



Board of Examiners of Nursing Home Administrators

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Felicia W. Anthony, MBA, LNHA, Board Chair – Ciara J. Lee, MS, Executive Director
4201 Patterson Avenue, Baltimore MD 21215 Phone: 410-764-4750

2022 SESSION POSITION PAPER

BILL NO: HB 1034
COMMITTEE: Health and Government Operations
POSITION: SUPPORT

TITLE: State Board of Examiners of Nursing Home Administrators – Renaming and Licensure of Assisted Living Managers

BILL ANALYSIS: House Bill (HB) 1034 bill establishes a license for assisted living facility managers (ALFMs); renames the “Board of Examiners of Nursing Home Administrators (BENHA)” to the “Board of Long Term Care Administrators (BLTCA)”; changes the composition of the Board by adding three (3) actively-practicing ALFMs and requiring two (2) members to be individuals who are not nursing home administrators or assisted living managers, but who are engaged actively in professions that are concerned with the care of chronically ill, infirm, or aged individuals; and requires BLTCA to develop and require a State’s Standards Exam for licensure of ALFMs.

POSITION AND RATIONALE: The State Board of Examiners of Nursing Home Administrators (the Board) supports HB 1034. This bill 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, licensed nursing home administrators (LNHAs) and ALFMs fall under the purview of the long term care administrator board. There are currently 15 states (including Virginia) that 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.

It is important to note that America’s assisted living facilities (ALFs) are not regulated by the federal government; 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). Consequently, Maryland’s current 1,699 ALFs are only fully-regulated by and accountable to the State (unlike Maryland’s 226 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, 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. For instance, the Maryland Department of Health (MDH) Office of Health Care Quality (OHCQ), in its report entitled *Maryland’s 2005 Assisted Living Evaluation* noted: “From a review of national and

Maryland-specific studies, individuals in assisted living programs are more frail than was anticipated when the program was implemented in 1996.”

Maryland’s acuity levels in ALFs compared to other states and national averages are of grave concern. The **2016 National Post-acute and Long-term Care Study (NPALS)** (via the CDC National Center for Health Statistics) provided that at 54%, **Maryland has one of the nation’s highest percentages 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 12% higher than the national average, which is 42%. As a comparison, Virginia is below Maryland at 41%, just under the national average. The study also found that 49% of Maryland’s ALF residents are 85 years of age or older.

The industry standard for residents in nursing homes and ALFs is the six (6) “activities of daily living” (ADLs), which are bathing, walking, dressing, toileting, eating, and transferring to and from bed. In evaluating residents, facilities look at how much help each person needs with their ADLs. The aforementioned study reported that, **for each ADL category, Maryland had a higher percentage of residents requiring care when compared to the national average as well as all neighboring states (i.e., Virginia, DC, Delaware, Pennsylvania, New Jersey, and New York).**

OHCQ continues to face staffing challenges similar to the rest of the nation which is a barrier to conducting required ALF surveys. For example, the **Office of Health Care Quality Annual Report and Staffing Analysis for Fiscal Year 2021** reported that, of the 1,672 ALFs in Maryland at the time of the report, OHCQ conducted: 164 “initial” surveys (for ALFs that are being initially licensed and are not yet providing resident care); 817 “renewal” surveys; and 100 “other” surveys. **The report stated that OHCQ had a grand total of 33 surveyors for all ALFs and planned to increase its surveyor staff by 3.99 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.

During the OHCQ surveys, Maryland ALFs are cited and issued State tags that group various types of observable deficient practices. According to the **Office of Health Care Quality Annual Report and Staffing Analysis for Fiscal Year 2021**, 135 citations were issued for State tag 3680 “Medication Management and Administration” in ALFs, the eighth highest ALF deficiency in fiscal year 2021. The given information is truly alarming, especially since almost half of the residents in ALFs in Maryland are over the age of 85 with underlying health conditions that require higher medication needs and medical support. It is noteworthy to report that the top ten most frequently cited assisted living deficiencies in assisted living programs in fiscal year 2021 also included the following: “Tag 2600 - Other Staff Qualifications” as #1; “Tag 2550 - Other Staff Qualifications” as #2; “Tag 2780 - Delegating Nurse” as #3; and **“Tag 2220 - Assisted Living Manager” as #10.** The data depicts a severe deficit in staffing qualifications in ALFs and a need for a licensure qualification for ALMs.

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.

For these reasons, the Maryland State Board of Examiners of Nursing Home Administrators strongly urges a favorable report on HB 1034.

Thank you for your consideration. For more information, please contact Ciara Lee, Executive Director for the Maryland Board of Examiners of Nursing Home Administrators, at 410-764-4749 or at ciaraj.lee1@maryland.gov.

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.