

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 665

(The President, *et al.*) (By Request - Office of the
Attorney General)

Finance

Health and Government Operations

**Assisted Living Programs - Unlicensed Programs - Resident Abuse, Exploitation,
and Neglect (The Senator Delores Kelley Residents of Unlicensed Programs
Protection Act)**

This bill requires the Maryland Department of Health (MDH) or the Office of Health Care Quality (OHCQ) to investigate whether assisted living residents have been subjected to neglect, exploitation, or abuse if MDH finds a credible allegation that a person is operating an assisted living program without a license. The person operating the unlicensed program must be subject to immediate prosecution (1) on receipt of a credible allegation or after an investigation finds that residents have been subjected to neglect, exploitation, or abuse or (2) if the person fails or refuses to cooperate fully in an investigation. If MDH finds no reason to believe that residents have been subject to neglect, exploitation, or abuse, MDH must provide written notice to the unlicensed program requiring compliance with licensure requirements within 30 days. A person operating an unlicensed program may not be subject to prosecution if they have promptly and in good faith submitted a complete application for licensure. MDH, 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 unlicensed assisted living program. MDH may adopt regulations to carry out the bill.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. Imposition of existing penalty provisions are not expected to materially affect State finances or operations.

Local Effect: Imposition of existing penalty provisions and the authority to petition a circuit court for injunctive relief are not expected to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill also repeals the requirement that MDH send written notice to an assisted living program found to be operating without a license 30 days before filing charges in order to give the program time to come into compliance with licensure requirements. The State is not required to consider the ability of an assisted living facility to pay a penalty when recommending the amount of the criminal penalty for operating without a license.

Current Law: An “assisted living program” is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of such services that meets the needs of individuals who need assistance with the activities of daily living. Assisted living programs are licensed by OHCQ within MDH. OHCQ must conduct an annual unannounced on-site inspection of each assisted living facility. Maryland regulations (COMAR 10.07.14) set the minimum, reasonable standards for licensure of assisted living programs.

A person may not knowingly and willfully operate, maintain, or own an assisted living program without a license. A violation is a felony subject to (1) for a first offense, a fine of up to \$10,000 or imprisonment for up to five years or (2) for a subsequent offense, a fine of up to \$20,000 or imprisonment for up to five years. A violation is also a violation of the Maryland Consumer Protection Act (MCPA). A person may not be subject to prosecution if the person has (1) applied in good faith for an assisted living program license; (2) is awaiting a decision regarding the application; and (3) has not been denied an assisted living program license on a prior occasion. When recommending the amount of the criminal penalty, the State must consider factors including the (1) nature, number, and seriousness of the violations and (2) ability of the assisted living program to pay the penalty.

If MDH finds an assisted living program to be in violation of licensure requirements, MDH must send written notice to the program 30 days before the State files charges for operating without a license.

A person also may not advertise, represent, or imply to the public that an assisted living program is authorized to provide a service that the program is not licensed, certified, or otherwise authorized to provide. A person may not advertise an assisted living program in a misleading or fraudulent manner. A violation is subject to a civil penalty not exceeding \$10,000 for each offense.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description,

or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Comments: As of February 10, 2023, there were 1,723 licensed assisted living programs in the State.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the past three years.

Designated Cross File: HB 774 (*The Speaker, et al.*) (By Request - Office of the Attorney General) - Health and Government Operations.

Information Source(s): Maryland Association of County Health Officers; Maryland Department of Aging; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

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