

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 720
 Finance

(Senator Kelley, *et al.*)

Health and Government Operations

**State Board of Examiners of Nursing Home Administrators - Renaming,
 Licensure of Assisted Living Managers, and Penalties**

This bill renames the State Board of Examiners of Nursing Home Administrators to be the State Board of Long-Term Care Administrators and requires that an individual be licensed by the board to practice as an assisted living manager in the State beginning October 1, 2024. Individuals who have been employed in the State as an assisted living manager and worked at a program with five or more beds as of September 30, 2022, are deemed to have satisfied the qualifications for licensure. An assisted living manager employed by a program with four or fewer beds must complete a specified manager training course by September 30, 2024. The bill alters board structure and membership requirements, specifies that the board is a medical review committee, and makes conforming changes. By October 1, 2023, the board must submit a report on implementation of the bill. The Office of Health Care Quality (OHCQ) must notify the board of the appointment of an assisted living program as a resident’s representative payee.

Fiscal Summary

State Effect: No effect in FY 2023. General fund expenditures increase by \$114,300 in FY 2024 for personnel, as discussed below. Future years reflect annualization and additional staff in FY 2025. General fund revenues increase by \$680,000 in FY 2025, and by \$510,000 in FY 2027 and biennially thereafter, from licensure fees. Potential increase in general fund revenues due to the imposition of civil fines.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	\$0	\$0	\$680,000	\$0	\$510,000
GF Expenditure	\$0	\$114,300	\$282,200	\$276,200	\$283,800
Net Effect	\$0	(\$114,300)	\$397,800	(\$276,200)	\$226,200

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

State Board of Long-Term Care Administrators

The bill adds 3 new members to the board and requires that 5 (rather than 6) of the 17 board members be licensed nursing home administrators. Before October 1, 2024, these 5 members must be individuals who have completed a specified manager training course (or are exempt from the requirement) and been actively employed by an assisted living program. On or after October 1, 2024, these 5 members must be licensed assisted living managers.

One consumer member of the board must have presently or have had, *within five years immediately preceding initial appointment*, a family member living in a nursing home. The second consumer member must have presently or have had within the five years immediately preceding initial appointment, a family member who receives services in an assisted living program.

The bill specifies that the board is a medical review committee as defined in the Health Occupations Article. Functions of a medical review committee include (1) evaluating and improving the quality of health care provided; (2) evaluating the need for and the level of performance of health care provided; (3) evaluating the qualifications, competence, and performance of health care providers; and (4) evaluating and acting on matters that relate to the discipline of health care providers.

Assisted Living Managers

“Assisted living manager” means an individual who oversees and is responsible for the day-to-day operation of an assisted living program.

To qualify for an assisted living manager license, an applicant must be of good moral character and at least 21 years old and (1) meet the education requirements under Maryland regulations (COMAR 10.07.14) and (2) complete an assisted living manager training course, as specified, including the successful passing of the course examination, or be exempt from the training requirement. Individuals who have been employed in the State as

an assisted living manager and have worked at an assisted living program that is licensed for five or more beds as of September 30, 2022, are deemed to have satisfied the qualifications for licensure.

To apply for a license, an applicant must (1) submit a board-approved application; (2) pay an application fee set by the board; and (3) submit satisfactory evidence of having completed a State and national criminal history records check (CHRC).

A license expires and can be renewed after two years. The bill provides procedures for license renewal, reinstatement, and inactive practice.

An individual may not practice, attempt to practice, or offer to practice as an assisted living manager in the State unless licensed by the board, or supervise, direct, induce, or aid an unlicensed individual to practice as an assisted living manager. Unless authorized to practice as an assisted living manager, an individual may not represent themselves as such. A person may not obtain or aid in selling or fraudulently obtaining or furnishing an assisted living manager license or practice as an assisted living manager under any license unlawfully or fraudulently obtained or unlawfully issued.

The board must investigate and take appropriate action as to any complaint filed with the board that alleges a licensee has failed to meet any standard of the board. Subject to hearing provisions, the board may deny a license, reprimand any licensee, place any licensee on probation, suspend or revoke a license, or impose a civil fine if an applicant or licensee violates any 1 of 17 disciplinary grounds.

The board may impose a civil fine instead of suspending or revoking a license or, in addition to a reprimand, placing the licensee on probation, or suspending or revoking the license. A civil fine may not exceed \$1,000 for a first violation and \$5,000 for any subsequent violation of the same provision. Any civil fine collected is payable to the general fund.

The board may take disciplinary action against an individual whose license has expired or been surrendered if the board initiated an investigation or issued charges against the individual while the individual was licensed.

The board may also impose a civil penalty of up to \$10,000 against an individual who (1) practices, attempts to practice, or offers to practice as an assisted living manager in the State without a license or (2) supervises, directs, induces, or aids an unlicensed individual to practice as an assisted living manager. Any civil fine collected is payable to the general fund. If the board finds a violation of practicing without a license, the board must provide the individual with written notice and a 60-day period to comply with the licensure requirement before imposing the fine.

Provisional Assisted Living Manager License

If a licensed assisted living manager leaves or is removed by death or any other unexpected cause, the owner of the assisted living program or other appropriate designee must immediately (1) designate a licensed assisted living manager to serve in that capacity and notify the board or (2) appoint an alternate assisted living manager or a nonlicensed individual to serve in the capacity of interim assisted living manager for up to 90 days, notify the board, and forward the credentials of the individual to the board for evaluation.

The board may issue a provisional license to the individual if the board determines that the applicant is of good moral character and capable of administering the facility for the provisional period. An applicant for a provisional license must submit to a CHRC (unless the individual has previously completed a CHRC required for licensure, certification, or registration by a health occupations board). The board may extend the initial provisional period for up to 30 days.

The appointed alternate assisted living manager or nonlicensed individual may serve in the capacity of interim assisted living manager if the individual has enrolled in a manager training course that the individual expects to complete within six months and has provided required notice.

Required Report

By October 1, 2023, the board must report on (1) the status of the appointment of the assisted living managers to the board; (2) the number of personnel employed by the board to implement the assisted living manager licensure requirements; (3) the ability of the board's software platform to accept applications for licensure as assisted living managers and issue the licenses; (4) the timeframe for informing and steps that will be taken to inform assisted living programs and assisted living managers of the licensure requirement; and (5) any other policies that the board anticipates adopting to implement the bill.

Current Law: Federal law requires that both nursing homes and nursing home administrators in all states be regulated. The State Board of Examiners of Nursing Home Administrators is the licensing authority of nursing home administrators in the State. The board regulates the practice of nursing home administrators, licenses qualified nursing home administrators, establishes fees, enforces statute, and adopts regulations to promote quality health care in the field of long-term care.

Assisted living is regulated by the State and generally does not have specific federal requirements. In Maryland, assisted living programs are licensed by OHCQ.

COMAR 10.07.14 set the minimum, reasonable standards for licensure of assisted living programs in Maryland, including requirements for an assisted living manager. An assisted living manager must, at a minimum, be at least 21 years of age and possess a high school diploma or other appropriate education and have experience to conduct specified responsibilities. Additional education and experience are required for an assisted living facility manager at a program licensed to provide a high level of care. Assisted living managers must be free from and/or immune to specified communicable diseases; have no criminal history; have sufficient skills, training, and experience to serve residents in a manner consistent with the philosophy of assisted living; have verifiable knowledge in specified areas; receive initial and annual training in specified areas; and be certified in basic first aid and cardiopulmonary resuscitation.

An assisted living manager must complete a training course that (1) consists of at least 80 hours of coursework and includes an examination; (2) consists of training programs that include direct participation between faculty and participants; and (3) includes not more than 25 hours of training that does not require direct interaction between faculty and participants. An assisted living manager employed in a program that is licensed for five or more beds must complete 20 hours of continuing education approved by the Maryland Department of Health every two years.

In addition to an assisted living program manager, each assisted living program must have an alternate assisted living manager available when the assisted living manager is not available. The alternate must be at least 21 years old, have two years of experience in a health-related field, and meet specified qualifications.

An assisted living program that fails to employ an assisted manager who meets these requirements may be subject to sanctions and a civil monetary penalty of up to \$10,000.

Chapters 471 and 472 of 2021 requires an assisted living program that was appointed as a representative payee for residents to report specified information to the Consumer Protection Division (CPD) of the Office of Attorney General by June 1 each year. An assisted living program must report on the use of the following benefits by residents during the immediately preceding year: (1) Social Security benefits; and (2) other federal, State, or local government funds that are allocated for the purpose of assisting individuals who are aged, disabled, or blind. OHCQ must notify CPD of the appointment of an assisted living program as the resident's representative payee within a reasonable time after being made aware of the appointment.

As of December 1, 2021, there were 1,699 licensed assisted living programs in the State, of which 395 were licensed for four or fewer beds.

State Expenditures: The board advises that it currently has only two full-time staff and one contractual position (currently in recruitment) to oversee the licensure and regulation of approximately 944 nursing home administrators. Thus, additional personnel are needed to implement the bill. The board advises that four additional full-time positions are needed to establish and administer the new assisted living program manager licensure program, which will regulate at least 1,700 assisted living managers.

Thus, general fund expenditures increase by \$114,262 in fiscal 2024, which reflects the cost to hire two of the needed four positions (an administrative officer and an office specialist) beginning October 1, 2023, to license assisted living program managers by October 1, 2024. The remaining two positions (both investigators) are assumed to begin July 1, 2024 (fiscal 2025). The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2024</u>	<u>FY 2025</u>
Positions	2	2
Salaries and Fringe Benefits	\$99,576	\$264,798
Other Operating Expenses	<u>14,686</u>	<u>17,357</u>
Total General Fund Expenditures	\$114,262	\$282,155

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

State Revenues: Assisted living managers must be licensed by October 1, 2024. It is assumed that the board will begin accepting license applications in fiscal 2025. The board advises that application fees will be \$100, and license and renewal fees, collected biennially, will be \$300. If a minimum of one assisted living manager from each of the 1,700 licensed assisted living programs in the State apply for a license, revenues increase by \$680,000 in fiscal 2025 to reflect initial application and license fees, and by \$510,000 in fiscal 2026, and biennially thereafter, to reflect renewal fees.

Small Business Effect: Assisted living programs, the vast majority of which are small businesses, must ensure that their assisted living managers comply with the bill’s licensure requirement. Facilities with four or fewer beds must ensure their assisted living program manager completes the required manager training course by September 30, 2024.

Additional Information

Prior Introductions: HB 707 of 2020, a similar bill, was referred to the House Health and Government Operations Committee, but was subsequently withdrawn. Its cross file, SB 480, was referred to the Senate Finance Committee, but was subsequently withdrawn.

Designated Cross File: HB 1034 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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