

In the Senate – Education, Energy, and the Environment Committee

SB 848

**Housing and Community Development – Statewide Rental Assistance Voucher Program --
Establishment**

POSITION: SUPPORT WITH AMENDMENTS

The undersigned individuals and organizations **SUPPORT WITH AMENDMENTS** HB 826.

HB 826 is a ground-breaking proposal that would create a statewide Rental Assistance Voucher Program. HB 826 will provide tenant based rental assistance for low-income Marylanders and prioritizes specific populations for this rental assistance. This would constitute a significant investment in low-income families and produce many of the positive social and economic benefits associated with affordable housing.¹ The intent of the legislation is to replicate the federal housing choice voucher (“Section 8”), but in many areas the legislation **falls short** of the protections in federal regulations provide to families. Specific amendments and proposed language to correct these drafting errors are attached to this testimony as **Exhibit 1**. Without these amendments, specific rights enshrined in federal statutes and regulations will be unavailable to participants, especially for those with disabilities, in the Statewide Rental Assistance Voucher Program. We understand this is not the intent of the legislation.

People with disabilities are more likely than their non-disabled peers to experience unemployment and poverty,² and nationwide, about 4.1 million people with disabilities spend more than half of their income on rent.³ In Maryland, more than half of all people with disabilities had annual household incomes below \$15,000 in 2016.⁴ While many people with disabilities receive monthly Supplemental Security Income (SSI) benefits, SSI payments alone are usually not enough to afford market rate housing. In 2022, the average monthly rent of a one-bedroom apartment in Maryland was \$1,111, while monthly SSI payments were just \$841.⁵ Consequently, many people with disabilities are forced into homelessness, nursing homes, State hospitals, emergency rooms, and Maryland’s jails and prisons. The Covid-19 pandemic demonstrated just how deadly and unjust the continued segregation of people with disabilities in

¹ Nabihah Maqbool, et al., *The Impacts of Affordable Housing on Health: A Research Summary*, available at <https://nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf> (last accessed February 23, 2023).

² Debra L. Brucker et al., *Health and Health Services Access Among Adults with Disabilities Who Receive Federal Housing Assistance*, HOUSING POLICY DEBATE, Aug. 29, 2017, at 1.

³ About 4.1 million people with disabilities nationwide pay more than half of their income on rent. CENTER ON BUDGET AND POLICY PRIORITIES, UNITED STATES FEDERAL RENTAL ASSISTANCE FACT SHEET (2021), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-19hous-factsheet-us.pdf>.

⁴ MD. DEP’T OF HEALTH, BRFSS BRIEF: DISABILITY AND HEALTH AMONG MARYLAND ADULTS (August 2018), https://health.maryland.gov/bhm/DHIP/Documents/BRFSS_BRIEF_2018-08_Disability.pdf.

⁵ TECHNICAL ASSISTANCE COLLABORATIVE, PRICED OUT: THE HOUSING CRISIS FOR PEOPLE WITH DISABILITIES (2021), <http://www.tacinc.org/knowledge-resources/priced-out-v2/>. Maximum SSI payments increased to \$794/month in 2021.

facilities is.⁶ Moreover, persons of color are more likely to experience disability.⁷ Therefore, the ability of people with disabilities to live in the community is an issue of disability and racial justice.

In recognition of the devastating toll of the pandemic on Marylanders with disabilities and their lack of housing opportunities, the Attorney General and Access to Justice Commission the Covid-19 Access to Justice Taskforce called for more permanent housing solutions for households living in extreme poverty, including people experiencing homelessness and people with disabilities.⁸

A statewide rental voucher program would be a tremendous first step by Maryland to address the housing crisis facing persons with disabilities. In this respect, HB 826 will have a net positive effect on low-income households. On the other hand, such a program could also fill in many of the gaps in federal policy that excludes families from the housing. HB 826's replication of federal housing policies does not expand households eligible for rental assistance, including excluding families based on immigration status. As individuals and organizations who believe housing is a human right, this result is hard to accept especially knowing that different choices could be made.

Nonetheless, the undersigned support this legislation provided the amendments set forth in **Exhibit 1** are made to ensure HB 826 continues the protections guaranteed in current federal law and policy. These amendments are especially needed to ensure people with disabilities have access to needed supports, such as live-in aides, or can seek medical-care they need without having their assistance terminated with the opportunity for a hearing. These amendments also guarantee that the Statewide Voucher Program operates within the Constitutional and civil rights requirements.

For the foregoing reasons, we **support with amendments** HB 826

Respectfully submitted,

Accessible Resources for Independence

Baltimore Renters United

Disability Rights Maryland

⁶ <https://ncd.gov/progressreport/2021/2021-progress-report>

⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, ADULTS WITH DISABILITIES: ETHNICITY AND RACE (last updated Sept. 16, 2020), <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>.

⁸ CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS (JAN. 2021), *available at* https://www.marylandattorneygeneral.gov/A2JC%20DocumentsI/AG_Covid_A2J_TF_Report.pdf, last accessed February 23, 2023).

The Freedom Center

Homeless Persons Representation Project

Independence Now

Image Center

Main St. Housing

Public Justice Center

Southern Maryland Center for Independent Living

SB 848

Proposed Amendments

1. 4-2901(B)(2), pg. 3 line 23 thru 26

Comment: This is a very restricted definition of disability and is rooted in HUD's definition for supportive housing for persons with disabilities. It is not necessary, or appropriate, for PHAs or the Department to evaluate the duration or the ability of individuals' ability to live independently. We recommend using the more narrow definition in federal civil rights statutes for persons with disabilities. Strike the current definition and replace with the following:

Proposed language: "A physical or mental impairment that substantially limits a major life activity."

2. 4-2901(g)(1-2), pg. 4 line 12-15

Comment: We were unclear on the need to specifically call out live-in aides in the legislation. Welcome more discussion on that, but it just felt a little strange because it is such a common occurrence. Not opposed to in but insight on the need would be helpful in understanding. We propose language that mirrors that of federal regulations, but does not incorporate by reference.

Proposed language: "Live-in aide" means an individual that:

- i) Is necessary for the care and well-being of a member of a Family;
- ii) is not obligated for the of support of the person; and
- iii) would not be residing in the unit expect to provide supportive services to a member of the family.

3. 4-2906, pg. 6 line 5 and 6

Comment: We believe the intent is that all of these preferences are equal. The mechanics of preferences for PHAs are that they exhaust households with a preference before moving to families without preferences. The families with preferences are called based on date/time of application. Additionally, we propose that families that include children who have aged out of foster be included as a priority equal to other priority families.

Proposed language: "The Department and each public housing agency shall equally prioritize vouchers and housing assistance payments for families that include: ..."

(6) children aging out of foster-care

4. 4-2907, pg. 6 line 13

Comment: A fifteen day period to provide documentation is completely unworkable for low-income persons, especially people with disabilities. This may require the submission of an award letter from SSA, which can take an extended period of time. Additionally, PHAs frequently ask about things like bank account statements AND work in the past year, gifts from family members, and any source of income. The documents required are quite extensive. Many of the requirements of time tables, time lines are left to discretion of PHAs in their administrative plans

Proposed language: “When an offer of assistance is made, a family ~~has 15 days to provide~~ must provide documentation to verify their income with the department of the public housing agency.”

5. 4-2908(A-B), pg. 6, line 17 thru 24

Comment: As discussed in our global comments, a concern with the drafting is the potential roll-back of housing programs at the federal level. We think a better approach to drafting would be incorporating the good provisions of current federal housing programs and omitting the bad ones.

Proposed language at line 22: “A family assisted under the State program shall be expected to pay a ~~portion of no more than 30%~~ of its monthly adjusted gross income for rent and utilities, as determined by the department or public housing agency.”

6. 4-2909, pg 6, line 26 thru 29

Comment: Time limited assistance has not adequately bridged families to federal rental assistance. DHCD’s RAP allows for one year, and the result is families are typically left homeless or in housing they cannot afford after the end of the year. A five year bridge period, while better than what currently exists, could cause the same effect. Some voucher waiting-lists exceed seven years, particularly in the most populated jurisdictions in the State (Montgomery County, Prince George’s, Baltimore County, and Baltimore City). Some voucher waiting-lists are shorter.

Proposed language: Housing assistance payments for a family shall continue ~~for up to 5 years or until a federal housing choice voucher under the federal housing choice voucher program becomes available; whichever occurs first.~~

7. 4-2910, pg. 7, line 2 thru 10

Comment: This language would limit live-in aides to only disabled households who are the head of household. This is more restrictive than what federal law and regulations in that it only allows for live-in aides for families of one where the HOH is a person with a disability. Specifically, federal regulations permit: “A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities.” 24 C.F.R. 982.316. Also, to our global comment, the inclusion of 24 C.F.R. 8.11 is a reference to reasonable accommodations in employment at HUD, so the reference doesn’t really check-out.

Proposed language: (A) “A family may request that the department or a public housing agency approve a live-in aide to provide necessary supportive services for a family member who is a person with disabilities.” ~~if the family is composed of a disabled individual who is the head of household.”~~

(B) The Department or public housing agency shall reasonably modify its policies, procedures, and rules to allow families that include a person with a disability to have live-in aide ~~approve a live-in aide if a live-in aide is required as a reasonable accommodation under 24 C.F.R. 8.11~~

(C) The Department or a public housing agency may not include a live-in aide’s income when determining a family’s income eligibility under the state program.”

8. 4-2911(B), pg. 7 line 25 thru 29

Comment: Paragraph B will have significant collateral consequences for other program participants residing in a building that is disqualified pursuant to this provision. For example, multiple participants may reside in a multi-family complex and if one participant has HQS violations and must relocation, that would require **ALL** families using statewide rental assistance to relocate, but not families using federal housing choice vouchers. Under federal regulations, there is more nuance that require a judgment related to 'a history or practice of non-compliance with HQS for units.' Our proposed edits are intended to mirror these revisions.

Proposed language: "A property owner who has a history or practice, as determined by ~~received three or more penalty notices from~~ the Department or a public housing agency, ~~for a violation of~~ of non-compliance with federal housing quality standards is not eligible to lease the owner's properties to families receiving assistance under the State program."

9. 4-2913(A)(1), pg. 8 line 6 thru 14

Comment: This provision is confusing. It is unclear if this provision is in reference to a landlord or in reference to a participant. I think it is potentially confusing to try to include both audiences into this provision. However, we propose that it be limited to prospective landlords

Proposed language:

4-2913(B)(2)(v), pg. 9 line 22-23

Comment: This allows for the automatic termination of families who are absent from a unit for more than 180 days. This does **not** replicate federal regulations and has a significant impact on families with disabilities. Federal regulations allow for termination of a Housing Assistance Payment Contract w/the landlord, 24 C.F.R. 982.312, and a family **may** be terminated from the program if they are absent for 180 days. 24 C.F.R. 982.551 (identifying as discretionary cause to terminate absence from a housing unit), 24 C.F.R. 982.555(a)(1)(v) (requiring a hearing for a family for absence from the unit). This is a significant issue for families with disabilities who may be out of a unit for extended medical absences or stays at rehabilitation centers. If families with disabilities are out of units for more than 180 days, they should have the right to challenge any termination. We would propose that either i) all terminations are discretionary as established in 4-2913(C); or ii) absence from a unit for 180 consecutive days be made a discretionary termination under 4-2913(C).

Proposed language: Remove 4-2913(B)(2)(V), and add language at 4-2913(C)(7): "Is absent from a State Program Unit for more than 180 Consecutive Days."

10. 4-2913(C)(2), pg. 10 line 2-3

Comment: PHAs may still evict households for marijuana use and so families who have not engaged in prohibited activity in Maryland may be excluded from State Assisted Housing under this provision. Preference is for State assisted housing to fill gaps not filled by federal housing programs. We propose striking, or alternatively limiting language.

Proposed language: Either strike this provision; or “has been evicted from federally assisted housing for violent criminal activity that threatens the health, safety, and welfare of residents of federally assisted housing within the preceding 3 years.”

11. 4-2913(E), pg. 10 INSERT NEEDED

Comment: There is no explicit requirement in the legislation to provide an informal hearing to participants who are proposed to be terminated or a right to challenge to challenge the factual basis for such a termination. Supreme Court precedent, *Goldberg v. Kelly*, requires that prior to termination of public benefits, such as housing assistance, due process is required before termination of assistance. Therefore, language is needed to guarantee an opportunity for a hearing prior to termination of housing assistance under this program. The proposed language mirrors what is in federal regulations at 24 C.F.R. 982.555

Proposed Language: 4-2913 (E) In no event shall assistance be denied or terminated to a family without a written notice of the reason for the family’s denial or termination with an opportunity to challenge the denial or termination at an informal hearing before an impartial hearing officer. At and prior to the informal hearing, Families must be allowed to:

- i) Be represented by an attorney;
- ii) Present evidence and question any witnesses;
- iii) Examine and make copies of any documents directly relevant to the proposed denial or termination.”

12. 4-2914(B)(1), pg. 10 line 10

Comment: It is frequent that some households with disabilities will rent units that are within proximity to and owned by family members. This is explicitly allowed by federal regulations at 24 C.F.R. 982.306(d) – “The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.” Therefore, we suggest language that would accommodate the needs of families with disabilities.

Proposed language: “A family that receives a voucher under the state program may not 1) have a financial interest in the unit, however the Department of public housing agency may approve a family to reside in such a unit if doing so would reasonably accommodate a family member who is a person with a disability.”

13. 4-2917(B), pg. 12, line 4 thru 12

Comment: This provision seemed strange. I am unclear why elderly households may be treated differently than other households. Frequently, you may see an elderly households that have other family members – who are non-elderly – living with them. This is particularly true of households with adult children w/intellectual and developmental disabilities. We proposed striking paragraph (B) entirely. (B)(2) can be addressed through termination for absence from units for greater than 180 days.

Proposed language: [Strike paragraph B of 4-2917]

14. 4-2920

Comment: We would like to see additional reporting information on i) disability status of any households served; and ii) if the five year limitation on assistance remains, the number of households exiting assistance w/o having received a federal housing choice voucher should also be report on.

Proposed Language: 4-2920(7) “The race, disability status, and gender of individuals in families receiving assistance under the State Program.” ...

(14) Families terminated from assistance because they have not received a federal housing choice voucher within the five years of their receipt of State funded housing assistance.”

Other Comments

1. **Just Cause Protections.** Under current federal regulations for the Housing Voucher program, landlords can simply not renew a voucher household’s lease. Housing insecurity created by lease non-renewals has a particularly devastating impact on low-income families who cannot afford the costs and expenses of moving such as security deposits, moves, utility hook-ups, and other fees. Of note, ‘just cause’ or ‘good cause’ protections were formally part of the federal regulations implementing the voucher program, but were later repealed.
2. **Screening and Admissions.** Public Housing Authorities have limitations on who can be served, including criteria based on immigration status, income targeting levels for families at or below 50% Area Median Income, and criminal background screenings that limit who is eligible for federal rental assistance programs. The criminal background screenings *exceed* what is illegal in Maryland, such as Marijuana use. State funded program can serve families federal housing programs don’t.
3. **Do Not Incorporate Existing Regulatory Citations, but do include existing language.** Generally, legislation that incorporates other legislation by reference can create problems as those provisions can change or be interpreted in a way to defeat the intent of the legislation. Additionally, given that federal regulations can at times be byzantine, we support more specific language that incorporates the substantive language of relevant regulations over a reference to provision of the United States Code or federal regulations.