



October 9, 2024

Sent Via Email: BEPS.MDE@maryland.gov.

Mark Stewart
Program Manager, Climate Change Program
Air and Radiation Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 705
Baltimore, MD 21230-1720

Re: Building Energy Performance Standards Draft Regulations

Dear Mr. Stewart:

Thank you for the opportunity to submit comments on the draft Building Energy Performance Standards regulations.

LeadingAge Maryland is a community of more than 140 not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing home, PACE, hospice, and home and community-based services. LifeSpan Network is a senior care provider association, representing the continuum of care in Maryland. Members of LeadingAge Maryland and LifeSpan Network provide health care, housing, and services to older and disabled persons.

We applaud the state's efforts to address CO2 emissions and ensure that Maryland is taking steps to support climate health. However, implementation of these BEPS regulations as currently written will most certainly impact aging services providers, particularly not for profits, in Maryland and exacerbate the financial and operational viability of a wide range of critically necessary organizations, especially affordable senior housing. Our members provide affordable housing, supportive services, and medical and personal care services to individuals with chronic illnesses, disabilities, or aging-related conditions, and face a range of financial and operational challenges. These challenges have been growing due to factors such as increasing demand for services, rising costs, and a complex regulatory environment. Notably, our members who provide affordable senior housing play a critical role in providing safe, and supportive housing for older adults on fixed or limited incomes. The new requirements and costs necessitated by the BEPS regulations would be untenable for many of these communities.

We urge the Maryland Department of Environment (MDE) to pause implementation until the logistical, cost, and operational concerns can be thoroughly evaluated, and until the state has

the capacity to provide technical assistance, financial assistance, and coordinated support to the not-for-profit organizations in the state who will be hardest hit by these new requirements. Most not for profit organizations, and especially affordable senior housing providers, do not have energy experts on staff. To comply with these new reporting requirements, many organizations will be forced to contract with costly consultants and pay hefty non-compliance fines. More and more older adults in our state are needing affordable housing, care, and services. This is not the time to put additional unfunded mandates on not-for-profit organizations who support some of the most vulnerable members of our communities.

General Comments:

The Building Energy Performance Standard (BEPS) regulations, aimed at improving energy efficiency in buildings, will pose several challenges for aging services providers, including skilled nursing, assisted living, continuing care retirement communities, PACE, hospice, and other care and service providers:

1. High Compliance Costs. Retrofitting older buildings, common for many nursing homes, assisted livings, affordable senior housing, and other care providers, to meet energy efficiency standards can be expensive. HVAC systems, insulation, and energy management technologies will require costly upgrades. Many of these organizations do not have large reserves, and capital expenditures have to be made judiciously and in line with annual budgets.

2. Increased Financial Strain. Senior care providers typically operate on very tight margins, particularly those organizations who are reliant on Medicare/Medicaid funding. The cost of compliance may divert funds away from resident care or other critical areas. Unlike other commercial companies or business, most of our members cannot simply pass on increased costs to consumers

3. Potential Fines for Non-Compliance. Non-compliance with BEPS regulations will result in fines or penalties, adding to the financial strain. Organizations that are unable to upgrade in a timely manner may face penalties that compound their financial difficulties.

4. Energy Use Constraints. Some providers, like nursing homes and assisted living facilities for example, have specific energy needs related to heating, cooling, and medical equipment, which may limit their ability to reduce energy consumption without compromising patient care. Stricter energy efficiency standards may conflict with the need for a controlled, comfortable environment for older adults and medically fragile residents.

5. High Retrofitting and Upgrade Costs. Many of our members, especially not-for-profit senior affordable housing typically operates with tight budgets and limited reserves. Meeting the energy efficiency requirements set by BEPS will likely require significant capital investment to retrofit buildings with updated HVAC systems, insulation, windows, and other energy-saving technologies. Many affordable senior housing communities are located in older buildings, which are often more costly to upgrade to modern energy efficiency standards.

6. Limited Funding Sources. Many communities often rely on government grants, donations, and subsidies to maintain operations. Securing additional funding for energy

efficiency upgrades may be challenging, especially as these grants are highly competitive and not guaranteed. Borrowing to cover upgrade costs could strain already tight budgets, leading to increased financial vulnerability.

7. **Impact on Housing Affordability.** Not-for-profit affordable senior housing aims to provide low-cost housing for seniors on fixed incomes, such as Social Security or pensions. However, to cover the costs of compliance with BEPS, housing providers may need to raise rents, which could undermine the affordability of these communities and place financial pressure on seniors. If costs rise too much, some seniors may be priced out of these housing options, exacerbating housing insecurity for vulnerable populations.

8. **Increased Operational Burdens.** Meeting BEPS regulations will require ongoing energy monitoring, reporting, and management. Additional operational responsibilities may strain already stretched staff and resources. Managing energy upgrades and compliance might divert attention and resources away from core services like resident support, community programming, and housing management.

9. **Penalties for Non-Compliance.** If senior care providers are unable to meet the BEPS targets, will face severe compliance fees, adding to their financial burdens. These penalties could divert funds away from maintenance, resident services, or other important operational areas. Non-compliance risks could also lead to legal or regulatory challenges, further straining limited resources.

10. **Difficulty Accessing Energy Efficiency Incentives.** Though there may be incentive programs or funding opportunities to help offset the costs of energy efficiency upgrades, not-for-profit senior housing providers may find it challenging to navigate complex application processes or meet eligibility requirements for certain programs. Smaller not-for-profits, in particular, might struggle to access these funds.

11. **Space Limitations for Renewable Energy.** Senior care communities may lack the physical space or infrastructure needed to install renewable energy solutions like solar panels or geothermal systems, which could help them meet BEPS requirements. In densely populated urban areas, space constraints may make it difficult to take advantage of renewable energy options.

12. **Impact on Senior Health and Well-Being.** Energy-efficient retrofits could potentially impact the indoor environment, which is critical for senior residents' health. For example, improper installation or ventilation changes during retrofitting might result in poor air quality or inconsistent temperature control, which can negatively impact seniors, especially those with respiratory conditions. Overly aggressive efforts to cut energy usage (such as limiting heating or cooling) could compromise seniors' comfort and well-being, as they often need stable indoor temperatures for health reasons.

13. **Delayed or Deferred Maintenance.** Senior care communities already face challenges with funding building maintenance. Adding BEPS-related energy efficiency costs could mean

deferring other important maintenance projects, potentially leading to a decline in the quality of housing for seniors.

14. Energy Usage Data. We are concerned with obtaining and entering the energy usage data. Relying on individual building owners to submit energy data rather than requiring this information directly from energy utility companies is cumbersome. Providers who provide housing and care may have anywhere from 5-over 100 energy meters. In addition, utility companies are not prepared to respond to the number of requests they will receive when these requirements go into effect. Already, organizations in Maryland report waiting months after placing a request to receive energy usage reports from their utility companies. We urge MDE to determine how utility usage could be reported directly from utility companies rather than requiring individual organizations to request and submit this data. The processes could be immensely streamlined if the data were collected directly from the utility companies.

15. Renewable Energy Credits. We believe there is a lack of clarity around how solar energy and renewable energy credits will be counted in the reporting for each building, and if renewable energy credits must originate in Maryland to be counted.

16. Need for Support and Technical Assistance. MDE must provide technical assistance. Affordable senior housing providers and other aging services providers will struggle to hire energy consultants, if they are able to at all. We are unaware of the state providing needed technical assistance and support to make it simple for organizations to understand how to comply and improve their scores. How will MDE ensure that organizations understand their energy and emission benchmarks, and how to prioritize needed infrastructure investments and upgrades? Further, how will the state support organizations in paying for upgrades?

17. Electricity Capacity and Infrastructure Outside of the Covered Building. There is a lack of clarity around who is responsible for improvements to electricity capacity and infrastructure outside of buildings. For organizations who wish to reduce gas usage and increase electrical usage, how will the state ensure that the electrical capacity for their building is sufficient? We are concerned that this cost will be forced onto not for profits, instead of requiring the energy utility companies to make necessary upgrades to support increased electrical capacity.

Specific Comments on Draft BEPS Regulations

Set forth below are specific concerns with the draft BEPS regulations:

1. 26.28.04.01 Alternative Compliance and Special Provisions. The alternative compliance pathway is overly punitive. The \$230 per ton alternative compliance fee is roughly 10 times what utility companies pay for emissions allowances, 2.3 times the rate modeled for the state Building Energy Transition Plan and includes an inflation factor not authorized by the Climate Solutions Now Act of 2022 (CSNA). We urge MDE to delete the inflation adjustments for the alternative compliance pathway. The alternative compliance fee already incorporates an annual \$4 per metric ton increase. An additional inflation adjustment may pose significant financial burdens on long term care facilities and affordable senior housing communities if inflation approaches levels experienced in recent years. In particular, not-for-profit aging

services providers face severe challenges. Across the country, these facilities face a double crisis of labor shortage and higher expenses. We cannot just raise prices or volume to account for these increased costs.

2. 26.28.04.02C Exemptions – Affordable Housing. We appreciate the pathway to a reduced alternative compliance fee for affordable housing providers. However, given the challenges associated with not-for-profit affordable senior housing, we request a waiver from BEPS if a housing provider maintains rent at a certain area median income.

3. 26.28.04.03 Alternative Compliance and Special Provisions. The emission standards for campus-level compliance should be set using the predominant building type on campus. MDE should clarify Chapter 04.03 (Option for campus-level compliance). The proposed building standards do not specify how the emission standards for a campus with mixed property types would be calculated. Since an aging services providers' campus may include a diversity of property types, to ease administrative burden, we recommend MDE set campus-level performance standards using the performance standards of the predominant building type, as measured by square footage.

4. Offsets. Some providers have made and intend to continue making energy improvements on their campus. State law requires considerations for offsets in climate mitigation policies, but none are allowed in the regulations. This must be factored into the regulations.

5. Compliance Fund. We recommend MDE establish a fund with the collected compliance fees and distribute them to help covered buildings pay for necessary improvements. As explained, the revenues of many not-for-profit aging services providers, including not-for-profit are particularly constrained. Paying alternative compliance fees would only diminish already limited financial resources. Instead of a purely punitive structure, we urge MDE to deploy the alternative compliance pathway in a constructive manner to help covered buildings achieve compliance.

Thank you for the opportunity to comment on these draft BEPS regulations.

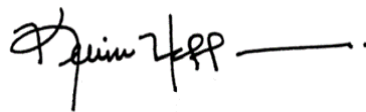
Sincerely,



Allison Ciborowski

President and CEO, LeadingAge Maryland

Sincerely,



Kevin Heffner

CEO, LifeSpan Network