MARYLAND
Health Care
Commission

Andrew N. Pollak, MD, Chairman
Ben Steffen, Executive Director

February 16, 2022

The Honorable Dolores G. Kelley
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 531 - Maryland Health Care Commission – Assisted Living Programs - Study

Dear Chair Kelley and Committee Members:

The Maryland Health Care Commission (MHCC) is submitting this letter of information on SB 531 - *Maryland Health Care Commission – Assisted Living Programs - Study (SB 531). MHCC is providing this letter of information because we wish to inform the Committee that we may lack sufficient resources at this time to complete the thorough study this issue deserves.*

HB 636 requires MHCC in consultation with the Office of Health Care Quality, the Maryland Long-Term Care Ombudsman Program, the Medicaid Administration, the Governor's Workforce Development Board, and interested stakeholders, to conduct a study regarding the quality of care by assisted living programs with nine or fewer beds; and requiring the Commission to report its recommendations, including any draft legislation, to the Governor, the Department of Health, and certain committees of the General Assembly.

In addition, SB 531 requires MHCC to:

(1) analyze the inspection data from the Office of Health Care Quality to determine, on a systemic level, where quality of care may be improved;

(2) examine the entry into and exit from the market for assisted living programs, including any noticeable trends related to inspection data or regulatory requirements;

(3) consider the feasibility of developing a reporting system for assisted living programs that protects patient confidentiality and makes data related to catastrophic health emergencies declared by the Governor and quality of care publicly available;

(4) review the current assisted living program licensure regulations to determinewhether these programs should be regulated differently than programs with ten or more beds;

(5) determine whether: (i) assisted living programs receive sufficient reimbursement to cover the cost of care for the services provided, including for residents with Alzheimer's

and other dementia–related conditions, under initiatives offered through the Maryland Medicaid Administration or other State or local initiatives; and (ii) the Home–and Community–Based Options Waiver, or any other waiver program that may be used for assisted living programs, can be revised to improve the quality of care, and increase provider participation; and

(6) review staffing resources that could be better utilized and made available for these programs, including measures to encourage the recruitment and retention of staff and meet standards for sufficient staffing.

In Maryland, an assisted living program is defined as: 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 meet the needs of individuals who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the individuals.[1]

There is a wide variety of assisted living providers in Maryland. They range from large, corporate-managed facilities where hundreds of people live in their own apartments to small, private homes in which the owners provide services to two residents who may share a bedroom. What these providers have in common, is that they all offer their residents some level of assistance with their daily activities, including dressing, bathing, and eating. These facilities are not as highly regulated by the government as nursing homes. More than 70% of assisted living facilities have nine (9) or fewer beds. These facilities are less likely to be subject to OHCQ routine inspections and they are not currently listed on the Maryland Health Care Quality Website.

Assisted living facilities serve an important niche in the long-term care landscape. During the COVID-19 pandemic and especially during the repeated surges assisted living facilities were beset with the same challenges faced by nursing homes and adult living facilities – rapid outbreaks of the disease, lack of PPE and other needed equipment, and limited and often demoralized workforce. COVID-19 outbreaks at assisted living facilities did not generate nearly the public outcry, although the outbreaks were nearly as widespread and equally devastating to the residents.

[1] COMAR 10.07.14.02 (11) (a)

Government and commercial payers rarely cover the living costs for assisted living. Almost all assisted living services costs are paid for by residents (or their families) out of their personal funds. Long term care insurance generally will pay for assisted living, but the insurance must be purchased in advance and paid for from personal funds.[2] Virtually all payers will cover the health care services delivered to residents of assisted living. These services could range from primary care and behavioral health services, a range of rehabilitation, and even sophisticated respiratory and ventilation care. A separate secure dementia unit often exists in larger assisted living facilities. A more limited range of services will be available at the small facilities.

Increased nursing home care costs and expanding scope of services available at larger assisted living facilities has increased payers, particularly Medicaid, interest in providing assisted living benefits. These programs are still in the pilot phases, but it is possible that the programs will expand. A barrier to broader coverage of assisted living care is the lack of national standards like those that exist for nursing homes and home health agencies. Medicare and Medicaid certified nursing homes and home health agencies are required to undergo rigorous state inspections annually with results readily accessible to consumers. State licensing standards for assisted living vary greatly in the scope of review and authority to intervene. These problems are magnified for the smaller facilities.

Comparable data for assisted living is sparse and in Maryland it is focused on facilities with ten beds or more. MHCC publishes the results of OHCQ inspection surveys performed on-site, influenza vaccination rates, and descriptive information on ownership, the size of the facility, and the scope of services for facilities. For facilities with nine beds or fewer, information is limited to inspection reports from the Office of Health Care Quality.

The MHCC commends the sponsors for offering this study. Our concerns about undertaking the study rest on the availability of staff resources. A broad assessment of assisted living services encompassing the entire industry is warranted. Included in that study should be an assessment of the appropriate regulatory framework given the growing popularity of assisted living and the increasing acuity of the resident population. Small facilities present especially complex challenges as they often serve patients with fewer financial resources.

[2] Assisted Living in Maryland, *What you Need to Know*, 2002, available at https://aging.maryland.gov/documents/ALGuide.pdf

We hope this information is helpful. If you would like to discuss this further or have any questions, please contact Tracey DeShields, Director, Policy Development and External Affairs at tracey.deshields2@maryland.gov.

Sincerely,

Andrew Pollack
Chair, MHCC

Ben Steffen
Executive Director, MHCC

cc:
The Honorable Pamela Beidle
The Honorable Malcolm Augustine
The Honorable Adelaide C. Eckardt
The Honorable Antonio Hayes
The Honorable Mary Washington
Tracey DeShields, Director, Policy Development and External Affairs, MHCC