

MEMORANDUM

TO: Health and Human Services Committee

FROM: ~~Michael~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 40-11, Group Homes – Developmentally Disabled Adults - Licensing

Bill 40-11, Group Homes – Developmentally Disabled Adults - Licensing, sponsored by the Council President at the request of the County Executive and Councilmember Ervin, was introduced on December 6, 2011. A public hearing was held on January 24 (see testimony, ©9-18).

Bill 40-11 would exempt certain group homes for developmentally disabled adults which are licensed by the state from the County group home licensing law. Reasons given in the hearing testimony for repealing this requirement include duplication of effort by County and state licensing agencies and cost savings for group home providers.

Issues

1) Why only “de-license” this category of group homes?

An issue raised by, among others, civic activist Max Bronstein (see letter, ©25) is what is DHHS’ rationale for no longer licensing this category of group homes (developmentally disabled adults) while both the County and the state continue to license other types of group homes. Neither DHHS nor the other advocates for this Bill addressed this issue in their hearing testimony.

2) Does the state effectively perform its licensing function?

A recent state legislative audit of the state group home licensing agency, the Office of Health Care Quality (OHCQ) in the state Department of Health and Mental Hygiene (DHMH) (see excerpts, ©19-24), found that, from February 2008 through August 2010, the agency failed to inspect 76% of the licensed facilities for the developmentally disabled. If one rationale for the County no longer licensing these facilities is that the state will effectively do so, this data tends to call that rationale into question. In its response to the audit, OHCQ concurred with the auditors’ finding and attributed its failure to inspect to staff shortages – a deficit of 28 inspectors in the DD

unit. In our view, for budget reasons alone, the state's staff situation is unlikely to improve in the foreseeable future.

3) Will the County continue to perform the same fire code inspections as it currently does?

Which if any fire code inspections will the County no longer perform? In particular, will the County fire code inspectors continue to inspect each group home before it begins operations? This is a code where the County is the primary enforcement agency, so concern about gaps in coverage is especially warranted.

This packet contains:	<u>Circle #</u>
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Bill No. 40-11
Concerning: Group Homes -
Developmentally Disabled Adults
Revised: 12-1-11 Draft No. 2
Introduced: December 6, 2011
Expires: June 6, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive and Councilmember Ervin

AN ACT to:

- (1) revise the licensing requirements for certain group homes for developmentally disabled adults; and
- (3) generally amend the law regarding regulation of group residential facilities.

By amending

Montgomery County Code
Chapter 23A, Group Homes
Section 23A-3

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 23A-3 is amended as follows:**

2 **23A-3. Applicability of chapter.**

3 This Chapter does not apply to a:

- 4 (a) facility which holds a valid license for institutional care, such as a
5 nursing home, hospital, child or adult day care facility, or domiciliary
6 care home for 5 or more residents;
- 7 (b) foster or respite care home for children which is approved by the
8 County Department of Health and Human Services, the State
9 Department of Juvenile Services, or any licensed child placement
10 agency, in accordance with standards set by the appropriate State
11 agencies;
- 12 (c) foster care or respite care home for adults for 3 or fewer elderly
13 persons or persons with disabilities, which is approved by the
14 Department of Health and Human Services;
- 15 (d) licensed residential or institutional facility whose total number of
16 residents at any one time will exceed 16 or the number of persons
17 allowed under a license for the facility issued by a state agency,
18 whichever is less;
- 19 (e) group home which does not routinely provide more than 50 hours of
20 on-site supervision a week, but a home exempted under this
21 subsection may apply for a license and be licensed if it meets the
22 requirements of this Chapter; [or]
- 23 (f) group home for developmentally disabled adults which is licensed by
24 the state Department of Health and Mental Hygiene; or
- 25 (g) group of persons, not related by blood or marriage, living together in a
26 dwelling unit as a family as defined in Chapter 59. Supportive care
27 services and treatment for individual residents or the group may be
28 provided by a person or agency that does not assume responsibility for

29 acquiring those services or treatments or for supervising, directing, or
30 controlling the residents.

31 *Approved:*

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34 Valerie Ervin, President, County Council Date

35 *Approved:*

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38 Isiah Leggett, County Executive Date

39 *This is a correct copy of Council action.*

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42 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 40-11

Group Homes – Developmentally Disabled Adults - Licensing

DESCRIPTION: Would exempt certain group homes for the developmentally disabled from county inspection and licensing requirements.

PROBLEM: Group homes for developmentally disabled adults are currently licensed and extensively regulated both by the State Department of Health and Mental Hygiene/Developmental Disabilities Administration. (“DHMH/DDA”) and the County.

GOALS AND OBJECTIVES: To eliminate duplication of effort and minimize expense for owners of group homes serving the developmentally disabled population.

COORDINATION: Department of Health and Human Services

FISCAL IMPACT: See Fiscal and Economic Statement.

ECONOMIC IMPACT: See Fiscal and Economic Impact Statement.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Montgomery County is the only jurisdiction in the state that requires operators of group homes for developmentally disabled adults to secure both a county and a state license.

SOURCE OF INFORMATION: Kathy Schoonover, Department of Health and Human Services (DHHS), Division of Licensing and Regulatory Services;
John J. Kenney, DHHS, Aging and Disability Services;
Michael Donahue, Fire and Rescue Services.

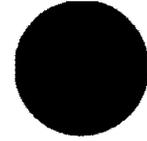
APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 2, 2011

RECEIVED
MONTGOMERY COUNTY
NOV 2 2011

TO: Valerie Ervin, Council President
FROM: Isiah Leggett, County Executive 
SUBJECT: Licensure of Group Homes for the Developmentally Disabled—Bill to Exempt

I am attaching for the Council's consideration a bill that would exempt group homes for the developmentally disabled from the general licensure requirements contained in Chapter 23A of the Montgomery County Code. Also attached are a Legislative Request Report and a Fiscal and Economic Impact Statement for this bill.

Group homes for the developmentally disabled are subject to licensure and inspection requirements by both the state and the county. No other local jurisdiction in the state has similar requirements. This bill would eliminate duplication in the licensure and inspection process and, as a consequence, reduce costs to the providers who run these group homes.

If this exemption is granted, these group homes will still be subject to the health and safety standards established by the Office of Health Care Quality ("OHCQ") of the State Department of Health and Mental Hygiene. OHCQ licenses these facilities and state inspectors from OHCQ conduct unannounced site visits to review the safety of clients, compliance with service plans, staffing adequacy, and overall quality of care provided to residents.

In addition, each resident of a group home receiving funds from the Developmental Disabilities Administration ("DDA") will still be assigned a resource coordinator working through Aging and Disability Services in our Department of Health and Human Services. The coordinator is responsible for visiting the client, reviewing the services provided, and monitoring the cleanliness of the home.

Fire inspections are an essential element of the safety plan and the Department of Health and Human Services will require that these facilities continue to be inspected annually by the County Fire Marshall.



Valerie Ervin, President
November 2, 2011
Page 2

I have concluded that there is sufficient oversight of these homes by professional staff from state and county agencies that the well-being of residents will not be compromised by the removal of the county licensure requirement.

I look forward to working with the Council as it considers this legislation. For questions about this bill, please contact Uma S. Ahluwalia, Director, Department of Health and Human Services at 240-777-1266.

IL:gh

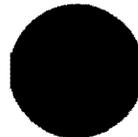
Attachments (3)

c: Uma S. Ahluwalia, Director, Department of Health and Human Services
Richard Bowers, Chief, Fire and Rescue Services
Kathleen Boucher, Assistant Chief Administrative Officer

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

September 21, 2011

TO: Valerie Ervin, President, County Council

FROM: Jennifer A. Hughes, Director

SUBJECT: Bill to Amend Chapter 23A, Group Residential Care Facilities, exempting certain group homes for the developmentally disabled from county inspection and licensure requirements

RECEIVED
MONTGOMERY COUNTY

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject Bill.

LEGISLATION SUMMARY

Group homes for developmentally disabled adults are currently licensed and extensively regulated both by the Maryland State Department of Health and Mental Hygiene, Developmental Disabilities and Montgomery County. The goal of this legislation is to eliminate the duplication of effort and minimize expense for owners of group homes serving the developmentally disabled population.

Bill XX-11 would:

1. Revise the list of facilities to which Chapter 23A does not apply;
2. Add "group homes for developmentally disabled adults which are licensed by the Maryland Department of Health and Mental Hygiene, Developmental Disabilities Administration" as unregulated residential facilities; and
3. Generally amend the law regarding certain unregulated residential facilities.

FISCAL AND ECONOMIC SUMMARY

This Bill, if approved would result in a loss of revenue of approximately \$39,100 in the Health Inspections: Living Facilities – Licenses revenue category as these services will no longer be provided. There are 782 Developmentally Disabled Adult (DDA) group home beds. The Department of Health and Human Services (DHHS) collects \$50 per bed when the facility license is renewed annually;

Office of the Director

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www.montgomerycountymd.gov



Valerie Ervin, President, County Council
September 21, 2011
Page 2

(782 x 50 = \$39,100). This Bill will result in the loss of \$39,100 in revenue each year over the next six years for a total revenue impact of -\$234,600 (\$39,100 x 6). DHHS estimates 608 hours are spent annually on DDA group home inspections by six environmental health specialists who conduct these inspections at 100 hours per inspector equating to approximately one-third of a workyear. These hours will be redirected to conducting mandated State food safety inspections.

Breakout of Hours:

Number of Group Homes: 217

Assumptions:

Inspection time (including travel) 2.5 hours
Annual inspections: 217 homes x 2.5 = 543 hours
Re-inspection rate 20%
Re-inspection time 1.5 hours
Re-inspections: 217 x 20% = 43 homes x 1.5 hours = 65 hours

Total 608 annual inspections hours (543+65=608) = approximately 30% of one work year

Montgomery County Fire and Rescue Services (MCFRS) will continue mandatory safety inspections on an annual basis with an assessed fee. The inspections will be included as a contractual obligation on the part of the provider as a condition of receiving county funding the following fiscal year. Currently, MCFRS charges \$154 (\$140 + 10% tech fund) for inspection labor and a \$55 permit fee for each group home for a total of \$209 per year. MCFRS will waive the permit fee as these providers depend almost entirely on funding through grants and assistance provided by the State and County; the new fee will be \$154 per year for each group home. Based on the current annual inspection demand of 217 DDA group homes, MCFRS will incur a revenue loss of \$11,935 in each of the next six years. The total revenue impact over the six years is a loss of \$71,610.

This Bill has no meaningful impact on employment, personal income, investment, or other economic variables to the Montgomery County economy as a whole. The Bill results in fewer inspections and fees collected, but on a per-provider basis these changes are insignificant.

The following contributed to and concurred with this analysis: Clark Beil, Senior Administrator and Kathy Schoonover, Nurse Administrator, Licensure and Regulatory Services, Department of Health and Human Services, Michael Donahue, Assistant Chief, Montgomery County Fire and Rescue Services, Mike Coveyou, Department of Finance, and Trudy-Ann Durace, Office of Management and Budget.

JAH:tad

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Uma S. Ahluwalia, Director, Department of Health and Human Services
Beryl L. Feinberg, Budget Manager, Office of Management and Budget
John Cuff, Office of Management and Budget
Amy Wilson, Office of Management and Budget
Trudy-Ann Durace, Office of Management and Budget



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Isiah Leggett
County Executive

Uma S. Ahluwalia
Director

**Testimony re Bill 40-11, Group Homes-Developmentally Disabled Adults-Licensing
by
Uma S. Ahluwalia, Director
Montgomery County Department of Health and Human Services**

January 24, 2012

-
- Good Afternoon, Council President Berliner and members of the County Council. I am Uma Ahluwalia, Director of the County's Department of Health and Human Services. I am here today on behalf of County Executive Isiah Leggett to testify in support of Bill 40-11 which, if approved, will exempt group homes for the developmentally disabled (DD) from the general licensure requirement contained in Chapter 23A of the Montgomery County Code.
 - We have worked very closely with the numerous stakeholders for whom the matter of a local licensing requirement—in addition to the State's licensing requirement—is a serious concern.

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- During the first year of my tenure, I met with the providers of residential services to individuals with developmental disabilities and heard their concern that our local licensing requirement of their group homes was duplicative of the State's licensing activities and imposed a non-valued burden on their managers and direct care staff. I then consulted with various stakeholders including other County agencies, the State Department of Health and Mental Hygiene (DHMH), the County's Commission on People with Disabilities, and advocates for persons with developmental disabilities.
- We created a working group comprised of DHHS staff from our Licensure and Regulation, Aging and Disability Services and the County Fire Marshal to determine whether there is duplication of inspections by the Office of Health Care Quality (OHCQ) in the State's DHMH and the County, and to determine whether there are certain functions conducted by Montgomery County departments that should be eliminated, reassigned or maintained.
- Based on the following factors, we concluded that DD group homes could be exempted from the county licensing requirement without

losing safeguards that ensure the safety and well-being of the residents of these group homes.

- No other jurisdiction in the State requires a local license for DD group homes in addition to the State license.

- DD group homes must meet State quality of care requirements. They cannot operate in the County without a state license and are subject to the health and safety standards established by the State OHCQ, which will continue to inspect and license these facilities including unannounced site visits by State inspectors to review the safety of and overall quality of care provided to residents.

- Through our contractual arrangements with DD providers, DHHS has significant oversight of conditions in DD group homes – far more than we do with other types of group homes that we license locally. Resource coordinators and contract monitors who work for DHHS visit these homes multiple times each year to ensure that appropriate services are being provided to the residents. Many of the functions currently conducted by our Public Health

Environmental Health Inspectors will be incorporated into the site visits conducted by our resource coordinators and/or contract monitors. Any problems that they identify will be promptly reported to the appropriate authority.

- Fire inspections of these facilities will continue to be done on an annual basis by the County Fire Marshall to ensure they meet all Code requirements.
- We believe that with these safeguards in place, we can remove the additional financial and regulatory burden that local licensing imposes on DD group home providers. For these reasons, we ask that you support Bill 40-11.
- Thank you for allowing me to testify today.

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MONTGOMERY COUNTY COMMISSION ON PEOPLE WITH DISABILITIES
Testimony on Bill 40-11, Group Homes – Developmentally Disabled Adults - Licensing
Before the Montgomery County Council
1:30 p.m., January 24, 2012
Mark Loberg, Commissioner

Good Afternoon, my name is Mark Loberg and I am a commissioner testifying on behalf of the Commission on People with Disabilities on this bill before you this afternoon to eliminate the duplication of licensing of group homes for people with developmental disabilities by both the County and the State. Montgomery County is the only jurisdiction in the state that requires operators of group homes for adults with developmental disabilities to secure both a county and a state license.

This licensing duplication was brought to the attention of the Commission by a former commissioner who was associated with homes serving adults people with developmental disabilities, as he reported that this duplication of effort is very time consuming for staff as well as adds additional cost to group homes serving this population. The recommendation to eliminate this duplication came from the Commission to the Department of Health and Human Services a few years back.

At the Commission's January 11, 2012 meeting, a motion was made to support Bill 40-11 to exempt group homes serving people with developmental disabilities from County licensing requirements. It passed unanimously. It is our understanding that the fire marshal will continue to make monitoring visits as well as staff from Resource Coordination will be making visits to the homes to have meetings with the residents in the home.

The Commission recommends to the Council to support this bill to revise the licensing requirements for certain group homes for adults with developmental disabilities and to amend the law regarding regulation of group residential facilities. Elimination of duplicative mandates while preserving the safety of those living within the facilities is a very compelling reason to for the Council to vote in favor of this bill.

We thank the Council for its support over the years of providers serving people with developmental disabilities. Thank you for the opportunity to comment on behalf of the Commission.

Montgomery County InterACC/DD

(Jubilee Assn) 10408 Montgomery Ave. Kensington, Md. 20895

Voice 301-949-8628, Fax 301-949-4628

Co-Chairs; Tim Wiens (twiens@Jubileemd.org) & Karen Lee (klee@seeconline.org)

Testimony before the Montgomery County Council

January 24, 2012

In support of Bill 40-11, Group Homes – Developmentally Disabled Adults

Montgomery County Inter ACC/DD is in support of Bill 40-11 to eliminate County licensure of group homes that are licensed by the Maryland Developmental Disabilities Administration (DDA).

Uma Ahluwalia and Jay Kenney from DHHS met with Inter ACC/DD members a couple of years ago in the face of County budget cuts to our agencies and asked for ideas of how they could help to reduce our costs. Out of that meeting came the suggestion of eliminating County licensing of group homes that are licensed by DDA.

Following are the reasons we believe County licensing should be eliminated;

- 1) The Maryland DDA already licenses these homes, and no other County in Maryland also licensed these homes. In addition to the regular license inspection the Regional Office of DDA does follow-up inspections when there are issues of concern from licensing or when there are complaints from family or the community.
- 2) Almost all DDA funded clients living in group homes have Resource Coordinators which are employed or contracted through DHHS. These Resource Coordinators visit all of their clients in their homes at least once a year. We understand that as part of this change that additional questions will be added to their checklist.
- 3) Contract Monitors as a part of our DD Supplement Contracts visit our homes every two years and they also have a checklist of items they are reviewing.
- 4) The Fire Department will continue to inspect these homes annually for fire code violations.
- 5) All DDA licensed agencies are required to have an internal "Standing Committee" which is composed of an equal number of agency employees and non agency employees. This committee reviews all unusual incidents that are reported to DDA, makes recommendations for corrections, and sets and monitors quality assurance goals for the agency.
- 6) Although County licensing brings some value as one of many parts to the overall quality assurance system for our services, in tight financial times, we need to ask ourselves how much value this level of redundancy brings to these services.

Abilities Network, The Arc of Montgomery County, CALMRA, CHI Centers, Community Support Services, Inc., Full Citizenship, CSAAC, Head Injury Rehab and Referral, Jewish Foundation for Group Homes, J.P. Kennedy Institute, Jubilee Assn., MedSource, R.O.I., Compass Inc, SEEC, TransCen, The Rock Creek Foundation, Treatment and Learning Centers and other providers and government agencies serving individuals with developmental disabilities.

Montgomery County InterACC/DD

(Jubilee Assn) 10408 Montgomery Ave. Kensington, Md. 20895

Voice 301-949-8628, Fax 301-949-4628

Co-Chairs; Tim Wiens (twiens@Jubileemd.org) & Karen Lee (klee@seeconline.org)

- 7) Our agencies will benefit from the lack of licensure fees and from the time that it takes our staff to schedule these visits and to respond to licensing issues. It will result in savings of time and money for all of our agencies. We estimate that it costs our agencies about ½ a day per year of time to process the licensing application, write the check, schedule the inspection, be at the inspection and respond to issues raised by the inspector. This is usually done by a first line supervisor at an estimated cost of \$85 for ½ day of work plus the licensing fee of \$50 per resident in the home for an average home having 3 residents. So the average savings per licensed home for our agencies would be about \$235. Jubilee Association is a middle size agency, this would save us about \$4,000 a year.

Submitted by
Tim Wiens, Co-Chair Inter ACC/DD
and
Executive Director
Jubilee Association of Maryland



Testimony before the Montgomery County Council
January 24, 2012

In support of Bill 40-11, Group Homes – Developmentally Disabled Adults

Good Afternoon. My name is Nancy Tolbert and I am the Executive Director of CALMRA, Inc. CALMRA is a non-profit organization serving people with cognitive disabilities in Montgomery and Prince George's Counties. I am here to testify in strong favor of bill # is 40-11.

I have been a member of the Montgomery County InterACC / DD for many years. The issue of licensing has been discussed repeatedly for at least the last 15 years. The administrators of agencies like CALMRA see the County's efforts as duplicative and costly. The costs related to this program are shared by both, the providers and the county. In this time of extreme fiscal restraint, eliminating these fees associated with the licensing inspections as well as the staff time devoted to these efforts would help us considerably. I believe it would also free up the county to utilize their resources in areas that are not already reviewed and inspected by any other entity such as restaurants, schools, and nursing homes.

Our homes already have a lot of oversight. In addition to having the State of MD review and license our homes, our properties are visited by Montgomery County resource Coordination. Further oversight is done by our Quality Assurance Plans that call for monitoring of our programs. These plans are submitted and approved annually by the State. CALMRA, like the Council members, is also sensitive to neighbors' opinions and perspectives. CALMRA gives all the nearby neighbors our direct phone numbers should they have a concern with one of our properties.

Montgomery County is the ONLY county in the great State of Maryland to have such a licensing program. All other counties work with the provider agencies and if needed, State personnel, to address concerns. Currently Montgomery's duplication of effort is costly and unnecessary to ensure quality service provision.

Thank you for your serious consideration of this bill and for all your work to help citizens of Montgomery County who have developmental disabilities.

Respectfully Submitted,

Nancy Tolbert
Executive Director
CALMRA, Inc.
5020 Sunnyside Ave #206
Beltsville, MD 20705
(301) 982-7177

Testimony before the Montgomery County Council

January 24, 2012

In support of Bill 40-11, Group Homes – Developmentally Disabled Adults

The Arc Montgomery County is in support of Bill 40-11 to eliminate County licensure of group homes that are licensed by the Maryland Developmental Disabilities Administration (DDA).

Uma Ahlawalia and Jay Kenney from DHHS met with the Interagency Coordinating Council for people with Developmental Disabilities a couple of years ago in the face of County budget cuts to our agencies and asked for ideas of how they could help to reduce our costs. Out of that meeting came the suggestion of eliminating County licensing of group homes that are licensed by DDA.

Following are the reasons we believe County licensing should be eliminated;

- 1) The Maryland DDA already licenses these homes, and no other County in Maryland duplicates these efforts. In addition to the license inspection, the Regional Office of DDA completes follow-up inspections when there are issues of concern from licensing or when there are complaints from family or the community.
- 2) Almost all DDA funded clients living in group homes have Resource Coordinators which are employed or contracted through DHHS. These Resource Coordinators visit all of their clients in their homes at least once a year. We understand that as part of this change additional questions will be added to their checklist.
- 3) Contract Monitors as a part of our DD Supplement Contracts visit our homes every two years (sometimes more often at their discretion) and they also have a checklist of items they review.
- 4) The Fire Department will continue to inspect these homes annually for fire code violations.
- 5) All DDA licensed agencies are required to have an internal "Standing Committee" which is composed of an equal number of agency employees and non agency employees. This committee reviews all unusual incidents that are reported to DDA, makes recommendations for corrections, and sets and monitors quality assurance goals for the agency.
- 6) Although County licensing brings some value as one of many parts to the overall quality assurance system for our services, in tight financial times, we need to ask ourselves how much value this level of redundancy brings to these services.

7) Our agencies will benefit from the lack of licensure fees and from the time that it takes our staff to schedule these visits and to respond to licensing issues. It will result in savings of time and money for all of our agencies. We estimate that it costs our agencies about ½ a day per year of staff time to process (1) licensing application, write the check, schedule the inspection, be at the inspection and respond to issues raised by the inspector. This is usually done by a first line supervisor and monitored by the next supervisor in line at an estimated cost of \$85 for ½ day of work plus the licensing fee of \$50 per resident in the home for an average home supporting 3 residents. The average savings per licensed home for our agencies would be about \$235. The Arc operates 43 homes x \$235/home = \$10,105. This is money that is more useful when applied toward items that directly benefit the residents, i.e. food, supplies, transportation, community inclusion activities, etc.

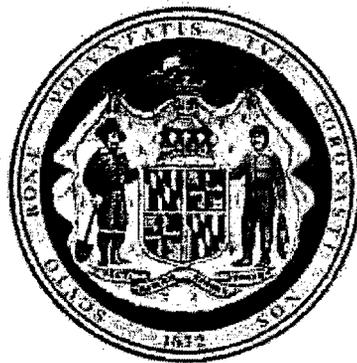
Submitted by

Joyce Taylor, Executive Director
The Arc Montgomery County

Audit Report

**Department of Health and Mental Hygiene
Regulatory Services**

November 2011



**OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY**



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

November 7, 2011

Karl S. Aro
Executive Director

Bruce A. Myers, CPA
Legislative Auditor

Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee
Senator James C. Rosapepe, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited Regulatory Services, a budgetary unit within the Department of Health and Mental Hygiene (DHMH), for the period beginning February 1, 2008 and ending August 2, 2010. Regulatory Services (hereinafter referred to as the Unit) consists of the following units:

- Health Professional Boards and Commission (comprised of 16 separate boards and one commission)
- Board of Nursing
- Board of Physicians
- Office of Health Care Quality (OHCQ)

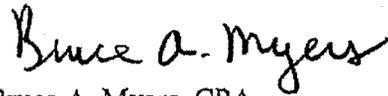
The entities comprising the Unit are responsible for licensing and regulating health professionals (such as physicians, nurses, and pharmacists) and health care facilities in the State. As further explained on page 4 of this report, the Unit was created based on certain organizational changes made within DHMH.

Our audit disclosed that certain boards had not established adequate control and accountability over licenses and related cash receipts. For example, as commented upon in our audit reports dating back to 1987, one of these boards did not reconcile the value of licenses issued to the related cash receipts. This condition contributed to the failure of the board to detect in a timely manner the apparent fraudulent sale and distribution of certain certificates.

We also noted that certain health care facilities were not inspected by OHCQ as required. For example, OHCQ had not performed inspections for 725 of the 1,367 (53 percent) licensed assisted living facilities during fiscal year 2010. Finally, we identified certain security and control deficiencies pertaining to one board's information systems.

DHMH's response to this audit, on behalf of the Unit, is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by the Unit.

Respectfully submitted,



Bruce A. Myers, CPA
Legislative Auditor

Health Care Facility Inspections

Finding 2

The Office of Health Care Quality (OHCQ) had not conducted annual inspections of certain health care facilities as required.

Analysis

OHCQ had not inspected certain health care facilities as required. OHCQ is required to conduct inspections of these facilities at least annually to ensure facility compliance with State and federal regulations regarding patient care and safety.

According to its records, which we determined to be reliable, for fiscal year 2010, OHCQ had not performed inspections for 725 of the 1,367 (53 percent) licensed assisted living facilities nor inspected 154 of the 201 (76 percent) facilities for the developmentally disabled. In addition, OHCQ had not inspected any of the 15 related resource coordination agencies (which are primarily county health departments) responsible for developing appropriate individualized plans for developmentally disabled individuals. DHMH inspections would include reviews of the adequacy of these plans.

Similar situations were commented upon in our two preceding audit reports of DHMH – Office of the Secretary. DHMH management again indicated that an increasing workload, combined with reductions in staff, have caused the delays in performing required inspections and they are continuing efforts to improve inspection processes to gain efficiencies.

Recommendation 2

We recommend that OHCQ complete inspections of the various health care facilities, as required by law (repeat).

Finding 2

The Office of Health Care Quality (OHCQ) had not conducted annual inspections of certain health care facilities as required.

Recommendation 2

We recommend that OHCQ complete inspections of the various health care facilities, as required by law (repeat).

OHCQ Response:

OHCQ concurs with the finding and recommendation.

OHCQ's capacity to complete inspections of the various health care facilities as required by law continues to be challenged by the ongoing surveyor shortage. According to OHCQ's FY 2010 Staffing Analysis, the surveyor deficit in the Assisted Living unit was seven positions; the deficit was 28 surveyor positions in the Developmental Disabilities (DD) unit. In operational terms, the deficit means that in order to complete the mandated surveys, OHCQ will need an additional 35 surveyors. The number of completed surveys is clearly influenced by the surveyor staffing deficit. It's important to point out that OHCQ the number of positions has been 194 to 183, and that the agency staffing deficit for all units is 92. These staff reductions, coupled with furloughs and administrative salary reduction days, and the lack of administrative support positions, affects the number of completed surveys.

In an effort to address the oversight concern, OHCQ implemented a number of initiatives aimed at better utilizing our limited resources; they include:

- DD unit began utilizing provider self-surveys to document mandated policy and procedure compliance and personnel training requirements, which resulted in an average savings of two days survey time per agency surveyed.
- DD unit allocated staff resources to develop a small division with the primary focus on children's issues, which includes initial and re-licensure surveys, complaint and incident investigations, and partnerships with other State and county agencies involved in supporting the needs of children. The creation of the children's unit should increase OHCQ's ability to complete mandatory annual visits to each of the 24 agencies.
- DD unit recently began the practice of referring non-health and non-safety complaints to the four (4) DDA regional offices. Administrative investigations, rather than those performed on site, are conducted, when appropriate. Furthermore, the DD unit incorporates incident and complaint investigations into re-licensure visits whenever possible.

From: Berliner's Office, Councilmember
Sent: Wednesday, February 01, 2012 9:44 AM
To: Montgomery County Council
Subject: FW: Bill 40-11

2012 FEB -1 PM 4:29

RECEIVED
MONTGOMERY COUNTY
COUNCIL

From: susan or max [mailto:sumax@verizon.net]

Sent: Tuesday, January 31, 2012 6:47 PM

To: Riemer, Hans; Rice, Craig; Navarro's Office, Councilmember; Berliner's Office, Councilmember; Leventhal's Office, Councilmember; Elrich's Office, Councilmember; Floreen's Office, Councilmember; Andrews's Office, Councilmember; Ervin's Office, Councilmember; Ike Leggett

Subject: Bill 40-11

Dear Councilmembers:

Dear County Executive Leggett:

I have been communicating with Pat Brennan, Legislative Liason at HHS, about this bill. I also spoke by phone with Mike Faden, of the Council Staff, about the bill. Further, I watched & listened to the speakers at the public hearing on this matter. While I do not oppose the bill, all this attention leaves me with the following unanswered questions, & concerns about this proposed legislation.

* Why is this bill only applied to group homes for the developmentally disabled?

There are group homes for those with disabilities that are not considered due to developmental causes, such as physical disabilities; Alzheimer's disease; dementia; and the like. If the bill's aim is to avoid duplication of State oversight, why the narrow focus?

* What is the political impetus behind the current bill?

Whenever I come across a bill that does not seem to make complete sense, I become concerned that it has some political basis, and therefore does not have to make complete sense. Do not misunderstand, I do not oppose the legislation, but feel it is incomplete. Also, I emphasize that I do not suggest that the bill should apply to half-way houses.

I listened closely to the statements by Tim Weems, of Jubilee & the group home umbrella organization he serves. Mr. Weems mentioned that each of his organization's homes expend \$235. which would be saved if the bill passed. Joyce Taylor, of the Arc, used the exact figure in discussing the ARC's possible saving. The ARC, with 43 homes in Montgomery, is the giant of this type of organization locally. Interestingly, the ARC's online financial statement for 6/30/09 shows them to be a \$24.5 million operation & that \$21.6 million of their revenue is from government sources. Further, please note that the Arc purchased three homes in one Aspen Hill neighborhood, paying a total of over \$1.5 million for those homes. Hardly a small operation.

Again, I do not oppose the bill, I feel it should include the additional types of group homes mentioned, not just those for the developmentally disabled.

Another interesting item came to my attention as I researched Bill 40-11. Until the early 90's, the County Code had a provision enabling neighborhoods to comment about group homes wishing to locate in their community. However, the (federal) Fair Housing Act & a court decision in 1993 ended the ability to use that portion of the County Code. Perhaps a proper legal mechanism can be

formulated so that a public voice can again be heard when group homes overly proliferate too closely to one another.

Until I hear valid reasons as to why my questions are groundless, my antennae will continue to tingle and twitch indicating that it's just politics, and that a special interest is being served, not the public interest.

This text has been approved by the Board of the Strathmore Bel-Pre Civic Association.

Max Bronstein
External Affairs Chair