



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

Senate Bill 665

Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect

In the Finance Committee
Hearing on March 16, 2023

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 665 at the request of the Vice Chair of the Maryland Senate Finance Committee, Senator Katherine Klausmeier.

Maryland Legal Aid (MLA) asks that the Committee report **favorably** on SB 665, an important bill that closes a gap in the protection of older/disabled adults living in the community.

MLA is a non-profit law firm that provides free legal services to the State's low-income, vulnerable residents. Our twelve offices serve residents in each of Maryland's twenty-four jurisdictions and handle a range of civil legal matters, including elder law, Medicaid, access to Long-Term Care, and Nursing Home and Assisted Living Facility (ALF) cases.

Currently, operating an unlicensed ALF in Maryland is a crime, but the existing statute lacks teeth. SB 665 adds two key provisions needed for enforcement which currently do not exist; (1) it permits investigating violations of the statute when discovered, and (2) adds consequences that will have impact. Most importantly, the bill's enforcement provisions implement a victim-centered approach to remedying the illegal operation of unlicensed ALFs.

The first enforcement provision added in SB 665 provides the Maryland Department of Health (MDH) the authority to investigate unlicensed ALFs for abuse and neglect of their residents, most of whom are older adults living with physical and/or mental disabilities. Currently, unlicensed facilities operate without any oversight from the MDH's Office of Health Care Quality (OHCQ). Currently the OHCQ is only charged with the oversight of *licensed* ALFs. This bill will give OHCQ the much-needed authority to step in and investigate when an unlicensed ALF is reported.

Today, under MD Code Health General 19-809, when an unlicensed ALF is reported, if the ALF applies for a license within 30 days of being discovered, they are immune from prosecution for the pendency of the licensing process. This has become a loophole that unlicensed ALF operators have used to their advantage. Often, this means that the owner or operator of this facility can apply for licensure, and meanwhile close that "shop" and reopen under new ownership in a new location and begin their predatory practices all over again, never facing any consequences.

The second enforcement provision included in SB 665 allows for the *immediate* prosecution of persons operating an unlicensed ALF. This provision will create vital protections for residents of unlicensed ALFs by implementation of significant, timely consequences to force operators into compliance.

SB 665 puts front-and-center the well-being of the residents of these unlicensed facilities and the harm they experience. These residents suffer neglect, physical, mental, financial, and sexual abuse, and other forms of exploitation. Residents at unlicensed ALFs are especially vulnerable to abuse or neglect due to the personal services the operator and staff provide, including assistance with daily activities, such as toileting and showering. Assisted living facilities also provide medication management, food preparation, and management of the resident's personal finances or government benefits. The potential for neglect and abuse is high. The harm imposed can manifest itself in long-term physical and mental health issues that impact a resident's life-long quality of life.¹

It is no secret that unlicensed ALFs engage in human and/or benefits trafficking, using coercion, deception, threats, or other means to traffic a victim, moving them from one facility to another for the additional purpose of appropriating their benefits, such as Social Security Retirement, Food Stamps (SNAP), or other benefits.² An example of how this occurs is when a particularly devious operator has both a licensed ALF and an unlicensed ALF. A new resident signs an Admission Contract for the licensed facility, agreeing to certain terms, services, and costs. Usually, the resident also signs over their government benefits, making the facility their representative payee. However, the operator soon “shuffles” the resident to their unlicensed facility, where they receive less services, often in a facility, usually a home, in worse condition, for the same price. In the worst cases, the resident suffers abuse or neglect.

MLA has served clients who have been “shuffled” through a licensed ALF into an unlicensed ALF. In one case, after being moved from a licensed to an unlicensed ALF, our client suffered neglect—their medication was mismanaged, they were underfed, and received minimal hygiene assistance, yet they were charged the same rate as the licensed ALF. Eventually, the client was pushed out onto the sidewalk, abandoned, and told they could not live in the unlicensed ALF anymore. The police were called, but even with their support, the client was fearful of the facility operator and refused to report the neglect and exploitation they endured. If SB 665 is enacted, it will give OHCQ investigatory power to promptly step in, investigate and add injunctive relief to stop the operation of an unlicensed ALF. This missing piece of oversight and control is necessary for the protection of vulnerable persons from unscrupulous operators of unlicensed ALFs.

Residents of unlicensed ALFs are especially vulnerable because they often have *nowhere else to go* if they do not remain at their current facility, and further, because the facility is unlicensed, no government agency or entity even knows the facility exists. Unlicensed ALFs often cost less than licensed facilities. The average cost of a licensed

¹ See generally, *Research, Statistics, and Data*, NAT'L CENTER ON ELDER ABUSE, https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#_ednref65. Please visit this site for a comprehensive overview of elder abuse facts and figures.

² GA Code § 16-5-102.1 (2020). Georgia is a trailblazer in the protection of older and vulnerable adults against benefits trafficking.

ALF in Maryland is approximately \$4,000 per month.³ This is substantially more than residents of unlicensed facilities can afford, who generally consist of older adults and/or those living with disabilities on low, fixed incomes. Without family or social work support, residents do not know what their options are and do not have the support to explore those options. Many residents are fearful of reporting abuse or neglect (to “rock the boat,”) and put their placement in jeopardy. To many of these individuals, suffering in an unlicensed ALF is still better than being un-homed.

At an unlicensed ALF, no Long-Term Care Ombudsman is coming to detect harm or discuss the resident’s concerns and issues like they do with residents at Nursing Homes and licensed ALFs. Residents of unlicensed ALFs cannot file a complaint with the MDH OHCQ since this office does not have jurisdiction to investigate. Even if the police come knocking, operators do not have to open the door.⁴ If SB 665 is passed, operators of unlicensed facilities across Maryland can be investigated,⁵ prosecuted, and shut down. This strong deterrent will protect vulnerable older adults and people with disabilities from abuse and neglect by unlicensed ALF operators.

Maryland Legal Aid strongly urges the Committee to issue a FAVORABLE report on Senate Bill 665. If you have any questions, please contact Emory Saucedo, by phone at (410) 951-7763 or by email at esaucedo@mdlaborg.

³ GENWORTH, COST OF CARE SURVEY, <https://www.genworth.com/aging-and-you/finances/cost-of-care.html> (last visited on March 1, 2023).

⁴ Unless the Police have a warrant, operators are not required to let them enter the building/unlicensed ALF.

⁵ Oddly, prior to this bill, Maryland Law has largely overlooked unlicensed ALFs and no authority existed for investigation by the Office of Health Care Quality.