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TO: The Honorable Joseline Peña-Melnyk
Chair, Health & Government Operations Committee

FROM: W. Zak Shirley
Director, Medicaid Fraud Control Unit

Lisa Hyle Marts
Deputy Director, Medicaid Fraud Control Unit

RE: **House Bill 774 - Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect (Support)**

The Office of the Attorney General Medicaid Fraud Control Unit (MFCU) writes to offer its support for HB774. Since 1979, the MFCU has protected Maryland's citizens through the investigation and prosecution of abuse and neglect of vulnerable adults. The MFCU has seen firsthand the injustices and indignities that can befall the elderly or disabled at the hands of callous and uncaring providers who put profits before people. At the same time, we have identified shortcomings and loopholes in the law that allow such abuses to go unchecked. HB774 offers the opportunity to close just such a loophole and strengthen protections for Maryland's most vulnerable populations.

House Bill 774 is the result of a collaboration between the Office of the Attorney General, the State Long-term Care Ombudsman, the Office of Health Care Quality (OHCQ), and numerous community stakeholders who, in the course of their discussions have recognized a shared concern for the conditions found in unlicensed Assisted Living Facilities (uALFs) and the difficulty in using existing legal mechanisms to correct them. This bill will close a loophole in the law that, at present, permits uALFs with deplorable living conditions to continue operating without consequence.

Assisted Living Facilities are overseen by OHCQ and are subject to their oversight and regular inspection. UALFs, however, operate free of any such oversight or regulation. In most cases, the state does not even know they exist unless a complaint is filed. Even then, the authority of OHCQ to enter and investigate such allegations is constrained. Owners are not required to permit inspectors to enter the premises or speak with the people living there to assess their situation. Freedom from oversight or accountability creates the perfect environment for abuse, neglect and exploitation.

Unscrupulous uALF owners help themselves to the residents' Social Security benefits, pensions payments, and bank accounts while providing minimal care to their dependent clientele. Expenses such as food and facilities are cut in favor of profits. In most cases, residents are unable to help themselves or report their suffering.

At present, MD Code, Health - General, § 19-1809, allows an individual found operating an uALF (a felony) to apply for a license within 30 days. Then, so long as the application has been *submitted*, that individual cannot be subjected to criminal prosecution and may continue to operate the facility during the pendency of the licensure process. This system is driven by the need for affordable assisted living care and is designed to encourage licensure, not to punish unlicensed operation. Unfortunately the system is blind to the abuses that often occur within these facilities and treats all uALF operators the same. In short, facilities rife with abuse/neglect/exploitation are offered the same protections from prosecution during the licensure process as any other facility. This statutory escape clause is not unknown to unscrupulous operators who know how to “game” the system by applying multiple times under different names, moving residents between multiple properties, and refusing to cooperate with OHCQ investigations.

HB774 closes the loophole that allows abusive uALF owners to continue operating, by allowing OHCQ to make an early determination of whether there is a credible allegation of abuse/neglect/exploitation occurring within such facilities. For those facilities where such a finding is made, the 30-day grace period and its shield against prosecution is eliminated. Such cases will be referred to the Office of the Attorney General for investigation and potential prosecution for crimes related to vulnerable adults abuse in addition to operating an uALF.¹ In addition, because these investigations may be lengthy, the bill allows for injunctive relief against an uALF's continued operation.

In sum, this bill strikes an appropriate balance between encouraging compliance with oversight regulations and punishing those who take advantage of the system at the expense of others.

Proposed Amendments

The following amendments provide additional clarity on the types of activity that are sufficient to trigger the safeguards in this bill:

At Page 2, Line 6-7: Add “a credible allegation that” after the word finds. Add “is operating without a license” after the word “program.” Delete “to be in violation of paragraph (1) of this subsection”.

At Page 2, Line 11: Add “, exploitation,” after the word neglect. Strike “physical”.

At Page 2, Line 15: Add “, exploitation,” after the word neglect. Strike “physical”.

At Page 2, Line 27: Strike “financial”

At Page 2, Line 28: Strike “physical”

¹ Where an investigation closes without filing charges, the 30-day window to obtain licensing will be available to the uALF operator.

The following amendment provides OHCQ with the power to promulgate regulations under this statute to provide additional guidance and clarity.

At Page 4, Line 6: Add “(d) The Department may adopt regulations to carry out the provisions of this subtitle.”