

**TO:** Senate Finance Committee  
**FROM:** Lutheran Social Ministries of Maryland  
**SUBJECT:** Senate Bill 488, Continuing Care in a Retirement Community Providers -  
Governing Bodies - Membership  
**DATE:** February 13, 2026  
**POSITION:** Unfavorable

Lutheran Social Ministries of Maryland opposes Senate Bill 488, Continuing Care in a Retirement Community Providers - Governing Bodies – Membership.

Lutheran Social Ministries is the parent company of two Continuing Care Communities in Maryland serving over 800 residents in Independent Living , Assisted Living, Memory Care and Skilled Nursing..

Lutheran Social Ministries of Maryland (LSMMD)strongly supports resident voice, engagement, and meaningful participation in governance within our continuing care retirement communities (CCRCs). Maryland law already provides robust and carefully balanced mechanisms for resident involvement, including requirements that CCRCs include resident board members with full voice and vote, that the governing body confer with the resident association before the subscriber members join the board, permitting subscriber members to report on non-confidential deliberations and actions to the resident associations, as well as a newly enacted requirement—effective January 1, 2026—for an alternate resident board member - LSMMD has always exceeded this requirement with two full vote and voice members on the Community Board of Trustees. These provisions reflect deliberate legislative choices that balance resident participation, fiduciary responsibility, and board independence. These recently enacted policies should be given time to take effect before additional statutory restructuring is imposed.

Senate Bill 488 restructures the governance of CCRCs by expanding the role of resident associations in board composition and oversight. The bill allows resident associations, rather than governing bodies, to select regular and alternate subscriber members, removes existing standards and criteria for those selections, and modifies board composition for providers operating multiple facilities.

Lutheran Social Ministries of Maryland respectfully raises the following concerns:

1. **Undermines Sound Governance and Fiduciary Responsibility:** CCRC governing boards have fiduciary obligations to ensure financial sustainability, regulatory compliance, and long-term stewardship of the organization’s mission. Senate Bill 488 requires resident associations to select board members and directs those members to represent subscriber interests, placing them in direct conflict with Maryland corporate law, which requires directors to act in the best interests of the organization as a whole. Maryland law recognizes that the right to elect directors belongs only to (a) the member(s) of the corporation, if any, or (b) the board itself if the corporation is self-perpetuating. Maryland law does not grant service consumers, such as residents

of a CCRC, automatic legal status as “members” of the corporation. Membership classes must be affirmatively created in the governing documents. Mandating a resident elected director would override governance rights vested in the corporation’s member or board and impose an external elector class that the MGCL does not contemplate. Maryland nonprofit guidance reinforces that board structure, including size, qualifications, and election method, remains within the nonprofit’s authority and is not dictated by stakeholder groups like residents. By effectively rewriting well-established corporate law and practices, the bill sets a troubling precedent and destabilizes nonprofit governance structures designed to protect residents over the long term. For large, multi-site organizations operating CCRCs in Maryland, the bill could require the addition of multiple residents to corporate boards of directors, fundamentally disrupting established governance practices and impairing effective oversight

Where a parent board oversees not just CCRCs; but ,multiple related subsidiaries across its portfolio, a director mandated to determine operational responsibilities of the other subsidiaries which they do not represent nor may not have any expertise to offer. These subsidiaries could be Adult Day Care, Therapy Services, InHome Services or even independent senior housing. This structure risks compromising fiduciary duties and undermines the independence necessary for responsible governance.

2. Creates Undue State Involvement in Private Nonprofit Governance: Senate Bill 488 would allow Maryland to treat certain governance arrangements as “oversight” of a CCRC by its non-profit parent. As such, the parent organization would be treated as a “provider” which would then compel Maryland CCRC residents to sit on the parent board (in addition to the board of the CCRC). For organizations such as some of our members which serve as the sole member and supporting organization for multiple CCRCs across several states—some with as few as two CCRCs in Maryland—this represents a fundamental and inappropriate intrusion by one state into the governance of a private, multi-state nonprofit entity.

This goes beyond regulatory oversight of licensed facilities. Instead, it constitutes state influence over who governs a private nonprofit at the parent entity level, raising significant governance, constitutional, and interstate regulatory concerns.

3. Creates Direct and Unavoidable Conflicts of Interest:

The parent of a CCRC does not have any “subscribers.” The CCRC does. Nor does the parent own or operate any CCRC facility. So which subscriber(s) from which facilities are to be appointed to the parent board?

Contrary to the fiduciary duties all directors (including resident directors) currently owe under Maryland law to act in the best interests of the corporation, the bill provides that, instead, the resident director is to represent the interest of the provider’s subscribers. Not only does this dramatically change a director’s customary fiduciary duties, but it also further exacerbates the

conflict issues. Does the resident of a Maryland CCRC just represent the interests of the residents of that CCRC to the potential detriment of residents of other CCRCs or even to the detriment of clients of the other subsidiaries?

4. Rewrites the Legal Concept of “Control” Beyond Its Intended Purpose: Under existing Maryland law and regulation, the concept of “control” is intentionally broad but carefully limited in application. Current statute (Human Services Article §10-432) and regulation (COMAR 32.02.01.22) apply the concept of control primarily in transactional contexts, such as sales, transfers, reorganizations, or ownership changes exceeding 50 percent.

Senate Bill 488 expands the application of oversight or control to routine governance composition decisions. This repurposes a consumer protection framework addressing a change in control into a governance control mechanism—something the statute and regulatory framework were never designed to address.

5 Breaks Longstanding Legal and Regulatory Boundaries: Maryland’s current CCRC regulatory framework draws a clear and functional distinction between:

- Facility-level regulation, including certificates of registration and operational oversight; and
- Parent-level governance, which is not subject to state involvement, absent a change in ownership or control.

Senate Bill 488 blurs this critical distinction. If Maryland asserts authority to dictate parent-level governance based on residency requirements, other states could impose similar mandates. The parent in a system of multi-state nonprofit providers could face conflicting statutory requirements across jurisdictions, making lawful and effective governance nearly impossible.

The assertion of this authority by Maryland is particularly problematic for several reasons. First, it undermines the established principle that state regulatory oversight should apply at the facility level—where operations, licensing, and resident protections are most directly relevant—while leaving parent-level governance to be determined by the nonprofit’s own governing documents and the laws of the state in which it is incorporated. By extending state involvement to the governance of parent organizations, Maryland is venturing into an area traditionally reserved for internal corporate decision-making and the home state’s corporate law, not for external regulation by each state in which a nonprofit operates.

This overreach creates significant legal and operational challenges for multi-state nonprofit organizations. If other states follow Maryland’s lead and impose their own, possibly conflicting, requirements for board composition or governance structures, parent organizations could be forced into an unmanageable position—attempting to comply with numerous, potentially contradictory, state laws. Such a scenario would not only complicate compliance but could also result in violations of one state’s law in the process of obeying another’s, thereby exposing organizations to legal risk and threatening the stability of their governance. Moreover, this approach disrupts the uniformity and predictability that are essential for effective nonprofit governance. Multi-state organizations rely on the clarity provided by a single set of

governing documents and the corporate law of their state of incorporation. Maryland's assertion to dictate parent-level governance based on resident status erodes this clarity, invites regulatory chaos, and may discourage organizations from operating in Maryland altogether due to the compliance burden and uncertainty it creates.

6. Absence of Selection Criteria Contrary to Maryland Law and the Constitution. Under Senate Bill 488, the regular and alternate resident board members would not be subject to the same standards and criteria used to select other board members, including any requirement to adhere to a particular religious belief. This would be contrary to MD Code Corporations and Associations Article Section 2-403(a), which states that each director shall have the qualifications required by the corporation's charter or bylaws. Moreover, this raises significant constitutional issues.

7. Threatens Religious Liberty and Religious Freedom: Many CCRCs in Maryland are operated by faith-based organizations. In these communities, board members serve as stewards of both corporate governance and religious mission. By compelling faith-based providers to accept board members selected by resident associations—without requiring that those individuals meet the same mission-based criteria as other board members—Senate Bill 488 intrudes on protected religious governance and raises serious First Amendment concerns that precludes the enactment of a law that prevents the free exercise of religion.

8. Violates Principles of Expressive Association: The First Amendment protects the right of nonprofit organizations to define their mission and leadership. Board composition is a core element of that expressive association. Mandating governance participation by individuals selected outside an organization's established processes interferes with this constitutional protection and alters institutional identity in ways that extend well beyond resident engagement.

9. Unnecessary Given Existing Resident Engagement Mechanisms: Continuing Care Retirement Communities (CCRCs) in Maryland and elsewhere already foster robust resident participation and transparency through a variety of established mechanisms. Resident councils, composed of elected representatives, provide direct input and feedback to management, ensuring that resident concerns and priorities are consistently addressed. Advisory committees often offer residents a meaningful role in shaping community policies and programs, further strengthening their voice within the organization. Regular town hall meetings create open forums for discussion, enabling residents to ask questions, raise issues, and receive updates from leadership.

Quarterly financial updates and disclosure statements promote transparency by informing residents about the community's fiscal health and operational decisions. Additionally, CCRCs are legally required to file IRS Form 990, making key financial information publicly accessible and supporting accountability. Resident satisfaction surveys enable management to monitor and improve the quality of life and services, while ongoing communication—such as newsletters, emails, and direct interactions—ensures residents remain informed and engaged. These mechanisms collectively empower residents to have a meaningful influence on their living environment, uphold transparency, and encourage collaborative governance without the need for statutory changes that might disrupt established governance structures.

These existing approaches not only meaningfully engage residents but also preserve the integrity of governance. By ensuring that residents can participate through well-designed channels, CCRCs maintain the fiduciary responsibility of their boards and safeguard constitutional protections such as freedom of association and religious liberty. The established mechanisms strike a balance between empowering residents and protecting the organizational structure necessary for effective oversight and compliance. As a result, imposing additional statutory mandates, such as those proposed in Senate Bill 488, is unnecessary and risks undermining the careful equilibrium already achieved through proven resident engagement practices.

Senate Bill 488 represents a significant and unprecedented expansion of state involvement in private nonprofit governance. Lutheran Social Ministries of Maryland supports strong resident engagement, transparency, and accountability in CCRCs. However, Senate Bill 488 goes too far by weakening established governance structures, and creating unnecessary operational and legal risks. The goals of resident involvement and transparency can—and already do—occur through proven mechanisms without restructuring governing boards by statute.

For these reasons, Lutheran Social Ministries of Maryland respectfully requests an **unfavorable report** on Senate Bill 488.

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