



Client Alert



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Assisted Living Community Bill Does Not Survive General Assembly's Crossover Day

House Bill 850, which would have created a new category of long-term care provider in Georgia, did not survive Crossover Day in this year's session of the General Assembly. The purpose of HB 850 was to establish "assisted living communities," which proponents described as bridging the gap between personal care homes and nursing homes. The bill would have allowed a personal care home to seek licensure as an assisted living community (ALC), which would have authorized it to provide additional services, including nursing and other health services, that personal care homes are currently prohibited from providing directly.

Crossover Day, the 30th day of the General Assembly's annual session, is the day by which bills must pass from one house of the General Assembly to the other or else die for that session. Typically, Crossover Day represents the heaviest day of activity as legislators scramble to resolve the debate about pending legislation and either move the bills or see them put off until next year. With the state's looming budget crisis, this session's Crossover Day was characteristically frantic. HB 850, which earlier had passed through the House's Health and Human Services Committee by the narrowest of margins and after considerable debate, did not ultimately make it to the House floor in time.

Proponents of HB 850 maintained that it encouraged "aging in place" by addressing "living needs," which the bill describes as including assistance with activities of daily living and the administration of medications, and "supplemental health needs," which the bill defines broadly as "those needs required to provide for the health of a resident." Proponents of the bill emphasized that ALC residents and their families would be enabled contractually to assume any risks related to remaining in an ALC as long as a physician determined that continued placement was appropriate. The bill also introduced the concept of "medication technicians" – in essence, staff members who would be trained to administer medications to ALC residents.

Proponents of the bill also argued that current personal care home regulations, which prohibit the retention of non-ambulatory residents, thwart residents' desire to age in place. Current regulations of the Department of Community Health, which are based on Life Safety Code requirements, provide that a resident must be ambulatory in order to remain in a personal care home. The current regulatory definition of "ambulatory resident" is drawn

broadly, and includes residents who are able to move from place to place, whether aided by a walker or by propelling a wheelchair, and exit with minimal assistance in the case of an emergency.

Opponents of HB 850 argued that, in essence, the bill would have created long-term care facilities that are allowed to provide many of the same services offered in nursing homes, albeit without having to comply with the myriad federal and state regulations to which nursing homes are subject. Opponents emphasized that while nursing home oversight is funded by and carried out by the federal government, ALC oversight would be left to an already overburdened and underfunded state agency. At the center of the arguments of the bill's opponents, however, was that the term "supplemental health needs" is essentially undefined, and would have allowed an ALC not simply to bridge a perceived gap between personal care homes and nursing homes, but to become de-regulated parallel providers of nursing home services to all but those residents who require "continuous" care.

Opponents also maintained that, while HB 850 purported to encourage "aging in place," in practice the bill would have permitted an ALC to accept residents who require the highest level of care from the first day of admission. Opponents also expressed concern about the use of "medication technicians," for whom HB 850 did not require supervision by licensed nurses or physicians. Opponents stressed that current personal care home regulations already allow third party healthcare providers, such as home health agencies, therapy providers, and hospices, to provide services in personal care homes, and permit personal care homes to provide assistance with medications to residents.

Although HB 850 will not pass this session of the General Assembly, the underlying concepts and controversies presented in the bill are not new, and providers should be prepared for these issues to be debated again in next year's session.

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