An Examination of Unlicensed Facilities in Tennessee

TCAD
TENNESSEE COMMISSION ON AGING AND DISABILITY

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Executive Summary

This report examines the gaps between the regulatory entities who license residential facilities for elderly and vulnerable adults, identifies the individuals who fall victim to unlicensed facilities, and offers proposed solutions discussed between the State stakeholders.

Elderly and vulnerable adults who reside in unlicensed facilities often become victims of abuse, neglect, or financial exploitation. The majority of the residents found in these unlicensed facilities were over aged sixty (60) and were not able to live independently but were not yet eligible for Medicare or Medicaid. The great majority of these residents were low income, but most did not receive Supplemental Security Income (SSI). Some of these residents may have been homeless or potentially even victims of other crimes such as financial exploitation or neglect. Many unlicensed facility residents had been discharged from local hospitals who faced pressure to free up hospital beds; had difficulty locating placement for residents with behaviors; or could not find placement opportunities as the resident lacked the necessary benefits.

The data collected for this paper evidences that the lack of small residential placement facilities for elderly and vulnerable adults in some counties may allow unlicensed facilities to flourish. From January 1, 2021 to July 2021, the Tennessee Bureau of Investigation calculated that it had received sixty-four (64) complaints of unlicensed facilities. In the time frame that the stakeholders have been convening to discuss unlicensed facilities, the stakeholders have been involved in the removal of residents from at least thirteen (13) unlicensed facilities with more being identified every day.

Each agency has jurisdictional limitations, which include, but are not limited to: specific numbers of residents who must be found in a facility before an agency can investigate, specific services provided, such as medication administration or nursing services, or the types of benefits received by residents. Data also cannot be freely shared between agencies which would allow cases to be linked.

Solutions to the unlicensed facility problem could include a standing "strike force" with specific protocols for the external stakeholders. Operation of an unlicensed facility in the State of Tennessee is a Class B misdemeanor; increasing criminal penalties for chronic operators of unlicensed facilities to a Class D felony could be a deterrent. Education to the general public about unlicensed facilities will also be a key component, along with dedicated webpages with links to each facility type and how to apply. Medicaid diversion, patterned after the Katie Beckett Waiver (Part B), may also be a solution or even possibly re-opening Group 3 of CHOICES. Semi-independent living services, like those provided by the Department of Intellectual and Developmental Disabilities could be expanded. Tiny homes may be an additional option, as the Fire Marshal's Office now regulates permanent construction of tiny homes. Residential homes for the aged, currently licensed by the Department of Health, could become a certificate, with the home size limited to four (4) or less to comply with the Medicaid Settings Rule, and fire and life safety surveys conducted by the State Fire Marshal's Office. This model may allow for smaller government, easing the barriers of entry to operating a residential home for the aged, and allow more elderly persons to receive care in a smaller homelike setting.

Background

The Department of Health ("TDH"), Department of Mental Health and Substance Abuse Services ("TDMHSAS"), the Department of Intellectual and Developmental Disabilities ("DIDD") all regulate types of residential facilities. The Department of Human Services ("DHS") regulates adult day services. For each of the Departments which regulate licensed facilities, State law indicates that operation of an unlicensed facility is a Class B misdemeanor. *See* Tenn. Code Ann. § 68-11-213(h), 68-102-117, 33-2-405, and 33-2-417. Despite these prohibitions, for many years, the Departments have received multiple complaints which seem to indicate that unlicensed facilities in Tennessee may be flourishing.

In March -2021, the Department of Health, the Department of Human Services, Division of Adult Protective Services ("APS"), Department of Mental Health and Substance Abuse Services, Tennessee Bureau of Investigation ("TBI"), and later the Department of Intellectual and Developmental Disabilities, and the Tennessee Commission on Aging and Disability ("TCAD") all became aware of two related unlicensed providers operating in the Hamblen County area. Multiple agencies became involved in these unlicensed providers due to a mixed population of residents; many were elderly; several had mental health diagnoses; one had a traumatic brain injury; and several were bedbound and required skilled nursing care. Because the providers continued to operate unlicensed facilities with a mixed population of residents, no one agency had complete and total jurisdiction over the facility or the means to obtain an injunction based on the necessity of licensure.

The providers in Hamblen County were the subject of multiple complaints of abuse, neglect, and financial exploitation over the years and were well-known to local law enforcement, APS, the local codes department, and many of the regulatory agencies. In fact, one of the providers operating the unlicensed facility had previously been placed on the Tennessee Department of Health's Abuse Registry by Adult Protective Services on the basis of neglect of a resident in her care.

The Department of Health, on a visit to one of the unlicensed homes, discovered six (6) residents in the basement of the ranch-style home with no means of egress and a non-working bathroom. Several fire hazards were also observed. As a result, a complaint was opened with the State Fire Marshal's Office, which had not been previously included in prior efforts in these two homes. The facility was then issued a Review of Order or Removal or Remedy of Dangerous or Defective Conditions. The State Fire Marshal's Office issued a Plan of Corrective Action ("POCA") and ordered the facility to remedy the fire hazards and egress issues immediately or potentially have their electricity turned off due to the great safety risks present in the home. The facility was unable/unwilling to comply with the Plan of Corrective Action. A Final Order was then issued and the electrical service to the residence was disconnected.

Complicating matters further, most of the residents in the home were initially[1] ineligible for TennCare, and as a result, had few benefits or means to pay for care or housing. Some residents had been referred from local hospitals in the area. Over the course of several weeks, a coordinated multi-agency effort led to residents being assessed for CHOICES by the local Area Agency on Aging and Disability. Pre-admission Evaluation ("PAEs") were then adjudicated by TennCare and placement was secured through joint efforts between Adult Protective Services, the Area Agency on Aging and Disability, TennCare MCOs, and the Department of Health. Adult Protective Services also secured a temporary injunction, and later a permanent injunction preventing the unlicensed provider from continued operation. The APS injunction was secured based on the placement of the unlicensed facility provider on the Department of Health's Abuse Registry.

After the first home was shut down, it came to light that the second home contained approximately eleven (11) residents and had raw sewage in the front yard. Investigators observed that one resident was bed bound and caregivers were regularly administering medication, including injectable insulin. The facility was performing activities of daily living, including assistance with bathing and grooming.

The Fire Marshal's office inspected and found eight (8) deficiencies affecting the health and life safety of the residents. The facility was then issued a Review of Order or Removal or Remedy of Dangerous or Defective Conditions. The State Fire Marshal's Office issued a Plan of Corrective Action ("POCA") and ordered the facility to remedy the fire hazards and electrical issues immediately or potentially have their electricity turned off due to the fire safety risks present in the home. The facility was unable/unwilling to comply with the Plan of Corrective Action. A Final Order was issued and the electrical service to the residence was disconnected. The unlicensed facility provider continued to exert undue influence over the residents and cajole the residents into staying at the location despite the lack of electricity. The unlicensed provider then attempted to transfer ownership of the location to a caregiver in the home. The facility continued to operate utilizing a generator for power, which was rigged into the main breaker, and housing vulnerable adults. Adult Protective Service investigators also noted that despite living in a facility utilizing a generator, residents were still required to pay the operator rent. Given the number of residents, the stakeholders again worked for many weeks with a local Area Agency on Aging and Disability to conduct CHOICES assessments and find placements. PAEs were then adjudicated by TennCare. Placement was secured through joint efforts between Adult Protective Services, the Area Agency on Aging and Disability, the Tennessee Department of Mental Health & Substance Abuse Services, TennCare MCOs (when appropriate), and the Department of Health. Ultimately, the Tennessee Bureau of Investigation working in conjunction with the District Attorney General for the Third District of Tennessee was able to secure a nuisance abatement, pursuant to Tenn. Code Ann. §§ 29-3-101, 29-3-102, and 29-3-112. This nuisance abatement is the first of its kind to ever be used against an unlicensed facility in the State of Tennessee.

[1] Residents found in the home initially had no TennCare benefits. After being assessed by Area Agency on Aging and Disability staff and after working with representatives from TennCare, residents were later approved for CHOICES based on a safety determination.

In response, the State stakeholders developed a strike force team comprised of the Tennessee Department of Health, Tennessee Department of Mental Health and Substance Abuse Services, Department of Intellectual and Developmental Disabilities, Adult Protective Services, Tennessee Bureau of Investigation, TennCare, Tennessee Commission on Aging and Disability, State Fire Marshal's Office, and multiple Areas of Aging and Disability, worked to create a set of protocols to address unlicensed facilities. This team worked together through bi-weekly calls and at present, since its inception in March 2021, has addressed approximately thirteen (13) unlicensed facilities across the ninety-five (95) counties, with more additional facilities identified at the time of this writing.

Persons Affected

It should be noted that the unlicensed facilities discussed in this paper are **not** independent living facilities. Pursuant to Tenn. Code Ann. § 68-11-201(38), an independent living facility means a single-family residence, building, establishment, or complex used as a boarding home; an active adult community; a 55+ community; senior apartments; a retirement community; or a retirement home that provides housing for adults who are fifty-five (55) years of age or older. An independent living facility may provide meals, housekeeping services, and social activities for the entertainment of its residents, but does not provide any nursing or medical care, including medication administration or assistance with medication administration, and each resident is able to live independently, though a resident may independently contract for medical or nursing care with a home health agency or similar service." [Emphasis added.]

The majority of the residents found in these unlicensed facilities were not able to live independently. Some of the residents found in the unlicensed facilities lacked capacity and met criteria for APS to take legal action to place the resident in the custody of the Department of Human Services. The majority of the individuals identified in unlicensed facilities have been over the age of sixty (60) but did not have private insurance and had not been assessed for Medicaid. Many of these individuals needed some assistance with activities of daily living but did not meet TennCare criteria to qualify for CHOICES. The great majority of these residents were low income but most did not receive Supplemental Security Income (SSI). In order to qualify for CHOICES, a resident must fall into one of the three CHOICES groups:

CHOICES Group 1 is for people of all ages who receive skilled nursing care in a nursing home.

CHOICES Group 2 is for adults (age 21 and older) with a physical disability and seniors (age 65 and older) who qualify to receive nursing home care but choose to receive home care services instead.

CHOICES Group 3 is for adults (age 21 and older) with a disability and seniors (age 65 and older) who don't qualify for nursing home care but need a more moderate package of home care services to delay or prevent the need for nursing home care.

To qualify for and remain in CHOICES Groups 1 and 2, an individual must:

1) Need the level of care provided in a nursing home AND
2) Qualify for Medicaid long- term services and supports.

To qualify for Medicaid long-term services and supports: (1) An individual's income can't be more than $2,382 per month (2) The total value of things an individual owns can't be more than $2,000 (The home where you live doesn't count) AND (3) An individual can't have given away or sold anything for less than what it's worth in the last five (5) years.

To qualify for and remain in CHOICES Group 3, an individual must be "at risk" of needing the level of care provided in a nursing home unless the individual receives home care AND be receiving Supplemental Security Income (SSI) payments from the Social Security Administration.

Because of the lack of private insurance or CHOICES coverage, the individuals found in the unlicensed facilities are often unable to qualify for licensed facilities such as an assisted living facility which can range from $2,000 - $7,000 per month. According to www.seniorliving.org, the average price of an assisted living facility in Tennessee is $4,039.00 as of May 2021.[2] Additionally, for those residents who do receive a Social Security check, many residents were vulnerable to financial exploitation, as many unlicensed facility providers require that residents make the operator the representative payee of the resident's Social Security check.

Some of these residents found in unlicensed facilities may have been homeless or potentially even victims of other crimes such as financial exploitation or neglect. In at least two facilities, residents were identified as registered sex offenders or as being on parole. Many unlicensed facility residents had been discharged from local hospitals who faced pressure to free up hospital beds, had difficulty locating placement for residents with behaviors, or could not find placement opportunities as the resident lacked benefits necessary for placement in a licensed healthcare facility. Simply put, many of these residents may have had no place to go.

Data

In 2018, there were 52.4 million adults 65 and over in the United States.[3] By 2040, that number is expected to climb to 80 million, comprising nearly 21% of the total population. [4] [5] People aged 85 and older are predicted to almost triple from their current 6.7 million to 19 million by 2060.[6]

Studies have found that at least one in 10 community-dwelling older adults experienced some form

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[2] 2021 Assisted Living Costs & Pricing by State | Monthly & Annual Costs (seniorliving.org)

[3] Administration on Aging, (2020, May). 2019 profile of older Americans. Retrieved from https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2019ProfileOlderAmericans508.pdf

[4] Urban Institute. (2015, April 3). The US population is aging. Retrieved from https://www.urban.org/policy-centers/cross-center-initiatives/program-retirement-policy/projects/data-warehouse/what-future-holds/us-population-aging#:~:text=The%20number%20of%20Americans%20ages,The%20nation%20is%20aging.

[5] Urban Institute. (2015, April 3). The US population is aging. Retrieved from https://www.urban.org/policy-centers/cross-center-initiatives/program-retirement-policy/projects/data-warehouse/what-future-holds/us-population-aging#:~:text=The%20number%20of%20Americans%20ages,The%20nation%20is%20aging.

[6] Nasser, H. (2019). The graying of America: More older adults than kids by 2035. Retrieved from https://www.census.gov/library/stories/2018/03/graying-america.html#:~:text=Starting%20in%202030%2C%20when%20all,add%20a%20half%20million%20centenarians.

of abuse in the prior year.[7][8] Global estimates from a recent meta-analysis reflect that one in six elders, or 15.7%, in the community experienced past year abuse.[9]

Prevalence rates by type of abuse differ across studies. One study, relying on self-reports of abuse, assigned the following percentages by type of abuse: psychological (11.6%), physical (2.6%), financial (6.8%), neglect (4.2%), and sexual (0.9%) abuse.[10]
Another recent study found the following: emotional (4.6%), physical (1.6%), financial (family: 5.2%), financial (stranger: 6.5%), neglect (5.1%), and sexual (.6%).[11]

A recent meta-analysis assessing the global prevalence rates of the abuse of older women found that one in six experienced abuse in the prior year. By type, the pooled prevalence rates reflected the following percentages: psychological abuse (11.8%), physical abuse (1.9%), financial abuse (3.8%), neglect (4.1%), and sexual abuse (2.2%).[12]

Common victim risk factors for abuse, neglect, or exploitation include:

- Chronic medical conditions and poor physical health
- Functional disability and dependence
- Mental health problems
- Cognitive deficits
- Financial dependence
- Lower socioeconomic status
- Substance misuse
- High levels of stress and poor coping mechanisms
- Prior exposure to trauma
- Limited social support
- Poor relationship between the victim and the perpetrator. [13][14]

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[7] Acierno, R., Hernandez, M. A., Amstadter, A. B., Resnick, H. S., Steve, K., Muzzy, W., & Kilpatrick, D. G. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study. American journal of public health, 100(2), 292-297.
[8] Rosay, A. B., & Mulford, C. F. (2017). Prevalence estimates and correlates of elder abuse in the United States: The national intimate partner and sexual violence survey. Journal of elder abuse & neglect, 29(1), 1-14.
[9] Yon, Y., Mikton, C. R., Gassoumis, Z. D., & Wilber, K. H. (2017). Elder abuse prevalence in community settings: a systematic review and meta-analysis. The Lancet Global Health, 5(2), e147-e156.
[10] Yon, Y., Mikton, C. R., Gassoumis, Z. D., & Wilber, K. H. (2017). Elder abuse prevalence in community settings: a systematic review and meta-analysis. The Lancet Global Health, 5(2), e147-e156.
[11] Acierno, R., Hernandez-Tejada, M., Muzzy, W., & Steve, K. (2009). National Elder Mistreatment Study (NCJ # 226456). Washington, DC: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.
[12] Yon, Y., Mikton, C., Gassoumis, Z. D., & Wilber, K. H. (2019). The prevalence of self-reported elder abuse among older women in community settings: a systematic review and meta-analysis. Trauma, Violence, & Abuse, 20(2), 245-259.
[13] Storey, J. E. (2020). Risk factors for elder abuse and neglect: A review of the literature. Aggression and Violent Behavior, 50, 101339.
[14] Pillemer, K., Burnes, D., Riffin, C., & Lachs, M. S. (2016). Elder abuse: global situation, risk factors, and prevention strategies. The Gerontologist, 56(Suppl_2), S194-S205.

In Tennessee, by 2040, 2,088,906 million Tennesseans will be over the age of 60. In 2070, 2,559,725 residents will be over the age of 60[15]. Finding affordable residential housing for elderly Tennesseans is a growing program.

The focus of this paper is on residential homes for the elderly. As such, it is pertinent to know what licensed residential homes are available in Tennessee from each Department. For purposes of this paper, the following facility types licensed by the Tennessee Department of Health were included: skilled nursing facilities, assisted care living facilities, residential homes for the aged, and traumatic brain injury homes. There are six hundred fifty-three (653) of these licensed Tennessee Department of Health facilities included in the heat map.

The Department of Mental Health & Substance Abuse Services licenses the following residential facility types: alcohol and drug residential detoxification treatment facilities, alcohol and drug halfway house treatment facility; alcohol and drug residential rehabilitation treatment facility, mental health supportive living; mental health supportive residential facility, crisis stabilization unit, and mental health residential treatment programs for adults. There are four hundred seventy-two (472) residential facilities licensed by TDMHSAS included in the heat map.

The Department of Intellectual and Developmental Disabilities licenses the following residential facility types: ID Adult Habilitation Day - Center Based; ID Adult Habilitation Day - Community Based; DD Adult Habilitation Day - Community Based; DD Adult Habilitation Day - Center Based; ID & DD Diagnosis & Evaluation; ID & DD Institutional Habilitation; DD Semi-Independent Living; ID Semi-Independent Living; ID & DD Residential Habilitation; ID & DD Boarding Home; ID & DD Placement Services; ID & DD Respite Care Services; and ID & DD Supported Living. For purposes of this paper, DIDD Residential and DIDD Supportive Living Facilities are included. There are three thousand four hundred and twenty-one (3,421) residential facilities licensed by DIDD of these types.

The Department of Human Services licenses adult day service centers. There are forty (40) adult day service centers. The Department of Human Services, Division of Adult Protective Services ("APS") investigates reports of abuse, neglect (including self-neglect) or financial exploitation of adults who are unable to protect themselves due to a physical or mental limitation. APS staff assess the need for protective services and provide services to reduce the identified risk to the adult. APS may take custody of an individual that a Court adjudicates as incompetent, but only if that individual is in imminent danger.

The State Fire Marshal's Office houses the Codes Enforcement section which enforces statewide adopted fire and building construction safety codes and standards to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures, in accordance with state-wide minimum standards, pursuant to Tenn. Code Ann. 68-120-101. There are forty-five (45) exemption jurisdictions across the State that are authorized to perform independent plans reviews. As such, for those non-exempt counties, the State Fire Marshal's Office plays an important role in regulating unlicensed facilities.

[15] Boyd Center for Business and Economic Research, University of Tennessee, Knoxville - October 2019

The Tennessee Commission on Aging and Disability ("TCAD") was tasked by the Governor's Office to study the unlicensed facility issue. TCAD is the designated State unit on aging and is mandated to provide leadership relative to aging issues on behalf of older persons in the State. The Commission also house the Collaborative Response to Elder and Vulnerable Adult Abuse (CREVAA) program which is funded by the Victims of Crime Act (VOCA) grant. CREVAA is managed at the Tennessee Commission on Aging and Disability and partners with the Area Agencies on Aging and Disability (AAADs), and one Human Resource Agencies (HRA) across the State to provide emergency services and supports to vulnerable adult victims of crime. CREVAA funds have been used to secure placement for several residents found in unlicensed facilities. Further, TCAD also houses the Tennessee Public Guardianship for the Elderly program which serves as the court-appointed guardian for individuals aged sixty (60) and over who, due to physical or mental limitations are unable to make personal decisions regarding their health and financial resources. The Program can also serve clients under the age of sixty (60), provided that the Executive Director approves entry of an underage individual to the program. The program ensures the health and welfare of some of the State's most vulnerable residents. The court utilizes the program as a public option of last resort for individuals who have no other family member, friend, bank or corporation willing, able or suitable to act on their behalf. Several clients found in the unlicensed facilities have entered the State Public Guardian Program.

The Commission on Aging and Disability surveyed the Department of Health, Department of Mental Health and Substance Abuse Services, Department of Intellectual and Developmental Disabilities, and Department of Human Services. A heat map of all licensed facilities providing residential care and regulated by the aforementioned Departments is attached as *Appendix I.*

A review of all licensed facility types indicates there are some healthcare deserts across the State. For example, Hancock, Montgomery, McNairy, Pickett, Polk, and Van Buren all had one licensed residential facility of some type. While this one facility in each of these counties may well have been a skilled nursing facility with a larger bed census, the data evidences that some counties lack small residential placement facilities for elderly and vulnerable adults, which may allow unlicensed facilities to flourish.

Another problem that Tennessee faces is accurately counting the number of unlicensed facilities. A recent Comptroller's Report found that because case data cannot be shared between agencies, cases cannot often be linked.

As a result, it is difficult to obtain a unique count of cases specifically affecting elder and vulnerable adults[16].

After initiating the strike force, the Commission on Aging and Disability asked that the Tennessee Bureau of Investigation compile a list of unlicensed facilities reported to them. From January 1, 2021 to July 1, 2021, the Tennessee Bureau of Investigation calculated that it had received sixty-

[16]"Financial Exploitation of the Elderly in Tennessee," by the Office of Research and Education and Accountability, Tennessee Comptroller of the Treasury, September 2020. https://comptroller.tn.gov/content/dam/cot/orea/advanced-search/2020/ElderFinancialExploitationFullReport.pdf

four (64) complaints of unlicensed facilities. A heat map of the unlicensed facilities is attached as *Appendix II.*

Operation of an unlicensed facility is a Class B misdemeanor, pursuant to Tenn. Code Ann. §§ 68-11-213(h), 68-102-117, 33-2-405, and 33-2-417. A survey of the Tennessee Bureau of Investigation revealed that the number of unlicensed facility operators who had been criminally prosecuted for running an unlicensed facility was **zero**. In discussions with the Tennessee Bureau of Investigation, it was felt that for the unlicensed providers who are charged with a crime, the crime often involved other offenses such as neglect or possible financial exploitation and, as such, the offense of an unlicensed facility was not charged or was dismissed in favor of other charges.

Nationwide Studies

Although this issue of unlicensed facilities has never before been studied in the State of Tennessee, the Assistant Secretary for Planning and Evaluation ("ASPE") as the Advisor to the Secretary of the U.S. Department of Health and Human Services (HHS) wrote a report entitled, "Understanding Unlicensed Care Homes: Final Report" which was published on August 31, 2015[17]. There are some key findings which are in line with what has been experienced firsthand in Tennessee.

- Although there were a few examples of unlicensed care homes where receive what they categorized as good care, it appears that abuse, neglect, and financial exploitation of these vulnerable residents is commonplace.
- Residents of these homes are extremely vulnerable. While some unlicensed homes reportedly serve elderly and physically disabled residents, formerly homeless, persons who may have substance use disorders, persons with severe and persistent mental illness, and parolees are often found in unlicensed facilities. Some of these homes also serve mixed populations (e.g., elderly residents as well as individuals with severe and persistent mental illness).
- Many residents of unlicensed care home are Supplemental Security Income (SSI) beneficiaries. Several informants explained that some unlicensed care home operators require residents to make the care home operator or the operator's designee their representative payee for SSI benefits, and that some operators also collect food stamps, medications, or other resources from residents, which the operators can then sell for profit.
- Conditions in unlicensed care homes are often abusive, financially exploitative, and neglectful of residents' basic needs, and depicted situations that involved false imprisonment of the residents and repeatedly moving the residents from one facility to another, both within and across states, to evade law enforcement.
- Interagency, multidisciplinary teams at state and local levels are imperative to the success of shutting down unlicensed care homes, and to address the various issues involved in such closures, such as meeting the housing and services needs of residents, addressing any criminal behaviors of the care home operators, and ensuring the safety of the house or facility and neighboring properties. The informants recommended the formation of teams including a range of stakeholders, including state licensure officials, Adult Protective Services (APS), ombudsmen,

[17] Angela M. Greene, Michael Lepore, Linda Lux, Kristie Porter, and Emily Vreeland (2015). "Understanding Unlicensed Care Homes: A Final Report." https://aspe.hhs.gov/reports/understanding-unlicensed-care-homes-final-report-0

police, firefighters, emergency medical services, code enforcement, and local advocacy organization workers.

- States commonly use a strategy that includes penalty systems that fine operators as a way to try and close illegally unlicensed care homes. However, fines have had little impact on closing the homes, as they were often unenforceable and rarely paid.
- Some states may implement public awareness campaigns to support identification of unlicensed care homes. Two of our three site visit states aimed to enhance awareness of poor and inadequate unlicensed care homes by increasing education for the public and key stakeholders: Pennsylvania held a statewide education and marketing campaign to inform the public about unlicensed care homes, and Georgia conducted training sessions to educate law enforcement and first responders about these homes.
- Common factors found in unlicensed homes across the United States:
    - The policies that licensed care homes have against admitting residents who exhibit behavior problems and those who have substance use disorders, or to discharge residents who develop these problems.
    - The modest payments made by SSI or State Supplemental Payments to residential care homes, are inadequate to cover expenses in licensed facilities.
    - The closure of large mental health institutions and concomitant transition of previously-institutionalized individuals with severe and persistent mental issues to community-based care settings, such as legally unlicensed care homes.
    - The financial pressure hospitals feel to free up hospital beds sometimes results in discharges to unlicensed care homes, both unintentionally and for expediency.

ASPE concluded that, "Additional research on unlicensed care homes will be valuable to build our understanding of the role--intended or unintended--of these places in our long-term services and supports systems, and the policies affecting it." This paper attempts to build on ASPE's conclusions and examine the problem of unlicensed facilities in Tennessee further in-depth.

Jurisdictional Limitations

Compounding the unlicensed facility problem in Tennessee are gaps between each of the regulatory agencies' jurisdiction. The system for investigating unlicensed facilities is complaint driven. Reports on an unlicensed facility are generally sent to Adult Protective Services (APS) by a complainant (usually a layperson) who identifies the type of unlicensed facility, as they understand it. Given that most people do not understand the distinction in the types of various licensed facilities, it is difficult to quantify data on the different types of unlicensed facilities.
Further, each agency has different criteria for investigating an unlicensed facility case. For example, APS must have an allegation of vulnerability that meets APS criteria. A complaint on an unlicensed facility may be screened out if there is no allegation of abuse, neglect, or exploitation.

The Department of Health also has investigation restrictions based on the size of the facility. For example, pursuant to Tenn. Code Ann. § 68-11-201(18), Department of Health licenses residential

homes for the aged which are defined as a home which accepts primarily aged persons for relatively permanent, domiciliary care. A home for the aged provides room, board and personal services to four (4) or more nonrelated persons. The Department of Health is unable to investigate unlicensed care homes that contain less than four (4) unrelated persons.

The Department of Mental Health and Substance Abuse Services has the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, … and for personal support services. The department of mental health and substance abuse services shall license services and facilities operated for persons with mental illness or serious emotional disturbance or in need of alcohol and drug abuse prevention or treatment services. Tenn. Code Ann. § 33-2-403(a).
For both mental health and substance abuse, the following three elements must all be found at the unlicensed home for TDMHSAS to generate a finding that they require licensure and are operating unlawfully:

1. Owner/operator is providing "medication assistance" to residents.
2. Owner/operator is providing "personal care" services to residents.
3. There is more than one (1) resident residing in the home who is unrelated to the owner/operator and who has been diagnosed with a mental illness under the DSM criteria OR whose primary purpose is restoring service recipients with alcohol and/or drug abuse or dependency disorders to levels of positive functioning and abstinence appropriate to the service recipient.

The Department of Intellectual and Disability has the right to enter upon or into the premises of any facility or service providing intellectual and/or developmental disabilities or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. "Licensee" is defined by DIDD Rule 0465-02-01-.01(41), as "the proprietorship, partnership, association, governmental agency, or corporation which provides a service under the licensure jurisdiction of the Department."

The following facilities or services are excluded from the licensure jurisdiction of DIDD:

(a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of intellectual and/or developmental disability services.

(b) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of intellectual, mental, or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201, et. seq.

(c) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services, and that affirmatively states that its primary purpose is not the provision of intellectual and/or developmental disabilities services or personal support services.

DIDD will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility, pursuant to Tenn. Code Ann. § 33-2-416 .

There are also limitations placed on each Department regarding the sharing of information. Pursuant to Tenn. Code Ann. § 63-1-117(f), the Department of Health cannot share any information on unlicensed facility complaints. Similarly, given the mental health treatment records that it holds, the Department of Mental Health and Substance Abuse Services has information that is prohibited from disclosure pursuant to Tenn. Code Ann. § 33-3-103.

Attached in *Appendix III,* please find a summary of jurisdictional limitations from each Department in their own words.

Proposed Solutions

Strike Force/Strike Force Protocols

As the situation in Hamblen County developed, a "strike team" of external stakeholders came together. It consisted of the regulatory agencies who license and regulate facilities, TDH, TDMHSAS, DIDD, the State Fire Marshal's Office, and the agencies which investigate elder abuse, including TBI and APS, along with TennCare, the Tennessee Commission on Aging & Disability, and the Area Agency and Disability representative from the district of the unlicensed home. As part of the strike force, a representative from each entity was identified. An unwritten protocol was soon developed. As soon as an agency which licenses or regulates a facility type receives an unlicensed facility complaint, the complaint would be reported to the other strike force members. Then, the strike force members would also check in their respective databases to see if the facility address/operator was licensed. If not, the strike force member would then report to their agency and work within the agency protocol to investigate. Each agency would then report back to the team on the bi-weekly Tuesday/Thursday calls the progress made on the investigation. This allowed multiple agencies to communicate and coordinate joint visits to the unlicensed facility property and share information on clients residing in the unlicensed facility. Additionally, if unlicensed facility residents were identified who lacked TennCare benefits, the Area Agency and Disability would conduct the assessment and then report to TennCare. TennCare, if possible, would then expedite the assessments and determine if the resident qualified for CHOICES or what additional information was needed. If a resident was identified who did already have TennCare, TennCare would work with its own managed care organizations ("MCOs") to find placement. On the bi-weekly calls, placement options would be discussed and the various agencies often "brain-stormed" to determine which pieces were missing and how to achieve the goals of removing the residents. The various licensing agencies also provided lists of available beds.

Another tool that the strike force teams have examined is the use of a nuisance abatement injunction. After the success of the Hamblen County nuisance abatement injunction, a template was developed and shared with other district attorneys who have problematic serial/chronic unlicensed facility providers in their districts. It is recommended that the nuisance abatement model be adopted state-wide as part of the unlicensed facility protocols.

Some agencies like APS, have developed Rapid Response Teams which investigate unlicensed facilities. The Rapid Response Team (RRT) is a team within Adult Protective Services that is made up of a Team Coordinator and Investigative Specialists who are situated geographically across the State to provide state-wide coverage. RRT provides support to staff by offering the following services:

1. Case coverage in counties in which there is insufficient coverage due to staff leave/vacancy or a high volume of reports,
2. Provide backup to the intake unit as needed,
3. Coverage for specialized cases that are sensitive, high profile, conflicts of interest, or that may need additional staff involvement,
4. Conducting approved community presentations,
5. Coaching and mentoring services to staff,
6. Twenty-four (24) hour coverage for matters that cannot be resolved by intake, and
7. Investigate multi-agency cases involving unlicensed group homes.

RRT was utilized to work unlicensed home cases in order to provide consistency across cases, as well as for flexibility and agility.

In addition, APS has also developed a Formstack which it has proposed be used to report instances of unlicensed facilities. APS developed guidance for staff to identify unlicensed facilities. The proposed guidance reads as follows, "Unlicensed care homes provide room, board and some level of services for three or more unrelated individuals but are not licensed or certified by the State. These homes often serve very vulnerable individuals such as individuals with serious mental illness or other disabilities, or older adults with functional limitations and limited financial resources." More discussions will be needed to align this with the criterion of the different agencies.

The bi-weekly with the strike force team have been very successful and have served to breakdown the silos in which many agencies over the years have resided.

Increased Criminal Penalties

After working with the strike team for several months, a common theme has emerged. Many of the unlicensed facility providers that the team has come into contact with over the course of several months are chronic offenders.

For example, the Department of Mental Health and Substance Abuse Services has one unlicensed facility provider, that over the course of several years, has operated thirteen (13) unlicensed facilities. When the Department becomes aware of this provider, it investigates, and if substantiated that the facility is an unlicensed provider, it sends a Cease and Desist Order signed by its Commissioner. If the individual continues to operate the facility, the Department can seek injunctive relief pursuant to Tenn. Code Ann. § § 34-2-405 and 33-2-417. This is a labor-intensive

process, which can be circumvented by the provider, when the provider closes up shop and moves on to a new location. It can be difficult to track unlicensed providers, especially if they do not own the homes which they operate, but instead lease residential homes or move across county lines.

Simply put, a Class B misdemeanor and civil penalties may not be enough to deter these chronic or habitual offenders. A viable option may be to amend Tenn. Code Ann. § § 68-11-213(h), 68-102-117, 33-2-405, and 33-2-417 to provide that the continuous or chronic operation of multiple unlicensed facilities is a Class D felony. Each Department would have discretion as to how it defines a chronic offender. Notice of this statute would also be provided to unlicensed facility operators in advance.

Education

Education should be provided to members of the general public about how to find licensed facilities and resources for their loved ones who may require residential care. Additionally, information should be provided on how to spot an unlicensed facility. Both goals could be accomplished through a targeted marketing campaign.

The Tennessee Commission on Aging and Disability operates an Information & Assistance line which takes calls from citizens in-state and out-of-state seeking assistance. The number two (2) most asked question received from around the State is, "How do I become a licensed provider?" Currently, an individual would have to know which department licenses a facility type in order to apply for licensure. TCAD proposes that a new page be added to its website with links to each agency's licensure website and a description of the types of residential facilities available for ease of use to those interested parties.

Additionally, consideration should be given to working with the external stakeholders, such as the Tennessee Hospital Association ("THA") and Tennessee Health Care Association ("THCA"), to combat discharges/referrals from hospitals and rehabilitation facilities to unlicensed providers.

Tailored Support for Older Adults (LTSS/TennCare Programs)

Medicaid Diversion

Medicaid Diversion is a term that encompasses an array of programs and options intended to divert or at least delay a person's enrollment into Medicaid, or potentially into higher cost Medicaid benefits such as institutional long-term care—typically by making available less expensive home and community-based services (HCBS) options, including family caregiver supports, that help support and sustain independent community living. Medicaid Diversion (or Medicaid alternative) programs:

- Help people continue to live independent, healthy lives in their homes and communities (honoring their choice/preferences);
- Reduce stress and burden on family caregivers; and
- Delay enrollment in Medicaid, or placement in more expensive institutional benefits or alternatives, avoiding substantially higher expenditures for Medicaid long-term services and supports (LTSS).

Tennessee has long had such programs, including the CHOICES in Long-Term Services and Supports program launched in 2010. Since implementing the CHOICES program in 2010:

- 7,500 fewer people are served in nursing homes each year.
- 9,000 more people have access to in-home care each year.
- The waiting list for Medicaid-reimbursed in-home care has been eliminated for older adults and adults with physical disabilities.

Re-Opening CHOICES Group 3

One of the most impactful components of CHOICES in achieving these goals was the implementation in 2012 of a benefit group for people who do not yet qualify for institutional care, but are at risk of placement if HCBS are not immediately available—called CHOICES Group 3. Individuals enrolled into CHOICES Group 3 receive a moderate package of HCBS – up to $15,000 per year, in order to help divert or delay their placement into more expensive institutional or alternative benefits. Upon initial implementation, enrollment into the group was available to individuals who met "at-risk" medical eligibility criteria and higher institutional income standards.

The 12 Month Periods ending 6/30/13, 6/30/14 and 6/30/15 reflected nearly 20 percent diversion of all NF applicants to HCBS after raising NF level of care standards. During these years, the numbers of people receiving NF services declined markedly, as did NF expenditures,[18] and the number of people receiving HCBS increased. However, effective July 1, 2015, enrollment into Group 3 became more restricted—only to individuals receiving Supplement Security Income (SSI). After individuals were required to meet SSI criteria to enroll in CHOICES Group 3, NF diversion numbers dropped substantially. Since that time, the 12 Month Period ending 6/30/16 reflected a 13.6% nursing facility diversion rate; the 12 Month Period ending 6/30/17, an 11.52% diversion rate; the 12 Month Period ending 6/30/18, an 13.21% diversion rate; and the 12 Month Period ending 6/30/19, an 11.83% diversion rate. Significant increases were observed in NF expenditures as fewer HCBS alternatives became available.

Citing these observations, a review of the CHOICES program performed by an external quality review organization entitled, "TennCare II Extension (No. 11-W-00151/4) Draft Interim Evaluation Report[19]" which was published on November 4, 2020 found that, "The early successes of offering HCBS more broadly to at-risk groups in achieving greater diversion from institutional care warrant further consideration, particularly in light of the recent impacts of COVID-19 on NFs, and longer term, as it relates to ensuring the sustainability of the system in light of an aging population."

Also looking at the impact of CHOICES as well as the State-funded Options for Community Living Program, the Comptroller's Office on Research and Accountability issued a report entitled, "Senior Long-Term Care in Tennessee: Trends and Options" in April 2017 which provided several

[18] Taking into account increases in NF expenditures unrelated to utilization, but instead to new quality and acuity-related payment increases approved by the General Assembly

[19] https://www.tn.gov/content/dam/tn/tenncare/documents2/TennCareDraftAnnualReport20.pdf

recommendations around Medicaid Diversion opportunities, including the re-opening of CHOICES Group 3, demonstrating the potential for significant state savings by making these programs more broadly available.. The Comptroller's Report provided links to an AARP Report on Medicaid Diversion and also details on a very successful Medicaid Diversion program in Washington state. The link to the Comptroller's Report is: https://comptroller.tn.gov/content/dam/cot/orea/advanced-search/2017/2017_OREA_SeniorLongTermCare.pdf

Emergency Placement Funds for Victims of Elder Abuse, Neglect, or Exploitation

TennCare has authorized the use of an "Emergency Placement" rate of $245/day for Community Living Supports which was implemented early in 2018. It is provided for up to 30 days an in exceptional circumstances, can be extended for up to another 30 days. It is only for people in CHOICES or ECF CHOICES who are referred by APS and need immediate housing supports because their home is uninhabitable or they have been subject to abuse and neglect to the degree that their immediate safety, health, and welfare is in jeopardy. Unlike typical residential services, due to the nature of these circumstances, it is more of a respite benefit and the daily rate covers the individual's room and board expenses. This is only until suitable longer-term living arrangements can be made.

More attention should be given to publicizing this benefit and informing law enforcement and others of this potential emergency placement rate. Further, additional consideration should be given to economically incentivizing providers to keep beds open for emergent places, especially for those potential residents who may not be approved for CHOICES.

Tiny Homes

Nationwide, the use of tiny homes is on the rise. A pilot program in Pennsylvania has been developed which features tiny homes and even "tiny villages" as an option for affordable senior housing, as discussed in a recent article entitled, "Senior Living Innovators Zero In On Small Homes, Pocket Neighborhoods" by Tim Regan and published in the Senior Housing News on February 6, 2020[20]. The article highlighted a pilot program for "pocket neighborhoods" developed in New Holland, Pennsylvania, Denver, Colorado, Portland, Oregon, and in Austin, Texas. Pocket neighborhoods consist of smaller homes in walkable clusters, usually around a common area. Pocket neighborhoods would be geared more toward independent older adults. However, it's possible that eventually home health services could be expanded to a group of tiny homes, so that elders can age in place.

Tennessee is also jumping on the tiny home bandwagon, with the Department of Commerce and Insurance, Division of Fire Prevention, Modular Building Units adopting rules in June 2021 allowing for tiny homes to be built and inspected through its Modular Building Units' Division.

[20] Regan, T. (2020, February 6). Senior Living Innovators Zero In On Small Homes, Pocket Neighborhoods. *Senior Housing News*.

The tiny homes will be inspected after a permit is purchased though CORE with inspections for rough-in, final for electrical, and residential occupancy[21].

Additionally, Nashville itself has created "The Village at Glencliff" which provide respite services for unhoused persons after a hospital stay. There are twenty-two (22) tiny homes in the village[22].

Other Residential Models:

The Oregon Model[23]

From 1979-1981, Oregon conducted a pilot program using federal and state funds for community-based services for Medicaid eligible funds. It was the first Medicaid federal intergovernmental grant FIG-waiver to use XIX LTC money for in-home and community services in lieu of institutional care. In 1981, Oregon applied for waivers to use Medicaid funds for in-home and community-based services for eligible persons. In 1982, Oregon developed Adult Foster Homes/Adult Care Homes. Adult Foster Homes ("AFHs") are:

- Single-family residences that offer 24-hour care in a home-like setting catering to differing needs. AFHs serve six (6) or more residents.
- A wide variety of residents are served in adult foster homes, from those needing only room, board and minimal personal assistance to those residents needing full personal care, or skilled nursing care with the help of community-based registered nurses.
- An AFH is to provide twenty-four-hour (24) care and services to residents while supporting their independence, choice and right to make decisions. An ACH provides the opportunity for residents to reside in a safe and caring family-like environment.
- ACH providers may help with "activities of daily living" (ADLs) i.e. eating, dressing, bowel and bladder care, bathing and grooming, walking (which may include getting in or out of a bed or a chair), behavioral issues as needed.
- They also perform general tasks including laundry, medication management, meal preparation, transportation arrangements, socialization.
- Area Agencies on Disability regulate adult foster homes which are inspected and licensed before they can accept residents.
- The owner of the AFH and staff must pass an initial exam to be certified and receive state sanctioned continuing education credits on an annual basis.
- The home is inspected annually, and each Medicaid resident has a case manager who also monitors the home and care.

There are three types of Adult Foster Care Home levels of care:

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[21] https://publications.tnsosfiles.com/rules/0780/0780-02/0780-02-13.20210629.pdf

[22] McDonald, H. (2021, July 19.) The Village at Glencliff Becomes City's First Medical Respite Center. *News Channel 5.* https://www.newschannel5.com/news/its-just-heart-touching-the-village-at-glencliff-becomes-citys-first-medical-respite-center

[23] Source: McConnell, J (2021). "Oregon Adult Care Home Program for Elderly and Persons with Physical Disabilities."

- CLASS 1: license authorizes the home to admit residents who may need assistance with up to four (4) activities of daily living. The applicant must pass the state APD basic training course and examination.
- CLASS 2: license may be issued if the applicant has two (2) or more years of experience providing care to adults who are elderly or physically disabled. This AFH may admit residents who require some assistance in all ADLs but require full assistance in no more than three (3) activities of daily living. The applicant must also pass the department's basic training course for AFH potential licensees; or
- CLASS 3: license may be issued if the applicant is a currently licensed health care professional in Oregon, e.g.an RN, or if the applicant possesses the following qualifications:
    - Has at least three (3) years of experience providing care to adults who are elderly or physically disabled and require full assistance in four (4) or more of their activities of daily living.
    - Has satisfactory references from at least two (2) licensed health care professionals who have direct knowledge of the applicant's ability and experience as a caregiver.
    - In addition, the applicant must complete and pass the department's basic training course and exam for potential AFH providers.

Payment is provided either through a private contract with the licensee and the resident or thorough Medicaid. In Oregon, the AAAD office determines within state guidelines, the total amount the licensee will be paid based off of the resident's care needs.

As of 2020, there are one thousand seven hundred (1,700) licensed adult foster homes with a capacity of seven thousand four hundred seventy-five residents. Presently, occupation rate is about eighty-seven (87%) percent.

A Potential Tennessee Option

While the Oregon model is intriguing, there may be a better model that could be created in Tennessee based off existing licensed facilities.

The Department of Health currently licenses and regulates forty-eight (48) residential homes for the aged through the Board for Licensing Health Care Facilities. Presently, the Department of Health does not license residential facilities with less than four (4) residents. Tenn. Code Ann. § 68-11-201(18)(A) defines a home for the aged as a home represented and held out to the general public as a home which accepts primarily aged persons for relatively permanent, domiciliary care. A home for the aged provides room, board and personal services to four (4) or more nonrelated persons. Pursuant to Tenn. Code Ann. 68-11-201(18)(c), a residential home for the aged is authorized to administer medications to residents only if it employs or contracts with a physician, nurse, or physician assistant to administer medications to residents. A home for the aged resident is a person who is ambulatory and who requires permanent, domiciliary care, but will be transferred to a licensed hospital, a licensed assisted living facility, or a licensed nursing home

when health care services are needed that must be provided in those other facilities, pursuant to Tenn. Code Ann. 68-11-201(19).
Essentially, a resident in a residential home for the aged may need assistance with some activities of daily living but must be transferred out of the home when a higher level of care is needed. Residents should be ambulatory and able to administer their own medications.

As currently written, if an applicant wants to apply for a residential home for the aged, if the building is an existing single family home to be licensed for six (6) or fewer beds, an individual is not required to submit architectural plans that are signed and sealed by an architect or Tennessee licensed engineer, but they are required to one set of schematic drawings. Homes with more than twelve (12) beds and/or homes housing residents above ground floor are required to be sprinklered and must also submit sprinkler plans. (Sprinklers can be very cost-prohibitive to small home provider.) Further, submission of an approval from local zoning, building, and fire safety authorities must be provided for custodial care, in accordance with Tenn. Code Ann. 38-11-201(19)(B). The facility must then be surveyed prior to opening by both health and life safety surveyors. Life safety rules are comprehensive and are applicable to both skilled nursing facilities and assisted care living facilities, in addition to residential homes for the aged. After initial licensure, the facility will then receive annual health and life safety surveys conducted by the Office of Health Care Facilities.

The intent of the initial legislation creating residential homes for the aged was to create residential homes in a smaller group setting. Since there are only forty-eight (48) licensed facilities of this type, an option may be to transfer this program from a license into a certificate. The certified facilities would then be placed on a Registry. Additionally, rather than be surveyed under life safety rules from the Department of Health, the Office of the State Fire Marshal could conduct fire and life safety surveys, as they contractually do so for the smaller group homes licensed by the Department of Intellectual and Developmental Disabilities AND the Department of Mental Health and Substance Abuse Services. Finally, in order to comply with the Medicaid Settings Rule, the size of the proposed certified residential home for the aged would be made smaller. For homes under four (4) persons, the residents of those homes would be eligible for Medicaid Home and Community Based funding or a Medicaid Diversion waiver (if one were eventually adopted).
The existing forty-eight (48) residential homes for the aged could be grandfathered in and in 2023, the new smaller certified residential home for the aged could be adopted.
Also, this move would be consistent with the directives of Public Chapter 557 (2021) which authorizes Health Services Development Agency ("HSDA") to submit a plan to merge HSDA and the Board for Licensing Health Care Facilities to create a licensed Health Care Facilities Commission by January 23, 2023. This move would allow for smaller government, easing the barriers of entry to operating a residential home for the aged, and would allow more elderly persons to be taken care of in a smaller group/home-like setting. Thus, this proposition would help to bridge the unlicensed facility gap.

Semi-Independent Living Services

The Department of Intellectual and Developmental Disabilities offers a program entitled "Semi-Independent Living Services." Semi-Independent Living Services (SILS) shall mean services selected by the person supported that include training and assistance in managing money, preparing meals, shopping, personal appearance and hygiene, interpersonal and social skills building, and other activities needed to maintain and improve the capacity of an individual with an intellectual disability to live in the community, and which supports the person's independence and full integration into the community, ensures the person's choice and rights, and comports fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, except as supported by the individual's specific assessed need and set forth in the person-centered Individual Support Plan (ISP).

The service also includes oversight and assistance in managing self-administered medication and/or medication administration as permitted under Tennessee's Nurse Practice Act and performance of other non-complex health maintenance tasks, as permitted by State law. The SILS provider shall oversee the health care needs of the person supported.

This service is appropriate for people who need intermittent or limited support to remain in their own home and do not require staff that lives on-site. However, access to emergency supports as needed from the provider on a 24/7 basis is an essential component of this residential service.

Individuals receiving SILS may choose to receive services in a shared living arrangement with other persons who need differing levels of support, differing types of waiver services, or who participate in different HCBS programs, as permitted in Sate licensure law and regulation, as long as there is a willing, qualified provider who can safely meet the needs of each resident in the home. No more than three (3) persons receiving services will be permitted per residence. There are currently twenty-three (23) DIDD care recipients that are receiving semi-independent living services.

Conclusion

The unlicensed facility problem in Tennessee is growing. With the "silver tsunami" coming, as Tennesseans continue to age, affordable residential facilities will become an issue which can no longer be ignored. Over the course of six (6) months, approximate sixty-four (64) unlicensed facilities have been identified. In the thirteen (13) cases that the strike force has been involved in, many of the residents in these homes have been subjected to abuse, neglect. and financial exploitation. The residents of these homes are vulnerable, as they often have no healthcare benefits, little money, and often, no one to advocate for them or work on their behalf.

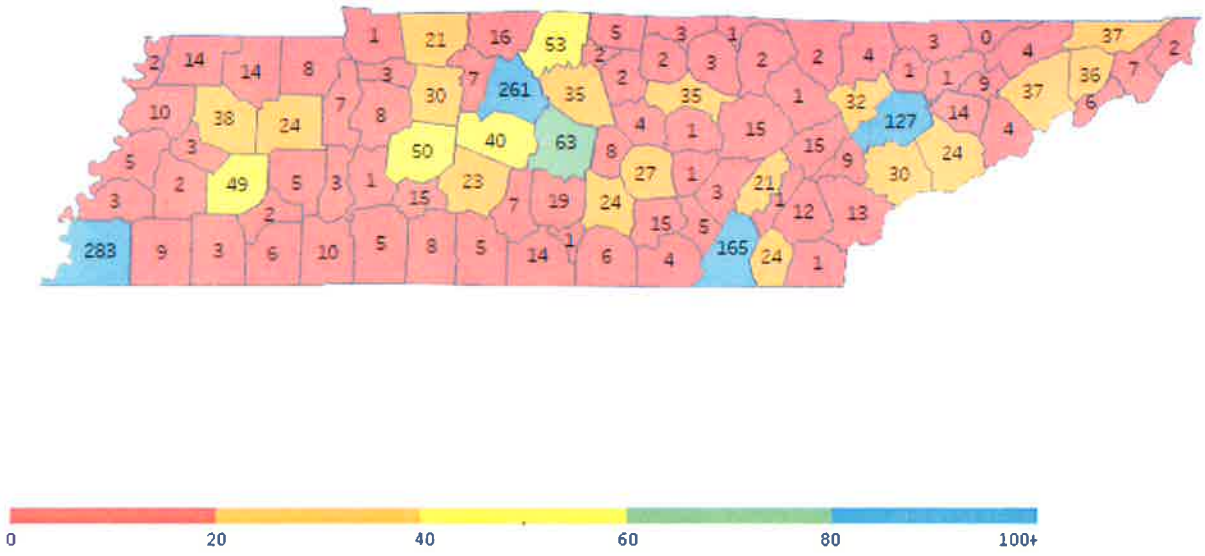
Compounding this problem further, is that there are few placement options and unlicensed facilities are found in counties where healthcare "deserts" occur. The lack of small residential health care facilities in these areas has allowed unlicensed facilities to flourish.

While there are a number of remedies to this problem from tiny homes, to Medicaid Diversion, including re-opening CHOICES Group 3, or even creating a new certified residential home model, the ultimate decision as to how unlicensed facilities will be handled will be left up to the will of the Tennessee General Assembly.

APPENDIX I
CHARTS
HEAT MAP OF ALL LICENSED FACILITIES BY DEPARTMENT

Figure 1. Number of Licensed Residential Facilities by County

Numbers represent the total number of facilities licensed by TN Department of Health, DIDD, and TDMHSAS as of July 2021. Please note businesses or organizations may hold licensure of more than 1 facility type and therefore may be counted as multiple facilities.



A link which the map which allows you to hover over the county to learn the various facility types can be found at: Licensed / Unlicensed Facilities August 2021 | Tableau Public

Table 1. Licensed Residential Facilities by County

County	TDH				DIDD		TDMHSAS							Total Licensed Facilities
	ACLF	Adult Care Home	SNF	TBI Home	RS	ICF-IIIDs	Alcohol & Drug Halfway House Treatment	Alcohol & Drug Residential Detoxification Treatment	Alcohol & Drug Residential Rehabilitation Treatment	Adult Residential Treatment	Adult Supportive Residential	Crisis Stabilization Unit	Supportive Living	
Anderson	7	0	5	0	6	0	2	2	2	2	0	0	6	75
Bedford	2	0	2	0	5	0	2	0	2	0	4	0	2	27
Benton	0	0	1	0	0	0	0	0	0	0	0	0	6	23
Bledsoe	0	0	1	0	0	0	0	0	0	0	0	0	2	5
Blount	7	0	6	0	1	0	2	4	6	2	0	2	0	82
Bradley	5	0	3	0	6	4	2	0	0	0	0	0	4	73
Campbell	1	0	3	0	0	0	0	0	0	0	0	0	0	12
Cannon	0	0	2	0	0	0	0	0	2	0	0	0	4	9
Carroll	1	0	3	0	0	0	0	0	0	2	10	0	8	32
Carter	1	0	6	0	0	0	0	0	0	0	0	0	0	19
Cheatham	1	0	2	0	0	0	0	0	2	2	0	0	0	12
Chester	1	0	1	0	0	0	0	0	0	0	0	0	0	4
Claiborne	0	0	3	0	0	0	0	0	0	0	0	0	0	14
Clay	0	0	1	0	0	0	0	0	0	0	0	0	2	4
Cocke	1	0	2	0	1	0	0	0	0	0	0	0	0	6
Coffee	5	0	4	0	5	0	0	0	0	4	4	0	2	38
Crockett	1	0	2	0	0	0	0	0	0	0	0	0	0	5
Cumberland	5	0	4	0	6	0	0	0	0	0	0	0	0	43
Davidson	34	0	21	0	0	24	10	14	18	12	58	4	66	656
Decatur	1	0	2	0	0	0	0	0	0	0	0	0	0	7
DeKalb	2	0	2	0	0	0	0	0	0	0	0	0	0	10
Dickson	3	0	2	0	7	0	0	6	8	4	0	0	0	63
Dyer	1	0	3	0	0	0	0	0	0	0	0	0	6	22
Fayette	3	0	2	0	0	2	0	0	0	0	2	0	0	15
Fentress	0	0	2	0	0	0	0	0	0	0	0	0	0	31
Franklin	3	0	3	0	0	0	0	0	0	0	0	0	0	21
Gibson	3	0	8	0	0	17	0	2	2	0	4	0	2	57
Giles	2	0	3	0	0	0	0	0	0	0	0	0	0	8
Grainger	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Greene	2	0	4	0	1	28	0	0	0	0	0	0	2	194
Grundy	2	0	1	0	10	0	0	0	0	0	2	0	0	27

County	TDH				DIDD		TDMHSAS							Total Licensed Facilities
	ACLF	Adult Care Home	SNF	TBI Home	RS	ICF-IIIDs	Alcohol & Drug Halfway House Treatment	Alcohol & Drug Residential Detoxification Treatment	Alcohol & Drug Residential Rehabilitation Treatment	Adult Residential Treatment	Adult Supportive Residential	Crisis Stabilization Unit	Supportive Living	
Hamblen	2	0	2	0	5	0	0	0	0	0	0	0	0	102
Hamilton	20	0	13	0	26	28	2	4	6	2	16	2	46	381
Hancock	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hardeman	0	1	0	0	0	0	0	0	0	0	0	0	2	3
Hardin	1	0	5	0	0	0	4	0	0	0	0	0	0	29
Hawkins	1	0	3	0	0	0	0	0	0	0	0	0	0	36
Haywood	1	0	1	0	0	0	0	0	0	0	0	0	0	10
Henderson	3	0	2	0	0	0	0	0	0	0	0	0	0	22
Henry	3	0	3	0	0	0	0	0	0	0	0	0	2	15
Hickman	0	0	2	0	0	0	0	8	20	20	0	0	0	62
Houston	0	0	1	0	0	0	0	0	0	0	2	0	0	4
Humphreys	1	0	2	0	3	0	0	0	0	0	0	0	2	11
Jackson	1	0	1	0	0	0	0	0	0	0	0	0	0	3
Jefferson	2	0	3	0	1	0	0	0	0	2	0	0	6	29
Johnson	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Knox	31	0	16	0	26	12	10	4	8	4	2	2	12	384
Lake	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Lauderdale	1	0	2	0	0	0	0	0	0	0	2	0	0	12
Lawrence	3	0	3	0	0	0	0	0	0	0	0	0	2	17
Lewis	0	0	1	0	0	0	4	4	6	0	0	0	0	29
Lincoln	1	0	2	0	5	0	0	2	4	0	0	0	0	21
Loudon	6	0	1	0	2	0	0	0	0	0	0	0	0	33
Macon	2	0	2	0	1	0	0	0	0	0	0	0	0	9
Madison	6	0	6	0	3	4	0	6	6	0	0	2	16	329
Marion	1	0	1	0	0	0	0	0	0	0	0	0	2	4
Marshall	1	0	2	0	0	0	0	2	2	0	0	0	0	11
Maury	4	0	5	0	2	0	2	0	2	0	4	0	4	87
McMinn	3	0	4	0	1	0	0	0	0	0	2	0	2	33
McNairy	1	0	2	0	3	0	0	0	0	0	0	0	0	19
Meigs	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Monroe	2	0	3	0	0	0	0	0	0	2	2	0	4	16
Montgomery	6	0	6	0	3	0	0	0	0	0	4	0	2	95
Moore	0	0	1	0	0	0	0	0	0	0	0	0	0	1

County	TDH				DIDD		TDMHSAS							Total Licensed Facilities
	ACLF	Adult Care Home	SNF	TBI Home	RS	ICF-IIIDs	Alcohol & Drug Halfway House Treatment	Alcohol & Drug Residential Detoxification Treatment	Alcohol & Drug Residential Rehabilitation Treatment	Adult Residential Treatment	Adult Supportive Residential	Crisis Stabilization Unit	Supportive Living	
Morgan	0	0	1	0	0	0	0	0	0	0	0	0	0	7
Obion	3	0	3	0	0	0	0	0	0	0	4	0	4	15
Overton	0	0	1	0	0	0	0	0	0	0	0	0	2	7
Perry	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Pickett	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Polk	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Putnam	4	0	4	0	5	0	0	2	2	4	8	2	4	105
Rhea	1	1	3	0	8	0	0	0	0	4	2	0	2	29
Roane	3	0	2	0	6	4	0	0	0	0	0	0	0	41
Robertson	3	0	4	0	6	3	0	0	0	0	0	0	0	17
Rutherford	12	0	9	0	4	14	0	2	4	0	0	0	18	143
Scott	0	0	2	0	0	0	0	0	0	0	0	0	0	16
Sequatchie	0	0	1	0	0	0	0	0	0	0	0	0	4	5
Sevier	4	0	3	0	1	0	0	2	4	2	6	0	2	25
Shelby	29	0	28	0	4	32	14	12	24	4	34	4	98	748
Smith	1	0	1	0	0	0	0	0	0	0	0	0	0	3
Stewart	0	0	1	0	0	0	0	0	0	0	0	0	0	10
Sullivan	13	0	7	0	3	0	0	2	2	0	0	0	10	95
Sumner	16	0	5	1	11	0	2	0	2	8	6	0	2	64
Tipton	1	0	2	0	0	0	0	0	0	0	0	0	0	7
Trousdale	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Unicoi	1	0	3	0	0	2	0	0	0	0	0	0	0	13
Union	0	0	1	0	0	0	0	0	0	0	0	0	0	3
Van Buren	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Warren	0	0	0	0	1	0	0	0	0	4	8	0	14	39
Washington	8	2	8	0	0	2	0	2	4	0	4	2	4	144
Wayne	1	0	1	0	3	0	0	0	0	0	0	0	0	10
Weakley	1	0	4	0	1	0	0	0	0	4	2	0	2	31
White	0	0	1	0	0	0	0	0	0	0	0	0	0	13
Williamson	23	0	6	0	1	0	0	2	2	6	0	0	0	67
Wilson	11	0	4	0	0	0	0	0	0	0	14	0	6	58
Total	**334**	**4**	**314**	**1**	**183**	**176**	**56**	**82**	**140**	**94**	**206**	**20**	**386**	**5129**

Table 2. Licensed Residential Facilities by Agency

Agency	Number of Licensed Residential Facilities
DIDD	359
TDMHSAS	984
TDH	653
Total	**1,996**

APPENDIX II
HEAT MAP OF ALL UNLICENSED FACILITIES

Figure 2. Known Unlicensed Facilities (June – July 2021)

Numbers represent number of facilities about which TBI received complaints during the period of January 1 – July 1, 2021

APPENDIX III
SUMMARY OF UNLICENSED FACILITY JURISDICTIONS

Adult Protective Services (APS)

APS has two criteria for a report to be assigned for an investigation: Vulnerable adult and at least one allegation of abuse, neglect, or exploitation.

"Abuse or neglect" is defined by TCA 71-6-102 (1) (A) as the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare. *Note: Merely being unlicensed does not meet the neglect criteria as stated above. However, regardless if the facility is licensed or not, being deprived of services necessary to maintain health and welfare would meet the neglect criteria.*

"Exploitation" is defined by TCA 71-6-102 (8) as the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.

"Adult" is defined by TCA 71-6-102 (2) as a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age (60+) is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter.

Tennessee Department of Health

TCA 63-1-117(f) prohibits the release of any complaint information.

OGC has consistently interpreted this statute as also prohibiting the release of the subject of the complaint. Consequently, TDH would not be able to notify the Strike Force that there is a complaint against an unlicensed facility. If a complaint on an unlicensed facility is received, TDH would investigate the complaint. Most of the time, TDH is alerted to a potentially unlicensed facility from APS, so APS often has the same information that TDH does. Law enforcement is contacted in egregious situations.

TDH Jurisdiction Re Unlicensed Facilities:

TCA 68-11-204 Requirement for Licensure (Prohibition Against Operating without a License)

(a)

(1) No person, partnership, association, corporation or any state, county or local government unit, or any division, department, board or agency of the governmental unit, shall establish, conduct, operate or maintain in this state any hospital, recuperation center, nursing home, home for the aged, residential HIV supportive living facility, assisted-care living facilities, home care organization, residential hospice, birthing center, prescribed child care center, renal dialysis clinic, outpatient diagnostic center, ambulatory surgical treatment center, adult care homes or traumatic brain injury residential homes as defined in this part, without having a license.
(2) State or local government home care organizations may be excluded by the board.
(3) An independent living facility is exempt from the licensure requirements of this part.
(b) Any health care facility or local health department operated by the federal government shall be exempt from this part.
(c) The board, in its discretion, shall be authorized to issue licenses to several licensees in such form as it may deem necessary to distinguish between and identify any of the facilities required to be licensed by the department.
(d) Nothing in this part requires a person or entity providing hospice residential services as of July 1, 1992, to obtain a certificate of need as a residential hospice, if such person or entity, prior to July 1, 1992, had qualified for reimbursement as a hospice under the federal Medicare program.

TCA 68-11-210(3)(c)(D), (E) Inspections (The Department can inspect)

(D) Notwithstanding this section or any other law to the contrary, the department shall conduct such on-site inspections and investigations as may be necessary to safeguard and ensure, at all times, the public's health, safety and welfare.
(E) The department shall conduct such inspections and investigations as may be necessary to appropriately respond to complaints received from the public and to immediately act upon any determination by the board that the public's health, safety or welfare is, or appears to be, threatened.

TCA 68-11-213(a) – (j) Injunctions, Inspection of suspected unlicensed facilities (The Department can inspect an unlicensed facility with permission; Remedies if the Department finds that a facility should be licensed)

(a)
(1) The department is authorized to initiate proceedings seeking injunctive and any other form of relief available in law or equity against any person who owns, operates, manages or participates in the operation of or management of any facilities required to be licensed under this part, or any resident or residents in any facility required to be licensed under this part, without having the license required by this part.
(2) The department may also seek such relief against any person who owns, operates, manages or participates in the operation or management of any facility required to be licensed under this part, if such person or facility violates this part, rules, regulations or orders issued under this part, or terms and conditions of the license.
(3) Proceedings under this section may be initiated in the chancery court of Davidson County or the chancery court of the county in which all or part of the activities complained of occur.
(b) Based upon a complaint that a home for the aged, assisted-care living facility, adult care home or traumatic brain injury residential home, subject to licensure under this part may be operating without a license, the department, with consent of an owner, operator, manager, or person who

participates in the operation, or patient or resident, or the guardian of the patient or resident, may enter the facility in order to investigate or inspect the complaint for the necessity of or compliance with licensure under this part.

(c) If consent is not obtained and the area sought to be inspected is a closed or non-public area, right of entry and inspection shall not be made by the department, unless a civil warrant, upon probable cause, is first obtained authorizing such entry or inspection.

(d) Inspections conducted pursuant to this section shall be conducted in a manner so as to minimize disruption.

(e) If a determination is made by the department that a facility or entity is subject to the requirements of licensure under this part, a notice shall be issued by the department stating the determination and requiring that application for licensure must be made to the department within thirty (30) days of the receipt of that notice. The thirty-day application period does not serve to waive any civil penalties that may be assessed for unlicensed operation of a facility under this part.

(f) Failure of a facility or entity requiring licensure to make application to the department for licensure within thirty (30) days from the date of the receipt of the notice may result in the initiation of injunctive relief and any other relief available in law or equity against any person who owns, operates, manages, or participates in the management of a facility or entity.

(g) In addition to requiring that a facility or entity make application for licensure, the department may immediately initiate a petition for injunctive relief or any other relief available in law or equity. The department may direct the facility or entity to immediately cease and desist operations when the health, safety, or welfare of the patients or residents requires emergency action. If the facility or entity does not comply with the directive to cease and desist, then the department may initiate proceedings for injunctive relief and any other relief available in law or equity.

(h)

(1) It is unlawful for any person to receive or accept any patient or patients or any resident or residents in any facility required to be licensed under this part without having applied for and obtained a license as required by this part.

(2) A violation of this requirement is a Class B misdemeanor.

(3) Each day of operation without a license constitutes a separate offense.

(i)

(1) The department may assess a civil penalty not to exceed five thousand dollars ($5,000) against any person or entity operating an assisted care living facility, home for the aged, adult care home, or traumatic brain injury residential home without having the license required by this chapter. Each day of operation is a separate violation.

(2) The board for licensing health care facilities is authorized to establish as part of its comprehensive system of quality assurance and enforcement a system for assessing civil monetary penalties, including appropriate due process, for assisted care living facilities, homes for the aged, adult care homes, and traumatic brain injury residential homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety, and welfare of residents.

(3) All penalties for adult care homes or traumatic brain injury residential homes shall be deposited by the department with the state treasurer to a general fund account specifically designated for the purpose of providing adult care home educational training programs and continuing education requirements for adult care home providers and traumatic brain injury residential home providers, resident managers, substitute caregivers and staff. The commissioner of finance and administration shall determine the appropriate use for these funds.

(4) Beginning one hundred eighty (180) days after the promulgation of regulations under this part by the department, the department may assess a civil penalty not to exceed three thousand dollars ($3,000) against any licensed assisted-care living facility for admitting or retaining residents not meeting the definition of assisted-care facility resident set forth in this chapter. Each such resident shall constitute a separate violation.

(j)

(1) The department may assess a civil penalty not to exceed one thousand dollars ($1,000) against any person or entity operating a prescribed childcare facility without the license required by this chapter or in violation of any other statute or regulation promulgated under this chapter. Each day of operation is a separate offense.

(2) The board is specifically authorized to promulgate regulations for the assessment and procedures to be used in the assessment of civil penalties against a prescribed child care center, including, but not limited to, a schedule of the minimum and maximum penalties, factors to be considered in making the assessment, procedures to be used in the assessment, appeals, and finality of assessments.

(3) The board is authorized to conduct contested cases regarding appeals of the penalties assessed pursuant to this subsection (j).

Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS)

The Department has the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, … and for personal support services. The department of mental health and substance abuse services shall license services and facilities operated for persons with mental illness or serious emotional disturbance or in need of alcohol and drug abuse prevention or treatment services. Tenn. Code Ann. § 33-2-403(a).

Residential Homes/Groups Homes:

For both mental health and substance abuse, the following three elements must all be found at the unlicensed home for TDMHSAS to generate a finding that they require licensure and are operating unlawfully:

1. Owner/operator is providing "medication assistance" to residents.

a. "Medication Assistance" means loosening the cap on a pill bottle for oral medication or opening medication packaging and placing the medication within reach of the service recipient, but does not allow the care giver to give the medication to the individual. Assistance includes medication reminders, and is limited to holding a service recipient's hand steady to help them with drinking liquid medication, guiding their hand when the individual is applying eye/ear/nose drops and wiping the excess liquid, helping with a nasal cannula or mask for oxygen or plugging the machine in and turning it on. Tenn. Comp. R. & Regs. 0940-05-01-.02(31)

2. Owner/operator is providing "personal care" services to residents.

a. "Personal Care" means services provided to a service recipient who does not require chronic or convalescent medical or nursing care. Personal care is the safekeeping and supervision of the service recipient's self-administration of prescription medication along with any of the following services: (1) responsibility for the safety of the service recipient, (2) a daily awareness by the management and staff of the service recipient's functioning, (3) knowledge of his or her whereabouts, (4) reminding a service recipient of appointments, (5) the ability and readiness to intervene if a crisis arises for a service recipient, and/or (6) supervision in the

following areas for the service recipient's major life activities, self-care, self-direction.
capacity for independent living or economic self-sufficiency. Tenn. Comp. R. & Regs. 0940-05-01-.02(38)

3. There is more than one (1) resident residing in the home who is unrelated to the owner/operator and who has been diagnosed with a mental illness under the DSM criteria OR whose primary purpose is restoring service recipients with alcohol and/or drug abuse or dependency disorders to levels of positive functioning and abstinence appropriate to the service recipient.

It is possible, and quite common, to run a home with individuals meeting #3 above and the home not require a TDMHSAS license. These homes are commonly referred to as independent living homes, transitional living homes, sober living, recovery homes, ¾ homes and/or un-supervised group homes.

Statutory Authority as It Relates to Homes Requiring TDMHSAS Licensure

• Tenn. Code Ann. § 33-2-405(a) - unlawful to operate/own facility providing Mental Health, Substance Abuse residential or non-residential treatment facility or provide personal care services without a license.

• Tenn. Code Ann. § 33-2-405(b) - violation of TCA § 33-2-405(a) is a Class B misdemeanor.

• Tenn. Code Ann. § 33-2-405(c) - each day in operation is separate Class B offense.

• Tenn. Code Ann. § 33-2-412(a) - we can sue to enjoin for establishing, operating, etc. without required license. Suit may be brought in the name of the state by the attorney general and reporter in the chancery court of Davidson County or by legal counsel for the department in the chancery court of the county in which all or part of the violations occurred.

• Tenn. Code Ann. § 33-2-412(b) - okay to sue to enjoin if about to start operating without a required license

• Tenn. Code Ann. § 33-2-417(a) - without prior notice we can order facility to cease and desist but must first find ordering is in public interest necessary for protection of health, safety, or welfare of service recipients.

• Tenn. Code Ann. § 33-2-417(d) – It is a Class B misdemeanor to violate a cease and desist order which (according to TCA 33-2-417(c) is final 30 days after entry) is calculated by looking back to date of service on operator.

• Tenn. Code Ann. § 33-2-417(e) – Says TCA 33-2-417(d) doesn't have to come before actions outlined in TCA §§ 33-2-405; or 33-2-412 above action.

Rule establishing authority to enter property to determine compliance with licensure law

TDMHSAS Administrative Rule 0940-5-2-.13 states, "With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or any part thereof, or service providing mental health, developmental disabilities substance abuse, or personal support services in order to make inspections deemed necessary to determine compliance with licensure laws, ordinances, regulations and rules. The facility or service shall comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, individuals being served by the facility or service, and/or to review and obtain copies of all records of the facility or service sufficient to determine compliance with licensure laws, ordinances, regulations and rules."

- TDMHSAS Administrative Rule 0940-5-2-.13 is broader in scope than Tenn. Code Ann. § 33-2-413 through exercise of the Department's power to set higher standards in the administration of the licensure program. See Tenn. Code Ann. § 33-2-404.

Please understand that our department (TDMHSAS) does not have the legal authority to force a mentally ill person to accept services, reside in a certain facility, or otherwise do anything against that person's wishes, except in very limited circumstances. Specifically, if the person meets certain legal standards, then they can be forced to receive involuntary treatment. The commitment process by which this is done is found in Title 33, Chapter 6, Part 3 (severe impairments), Part 4 (emergency treatment) and Part 5 (nonemergency treatment). These involuntary commitments require qualified professionals to make clinical findings that the individual is experiencing acute mental illness and poses a substantial likelihood of serious harm to themselves or others or are in danger of serious physical harm based upon their failure to provide for their own essential human needs. There are also statutory time limits on how long someone can be held for treatment and requirements for court review. If a person appears stable, able to take care of themselves, and appear not to be posing a threat of harm to themselves or others, TDMHSAS cannot intervene. Our Department gladly works with, and assists, interested parties in any way that we can to include providing each mentally ill individual with information regarding other housing options and assistance in securing that housing.

Department of Intellectual and Developmental Disabilities

DIDD's Reportable Event Management System

Reportable Event Management (REM) is one important component of an overall approach for ensuring the health, safety, individual freedom, and quality of life of people participating in home and community-based services (HCBS) and ICF/IID services. REM in CHOICES, ECF CHOICES, Katie Beckett, 1915(c) waiver, and ICF/IID programs involves a partnership between TennCare, the Department of Intellectual and Developmental Disabilities (DIDD), Managed Care Organizations (MCOs), Fiscal Employer Agents (FEAs) and providers of HCBS and/or ICF/IID services who all have a role in making REM an effective tool for ensuring the highest possible quality of life by honoring the self-determination of people receiving HCBS and ICF/IID services.

Consistent with expectations set forth in the federal Person-Centered Planning regulations, person-centered planning in CHOICES, ECF CHOICES, Katie Beckett, 1915(c) waiver, and ICF/IID programs is intended to identify and mitigate risk of harm, while not placing unnecessary restrictions on the freedom and choices of people supported; nor preventing opportunities for people to achieve increased independence and autonomy at home and as they participate fully in community life. This has important implications for REM.

Within CHOICES, ECF CHOICES, Katie Beckett, the 1915(c) waivers, and ICF/IID programs, the REM system is designed to:

1. Clarify Non-Reportable Events that providers must address internally through their own quality assurance and event management processes;
2. Define the Reportable Events that must be reported to DIDD and the MCO and the timeframes for reporting;

3. Ensure that provider agencies, their staff, MCO Support Coordinators, the FEA, and others are well informed of their responsibilities to identify events that are reportable;
4. Specify the types of Reportable Events that require investigation or review, by whom (DIDD or provider), the timeframes for such investigations or reviews, and how the person (and/or family and legal representative as appropriate), providers, and others are informed of the results of an investigation or review;
5. Define the processes for requesting a file review of a completed Class 1 Investigation Report, who may request a review, and timelines applicable to the review process; and
6. Ensure a collaborative process between providers, MCOs, and DIDD that identifies and defines trends in order to evaluate the nature, frequency, and circumstances of all Reportable

Events, in a manner that leads to actionable steps that are proactive in preventing or reducing similar occurrences.

In HCBS and ICF/IID programs, there are three (3) categories of Reportable Events: Tier 1, Tier 2, and Additional Reportable Events and Interventions. The type of Reportable Event dictates the reporting requirements and process that must be followed by the provider, MCO, FEA, and DIDD, as applicable. DIDD shall triage all allegations reported via the Abuse Hotline within two (2) business days (unless pending results of medical assessment, laboratory test, expert opinion, etc.) to determine the need for an investigation.

Tier 1 Reportable Events

Definition of Tier 1 Reportable Event

Tier 1 Reportable Event: The alleged wrongful conduct affecting the person by acts or omissions of abuse, neglect, exploitation, or misappropriation of money or property, that resulted in one or more of the following consequences to the person: death, serious injury, or physical harm; physical or sexual abuse; significant pain, intimidation or mental anguish that required medical intervention or loss of funds or property greater than $1,000 in value. Notice is given to the DIDD Abuse Hotline as soon as possible but within four (4) hours, and a typed report is submitted by the Event Management Coordinator (EMC) to the DIDD Event Management Unit at Central Office within one (1) business day. All Tier 1 events are investigated by the DIDD State Investigators.

Tier 2 Reportable Events

Definition of Tier 2 Reportable Events

Tier 2 Reportable Events: The alleged wrongful conduct affecting the person by acts or omissions of abuse, neglect, exploitation, or misappropriation of money or property, that resulted in one or more of the following consequences to the person: intimidation or mental anguish; probable risk of serious harm; loss of funds or property between $250 and $1,000 in value or prescription-controlled medications regardless of value; or, through supervision neglect harming a citizen in the community or engaging in criminal acts resulting in arrest and confinement. The person did not require medical treatment or intervention and is not at continued risk of serious harm. Tier 2events may be investigated by the DIDD State Investigators. Or certified Provider Investigators with the State's oversight.

Additional Reportable Events and Interventions
Additional reportable events and interventions, which are not related to abuse, neglect, or exploitation, shall also be reported to the DIDD Event Management Unit using the REF. The provider EMC or designee shall submit a REF to both DIDD and MCO within one (1) business day after the occurrence or discovery of occurrence of a reportable event or intervention. Providers shall be responsible for performing data collection and analysis for all reportable events and interventions.

Investigation Follow-up and Action Plan
DIDD and MCOs are responsible for reviewing investigation reports submitted by DIDD Investigators and Provider Investigators. DIDD Regional Office and the MCO shall determine the necessity for any follow-up review needed. The provider will complete the Action Plan for all substantiated investigations. The Action Plan shall address each Informational Findings and late reporting discovered as a means of provider self-improvement.

The Action Plan shall include the following information:
- The procedures that have been implemented to mitigate future risks to the person, including steps to prevent similar occurrences in the future;
- Verification that the substantiated perpetrator(s) was notified of the outcome of the investigation;
- A statement of what, if any, disciplinary action, training, reassignment, or any other remediation occurred as a result of the findings of the investigation; and
- A response to any informational findings contained in the investigation report.

Due Process
All provider substantiated staff will be eligible to utilize the due process system developed by DIDD. DIDD established the Office of Administrative Appeals (OAA) unit that provides due process opportunities for individuals with a Class 1 substantiation. Wrongful conduct of a Class 1 substantiation is generally serious enough to call into question whether the offender should be entrusted with the care of vulnerable persons. Substantiated individuals will have the right to request a file review, through which the substantiation could be upheld, modified, or overturned, and an opportunity to request a hearing before an Administrative Law Judge.

DIDD Licensure Jurisdiction to Investigate and Enter
Pursuant to DIDD Rule 0465-02-02-.13, a representative of DIDD, with or without giving notice, shall have the right to enter upon or into the premises of any facility or service providing intellectual and/or developmental disabilities or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. Additionally, the licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including but not limited to, the person supported, and/or to review all records of the facility or service.

"Licensee" is defined by DIDD Rule 0465-02-01-.01(41), as "the proprietorship, partnership, association, governmental agency, or corporation which provides a service under the licensure jurisdiction of the Department."

Pursuant to DIDD rule 0465-02-02-.18, the following facilities or services are excluded from the licensure jurisdiction of DIDD:

(a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of intellectual and/or developmental disability services.

(b) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of intellectual, mental, or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201, et. seq.

(c) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services, and that affirmatively states that its primary purpose is not the provision of intellectual and/or developmental disabilities services or personal support services.

Pursuant to T.C.A. § 33-2-416 and DIDD Rule 0465-02-02-.20, DIDD will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility.

Statutory Inspections

Pursuant to T. C. A. § 33-2-413, the department shall make at least one (1) unannounced life safety and environmental inspection of each licensed service or facility yearly. The department shall inspect for quality standards all licensees that contract with the department as part of its contract monitoring. The department shall inspect for quality standards all licensees that do not contract with the department. The department may deem a service or facility in compliance without inspection if the service or facility meets another government agency's certification or accreditation requirements provided for in rules of the department.

With or without giving notice, the department may enter the premises and inspect any applicant or licensee when a complaint is filed with the department against the applicant or licensee or when the department otherwise deems inspection in the interest of service recipients. Inspection may include review of physical plant, program, activities, and applicant or licensee records.

If the department finds noncompliance with life safety or food service standards relating to non-life threatening issues, the department shall refer the findings to the state or local agency responsible for life safety or food service inspection for re-inspection or review in accordance with life safety or food service standards. The department will accept the state or local agency's determination.

The department shall, to the extent practicable, coordinate life safety inspections to avoid duplication without good cause in the same calendar year by other government agencies that apply substantially the same standards.

Cease and Desist Order

Pursuant to T. C. A. § 33-2-417, if a commissioner finds that a service or facility is providing intellectual or developmental disability services, or personal support services without a license, the commissioner may, without prior notice, order the service or facility immediately to cease and desist from providing intellectual or developmental disability services, or personal support services. Before issuing a cease and desist order, the commissioner shall find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the service recipients of the service or facility; and consistent with the purposes fairly intended by this part.

The order shall state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the service recipients of the service or facility, and consistent with this part. The order shall provide notice to the respondent of the respondent's rights and responsibilities concerning review of the order.

The owner of the service or facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee under this subsection (c).

The owner or legal representative of the service or facility may request an informal conference before the commissioner or the commissioner's designee. The request shall be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or the commissioner's designee shall convene the requested informal conference within seven (7) days of the date of receipt of the request. The conference is informal, and the service or facility has the right to be represented by counsel at all stages of the informal conference.

If the respondent fails to request an informal conference under subdivision (c)(1), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The service or facility may obtain judicial review of this final order in the chancery court of Davidson County under the Uniform Administrative Procedures Act.

It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the service or facility, is a separate offense.

Semi-Independent Living Services:

Semi-Independent Living Services (SILS) shall mean services selected by the person supported that include training and assistance in managing money, preparing meals, shopping, personal appearance and hygiene, interpersonal and social skills building, and other activities needed to maintain and improve the capacity of an individual with an intellectual disability to live in the community, and which supports the person's independence and full integration into the community, ensures the person's choice and rights, and comports fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, except as supported by the individual's specific assessed need and set forth in the person-centered Individual Support Plan (ISP).

The service also includes oversight and assistance in managing self-administered medication and/or medication administration as permitted under Tennessee's Nurse Practice Act and performance of other non-complex health maintenance tasks, as permitted by State law.

The SILS provider shall oversee the health care needs of the person supported.

This service is appropriate for people who need intermittent or limited support to remain in their own home and do not require staff that lives on-site. However, access to emergency supports as needed from the provider on a 24/7 basis is an essential component of this residential service and is what differentiates it from Personal Assistance services.

Individuals receiving SILS may choose to receive services in a shared living arrangement with other persons who need differing levels of support, differing types of waiver services, or who participate in different HCBS programs, as permitted in state licensure law and regulation, as long as there is a willing, qualified provider who can safely meet the needs of each resident in the home. No more than 3 persons receiving services will be permitted per residence.

All individual goals and objectives, along with needed supports shall be established through the person-centered planning process and documented in the person-centered ISP and shall include opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources, as applicable based on the needs and preferences of the individual.

Supports shall be provided in a manner which ensures an individual's rights of privacy, dignity, respect and freedom from coercion and restraint; and which optimizes individual initiative, autonomy, and independence in making life choices.

The Circle of Support must consider the person's level of independence and safety prior to establishing a semi-independent living arrangement. Safety considerations must be reviewed at least annually (and more often should a change of needs or circumstances warrant). Consideration regarding the use of a Personal Emergency Response System should be given when appropriate.

The ISP must reflect the routine supports that will be provided by residential staff. The person may choose to live with one or two other persons supported and share expenses or to live alone as long as sufficient financial resources are available to do so.

Reimbursement for SILS shall not include the cost of maintenance of the dwelling. Residential expenses (e.g., phone, cable TV, food, rent) shall be apportioned between the person(s) supported and other residents in the home (if applicable).

A person who is receiving SILS shall not be eligible to receive Personal Assistance, Respite or Transportation as separate services. With the exception of transportation to and from medical

services covered through the Medicaid State Plan/TennCare Program, transportation shall be a component of SILS and shall be included in the reimbursement rate for such.

The SILS provider shall not own the person's place of residence or be a co-signer of a lease on the person's place of residence unless the provider signs a written agreement with the person that states that the person will not be required to move if the primary reason is because the person desires to change to a different provider.

The SILS provider shall not own, be owned by, or be affiliated with any entity that leases or rents a place of residence to a person supported if such entity requires, as a condition of renting or leasing, the person to move if the person desires to change to a different provider.

SILS shall not be provided in inpatient hospitals, nursing facilities, and Intermediate Care Facilities for individuals with Intellectual Disabilities (ICFs/IID). A family member(s) of the person supported shall not be reimbursed to provide SILS.

SILS shall not be provided in a home where a person supported lives with family members unless such family members are also persons receiving waiver services. Family member shall be interpreted to mean the mother, father, grandmother, grandfather, sister, brother, son, daughter, or spouse, whether the relationship is by blood, by marriage, or by adoption.

On a case-by-case basis, the DIDD Commissioner or designee may authorize SILS for a person supported who resides with his or her spouse and or minor children.

SILS shall not be provided out-of-state. A minimum of two face-to-face direct service visits in the home per week are required for each person receiving SILS. However, providers delivering this service are required to implement provisions for availability of provider staff on a 24-hour basis in case emergency supports are needed.

SILS providers are required to be licensed as Mental Retardation (i.e., Intellectual Disabilities) Semi-Independent Living Providers.

For individuals who are transitioning from a 24-hour residential waiver service supports into SILS and need additional hours of support during the transition period, providers will be reimbursed at a transition period rate, per the waiver max fee schedule, for a period of no more than 30 days from the date of transition.

For persons supported successfully transitioned from a 24-hour residential waiver service into Semi-Independent Living, a one-time per person "Transition to Independent Living Payment" will be made to the provider after the person supported has spent 6 consecutive months in SIL, so long as the person is still in SIL at the time of billing and is expected to continue living successfully in this setting. The "Transition to Independent Living Payment" will not count against a person's

individual cost neutrality cap but will be included in all federally required demonstrations of waiver cost neutrality.

Specify applicable (if any) limits on the amount, frequency, or duration of this service:
A person receiving Semi-Independent Living Services shall not be eligible to receive the Residential Special Needs Adjustment - Homebound or the Non-Residential Homebound Support Services.

License (specify):
Must be licensed by the Department of Intellectual and Developmental Disabilities (TCA Title 33 Chapter 2) as a Mental Retardation (i.e. Intellectual Disability) Semi-Independent Living Provider.

Other Standard (specify):
The provider must meet the general requirements for all waiver service providers:

1. All providers shall be at least 18 years of age.
2. Staff who have direct contact with or direct responsibility for the service recipient shall be able to effectively read, write, and communicate verbally in English and shall be able to read and understand instructions, perform record-keeping, and write reports.
3. Any waiver service provider who is responsible for transporting a service recipient shall ensure that the driver has a valid driver's license and automobile liability insurance.
4. Staff who have direct contact with or direct responsibility for the service recipient shall pass a criminal background check performed in accordance with a process approved by the Division of Intellectual Disabilities Services.
5. Staff who have direct contact with or direct responsibility for the service recipient shall not be listed in the Tennessee Department of Health Abuse Registry or the Tennessee Sexual Offender Registry.
6. Waiver service providers shall not have been excluded from participation in the Medicare or Medicaid programs.
7. All providers must comply with TennCare-approved policies, procedures, and rules for waiver service providers, including quality monitoring requirements.

Tennessee Bureau of Investigation - The Medicaid Fraud Control (MFCU) Division

The TBI Medicaid Fraud Control Division, is the state of Tennessee's Medicaid Fraud Control Unit certified by the United States Department of Health and Human Services Office of Inspector General. Our state authority arises under Tenn. Code Ann. § 71-5-2508 which in relevant part provides our authority as: "as regulated by federal law, the unit is authorized to investigate and refer for prosecution violations of all applicable laws pertaining to provider or vendor fraud and abuse in the administration of the Medicaid program, the provision of goods or services or the activities of providers of goods or services under the state Medicaid plan; Medicare fraud; and abuse or neglect in healthcare facilities receiving payments under the state Medicaid plan, such as board and care facilities as allowed by federal law."

Concurrent with our state law jurisdiction, the US HHS places guidelines on our investigations under 42 U.S.C.A. § 1396b(q) making them eligible for federal financial participation and list our responsibilities basically as:

1) Conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with (A) any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan

2) Reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan

3) The option to: review complaints of abuse or neglect of patients residing in board and care facilities and of patients who are receiving medical assistance under the State plan in a noninstitutional or other setting. Traditionally, the Medicaid Fraud Control Division has conducted criminal investigations in these settings.

Board and Care facilities are defined as; " a residential setting which receives payment (regardless of whether such payment is made under the State [Medicaid] plan) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

Criminal investigation of resident abuse, neglect, and exploitation occurring in unlicensed care homes falls under our purview due to these provisions of federal law. However, due to the state law jurisdictional limits of Tenn. Code Ann. § 71-5-2805 consultation with the appropriate District Attorney General precedes an investigation in board and care facilities and other non-institutional settings.

The State Fire Marshal's Office

The State Fire Marshal's Office houses the Codes Enforcement section which enforces statewide adopted fire and building construction safety codes and standards to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures, in accordance with state-wide minimum standards, pursuant to Tenn. Code Ann. 68-120-101. There are forty-five (45) exemption jurisdictions across the state that are authorized to perform independent plans reviews. As such, for those non-exempt counties, the State Fire Marshal's Office plays an important role in regulating unlicensed facilities

Generally, when the Fire Marshal's office receives a complaint within its jurisdiction, the Fire Marshal's office will send inspectors (electrical and/or building) to determine whether the property is in compliance. If the property has violations that are not life/safety issues, the Fire Marshal's Office will work with the property owners to remedy through a plan of corrective action, but the timeframe isn't urgent. If the property has violations that are life/safety issues—that could immediately result in injury, death or property damage—the Fire Marshal's Office will require a plan of corrective action much sooner, sometimes a few days. Some issues, like bolted doors or doors that do not open, are required to be fix immediately, while the other violations can be fixed at a later date. It's important to note that while the State Fire Marshal's Office requires a plan quickly, the Offices doesn't always require the work to be completed immediately. There are instances where the Office can allow equivalencies (fire watch) or other alternatives (reduced population) to allow continued use of the building until the corrections can be made.

If the property owner doesn't submit an approved POCA or doesn't comply with the POCA, the Office can issue an Order of Remedy or Removal pursuant to TCA 68-102-117 and require the violations to be remedied or removed immediately or within a timeframe specified in the Order. Depending on the violation, disconnection of electrical service may occur if the owner does not comply. The Fire Marshal's Office can also refer the Order to the Attorney General's Office for additional enforcement through the court system, but the Office is usually able to obtain compliance before then.

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