Article.

Current Law: An assisted living program is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to individuals who are unable to perform or who need assistance performing the activities of daily living.

An assisted living program does not include a nursing home, a State mental health facility, a program licensed by DHMH to provide services to individuals with developmental disabilities or mental health services, a hospice care program, services provided by family members, or services provided in an individual’s home.

Statute requires hospitals and related institutions to be licensed in order to operate in Maryland. An assisted living program is a related institution. An assisted living program license is valid for two years. A related institution that operates without a license is guilty of a misdemeanor and on conviction is subject to maximum penalties of a \$1,000 fine for a first offense and a \$10,000 fine for each subsequent conviction for a violation of the same provision. Each day a violation is continued after the first conviction is a subsequent offense. Additionally, the Secretary of Health and Mental Hygiene may impose a maximum civil penalty of \$10,000 for each offense.

Assisted living licensure applications must be on a form the Secretary requires and must include the applicant's name, a statement that the applicant meets statutory requirements, the class of the proposed related institution, the related institution's location, the name of the individual to be the related institution's head, and any other information the Secretary requires.

DHR must administer a care program that provides housing and related services for adults who, because of disability, require a supportive housing arrangement to live in the community. The program must: • provide for the development of care housing; • provide for case management to disabled individuals living in care housing; and • arrange for the provision of supportive services to disabled individuals living in care housing. DHR may only provide housing under the care program in assisted living program facilities licensed to operate under Health-General Article.

Background: There are approximately 1,580 licensed assisted living programs in Maryland and approximately 570 known unlicensed programs.

The Office of Health Care Quality (OHCQ) is aware of these unlicensed programs because of complaints it has received. OHCQ works with these providers to try to bring them further into compliance with State laws and regulations. OHCQ further advises that often local State's attorneys are hesitant to prosecute an unlicensed program because it currently is a misdemeanor offense to operate without a license.

The Office of Health Care Quality 2005 evaluation of Maryland's Assisted Living Program reported a proliferation of "get rich quick" scams aimed at using government funding for assisted living facilities to make money rather than provide quality care. Additionally, the evaluation reported that in 2004, 20 sanctions were imposed for operating without a license. In 2005, 27 sanctions were imposed. These instances were the most severe violations, and only the most severe violations are likely to be litigated. Due to the rapid emergence of "get rich quick" scams and the infrequency with which licensure violations are pursued, DHMH plans to strengthen licensing regulations to enhance quality at the outset. DHMH believes that strengthening regulations would be made easier by legislation that articulates both minimum licensing standards as well as the department's authority to deny licenses to unacceptable facilities.

The 2005 evaluation also confirmed that individuals in assisted living programs are more frail than was anticipated. Specifically, two-thirds of residents in assisted living programs have moderate to severe dementia. Further, deficiencies in care are equally likely in small and large facilities. For these reasons, DHMH believes that the "one-size-fits-all" regulatory framework should be replaced with a needs-based scheme. One application of the needs-based approach to care is the determination of whether awake

overnight staff are required. Rather than base awake overnight staffing on the number of patients in a facility, DHMH has moved to link the requirement to care needs. Beyond the presence of dementia, the department will use its Resident Assessment Tool to determine when residents require awake overnight staff.

Other states have established guidelines for awake overnight care. According to the National Center for Assisted Living, 12 states specifically require awake overnight staff: Delaware, Illinois, Indiana, Kentucky, and Montana (for category B and C facilities), Nevada (for facilities with more than 20 residents), New Jersey, Rhode Island, South Carolina, South Dakota, and Wisconsin (in facilities with one or more residents requiring continuous care), and Wyoming (for facilities with more than 8 residents).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; *Maryland's Assisted Living Program 2005 Evaluation: Final Report and Recommendations*, Office of Health Care Quality, January 2006; Department of Legislative Services

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