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DisabilityRightsMD.org

## HOUSE APPROPRIATIONS COMMITTEE

### HOUSE BILL 1559: Children in Unlicensed Settings and Pediatric Hospital Overstay Patients

March 3, 2026

#### POSITION: SUPPORT

Disability Rights Maryland (DRM), a non-profit legal advocacy organization, is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of individuals with disabilities. For more than 40 years, DRM has represented Maryland children, youth, and adults with disabilities, including, for approximately 15 years, children with disabilities in Child in Need of Assistance (CINA) proceedings in juvenile courts throughout the state. DRM continues to represent foster children in individual education cases and systemic litigation and provides support to CINA attorneys who seek DRM's expertise in complex disability-related matters. DRM has also received calls from many parents enmeshed in the voluntary placement agreement (VPA) process who are desperately seeking services for their children, some of whom are boarding in hospitals while awaiting placements. DRM is a member of the Unlicensed Settings and Pediatric Overstay workgroup created by House Bill 962, enacted in 2025.

In 1987, DRM brought the *Lisa L.* class action lawsuit challenging the state's practice of leaving children in state hospitals even though they were clinically ready for discharge. By 1993, when the lawsuit ended, Maryland had resolved the overstay problem, but over recent years, the practice resurfaced. Currently, DRM serves as associational plaintiff and co-counsel in *T.G., et.al. v. Department of Human Services, et.al.*, litigation filed in 2023 as a class action lawsuit to challenge pediatric overstays. We appreciate the opportunity to provide testimony in support of House Bill 1559, which seeks to address this persistent practice.

Because the Unlicensed Settings and Pediatric Overstay workgroup's members were not appointed until shortly before the workgroup's report was due to the General Assembly, the timeline was extended; the workgroup submitted an interim report to legislators in January, 2026 and will submit its final report in April, 2026. However, House Bill 1559 incorporates some of the preliminary recommendations outlined in the interim report; DRM believes that if these recommendations are implemented, a stronger infrastructure will be in place to address pediatric overstays. However, we also believe that without an increase in community placements such as therapeutic foster and group homes, and without meaningful home-based

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wraparound services and intensive behavior supports, including crisis prevention and intervention services, pediatric overstay will continue.

DRM appreciates that House Bill 1559 includes pediatric overstay in the definition of “child in an unlicensed setting.” Although hospitals are licensed to provide medical services, they are not licensed to provide foster care; children in pediatric overstay status have been found not to need hospitalization and are, thus, boarding in hospitals and emergency departments that are not equipped to meet their needs. The notion that children in overstay status are somehow safer in the hospital than they would be in other unlicensed settings is belied by the statements of hospital staff and by state employees themselves, as DRM detailed in its most recent court filing. Children have decompensated, have lost hope, and have had behavioral outbursts requiring intramuscular medication, seclusion or restraint as a result of their frustration at remaining in the hospital when they do not need to be there. Children have lost access to the outdoors, to school, and to their friends. Children who are in overstay status because the state will not process a request from their parents for a Voluntary Placement Agreement (VPA) until a placement is located for the child face additional harm by living in a limbo in which they are unable to return home but are not yet in the custody of the Department of Human Services. This limbo can extend for weeks or months; DRM represented a youth who spent approximately one year in overstay status. More recently, DRM exercised its protection and advocacy authority and its authority as interim class counsel to visit two youth in overstay status in a hospital emergency department, one of whom has been in overstay status since the beginning of August, 2025—almost seven months—living in a small emergency department room without the ability to go outside or continue to work towards a high school diploma. It should be incontrovertible that all unlicensed settings harm children and that the state’s practice of placing children in unlicensed settings must completely cease, regardless of the type of setting.

DRM also appreciates House Bill 1559’s creation of a full-time placement manager, a review panel and a rapid response team. Housing these positions in the Governor’s Office for Children will create a level of much-needed accountability beyond the Department of Human Services and the Maryland Department of Health. Because the Office has focused its efforts on eradicating child poverty, however, the Office will need to expand its priorities to ensure that staff have the resources and ability to fulfill the responsibilities outlined in the bill.

House Bill 1559 contains a provision allowing the placement team to override a local department of social services placement decision if necessary. This is important because, as noted in DRM’s recent court filing, local departments sometimes default to a recommendation for residential treatment center placement, even when the hospital’s recommendation, based on their clinical assessment of the child, is that the child should be placed in the community;

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local departments sometimes continue to seek residential treatment center placement even if the hospital explicitly says the child will be harmed if they are not placed in the community. The placement team should be able to override the department when this happens, but should not be able to override the department's recommendation in order to place a child in a more restrictive placement than what the department recommends; to place a child in a setting more restrictive than what they need would, for children with disabilities, violate their rights under the Americans with Disabilities Act.

Finally, we are encouraged by House Bill 1559's requirement that the Advisory Council established by House Bill 1559 must identify any grant or other source of funding that may be available for programs related to children in out-of-home placements and must examine New Jersey's system of care model and recommend how that system could be replicated in Maryland.

Maryland solved the problem of pediatric overstay in the early 1990s and can do so again with a commitment to allocate the resources necessary to build the infrastructure needed to expand the availability of community resources and services and with a commitment to the principle that no child should languish in a hospital, an emergency department, or any other unlicensed setting.

For these reasons, DRM supports House Bill 1559.

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