

Department of Planning and Budget 2005 Fiscal Impact Statement

1. **Bill Number:** HB 2512

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. **Patron:** Phillip A. Hamilton

3. **Committee:** Passed Both Houses

4. **Title:** Assisted living facilities

5. **Summary/Purpose:** Requires administrators of assisted living facilities, except for those providing residential living care only, to be licensed by the Board of Long-Term Care Administrators within the Department of Health Professions. The bill renames the Board of Nursing Home Administrators as the Board of Long-Term Care Administrators. The Board of Long-Term Care Administrators shall adopt regulations on or before July 1, 2007, and the administrator licensing provisions shall not be implemented or enforced until 12 months after the regulations become effective. The bill permits the Commissioner of the Department of Social Services to issue an order of summary suspension of a license to operate an assisted living facility in cases of immediate and substantial threat to the health, safety, and welfare of residents or participants and increases from \$500 to \$10,000 the maximum civil penalty for an assisted living facility out of compliance with licensure requirements. The bill requires medication aides in assisted living facilities to be registered by the Board of Nursing. The Board of Nursing shall adopt regulations on or before July 1, 2007, and the registration provisions shall not be implemented or enforced until 12 months after the regulations become effective. Regulations for a Medication Management Plan in assisted living facilities are to be developed by the Board of Social Services, in consultation with the Board of Nursing and the Board of Pharmacy. The bill creates the Assisted Living Facility Education, Training, and Technical Assistance Fund. The bill requires applicants for licensure as an assisted living facility to undergo a background check. The bill also requires each assisted living facility to provide written disclosure documents to residents and their legal representatives, if any, upon admission. Finally, the bill requires the Department for the Aging's contract with the long-term care ombudsman program provide a minimum staffing ratio of one ombudsman to every 2000 long-term care beds, subject to sufficient funding. Through enactment clauses, the Department of Social Services is charged with developing a training module for adult care licensing inspectors and integrating into the assisted living facility regulations standards that are consistent with recommendations of the Department of Mental Health, Mental Retardation and Substance Abuse Services to ensure appropriate care for residents with mental illness, mental retardation, substance abuse, and other behavioral disabilities. This bill incorporates SB 1000, SB 1085, SB 1140, SB 1185, SB 1187, and SB 1212.

6. **Fiscal impact estimate is final** (see item 8)
7. **Budget amendment necessary:** No (see item 8)
8. **Fiscal implications:**

Virginia Department for the Aging

Subject to available funding, this bill would require the Department for the Aging's contract with the long-term care ombudsman program provide a minimum staffing ratio of one ombudsman to every 2000 long-term care beds. Although, this provision does not require any additional funding, the following estimates the potential funding need. For FY 2003, the Commonwealth reflected 20.1 local Long-Term Care Ombudsman on the federal National Ombudsman Program Report. The number of long-term care beds in Virginia is estimated at 66,630. The department maintains that it would need an additional 13.2 ombudsman to meet the standard required in this legislation (33.3 ombudsman statewide.) The department estimates that these additional positions would cost approximately \$55,000 each, which includes benefits and nonpersonal services, for a total of \$725,000.

Department of Social Services

The Department of Social Services maintains that the legislation will add to the volume and complexity of work in the Division of Licensing Programs. A position would be needed to perform new and redistributed work in the following areas:

- Developing best practices in care and services to mentally ill and mentally retarded populations, to include establishing measurable criteria and training for implementation;
- Developing criteria for civil penalty amounts in ranges according to risk factors;
- Developing criteria for anticipated requests for allowable variances related to licensed facility administrators;
- Developing and delivering training to licensing inspectors on statutes and regulations;
- Developing and delivering training to inspectors and providers on medication management plans; and
- Establishing quality control methods and applications across these new program responsibilities.

Assuming an average salary of \$50,000, the cost for salaries and benefits would be \$64,843. Nonpersonal services costs are estimated at \$6,500 (\$2,500 of which would be one-time costs.) Personnel, equipment, and support costs for the additional position totals \$71,343 for FY 2006 and \$68,843 each year thereafter. Funding (\$512,853 for FY 2006) provided in the enrolled budget to enhance facility oversight will cover the additional costs associated with this legislation.

Assisted Living Facility Education, Training, and Technical Assistance Fund

This bill would increase the maximum penalty from \$500 to \$10,000 (not to exceed \$10,000 per 24 month period) when an assisted living facility is substantially out of compliance with the terms of its license. The revenue generated from any penalties will be deposited into the newly created Assisted Living Facility Education and Technical Assistance Fund. This fund

would be used to provide education and technical assistance to assisted living facility staff members. During FY 2004, 38 civil penalties were assessed against assisted living facilities, the majority of which were at the maximum of \$500. Assuming 38 penalties in FY 2005, the maximum possible would be \$380,000; however, the department estimate assumes that the penalties would vary across the entire range with only 5 percent assessed at the maximum of \$10,000.

Department of Health Professions

Regulation of Assisted Living Facility Administrators

Adding assisted living facility (ALF) administrators to Board of Nursing Home Administrators (which will be renamed Board of Long-Term Care Administrators) will clearly have a fiscal impact; however the amount and impact on licensure fees is unknown. The board's costs for licensing and disciplinary functions will increase, as well as the expense associated with adding two board members (the bill increases board membership from seven to nine.) The fee structure for professions regulated by the Department of Health Professions is established as to offset the anticipated costs of the board. Although the department does not have an estimate as to the ALF administrators it may license, it estimates that there are a sufficient number of professionals to absorb the added costs associated with regulation.

Regulation of Medication Aides

The number of medication aides currently employed in assisted living facilities is unknown. However, the Virginia Geriatric Education Center does conduct a medication administration training program that has been approved by the Board of Nursing. The Center reports that 33,157 persons have been through this program and it is assumed that a similar number would be registered. Therefore, it is anticipated that the medication aide registry would be comparable in size and scope to the nurse aide registry (approximately 40,000 nurse aides) that exists under the Board of Nursing.

The Department of Health Professions expects that it will incur costs associated with providing educational programs, maintaining persons on a registry, investigating complaints about medication aides, adjudicating disciplinary cases, participating in the health practitioners intervention program, compliance monitoring, etc. Assuming that the medication aides expenses are comparable to nurse aides, the annual budget for the medication aides registry would be approximately \$1.5 million. Note: The nurse aide registry receives \$625,000 of federal support.

The Department of Health Professions maintains that it would require seven additional positions to absorb the additional workload associated with the registry. These positions would conduct investigations, perform administrative proceedings, and staff disciplinary hearings and administer the registry. The cost of these additional positions would be supported by nongeneral fund licensure fee revenue.

Again, the fee structure for professions regulated by the Department of Health Professions is established as to offset the anticipated costs of regulation. Therefore, the entire costs of a medication aide registry would be borne by the aides. The department estimates that the application fee could be as high as \$100 with a biennial renewal fee of approximately \$100.

9. Specific agency or political subdivisions affected:

Department for the Aging

Department of Social Services

Department of Mental Health, Mental Retardation, and Substance Abuse Services

Department of Health Professions

10. Technical amendment necessary: No

11. Other comments: This bill is identical to SB 1183.

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cc: Secretary of Health and Human Resources