

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 707 (Delegate Carr)
 Health and Government Operations

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

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 must be licensed by the board to practice as an assisted living manager in the State beginning October 1, 2022. The bill alters board structure and membership requirements, specifies that the board is a medical review committee, and makes conforming changes. The bill also establishes that specified violations are a felony rather than a misdemeanor, increases the associated penalties, and imposes new civil fines.

Fiscal Summary

State Effect: No effect in FY 2021. General fund expenditures increase by \$108,700 in FY 2022, and by \$270,300 in 2023, for personnel, as discussed below. General fund revenues increase by \$623,200 in FY 2023, and by \$467,400 in 2025 and biennially thereafter, from fees. Potential increase in general fund revenues due to imposition of civil fines. The criminal penalty provisions of the bill do not have a material impact on State finances or operations.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	\$0	\$0	\$623,200	\$0	\$467,400
GF Expenditure	\$0	\$108,700	\$270,300	\$268,100	\$277,000
Net Effect	\$0	(\$108,700)	\$352,900	(\$268,100)	\$190,400

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

Local Effect: The criminal penalty provisions of the bill do not have a material impact on local finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

State Board of Long-Term Care Administrators

The bill adds four new members to the board who (1) before October 1, 2022, must be assisted living managers who have completed a specified manager training course and actively practice for an assisted living program and (2) on or after October 1, 2022, 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

An “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 have (1) a high school diploma or other appropriate education, as determined by the board; (2) appropriate experience, as determined by the board; (3) completed a board-approved manager-in-training program; (4) passed a national examination and an examination on State standards; and (5) met additional requirements, as established by the board.

To apply for a license, an applicant shall (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.

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 may 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 \$5,000 for a first violation and \$10,000 for any subsequent violation.

Provisional Assisted Living Manager License

If a licensed assisted living manager leaves or is removed by death or any unexpected cause, the appropriate assisted living authority must immediately designate a licensed assisted living manager to serve in that capacity and notify the board. If a licensed assisted living manager is not available, the appropriate assisted living authority must immediately appoint 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 for a period not exceeding 90 days 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 criminal history records check. The board may extend the initial provisional period for up to 30 days.

Penalties for Specified Violations

The bill repeals the current penalties for a violation of the Maryland Nursing Home Administrators Licensing Act (renamed the Maryland Long-Term Care Administrators Act) under which a person is guilty of a misdemeanor and on conviction subject to a fine of up to \$1,000 for a first offense and, for a subsequent offense, a fine of up to \$5,000 and/or imprisonment for up to six months.

Instead, the bill specifies that a person who willfully violates the prohibitions against practicing without a nursing home administrator or assisted living manager license, misrepresentation, license fraud, or operating a nursing home or assisted living program

without a licensed administrator or manager is guilty of a *felony* and on conviction is subject to a fine of up to \$20,000 and/or imprisonment for up to two years for a first offense, and a fine of up to \$50,000 and/or imprisonment for up to five years for a subsequent offense. In addition, a person who violates any of these prohibitions is also subject to a civil fine assessed by the board of up to \$30,000 for a first offense and up to \$50,000 for a subsequent offense.

Current Law/Background: 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. In 2019, 32 new nursing home administrator licenses and 226 renewal nursing home administrators' licenses were issued in the State.

Assisted living is regulated by the State and generally does not have specific federal requirements. In Maryland, assisted living programs are licensed by the Office of Health Care Quality. In 2020, there are 1,558 licensed assisted living programs in the State, of which 1,129 have between one and nine beds.

Maryland regulations (COMAR 10.04.14) 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 educational and experience is 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 department-approved continuing education 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 money penalty of up to \$10,000.

State Expenditures: The board advises that as it currently has only two full-time staff to oversee the licensure and regulation of approximately 500 nursing home administrators, it must hire four additional full-time positions to establish and administer the new assisted living program manager licensure program, which will regulate *at least* 1,558 assisted living managers.

Thus, general fund expenditures increase by \$108,658 in fiscal 2022, which reflects the cost to hire two of the needed four positions (an administrative officer and an administrative specialist) beginning October 1, 2021, in order to license assisted living program managers by October 1, 2022. The remaining two positions (both investigators) are assumed to begin July 1, 2022 (fiscal 2023). The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2022</u>	<u>FY 2023</u>
Positions	2	2
Salaries and Fringe Benefits	\$95,595	\$248,025
Other Operating Expenses	13,063	22,320
Total General Fund Expenditures	\$108,658	\$270,345

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

State Revenues: Assisted living managers must be licensed by October 1, 2022. It is assumed that the board will begin accepting license applications in fiscal 2023. The board advises that application fees will be \$100, and license and renewal fees, collected biennially, will be \$300. Assuming that a minimum of one assisted living manager from each of the 1,558 licensed assisted living programs in the State apply for a license, revenues increase by \$623,200 in fiscal 2023 to reflect initial application and license fees, and by \$467,400 in fiscal 2025, 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.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 480 (Senator Kelley) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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