



## LeadingAge DC- Position Paper on Bill 22-0689

**Issue:** Bill 22-0689, Omnibus Assisted Living Residence Improvement and Quality of Long Term Care Act of 2018

**Position:** Bill 22-689 is counterproductive to our common goal of ensuring high quality and accessible Assisted Living services that the public can trust in the District of Columbia. *We request that the DC Council suspend legislative hearings and respect the process currently underway by DC Health to write clear and fair regulations with public involvement.*

**Executive Summary:** Quality Assisted Living that the public can trust is a fundamental mission of LeadingAge DC. Our members have pioneered innovations in care and services that have made a major difference in the lives of Assisted Living residents and their families. LeadingAge DC and its members agree that it is time to update and improve regulations that value quality, resident rights, and person-centered care. However, Bill 22-689 is not the vehicle to appropriately and effectively improve quality and expand the offering of Assisted Living to all residents of DC. As written this Bill:

- *Discriminates against those living with cognitive disabilities and terminal diagnoses.*
- *Decreases choice and dignity.*
- *Jeopardizes the creation and preservation of affordable assisted living in the District of Columbia.*
- *Creates a competitive disadvantage for the District with its neighboring jurisdictions causing frail seniors to move out of the District.*

### History:

*Assisted Living in DC:* There are currently 12 Assisted Living Communities in the District of Columbia, only 3 of which accept any Medicaid funding for low income residents. These communities service over 600 residents of the District of Columbia. The need for Assisted Living in the District of Columbia is large, particularly for the middle to low-income population. When an affordable assisted living is unavailable DC residents resort to the higher cost, Nursing Home care that accepts Medicaid reimbursement

*DC Assisted Living Regulations:* Assisted Living communities in the District of Columbia are regulated by DC Health and an enforcement process established under the Assisted Living Act of 2000. In late 2017, DC Health began an inclusive process of drafting regulations with the goal of improving quality, access and affordability of Assisted Living in the District of Columbia. DC Health conducted focus groups including providers, consumers, advocates, ombudsman and DC Health Care Finance. In January 2018, the DC Board of Long Term Care Administrators convened a group to draft regulations for Assisted Living Administrators. Combined, hundreds of hours have been volunteered by the public to assist DC Health in creating fair Assisted Living Regulations to meet our common goals of quality, accessible and affordable Assisted Living. On February 6, 2018 the DC Council introduced Bill 22-0689, which does not take into account the work by the public focus group participants.

**LeadingAge DC Position:** *We request that the DC Council suspend legislative hearings and respect the process currently underway by DC Health to write clear and fair regulations with public involvement.*

LeadingAge DC and its members support the need to update and improve regulations that value quality, resident rights, and person-centered care. However, LeadingAge DC and our members have significant concerns about the unintended consequences of the currently proposed version of Bill 22-689. It is our belief that Bill 22-689 is not the appropriate vehicle to effectively improve quality and expand the offering of Assisted Living to all residents of DC. In addition, it



conflicts with current practice and was clearly not written with the involvement of national experts on Assisted Living practice, laws and regulations. For example, it eliminates the use of a pre-dispute arbitration agreements. In June of 2017, the Center for Medicare & Medicaid Services reversed its ban on pre-dispute arbitration agreements. In addition it is creates confusing and conflicting approaches to residents with dementia.

**Impact:** As written we believe this Bill will:

- ***Discriminate against those living with cognitive disabilities and terminal diagnoses.*** Two main reasons for moving into assisted living are cognitive disabilities such as dementia and terminal illnesses. B22-689 prohibits Assisted Living from admitting many of these individuals. This inappropriately forces these individuals into more expensive and restrictive environments such as nursing homes.
- ***Decrease choice and dignity.*** The following, while not inclusive, illustrate the limitations placed on residents and Assisted Living communities:
  - Requiring those with cognitive disabilities to carry identification at all times. This decreases resident choice and dignity.
  - Prohibiting residents from choosing a physician based solely on a physician's contract with the Assisted Living. This conflicts with the resident's right to choose his or her physician.
  - Limiting an assisted living's resources to prescribed hours of staffing, activities and preferences prevents a community from staffing to specific resident needs. Assisted Livings need to plan activities, care and staffing based not only on the census of the community but on the acuity and preferences of the community. As in neighboring jurisdictions and numerous other states, the best practice is to submit a staffing plan to the Department of Health for approval.
  - "The ALR shall not use the facility for commercial purposes." - This limits services that typically are offered in assisted living (e.g., beauty shops, gift shops, coffee shops). In addition, many innovative communities utilize these commercial programs to expand offerings and increase community engagement.
- ***Jeopardize the creation and preservation of affordable assisted living in the District of Columbia.*** The cost to develop and operate an Assisted Living will increase exponentially due to the staffing requirements and civil litigation liability presented in B22-689. This either eliminates funding sources or increases the cost of any remaining financing available developers and operators.
  - Low Income Housing Tax Credits (LIHTC) are used to finance the development of Assisted Living. The requirement of a 24-hour on-site registered nurse conflicts with the IRS rules governing the LIHTC and will eliminate it as a potential funding source for assisted living in the future.
  - Financial indicators such as Days Cash on Hand will suffer due to the new financial burdens (increased clinical staffing, etc.). This will cause the cost to finance new development to dramatically increase.
  - The cost to operate an affordable assisted living will be financially infeasible.
  - The unprecedented, nationwide, introduction of civil action based on Assisted Living violations of DOH policies and procedures increases the liability of operating an Assisted Living community and creates a hostile environment for providers.
- ***Create a competitive disadvantage for the District with its neighboring jurisdictions.*** The regulatory environment for Assisted Living providers in Virginia and Maryland is fair and reasonable for both the provider and the consumers. Based on the regulatory environment, providers will choose to develop communities in the neighboring jurisdictions and District residents will be forced to move out of the District to seek Assisted Living services.