

LeadingAge Maryland - 2023 - SB 665 - Assisted Liv

Uploaded by: Aaron Greenfield

Position: FAV



576 Johnsville Road
Sykesville, MD 21784

TO: Finance Committee
FROM: LeadingAge Maryland
SUBJECT: Senate Bill 665, Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect
DATE: March 16, 2023
POSITION: **Favorable**

LeadingAge Maryland supports Senate Bill 665, Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect.

LeadingAge Maryland is a community of more than 140 not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. Members of LeadingAge Maryland provide health care, housing, and services to more than 20,000 older persons each year. Our mission is to be the trusted voice for aging in Maryland, and our vision is that Maryland is a state where older adults have access to the services they need, when they need them, in the place they call home. We partner with consumers, caregivers, researchers, public agencies, faith communities and others who care about aging in Maryland.

Senate Bill 665 requires the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an assisted living program have been subject to neglect or physical abuse, if the assisted living program is operating without a license. The bill subjects assisted living programs operating without a license to immediate prosecution if they fail to cooperate. The Department must provide written notice to the unlicensed assisted living program that it must come into compliance with the licensure requirements within 30 days after written notification. The Department, the Attorney General, a state’s attorney, or a local health officer may petition a circuit court for injunctive relief against the operation of an assisted living program operating without a license.

Currently, an individual found to be operating an unlicensed assisted living facility (uALF) is given a 30-day grace period to apply for a license. While the application is pending, the individual cannot be prosecuted for operating. This loophole allows unscrupulous owners to

continue operating substandard facilities for extended periods of time by gaming the application system by using multiple names.

Abuse, neglect, exploitation of residents within an uALF may be addressed criminally. Unfortunately, those investigations take time, during which an uALF that has applied for a license may continue to operate. Senate Bill 665 would close the loophole by eliminating the 30-day grace period for those uALFs where the Office of Health Care Quality (OHCQ) finds a credible allegation. Owners found to be operating in this manner would be subject to immediate prosecution as well as injunctive relief to prevent their continued operation. Owners of uALFs who refuse to cooperate in OHCQ investigations would likewise lose access to the 30-day grace period and be subject to prosecution. Unlicensed ALFs that are not suspected of abuse, neglect, exploitation or those where a subsequent investigation finds the claims unsubstantiated will be provided the 30-day window to apply for a license as the current statutory framework provides.

Maryland is not unique in its need for assisted living facilities, which meet a vital need in our healthcare system in the state. Senate Bill 665 is intended to encourage uALFs to become licensed.

For these reasons, LeadingAge Maryland respectfully requests a favorable report on Senate Bill 665.

**For more information, please contact Aaron J. Greenfield, Greenfield Law, LLC,
410.446.1992**

SB 665_PJC_Favorable_FIN.pdf

Uploaded by: Ashley Black

Position: FAV



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SB 665
Assisted Living Programs - Unlicensed Programs – Resident Abuse & Neglect
Hearing of the Senate Finance Committee
March 16, 2023
1:00 PM

SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Health and Benefits Equity Project advocates to protect and expand access to healthcare and safety net services for Marylanders struggling to make ends meet. We support policies and practices that are designed to eliminate economic and racial inequities and enable every Marylander to attain their highest level of health. **PJC strongly supports SB 665**, which would require the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an unlicensed assisted living program have been subject to neglect or physical abuse. SB 665 would also authorize the Maryland Office of the Attorney General to subject an unlicensed assisted living program to immediate prosecution if a credible allegation is received or after an investigation has found abuse or neglect.

The rise in illegal unlicensed living facilities operating in plain sight has been an issue across the country. Maryland's seniors and individuals with disabilities, especially those with Medicaid and Medicare, have been targeted by unlicensed assisted living facilities for financial exploitation. In many cases however, residents have also experienced neglect, physical abuse, restraint (physical and chemical), overcrowding and/or deplorable living conditions in these unregulated facilities. For the safety and wellbeing of our seniors and adults with disabilities residing in nursing homes and assisted living facilities, it is imperative that the State have authority to investigate and immediately prosecute unlicensed assisted living facilities where abuse or neglect has been found or is alleged to have occurred.

SB 665 is necessary to promote the oversight, investigation and prosecution of unlicensed assisted living facilities that have violated the rights of vulnerable adults to be free from abuse and neglect in long-term care. Under current Maryland law, MDH must send written notice to the program 30 days before the State files charges to give the program an opportunity to come into compliance with licensure requirements.¹ This requirement in

¹ Md. Code Ann., Health Gen. § 19-1804.1 (Westlaw through 2022 Regular Session the General Assembly).

cases where abuse or neglect has occurred or is actively occurring could cause the state to lose valuable time in securing the safety of vulnerable adults in unlicensed facilities and could result in additional, preventable harm. Further, this provision is unworkable where there is evidence of abuse or neglect of residents because demonstrating the ability to care for residents of an assisted living program is integral to the application for licensure.²

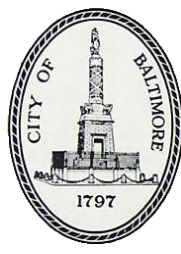
SB 665, if passed, would open a path for Maryland to protect seniors and individuals with disabilities from bad actors in the long-term care industry without delay. For these reasons, the Public Justice Center urges the committee to issue a **FAVORABLE** report for **SB 665**. If you have any questions about this testimony, please contact Ashley Black at 410-625-9409 ext. 224 or blacka@publicjustice.org.

² *Id.* at. § 19-1804.1 (b)(3)(v).

SB0665-FIN-FAV.pdf

Uploaded by: Brandon Scott

Position: FAV



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 665

March 16, 2023

TO: Members of the Senate Finance Committee

FROM: Nina Themelis, Interim Director of Mayor's Office of Government Relations

RE: Senate Bill 665 - Assisted Living Programs-Unlicensed Programs-Resident Abuse and Neglect

POSITION: Support

Chair Griffith, Vice Chair Klausmeier, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 665.

SB 665 requires the Maryland Department of Health, when investigating an unlicensed assisted living facility, to investigate whether the residents of that facility have been subject to neglect or physical abuse. If the Department finds that an allegation of neglect or physical abuse is credible, or if the operator of the facility is non-cooperative with the Department's investigation, the operator can be subject to immediate prosecution. The bill also allows the Department, the Attorney General, a States' Attorney or a local Health Officer to petition a circuit court for injunctive relief, against the operation of an unlicensed assisted living facility.

The Baltimore City Long-Term Care Ombudsman program, under federal and State law, acts as an advocate for residents of Baltimore nursing homes and assisted living facilities. The Ombudsman responds to resident complaints about a wide range of issues, including poor quality of care, inadequate staffing, and physical, psychological, and financial abuse.

Baltimore City's Long-Term Care Ombudsman estimates that there are at least 80 unlicensed assisted living facilities in Baltimore City, and that this number is growing. Baltimore City is a preferred location for these facilities due to the lower cost of housing in the City. The Ombudsman has received multiple complaints about these facilities including allegations of financial, physical, and psychological abuse, and resident neglect. Issues include inadequate food for residents, mismanagement of their medications, and theft of their financial benefits.

SB 665 is an important step toward addressing these forms of abuse and neglect, and protecting the rights of these older and disabled citizens of Maryland, who are isolated and at the mercy of these unscrupulous operators.

For these reasons, the BCA respectfully requests a **favorable** report on SB 665.

*Annapolis – phone: 410.269.0207 • fax: 410.269.6785
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<https://mogr.baltimorecity.gov/>*

SB 665 Testimony - C. Lee BLTCA.pdf

Uploaded by: Ciara Lee

Position: FAV

SB 665 – Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

Written Testimony – Ciara J. Lee, Executive Director, Maryland State Board of Long-Term Care Administrators

Good afternoon, everyone! My name is Ciara Lee and I am the Executive Director of the Maryland Board of Long-Term Care Administrators. I would first like to thank the President, the Finance Committee and the Office of the Attorney General for this opportunity to provide testimony for Senate Bill 665.

I come to you today as the administrative representative of the Board Office to emphasize the Board's support of Senate Bill 665. As we know, the aging and vulnerable population continues to increase. Many of those individuals require assistance with housing, supportive healthcare services, and functionality of activities of daily living. Depending on the severity level of an individual's needs, admission into a licensed assisted living program may be an appropriate option. While there are approximately 1,724 licensed assisted living programs in Maryland that meet the State's standards to operate and provide healthcare services to their residents, there are also unlicensed assisted living programs within the State that do not meet the State's requirements and are not State-regulated, affecting the overall well-being and safety of their residents.

Senate Bill 665 would set a precedence for the State to hold unlicensed assisted living facilities accountable for their operational violations and employ a State statutory standard of operations that enhances the well-being and safety of assisted living residents. We ask that your take this into consideration and vote favorably for this bill.

This concludes my testimony. Any questions?

Thank you!

SB 665 Maryland Legal Aid- FAVORABLE_final.pdf

Uploaded by: Emory Saucedo

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

Senate Bill 665

Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

In the Finance Committee
Hearing on March 16, 2023

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 665 at the request of the Vice Chair of the Maryland Senate Finance Committee, Senator Katherine Klausmeier.

Maryland Legal Aid (MLA) asks that the Committee report **favorably** on SB 665, an important bill that closes a gap in the protection of older/disabled adults living in the community.

MLA is a non-profit law firm that provides free legal services to the State's low-income, vulnerable residents. Our twelve offices serve residents in each of Maryland's twenty-four jurisdictions and handle a range of civil legal matters, including elder law, Medicaid, access to Long-Term Care, and Nursing Home and Assisted Living Facility (ALF) cases.

Currently, operating an unlicensed ALF in Maryland is a crime, but the existing statute lacks teeth. SB 665 adds two key provisions needed for enforcement which currently do not exist; (1) it permits investigating violations of the statute when discovered, and (2) adds consequences that will have impact. Most importantly, the bill's enforcement provisions implement a victim-centered approach to remedying the illegal operation of unlicensed ALFs.

The first enforcement provision added in SB 665 provides the Maryland Department of Health (MDH) the authority to investigate unlicensed ALFs for abuse and neglect of their residents, most of whom are older adults living with physical and/or mental disabilities. Currently, unlicensed facilities operate without any oversight from the MDH's Office of Health Care Quality (OHCQ). Currently the OHCQ is only charged with the oversight of *licensed* ALFs. This bill will give OHCQ the much-needed authority to step in and investigate when an unlicensed ALF is reported.

Today, under MD Code Health General 19-809, when an unlicensed ALF is reported, if the ALF applies for a license within 30 days of being discovered, they are immune from prosecution for the pendency of the licensing process. This has become a loophole that unlicensed ALF operators have used to their advantage. Often, this means that the owner or operator of this facility can apply for licensure, and meanwhile close that "shop" and reopen under new ownership in a new location and begin their predatory practices all over again, never facing any consequences.

The second enforcement provision included in SB 665 allows for the *immediate* prosecution of persons operating an unlicensed ALF. This provision will create vital protections for residents of unlicensed ALFs by implementation of significant, timely consequences to force operators into compliance.

SB 665 puts front-and-center the well-being of the residents of these unlicensed facilities and the harm they experience. These residents suffer neglect, physical, mental, financial, and sexual abuse, and other forms of exploitation. Residents at unlicensed ALFs are especially vulnerable to abuse or neglect due to the personal services the operator and staff provide, including assistance with daily activities, such as toileting and showering. Assisted living facilities also provide medication management, food preparation, and management of the resident's personal finances or government benefits. The potential for neglect and abuse is high. The harm imposed can manifest itself in long-term physical and mental health issues that impact a resident's life-long quality of life.¹

It is no secret that unlicensed ALFs engage in human and/or benefits trafficking, using coercion, deception, threats, or other means to traffic a victim, moving them from one facility to another for the additional purpose of appropriating their benefits, such as Social Security Retirement, Food Stamps (SNAP), or other benefits.² An example of how this occurs is when a particularly devious operator has both a licensed ALF and an unlicensed ALF. A new resident signs an Admission Contract for the licensed facility, agreeing to certain terms, services, and costs. Usually, the resident also signs over their government benefits, making the facility their representative payee. However, the operator soon “shuffles” the resident to their unlicensed facility, where they receive less services, often in a facility, usually a home, in worse condition, for the same price. In the worst cases, the resident suffers abuse or neglect.

MLA has served clients who have been “shuffled” through a licensed ALF into an unlicensed ALF. In one case, after being moved from a licensed to an unlicensed ALF, our client suffered neglect—their medication was mismanaged, they were underfed, and received minimal hygiene assistance, yet they were charged the same rate as the licensed ALF. Eventually, the client was pushed out onto the sidewalk, abandoned, and told they could not live in the unlicensed ALF anymore. The police were called, but even with their support, the client was fearful of the facility operator and refused to report the neglect and exploitation they endured. If SB 665 is enacted, it will give OHCQ investigatory power to promptly step in, investigate and add injunctive relief to stop the operation of an unlicensed ALF. This missing piece of oversight and control is necessary for the protection of vulnerable persons from unscrupulous operators of unlicensed ALFs.

Residents of unlicensed ALFs are especially vulnerable because they often have *nowhere else to go* if they do not remain at their current facility, and further, because the facility is unlicensed, no government agency or entity even knows the facility exists. Unlicensed ALFs often cost less than licensed facilities. The average cost of a licensed

¹ See generally, *Research, Statistics, and Data*, NAT'L CENTER ON ELDER ABUSE, https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#_ednref65. Please visit this site for a comprehensive overview of elder abuse facts and figures.

² GA Code § 16-5-102.1 (2020). Georgia is a trailblazer in the protection of older and vulnerable adults against benefits trafficking.

ALF in Maryland is approximately \$4,000 per month.³ This is substantially more than residents of unlicensed facilities can afford, who generally consist of older adults and/or those living with disabilities on low, fixed incomes. Without family or social work support, residents do not know what their options are and do not have the support to explore those options. Many residents are fearful of reporting abuse or neglect (to “rock the boat,”) and put their placement in jeopardy. To many of these individuals, suffering in an unlicensed ALF is still better than being un-homed.

At an unlicensed ALF, no Long-Term Care Ombudsman is coming to detect harm or discuss the resident’s concerns and issues like they do with residents at Nursing Homes and licensed ALFs. Residents of unlicensed ALFs cannot file a complaint with the MDH OHCQ since this office does not have jurisdiction to investigate. Even if the police come knocking, operators do not have to open the door.⁴ If SB 665 is passed, operators of unlicensed facilities across Maryland can be investigated,⁵ prosecuted, and shut down. This strong deterrent will protect vulnerable older adults and people with disabilities from abuse and neglect by unlicensed ALF operators.

Maryland Legal Aid strongly urges the Committee to issue a FAVORABLE report on Senate Bill 665. If you have any questions, please contact Emory Saucedo, by phone at (410) 951-7763 or by email at esaucedo@mdlaborg.

³ GENWORTH, COST OF CARE SURVEY, <https://www.genworth.com/aging-and-you/finances/cost-of-care.html> (last visited on March 1, 2023).

⁴ Unless the Police have a warrant, operators are not required to let them enter the building/unlicensed ALF.

⁵ Oddly, prior to this bill, Maryland Law has largely overlooked unlicensed ALFs and no authority existed for investigation by the Office of Health Care Quality.

SB665_FAV_AlzheimersAssociationMD.pdf

Uploaded by: Eric Colchamiro

Position: FAV

Testimony of the Alzheimer's Association Greater Maryland and National Capital Area Chapters
SB 665 - Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect
Position: Favorable

Chair Griffith and Vice Chair Klausmeier,

The Alzheimer's Association – representing the over 110,000 Marylanders with Alzheimer's and other forms of dementia, along with their caregivers – is here today in strong support of Senate Bill 665, which requires the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an assisted living program have been subject to neglect or physical abuse if the assisted living program is operating without a license; subjects certain assisted living programs operating without a license to immediate prosecution under a certain provision of law under certain circumstances, and other measures.

According to the Maryland Department of Health Office of Healthcare Quality—and their most recent annual report—there are, as of July 1, 2021, 1672 assisted living providers in our state. That is a number which increased, and did not decrease, in the first year of the pandemic. There are also ¾ of them who have 9 or fewer beds; these small providers often do not have a sign on their front door or a commercial kitchen, yet they are necessary entities which serve Marylanders. And there are also an unknown number more of unlicensed assisted living providers. Facilities who care for our most vulnerable Marylanders, who provide necessary services, yet they are not inspected annually.

This legislation tightens regulations on unlicensed providers. It is an important part of the equation, and we are grateful—particularly—to the Long-Term Care Ombudsman for their work in this space, in every county, highlighting resident rights. People with dementia are especially vulnerable because the disease may prevent them from reporting the abuse or recognizing it. In addition, as people with Alzheimer's gradually lose their ability to find words, express thoughts and follow conversations, they also have more difficulty understanding others. Communication changes during the middle stages include trouble finding the right word, repeating questions, losing the train of thought, reverting to a native language and relying on non-verbal communication. They are vulnerable.

We thank the Attorney General for highlighting the importance of this issue, we are also grateful for legislation this Session which looks into Elder Abuse more broadly—including with representatives of their long-term care ombudsman's office—and we urge a favorable report on this bill.

HFAM Testimony SB 665.pdf

Uploaded by: Joseph DeMattos

Position: FAV



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

Senate Bill 665: Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect
March 16, 2023
Written Testimony Only

POSITION: FAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support for Senate Bill 665. HFAM represents skilled nursing centers and assisted living communities in Maryland, as well as associate businesses that offer products and services to healthcare providers. HFAM members provide services and employ individuals in nearly every jurisdiction of the state. Our skilled nursing members provide nearly 4 million days of care across all payer sources annually, including more than 2.3 million days of Medicaid care.

Senate Bill 665 requires the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an assisted living program have been subject to neglect or physical abuse if the assisted living program is operating without a license; and, subjects certain assisted living programs operating without a license to immediate prosecution under a certain provision of law under certain circumstances.

The intent of this legislation is to address unlicensed assisted living facilities and close a loophole that currently makes prosecuting them difficult.

Currently, if an individual is found to be operating an unlicensed assisted living facility, they have a 30-day grace period to apply for a license and they cannot be prosecuted for operating an unlicensed facility while the application for licensure is pending. This is designed to encourage unlicensed facilities to come in to compliance rather than shut them down, due to a need for assisted living services in Maryland.

However, the Office of Health Care Quality (OHCQ) does not have the authority to enter an unlicensed facility and those operators have little incentive to cooperate with any investigation. While abuse or neglect allegations can be criminally investigated, that process takes time. During that time, the unlicensed facility may continue to operate while their license is pending.

This legislation will eliminate the 30-day grace period for unlicensed assisted living facilities where OHCQ finds a credible allegation of abuse, neglect, or exploitation. Owners of these facilities found to be operating in this manner will be subject to immediate prosecution, as well as prevented from continuing operations.

If owners of unlicensed facilities refuse to cooperate with OHCQ during investigations, they would likewise lose access to the 30-day grace period and be subject to prosecution.

Any unlicensed assisted living facility that is not suspected of abuse, or those where an investigation finds the claims of abuse unsubstantiated, will be allowed the 30-day period to apply for a license as currently provided.

It is critically important that we ensure the highest possible quality of care for all residents in assisted living facilities and ensure that owners of these facilities are operating in a way that respects the health, safety, and wellbeing of residents. Together, we have a shared goal of protecting of our older adult community and ensuring that their rights are respected.

For these reasons, we respectfully request a favorable report from the Committee on Senate Bill 665.

Submitted by:

Joseph DeMattos, Jr.


President and CEO

(410) 290-5132

NASW Maryland - 2023 SB 665 FAV - Unlicensed Assis

Uploaded by: Judith Schagrin

Position: FAV



Senate Finance Committee
Senate Bill 665 - Assisted Living Programs - Unlicensed Programs –
Resident Abuse and Neglect
March 16, 2023
SUPPORT

On behalf of the National Association of Social Workers, Maryland Chapter (NASW-MD), we would like to express our support for SB 665 Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect.

As social workers who work with older adults, we know that thousands of vulnerable Marylanders rely on assisted living facilities (ALFs) to meet their daily needs. Sadly, many of them live in unlicensed facilities which have no oversight, poorly trained staff, and dangerous conditions. Too often these residents are subjected to abuse and neglect. Examples include adults with brain injuries, mental illness, or dementia who languish in their rooms without stimulation or support from staff, and elders with physical disabilities who do not receive the care they need for basic activities of daily living, thus exacerbating their disabilities.

Financial exploitation of residents is also widespread in unlicensed homes. We know that victims rarely report such abuse and neglect due to fear of retaliation, shame and embarrassment, dependency on their abusers, and inability to report due to physical or cognitive limitations.

While abuse and neglect can occur in any residential setting, unlicensed homes are particularly dangerous because they are hidden from public view, with no regulation or oversight. In 2022, the Attorney General’s Office investigated and prosecuted felony charges of theft, abuse, and neglect against of an operator of several unlicensed ALFs. The Attorney General’s investigation revealed financial exploitation of the disabled residents, as well as overcrowded and deplorable living conditions, with rodent and insect infestations. The convictions that were secured in this case represent the tip of the iceberg.

This bill would provide much stronger action to secure the safety of ALF residents. It would require the Department of Health to investigate for abuse and neglect whenever they become aware of an unlicensed assisted living facility and would subject abusive operators to

immediate prosecution. These steps are critical to the well-being of vulnerable older adults who rely on ALFs for their care.

As the number of older Marylanders continues to grow, it is critical that we ensure that the most vulnerable among us can be cared for with safety, dignity, and autonomy.

For these reasons, we urge you to vote yes on SB 665.

Respectfully,

Mary Beth DeMartino, LCSW
Executive Director, NASW-MD

HB 665 unlicensed Ass. living.pdf

Uploaded by: Sarah Miicke

Position: FAV

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- Chevrei Tzedek Congregation
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- Temple Beth Shalom
- Temple Isaiah
- Zionist Organization of America
Baltimore District

WRITTEN TESTIMONY

**Senate Bill 665- Assisted Living Programs – Unlicensed Programs
 – Resident Abuse and Neglect**

Finance Committee

March 16, 2023

Background: Senate Bill 665 (SB665) would give the Department of Health more powers to go after unlicensed assisted living facilities by authorizing the Department to investigate whether residents in an unlicensed facility have been subject to neglect or abuse. This bill also gives the Attorney General, the State’s Attorney or the Department the ability to seek injunctive relief against the unlicensed assisted living facility.

Written Comments: Every senior deserves to live in a safe place, however, right now in Maryland, we know that is not the case. Several Associated agencies, including, Jewish Community Services (JCS), Comprehensive Housing Assistance Inc. (CHAI), and CHANA provide services to the rapidly aging Baltimore Community. CHANA has seen an uptick in clients who have been subject to abuse in unlicensed assisted living facilities. Currently in Maryland there is very little relief for victims of abuse in unlicensed facilities. SB665 aims to start to address this issue by giving state agencies the authority to investigate and seek injunctive relief against these facilities.

For these reasons we ask for a favorable report on SB665.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated: Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

2c - SB 665 - FIN - Long Term Care Admin Bd - LOS.

Uploaded by: State of Maryland

Position: FAV



Board of Examiners of Long Term Care Administrators

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2023 SESSION POSITION PAPER

BILL NO: SB 665
COMMITTEE: FINANCE
POSITION: SUPPORT

TITLE: Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

BILL ANALYSIS: This bill establishes the requirement for the Maryland Department of Health, or other designee of the Department, to conduct an investigative process to determine if residents who reside in an assisted living program have been subject to neglect and/or physical abuse if the assisted living program is unlicensed in Maryland. Furthermore, the bill also proposes subjecting certain unlicensed assisted living programs to immediate prosecution based upon a specific legal provision under certain circumstances, re-evaluates the various factors that the State government is required to consider when determining the amount of penalty for violation of a specific prohibition against operating an unlicensed assisted living program, and allows other entities and local health officers to petition for injunctive relief against the operation of an unlicensed assisted living program to ultimately protect the public, specifically assisted living residents.

POSITION AND RATIONALE: The State Board of Long-Term Care Administrators (the “Board”) supports SB 665. This bill exemplifies the strategies that the State of Maryland is attempting to proactively implement to ensure public protection, which also continues to be the mission-critical initiative of the Board, especially since there was legislation that was passed in 2022 that establishes licensure for Maryland assisted living managers (effective October 1, 2024). It is noteworthy to disclose that assisted living programs in the United States are not regulated by the federal government. Hence, there is no federal statutory oversight or federal regulatory entity that is in place to govern the licensure or disciplinary processes for assisted living programs collectively as a nation. In Maryland, there are only 1,723 assisted living programs that are licensed and fully regulated by the State government, meaning that those assisted living programs are held accountable by the State and meet the State’s standards to operate and provide quality healthcare services to residents who are in vulnerable conditions. Consequently, those Maryland assisted living programs that are not licensed to operate do not meet the State’s standards to ensure the well-being and protection of their residents. Rather, unlicensed assisted living programs are more probable to perpetuate serious issues such as neglect of health care needs, unsafe and unsanitary conditions, staffing deficits, abuse, and financial exploitation of their residents.

As a part of the Office of Health Care Quality assisted living facility surveys, Maryland assisted living programs 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*, 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. In addition, 135 citations were issued for State tag 3680 “Medication Management and Administration” in assisted living programs, the eighth highest assisted living program deficiency in fiscal year 2021. The given information is truly concerning, especially since almost half of the residents in assisted living programs in Maryland are over the age of 85 with underlying health conditions that require higher medication needs and medical support. The data depicts a severe deficit in staffing qualifications in licensed assisted living programs, but unfortunately creates a gap of information that omits any deficient practice related to unlicensed assisted living programs.

In conclusion, implementing the statute provisions that are outlined in SB 665 would provide leverage for the State to hold unlicensed assisted living facilities and the long-term care industry accountable for their operation violations, set a statute and regulatory standard for prospective assisted living program operators, and most importantly fortify the protection of assisted living residents. For the above reasons, the Board strongly urges a favorable report for SB 665.

For more information, please contact Ms. Ciara J. Lee, Executive Director for the Maryland State Board of Long-Term Care Administrators, at 410-764-4749 or 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.

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Position: FAV



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 665 - Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support for Senate Bill (SB) 665 - Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect.

The Office of Health Care Quality (OHCQ) is the agency within MDH charged with monitoring the quality of care in certain health care facilities and community-based programs, including assisted living programs. OHCQ oversees all assisted living programs in Maryland and conducts surveys for licensure, inspection of care, change of ownership, Alzheimer's special care units as well as investigates complaints and facility-reported incidents.

OHCQ's assisted living unit investigates about 120 allegations of unlicensed assisted living programs each year. These complaints come from the residents, family, employees, neighbors, local ombudsman, EMS, police, or other sources. OHCQ works closely with the Medicaid Fraud Control Unit (MFCU) within the Office of the Attorney General to investigate and prosecute these unlicensed programs. In certain circumstances, this bill subjects an assisted living program that is operating without a license to immediate prosecution, rather than waiting 30 days as is now required. This bill is crucial to better protect the health and safety of Marylanders who are receiving services in unlicensed programs.

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary

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Uploaded by: Stevanne Ellis

Position: FAV

Bill: SB 0665 Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

Position: Support

March 15, 2023

The Maryland Long-Term Care Ombudsman program advocates for residents in nursing homes and assisted living facilities in Maryland. Ombudsmen work to resolve complaints that can have adverse effects on the quality of care, safety, health, and quality of life of the citizens that reside in these facilities. In Maryland, ombudsmen provide these services to the over 50,000 citizens that live and receive services in nursing homes and assisted living facilities.

It is important to consider who resides in an assisted living facility. An assisted living facility is defined as a facility that provides care to two more unrelated people that need assistance with activities of daily living such as bathing, dressing, medications. Additionally, many assisted living residents would meet the requirement for a nursing home level of care. For individuals that are Medicaid waiver recipients that reside in an assisted living facility, the resident does have a nursing home level of care. All assisted living facilities are required to have a license.

However, the current law is not enough of a deterrent because there are unlicensed assisted living providers. Would you want a member of your family to receive care in an unlicensed nursing home? Or to receive care for an unlicensed physician or nurse? I am sure that your answer is no, and you would agree that unlicensed assisted living facilities should not be allowed to operate. The ombudsman program continues to receive information about unlicensed assisted living facilities and those referrals are made to OHCQ and other agencies.

This bill is incredibly important because it will strengthen the current assisted living law. This bill adds additional safeguards when abuse occurs or if the provider does not cooperate with the investigation. In most cases, the unlicensed provider is aware of the requirements of licensure. Ignorance of the law should not be tolerated. An assisted living facility provider must complete all requirements for licensure and keep their license in good standing to care for residents. Residents must not reside in an assisted living home that is licensed. Again, would you tolerate a physician or nurse to practice without a license? Assisted living managers will soon have licenses and this will be an additional safeguard for residents. The law exists to protect the residents and to ensure the quality of care and quality of life of residents. This bill will provide a deterrent for those that wish to flaunt the law. The residents deserve to have a safe place to live, free of all types of abuse, neglect, and exploitation. This bill will expand the law to cover unlicensed assisted living facilities.

Discharge planners from all setting and assisted living referrers are required to send individuals to a licensed assisted living facility when an assisted living facility is needed. This law will

serve as a reminder to those professionals that it is not a safe discharge plan to send someone to a facility that is breaking the law. If they are breaking the law and operating as unlicensed facility, then one cannot expect them to provide proper care or to provide a safe environment.

I ask the Committee to consider my comments and offer a favorable report for this bill.

Sincerely,

Stevanne Ellis

Maryland State Long-Term Care Ombudsman

SB 665 Assisted Living Programs Unlicensed Program

Uploaded by: Tammy Bresnahan

Position: FAV



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SB 665 Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect
Senate Finance Committee
FAVORABLE
March 16, 2023

Good afternoon, Chair Griffith and members of the Senate Finance Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP MD. On behalf of our almost 900,000 members, we would like to thank you for the opportunity to speak in support of SB 665 Assisted Living Programs – Unlicensed Programs-Resident Abuse and Neglect. We thank the Attorney General for bringing SB 665 forward.

SB 665 requires the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an assisted living program have been subject to neglect or physical abuse if the assisted living program is operating without a license. SB 665 also subjects assisted living programs operating without a license to immediate prosecution under the law and alters the factors that the State is required to consider when recommending the amount of penalty for operating an assisted living program without a license.

Assisted living facilities are designed for older people who are no longer able to manage living independently and need help with daily activities such as bathing or dressing, but do not require the round-the-clock health care that a nursing home would provide. Assisted living is there to offer that assistance, while maximizing their independence.

What we are all are familiar with is that assisted living facilities usually provide residents with their own apartments or rooms, as well as communal areas. They may offer around-the-clock supervision and a range of services, including meals, housekeeping, and laundry, as well as assistance with personal care and help with medications. What we have in Maryland is a sizable percentage of smaller assisted living facilities that provide level three care like what is provided in a nursing home.

In contrast to nursing homes, no federal quality standards exist for assisted living. Additionally, states vary significantly in their licensing requirements, quality standards, and monitoring and enforcement activities. In October 2000, the Oversight Committee on Quality of Care in Nursing Homes and Assisted-Living Facilities originated when the General Assembly established the Oversight Committee on Quality of Care in Nursing Homes.

The Committee adopted its present name on October 1, 2005, adding in Assisted Living. As a group who is represented on the Committee, it has been brought to the attention of the committee, problems in the smaller assisted living facilities, such as inadequately trained staff,

too few staff, unlicensed facilities, medication errors, and the admission and retention of individuals who need more care.

This proposed legislation will strengthen and give teeth to the attorney general so that bad actors who are doing terrible things in assisted livings are held accountable. For years, AARP and other advocates have been ringing the bell about bad actors who open assisted livings. Passing this bill, will give the state another tool in the toolbox to prosecute these bad actors.

AARP Maryland believes that state governments should conduct regular, thorough, and consistent oversight of long-term care including assisted living. Oversight should include evaluation of consumer outcomes and the quality of care.

AARP Maryland also believes that States should also ensure quality of care and quality of life for all consumers. The rights of the consumer should be protected in all long-term care settings including assisted living.

Additionally, States should establish licensing requirements to set provider standards, monitor service quality, and protect residents' rights. Residents' rights include those related to decision-making, choice, and complaint resolution. When noncompliance with regulations occurs, state regulators should be able to apply a range of sanctions. Sanctions can range from levying fines to banning new admissions, requiring a plan of correction, and revoking a facility's license and prosecution.

For these reasons, we ask the Committee for a favorable report on SB 665. If you have questions or comments, please contact Tammy Bresnahan at tbresnahan@aarp.org or by calling 410-302-8451.

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Position: FAV



Maryland Retired School Personnel Association

8379 Piney Orchard Parkway, Suite A • Odenton, Maryland 21113
Phone: 410.551.1517 • Email: mrspa@mrspa.org
www.mrspa.org

Senate Bill 0665

In Support of

Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect Finance Committee

Hearing: March 16, 2023 at 1:00 p.m.

Dear Honorable Senator Melony Griffith, Chair, and Honorable Senator Katherine Klausmeier, Vice Chair, and distinguished Finance Committee members,

The Maryland Retired School Personnel Association (MRSPA) supports SB 0665 Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect.

The Maryland Retired School Personnel Association believes that all seniors and other vulnerable persons should have access to high quality living arrangements that provide the highest quality of life. Senior's lives should be free from financial exploitation and abuse or neglect.

Unlicensed assisted living facilities should be monitored and investigated for abuse and neglect when it occurs. They should also comply with licensing rules and regulations and not be allowed to function without oversight. This legislation allows the state to advocate for vulnerable people in assisted living facilities and brings unlicensed facilities into compliance.

All vulnerable people in an assisted living facility and their families should be confident that they are safe and being well cared for in their time of need. No one should be abused or neglected because of where they live or of their ability to pay.

On behalf of the over 12,000 members of the Maryland Retired School Personnel Association, we urge a favorable report on SB 0665.

Sincerely,

Carla J. Duls.
President

Virginia G. Crespo
Legislative Aide

2023-03-16 Letter of Support SB665.pdf

Uploaded by: Zak Shirley

Position: FAV

ANTHONY G. BROWN
Attorney General



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March 16, 2023

TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: W. Zak Shirley
Director, Medicaid Fraud Control Unit

Lisa Hyle Marts
Deputy Director, Medicaid Fraud Control Unit

RE: **Senate Bill 665 - Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect (Support)**

The Office of the Attorney General Medicaid Fraud Control Unit (MFCU) writes to offer its support for SB665. Since 1979, the MFCU has protected Maryland's citizens through the investigation and prosecution of abuse and neglect of vulnerable adults. The MFCU has seen firsthand the injustices and indignities that can befall the elderly or disabled at the hands of callous and uncaring providers who put profits before people. At the same time, we have identified shortcomings and loopholes in the law that allow such abuses to go unchecked. SB665 offers the opportunity to close just such a loophole and strengthen protections for Maryland's most vulnerable populations.

Senate Bill 665 is the result of a collaboration between the Office of the Attorney General, the State Long-term Care Ombudsman, the Office of Health Care Quality (OHCQ), and numerous community stakeholders who, in the course of their discussions have recognized a shared concern for the conditions found in unlicensed Assisted Living Facilities (uALFs) and the difficulty in using existing legal mechanisms to correct them. This bill will close a loophole in the law that, at present, permits uALFs with deplorable living conditions to continue operating without consequence.

Assisted Living Facilities are overseen by OHCQ and are subject to their oversight and regular inspection. UALFs, however, operate free of any such oversight or regulation. In most cases, the state does not even know they exist unless a complaint is filed. Even then, the authority of OHCQ to enter and investigate such allegations is constrained. Owners are not required to permit inspectors to enter the premises or speak with the people living there to assess their situation. Freedom from oversight or accountability creates the perfect environment for abuse, neglect and exploitation.

Unscrupulous uALF owners help themselves to the residents' Social Security benefits, pensions payments, and bank accounts while providing minimal care to their dependent clientele. Expenses such as food and facilities are cut in favor of profits. In most cases, residents are unable to help themselves or report their suffering.

At present, MD Code, Health - General, § 19-1809, allows an individual found operating an uALF (a felony) to apply for a license within 30 days. Then, so long as the application has been *submitted*, that individual cannot be subjected to criminal prosecution and may continue to operate the facility during the pendency of the licensure process. This system is driven by the need for affordable assisted living care and is designed to encourage licensure, not to punish unlicensed operation. Unfortunately the system is blind to the abuses that often occur within these facilities and treats all uALF operators the same. In short, facilities rife with abuse/neglect/exploitation are offered the same protections from prosecution during the licensure process as any other facility. This statutory escape clause is not unknown to unscrupulous operators who know how to “game” the system by applying multiple times under different names, moving residents between multiple properties, and refusing to cooperate with OHCQ investigations.

Senate Bill 665 closes the loophole that allows abusive uALF owners to continue operating, by allowing OHCQ to make an early determination of whether there is a credible allegation of abuse/neglect/exploitation occurring within such facilities. For those facilities where such a finding is made, the 30-day grace period and its shield against prosecution is eliminated. Such cases will be referred to the Office of the Attorney General for investigation and potential prosecution for crimes related to vulnerable adults abuse in addition to operating an uALF.¹ In addition, because these investigations may be lengthy, the bill allows for injunctive relief against an uALF's continued operation.

In sum, this bill strikes an appropriate balance between encouraging compliance with oversight regulations and punishing those who take advantage of the system at the expense of others.

Proposed Amendments

The following amendments provide additional clarity on the types of activity that are sufficient to trigger the safeguards in this bill:

At Page 2, Line 7-8: Add “a credible allegation that” after the word finds. Add “is operating without a license” after the word “program.” Delete “to be in violation of paragraph (1) of this subsection”.

At Page 2, Line 12: Add “, exploitation,” after the word neglect. Strike “physical”.

At Page 2, Line 16: Add “, exploitation,” after the word neglect. Strike “physical”.

At Page 2, Line 28: Strike “financial”

At Page 2, Line 29: Strike “physical”

¹ Where an investigation closes without filing charges, the 30-day window to obtain licensing will be available to the uALF operator.

The following amendment provides OHCQ with the power to promulgate regulations under this statute to provide additional guidance and clarity.

At Page 4, Line 7: Add “(d) The Department may adopt regulations to carry out the provisions of this subtitle.”

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**2023 SESSION
POSITION PAPER**

BILL: SB 665 – Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect
COMMITTEE: Senate Finance Committee
POSITION: Letter of Information

BILL ANALYSIS: SB 665 requires the Maryland Department of Health, or a designee of the Department, to investigate whether residents in an assisted living program have been subject to neglect or physical abuse if the assisted living program is operating without a license; subjecting certain assisted living programs operating without a license to immediate prosecution under a certain provision of law under certain circumstances.

POSITION RATIONALE: The Maryland Association of County Health Officers (MACHO) provides a letter of information for SB 665. This bill requires, among other mandates, for the Department of Health or the Department’s designee to investigate suspected neglect or abuse of assisted living facilities residents. **Health Officers respectfully ask that the “designee” be defined as the Office of Health Care Quality (Page 2, Lines 10-12).**

The Office of Health Care Quality (OHCQ) is responsible for oversight and inspections of nursing homes and assisted living facilities. Their staff is trained to perform these functions. Health Officers are concerned that local health department staff could be designated with investigatory responsibilities given the undefined reference on Page 2, Line 10, and the subsequent reference to “Local Health Officer” on page 3.

Local health departments (LHDs) lack experience and staffing to carry out investigations of potential abuse. It is likely that these investigations will be infrequent, especially in small counties. As a result, training and ongoing competency will be extremely difficult to accomplish. Furthermore, if LHD staff are sporadically tasked to investigate conditions in assisted living facilities instead of a full-time statewide OHCQ team, it is more likely that abuses would not be recognized, jeopardizing prosecutions and leaving residents at increased risk.

Along the same lines of reasoning, **we ask that “Local Health Officer” be removed from Page 3, Line 12.**

We appreciate the Attorney General’s efforts to safeguard residents of assisted living facilities and want to assure that the most competent agency be designated to achieve this goal.

For these reasons, the Maryland Association of County Health Officers submits this letter of information for SB 665. For more information, please contact Ruth Maiorana, MACHO Executive Director at rmaioral@jhu.edu or 410-937-1433.