

Personal Board and Care Homes: A Hidden Population in Anne Arundel County

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CERTIFICATION STATEMENT

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writings of another.

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Abstract

The research problem was that Anne Arundel County was unaware of the scope of unlicensed personal board and care homes adversely affecting the County's ability to ensure preparedness for occupants at risk for a natural or man-made disaster. The purpose was to assess the scope of unlicensed personal board and care homes in the County. The descriptive research method was employed to answer the following questions: What state and/or local regulations define and govern personal board and care homes in Anne Arundel County? What is the scope of unlicensed personal board and care homes in Anne Arundel County? What resources are available in Anne Arundel County to mitigate the effects of a natural or man-made disaster impacting the residents and staff of personal board and care homes? A comprehensive literature review was completed, followed by extensive communication with representatives at the federal, state, and local level. Maryland's laws governing congregate living were compared and contrasted with other states. Questionnaires were distributed to public safety officers and responses integrated into a spreadsheet of facilities identified for future research. GIS mapping was used to create a visual representation of the scope of the problem. The results indicated that the population of senior citizens will continue to grow in the future and that the scope of unlicensed personal board and care homes in Anne Arundel County remains largely hidden from view, despite research. Such opacity adversely impacts the County's ability to ensure the safety of this identified at-risk population despite robust comprehensive emergency management planning and practice. Recommendations included additional research; enhanced coordination and cooperation among county agencies; review of model legislation enacted in other jurisdictions; awareness education for first responders in identifying at-risk individuals; and stronger advocacy for risk reduction strategies designed to prevent large loss of life fires.

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INTRODUCTION

On April 28, 2009, at approximately 3:30 pm, a fire occurred at a residential board and care facility located in Anne Arundel County, Maryland. The fire originated on the exterior of the home, spread vertically along a wall and communicated into the attic space (Kisser & Clawson, 2009). A two-alarm response was required to control the fire which caused over \$400,000.00 in damage and displaced four elderly residents, several of whom required assistance in removal from the single-family dwelling due to various infirmities. Several civilians observed the fire from the street, alerted the residents and staff (who were both unaware of the fire and initially doubted the civilians), and were able to assist in rescue efforts (Kisser & Clawson, 2009). The cause of the fire was most likely attributable to discarded smoking materials (Kisser & Clawson, 2009). As the incident commander, this incident brought into sharper focus the challenge associated with identifying personal board and care homes in Anne Arundel County.

Anne Arundel County has an extensive array of senior citizen housing ranging from independent living communities through skilled nursing care. Under applicable state and local laws, assisted living centers and skilled nursing centers are robustly regulated and regularly inspected with a clearly defined mechanism for residents to have their interests protected by an ombudsman. Conversely, personal board and care homes are not governed, inspected or controlled by any state or local agency or regulation; as a result, the residents are vulnerable, living without a safety net of oversight or advocacy.

The research problem is that Anne Arundel County is unaware of the scope of unlicensed personal board and care homes adversely affecting the County's ability to ensure preparedness for occupants at risk for a natural or man-made disaster. The purpose of this research effort is to assess the scope of unlicensed personal board and care homes in the County. Although fire is the

most common man-made disaster, Anne Arundel County is demonstrably vulnerable to natural disasters including hurricanes, flooding, and other severe weather events including Derechos. The descriptive research method will be used to answer the following questions: What state and/or local regulations define and govern personal board and care homes in Anne Arundel County? What is the scope of unlicensed personal board and care homes in Anne Arundel County? What resources are available in Anne Arundel County to mitigate the effects of a natural or man-made disaster impacting the residents and staff of personal board and care homes?

The first question will be addressed through research of existing state and local regulations that define and control the existence of personal board and care homes. A comparison between Maryland and other states will be completed. The second question will be addressed through a combination of questionnaires to Fire/EMS and police officials to locate and identify unlicensed personal board and care housing facilities. The Department of Aging and Disabilities will also be contacted for assistance, as well as the Department of Health and Department of Social Services. The researcher will also contact placement agencies who play a role in finding housing for clients. The third question will be addressed through a review of existing resources through the Anne Arundel County Office of Emergency Management, Office of Aging and Disabilities, Department of Social Services and cooperating agencies including the Red Cross. Preparedness efforts will be compared to nationally-recognized best practices outlined by the Centers for Disease Control.

BACKGROUND AND SIGNIFICANCE

Anne Arundel County is the 112th (of 3143) most populace county in the United States with a 2013 estimated population of 555,743 residents.

(<http://quickfacts.census.gov/qfd/states/24/24003.html>). Approximately 69,872 (12.7%) residents are age 65 and older, with an additional 28.3% (157,275) between the ages of 45 and 64 (<http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>). Maryland's Department of Aging reports that the state's 65 and older population is expected to increase more than 100% between 2005 and 2030, while the general population in the state is expected to increase by 21% over the same period (Hull, 2009). In Anne Arundel County, the increase is predicted to be even higher at 111% (Maryland Department of Aging, 2005).

The County operates under a Charter form of government in which a legislative branch, known as the County Council, enacts laws and passes budgets presented by the County Executive who leads the executive branch. The County Executive and County Council are elected in a representative democratic system (<http://www.aacounty.org/majortopics/government.cfm>). Major departments, including the Fire Department (AACOFD), Office of Emergency Management (OEM), Department of Aging and Disabilities, and Inspections and Permits (I&P) fall under the office of the County Executive. The County Department of Health is a quasi-county agency with joint responsibilities to the State Department of Health and Mental Hygiene (DHMH), which has the authority to promulgate and enforce regulations pertaining to license-required Assisted Living Facilities (ALF) and Skilled Nursing Facilities (Title 10 Department of Health and Mental Hygiene, 2009).

In 2009, the Department of Health and Mental Hygiene Office of Health Care Quality issued Transmittal AL-09-05 after determining,

“...there are homes seeking licensure that may not require state approval as assisted living programs. This observation is based on years of on-site observation by nurse surveyors and other health professionals that have identified resident care needs below that which require our approval and licensure, as set forth in Maryland law and the definition of “assisted living program.” (Kronmiller, 2009, p. 1)

The transmittal continued by indicating, “a license is *not required* (emphasis added) for a provider who serves exclusively individuals who are dependent on the provider only for room, board, and the control and security of their medication.”(Kronmiller, 2009, p. 1) This action resulted in certain personal board and care facilities located in Maryland to become unregulated if, in the determination of the owner of the facility, they met the definition provided in the transmittal. It is not known how many facilities determined that they no longer required regulation or how many have been established since the transmittal was promulgated. Although it remains the responsibility of the owner to seek a license if even one (1) resident’s condition/needs changes to meet the requirements set forth in Article 19-1801 of the Maryland Code and Title 10, the lack of oversight and inspection undermines the effectiveness of applicable regulations intended to protect such residents. It is postulated that the 2009 interpretation of applicable regulations identified in Transmittal AL-09-05 contributed to the environment prompting this research effort. It is important to note that unlicensed personal board and care homes are operated both legally and illegally and that residents are at risk, regardless of the circumstances under which the homes exist.

Adding to the urgency of this research effort is the incontestable state of changing demographics in Anne Arundel County. The United States is entering a time where the number of senior citizens will outpace all other age brackets. Between 1946 and 1964, the United States saw the greatest spike in births in the history of the country, known as the “baby boomers” (CNN, 2013). By December 29, 2029, the last of the generation will turn 65. The 65+ population segment is projected to double to 71.5 million by 2030 and grow to 86.7 million by 2050 (CNN, 2013, p. 1). As indicated, Anne Arundel County is predicted to see a greater than 100% increase in senior citizens over the next twenty years.

In Anne Arundel County, 3.8%, or approximately 21,000 individuals, are 65 or older and live below the federal poverty level

(http://annearundel.md.networkofcare.org/mh/indicator_detail.aspx?id=pvy220&c=2). This data represents the magnitude of a population that is especially endangered due to increased physical limitations, medical needs, social isolation, and financial insecurity (http://annearundel.md.networkofcare.org/mh/indicator_detail.aspx?id=pvy220&c=2).

Senior citizens as a population are disproportionately susceptible to the effects of man-made and natural disasters. Recognizing this, the State amended Title 10 in 2009 in an effort to ameliorate this identified hazard. License-required facilities are mandated to establish and maintain comprehensive plans for a wide array of man-made and natural disasters (Title 10 Department of Health and Mental Hygiene, 2009). Facilities must develop and maintain an emergency and disaster plan, including procedures for:

- Evacuation, transportation or shelter-in-place;
- Notifying families of actions that may be taken to keep residents safe, including a summary of emergency provisions and possible evacuation procedures;
- Continuity of operations (72-hours of necessary supplies present);
- Locating and identifying residents during displacement, including sending a brief medical fact sheet with each resident;
- Establishing an emergency planning liaison and providing that contact information to the local emergency management agency (Kronmiller, 2009, p. 5).

The regulations may have had the unintended consequence of simultaneously strengthening the protections for residents of license-required ALF's while at the same time exposing an unquantified segment of the senior citizen population living in residential board and care homes to a greater degree of vulnerability by not mandating identical requirements for the owners / operators of personal board and care homes.

Anne Arundel County has a well-defined history of confronting, and being affected by, natural and man-made disasters. The County's Office of Emergency Management is located in Glen Burnie, Maryland with an interoperable Emergency Operations Center (EOC) which also houses a back-up 9-1-1 center for police, fire and EMS as one component of a comprehensive Emergency Operations Plan (EOP) (<http://www.aacounty.org/OEM/>). The agency is staffed full-time by a Director (Police Captain), Operations Officer (Fire Division Chief), administrative assistant (grant manager); and several planners and exercise coordinators, in addition to a GIS Specialist, and an Information Technology Specialist. During times of declared emergencies, the EOC is staffed by representatives of cooperating and coordinating agencies internal and external to the County. The EOC serves as the main support and coordinating agency for man-made and natural disasters (<http://www.aacounty.org/OEM/>). The Director reports to the Fire Chief during routine activities and to the County Executive during declared emergencies.

Examples of disasters abound. Beyond fires, as described in the introduction, the County has extensive empirical evidence of its vulnerability to natural disasters. The National Weather Service (NWS) reports between 1888 and 2000, 37 tornados have touched down in Anne Arundel county resulting in 33 injuries at a direct damage cost of nearly \$2 Million (http://www.erh.noaa.gov/lwx/Historic_Events/MDcnty-tornado-events.htm).

Hurricanes are a primary cause of natural disasters in the County. Since 1950 (when the NWS began naming storms) no fewer than 15 hurricanes and at least two tropical storms have directly affected the County. Because of its location on the Chesapeake Bay, coupled with its extensive exposure along 533 liner miles of coastline, Anne Arundel County is uniquely vulnerable to such weather events (http://www.erh.noaa.gov/lwx/Historic_Events/hurricane_history/index.htm). For example, in

September 2003, Hurricane Isabel struck the Atlantic seaboard, making landfall in North Carolina. The size of the storm was so extensive, that it pushed a wall of water up into the Chesapeake Bay, resulting in extensive damage. The After Action Report (AAR) concluded,

“Anne Arundel County, Maryland was one of the hardest hit in the state. It’s geographic location to the west of the Chesapeake Bay (and to the right of the storm track) and its 500+ miles of shore-line made the county particularly susceptible. The county sustained one of the highest power outages, peaking at 196,000 out of 230,000 customers Friday morning. Vital county infrastructure and several critical facilities were without electric power, requiring backup power for several days. These included water and waste water treatment plants, sewer pumping stations, senior and assisted living facilities, 60+ schools, police and fire stations, as well as the Office of Emergency Managements’ Emergency Operations Center (EOC). Storm surge, heavy rainfall, high winds, and downed trees and wires resulted in 150 road closures. Fifteen businesses and over 570 homes were declared uninhabitable from major flood damage. Approximately 100 structural collapses occurred throughout the county” (Martin, 2008, p. 8).

Today, hurricanes remain a constant threat to the residents of Anne Arundel County.

On June 29, 2012, Anne Arundel County experienced a Derecho. In this case, a storm producing straight-line winds traveled more than 600 miles in 10 hours, resulting in 4.2 Million people without power for as long as 7 to 10 days (Department of Energy [DOE], 2012).

“The winds generated by this system were intense, with several measured gusts exceeding 80 mph. Unfortunately, 13 people were killed by the extreme winds, mainly by falling trees. An estimated 4 million customers lost power for up to a week. The region impacted by the Derecho was also in the midst of a heat wave. The heat, coupled with the loss of power, led to a life-threatening situation. Heat claimed 34 lives in areas without power following the Derecho” (*Service Assessment: The Historic Derecho of June 29, 2012*, 2013, p. iv)

The event resulted in one fatality in Anne Arundel County (*Service Assessment: The Historic Derecho of June 29, 2012*, 2013). Although feedback from those affected by the storm seemed to reflect a general lack of awareness about the type of weather phenomenon, it would be inappropriate to dismiss it as a “one-time” event. According to the National Oceanic Atmospheric Administration (NOAA), Derechos should be expected to strike the mid-Atlantic

region, including Maryland, every two to four years (National Weather Service NOAA Website, 2014).

In addition to the instant examples, Anne Arundel OEM identifies other hazards that pose a threat to residents of the County based on probabilistic assessments and historical data. These include: coastal and flash flooding, drought, earthquake, extreme heat, tropical storm, public health emergency, radiological event, riverine flooding, severe storm or hailstorm, severe winter storm, terrorism, and wildfire (<http://www.aacounty.org/OEM/>). Appendix A provides a map of Anne Arundel County, highlighting its location on the Chesapeake Bay and its relative location to major urban centers including Baltimore and Washington D.C. (Blair, 2014)

The AACOFD and OEM share a common mission to prevent where possible, prepare, and ameliorate the impact of man-made and natural disasters for its residents. This research effort supports that mission and is consistent with the strategic goals of the United States Fire Administration and the Federal Emergency Management Agency. Strategic Goal #1 states, “Reduce risk at the local level through prevention and mitigation. Every disaster or emergency is local and personal, and being prepared is both an individual and collective responsibility” (Federal Emergency Management Agency [FEMA], 2010, p. 14). Although Anne Arundel County has committed tens of millions of dollars to this effort on the local level, and has a demonstrated history of resiliency in recovering from events of local, regional and national significance, the fact remains there are unidentified populations living in the County that have not been reached by prevention and preparedness efforts. An on-going responsibility is to ensure that all residents, particularly those at greatest risk (including the elderly), are identified and protected.

Strategic Goal #3 states, “Improve the fire and emergency services’ capability for response to and recovery from all hazards. Every Federally-declared disaster began as a local response. Whenever there is a disaster—every response begins with a call to the local 9-1-1-center” (FEMA, 2010, p. 14). One of the primary goals since the Derecho in 2012 (which caused widespread power outages for 7-10 days at the height of a heat wave) has been to ensure an uninterrupted communication link with ALF’s. The Maryland Emergency Management Agency deployed the Central Maryland Type III- All Hazards Incident Management Team (IMT) to its EOC to assist in the assessment of these at-risk populations during the 2012 storm. A blind spot exists which interferes with the County’s ability to meet its obligations and as of this writing, the first encounter with a personal board and care home experiencing the effects of an extreme weather event may come in the form of 9-1-1 call reporting multiple fatalities found days after an event.

Finally, Strategic Goal #4, “Improve the fire and emergency services’ professional status. As training and education standards evolve and demand greater academic rigor, the NFA in conjunction with our State, local, and tribal partners, will promote a nationally-accepted competency-based system of professional development” (FEMA, 2010, p. 14), points to the need for research-based strategies to enhance strengths and limit or eliminate weaknesses. Fire and Emergency Services personnel are frequently in the most advantageous position to positively impact a community before disaster strikes. It is the routine call for service that allows responders to find an at-risk population and interrupt the chain of events that could lead to a negative outcome during a disaster. Research that quantifies a problem and provides strategies for resolution is critical to dispassionately driving change with cooperating agencies and policy makers.

LITERATURE REVIEW

A review of literature on the subject of personal board and care homes finds a complex and conflicting set of challenges beginning with the use of terms. A 1995 report from the Department of Health and Human Services identified that board and care homes can also be known as personal care homes; rest homes; domiciliary care homes; residential care homes; homes for the aged; and assisted living facilities (Hawes et al., 1995, p. 1). The authors identify early in the study that the terms are not universally agreed upon or understood, are frequently used interchangeably, and that there is limited consistent information available about them (Hawes et al., 1995). Further compounding the problem of assessing the scope of board and care homes was that in 1995, there were at least as many unlicensed board and care homes as licensed ones, with a combined residential population as high as one million (Hawes et al., 1995).

Robert Newcomer, PhD, a professor at the University of California shared the same belief in his review of the challenges associated with identifying and classifying facilities. “Other segments of the long term care system (e.g., assisted living, board & care, residential care) are much less well understood, and without population surveys or administrative data systems that facilitate community, state, or national level monitoring of resident populations or service supply” (Newcomer, p. 2). Dr. Newcomer testified before Congress in 1997 and identified that, at the time, approximately one million individuals lived in nursing homes with an additional half million living in licensed ALF’s and at least the same number living in unlicensed ALF’s (*Newcomer testimony to Congress, 1997*). He continued,

“In spite of the public policy concerns about the quality of residential care, and the seemingly rapid evolution of state policy and industry practices, relatively little is known about who is being served by RCFs within specific states and market areas ... One reason for the absence of information is that the licensing, regulation, quality assurance, and financing of this industry remains largely outside the established management systems for long term care” (*Newcomer testimony to Congress, 1997*).

As recently as 2011, despite extensive efforts to improve standardization across the industry of ALF's, there continue to be challenges. The National Center for Health Statistics reports that residential care facilities (RCF's), including assisted living facilities and personal care homes, are not federally regulated; that state approaches to RCF's vary widely; and that previous estimates on the size of the RCF community varied depending on the definition employed in the survey (Park-Lee et al., 2011).

Catherine Hawes, Director of the Program on Aging and Long-Term Care Policy, in an interview to the Public Broadcasting System (PBS) highlighted the challenges of defining the ALF system in 2012:

“... When we were trying to figure out what assisted living is or was, I had this image that it was apartment-style buildings where people had a lot of independence, and they were kind of [like] *Driving Miss Daisy*. They didn't need a lot of assistance. They just needed a nice place to live that was safe. Someone would help them with meals and transportation, and that was all. So I had this image of assisted living, and then we did the first national study, and of course that wasn't what assisted living was. We came up with a definition that showed there were basically four different types, but there are 20 different names across the country for assisted living. Even within states there are different names for what might be called assisted living, and none of them mean exactly the same thing” (Public Broadcasting System [PBS], 2012, p. 1).

There are a myriad of issues associated with ALF's beyond the most basic attempt to establish a cogent definition that identifies the place of personal board and care homes in the lexicon of housing for seniors. Hawes outlined several challenges, including the most dangerous one: a profit-driven system designed to ensure maximum occupancy (PBS, 2012). ALF's designed or permitted to accommodate completely independent senior citizens do not transfer residents to more skilled facilities when their underlying medical conditions warrant such action. As a result, ALF's are increasingly caring for higher acuity patients with more complex medical conditions for longer period of times than they should (PBS, 2012). Unlicensed owners / providers are

working outside any regulation / inspection model, placing their residents at risk for a catastrophe. Often, the caregivers are not bad people ~ they care deeply for the residents of their facilities and it is their compassion that belies the risks that families are placing their seniors in, coupled with an economic challenge to pay for higher level services (PBS, 2012). It is reasonable to expect that the acuity of patients found in unlicensed ALF's is equal to the acuity level of patients found in licensed facilities (PBS, 2012).

A 2010 policy brief by the American Association of Retired Persons (AARP) Public Policy Institute confirmed similar findings. In its report, it found that through the mid 1990's the most common term used to define aggregate living for seniors was "board and care", but that today the term "Assisted Living" has become the umbrella term covering a wide array of settings, divergent by state and without federal oversight (Mollica, Houser, & Ujvari, 2010).

In 2004, Golant indicated that the assisted living facility (ALF) is the fastest-growing, non-institutional long-term care alternative for frail older persons in the United States (Golant, 2004). Golant completed a review of six studies, based on data provided by the administrators of ALF's and found differing definitions, resulting in dissimilar populations in ALFs, and findings based on disparate indicators. He continued, "This is, however, an extraordinarily diverse shelter and care alternative, and very frail older persons with serious chronic health problems can be found in ALFs" (Golant, 2004, para. 3). Golant (2004) concluded that researchers must conduct more carefully executed studies with replicable methodologies that produce unbiased and generalized findings. His research underscored the relatively limited body of literature available on the subject of ALF's.

Noelker and Harel (2001) cited numerous researchers who had concluded that a fundamental lack of federal and state planning has contributed to the patchwork of long-term

care environments in existence. "...it has evolved haphazardly subject to changing political, economic, governmental, and market forces. Although billions have been spent on it and the amount continues to increase, there is widespread agreement that its quality has continued to be compromised by a variety of factors," (Noelker & Harel, 2001, p. 5). They continue by citing several contributory reasons including a lack of cohesive regulation, effective lobbying efforts, inadequate access, and limited reimbursement (Noelker & Harel, 2001).

Following up on the 1995 study, Hawes and Kimbell identified in 2009 that, "As many as 20 states allowed some facilities with more than two beds to operate without a license," and that, "RCF's (Residential Care Facilities) have little incentive to become licensed, particularly if there were an additional cost for staffing or fire safety to become licensed" (Hawes & Kimball, 2009, p. 38). Their report also cited numerous underlying causes for the existence and expansion of unlicensed board and care facilities including regulatory demands to comply with staffing levels, fire codes, and the American with Disabilities act (Hawes & Kimball, 2009). Additionally, their report highlighted the problem of abuse in such facilities particularly in instances where vulnerable senior citizens are co-habiting with mentally ill adults who have extreme difficulty finding housing in the aftermath of many states' decentralization and closure of mental health resident facilities for chronically ill individuals (Hawes & Kimball, 2009).

"Residential care facilities (RCF) are the most common long-term care setting outside of nursing homes and the most rapidly expanding form of senior housing. Such settings house as many as one million frail elders and persons with disabilities. In addition, there are a large but unknown number of unlicensed facilities housing the poorest elders and people with mental illness. RCF residents are vulnerable to mistreatment, including abuse and neglect for several reasons. These include the prevalence of physical frailty, cognitive impairment, and mental illness among residents; concerns about whether RCFs are capable of meeting the needs of the heavier care residents as a result of their low staffing levels and inadequate staff training; and growing recognition of the limited capacity of the regulatory systems responsible for assuring quality and protecting elders from abuse and neglect." (Hawes & Kimball, 2009, p. 1)

As delineated, a review of literature on this subject finds a fundamental lack of continuity in theory and in practice.

Regardless of the specific definition employed, the residents of congregate living characterized in personal board and care homes are at-risk for man-made and natural disasters. Examples abound: a 2012 National Fire Protection Association study of structure fires in residential board and care facilities found that between 2006 and 2010, an average of 1,920 structure fires were reported responsible for 10 deaths, 61 civilian injuries and \$8 million in direct property damage, *per year* (emphasis added) (Evarts, 2012). This translates into approximately 9,600 structure fires, claiming 50 lives, injuring over 300 civilians at a cost of \$40 million in direct property losses during the study period. The report drew data from two main sources: the National Fire Incident Reporting System (NFIRS) and the NFPA annual fire department experience survey. Both the NFIRS system and NFPA report are voluntary and the reliability of the data is limited by the knowledge of the reporter in using the data instruments. This does not mean that the data is invalid; only that there are inherent limitations to the reporting programs. The report listed five main causes of fire in such facilities in descending order of frequency including cooking equipment (80%), smoking materials (4%), intentional (4%), clothes dryer or washer (3%) and heating equipment (3%) (Evarts, 2012, p. 2). The report concluded that although most fires were small (89%) limited to the area of origin, the risk to loss of life was disproportionate based on the occupancy type and residents (Evarts, 2012).

Prior to this study, other incidents had already claimed numerous lives including:

- September 19, 1990, Bessemer, AL: an early morning fire claimed four lives in a residential board and care facility. Fortunately, a 16-year old resident was alerted to the fire and was able to rescue nine occupants. Tragically, although equipped

with residential sprinklers, the system was improperly designed and supported resulting in inadequate performance (National Fire Protection Association [NFPA], 1990).

- March 4, 1991, Colorado Springs, CO: nine elderly residents of Crystal Springs Estate (a residential board and care facility home) died in a fire which originated in the attic space of the single-story masonry and wood structure. The home was not equipped with sprinklers. The fire also injured eight residents and five firefighters (National Fire Protection Association [NFPA], 1991).
- May 13, 1997, Harvey's Lake, PA: a fire occurred in a single family dwelling being used as a residential board and care facility. The fire started on the screened-in porch likely caused by discarded smoking materials. One staff member and 21 residents were in the building at the time of the fire. The occupants ranged in age from 58 to 99 with varying medical needs and mental capacities. The fire claimed 10 occupant lives (National Fire Protection Association [NFPA], 1997).
- April 27, 1998, Arlington, WA: a fire occurred in a residential board and care facility which claimed the lives of 8 of the 32 residents. The home was not equipped with sprinklers (National Fire Protection Association [NFPA], 1998).

In addition to fire, which is the most common cause of loss of life in residential board and care homes, natural disasters pose a genuine risk to residents based upon their age, cognitive impairment, and lack of connectivity to jurisdictional resources. This is confirmed by the Royal Geographical Society when it observed that the elderly are often the most neglected in a natural disaster despite having been identified as being particularly at-risk (Royal Geographical Society,

2011). “Disasters are triggered by external hazards, but they also stem from vulnerability; people being in the wrong place without protection. It is therefore vital that information extends to communities to help them adopt protective actions and engage people living outside of the early warning systems. This is commonly known as 'the last mile' which means that warnings often don't reach those who need them most,” (Royal Geographical Society, 2011, p. 1).

In Hurricane Katrina, 71% of those who died were age 60 and older, pointing to the lack of planning for evacuating elderly residents (Helpage USA, 2013). Despite the fact that skilled nursing facilities are federally regulated and supported by federal funding under a wide array of programs, the Katrina disaster highlighted the weaknesses of the system when 78 elderly residents were found dead in their beds after the storm (Hyer, Brown, Polivka-West, & Berman, 2010). Facilities were abandoned by their caregivers and employees (Center for Disease Control [CDC], n.d.). This construct was repeated in 2012 during Hurricane Sandy when nearly 100 people died, nearly 50% of who were 65 or older (“Mapping Hurricane Sandy’s Deadly Toll,” 2012).

The effect of natural disasters on elderly persons living in personal board and care homes is compounded by a lack of regulation. The CDC noted in 2007 that the effects of hurricanes along the Gulf Coast in 2005, 2006, and 2007 were generally un-reportable because no one had the regulatory responsibility to track the residents in such facilities (Center for Disease Control [CDC], n.d., p. 12). The assumption that elderly will be protected by their caregivers is predicated on the belief that the caregivers know what to do when disaster strikes. This notion is widespread among individuals with elderly family members in such settings (CDC, n.d.). Unfortunately, experience and study have found the contrary, as outlined above.

Finally, a 2006 research effort in Alleghany County, PA found, “The elderly populations that live in personal care homes depend on the employees that are caring for them to be educated and trained to respond during an emergency. The elderly populations that live in personal care homes have a higher vulnerability to disasters due to lack of preparedness education and training of residents and staff. Only a small amount of research has been done in regards to this topic,” (Hussar, 2006, p. xi).

PROCEDURES

The research effort for this paper began with attendance of the 3rd year Executive Fire Officer program, *Executive Analysis of Fire Service Operations in Emergency Management*, at the National Fire Academy July 22 – August 2, 2013. During the two-week course, extensive time was spent in the Academy’s Learning Resource Center (LRC) reviewing similar subject Applied Research Papers (ARP) with specific attention to the bibliographies of prior research efforts to form the basis of a literature review. Copies of bibliographies were obtained to be referenced later in the research effort.

During the two-week period, a problem statement, purpose statement and research questions were developed. Fellow class participants were asked to review the language and wording in each in an effort to challenge the researcher to provide clarity and accuracy. The proposed topic was also shared with the course instructors, Chief Phil McLaughlin (ret.) of the Philadelphia Fire Department and Chief Allen Thomason (ret.) to ensure that the subject was consistent with the intent of the course including sufficient linkages to the goals and objectives of the program.

Upon returning from the NFA, the researcher contacted the assigned ARP evaluator and submitted the requisite ARP proposal which was reviewed, commented upon, and approved.

Additional resources were provided by the evaluator including extensive reference materials for effective research. The researcher recommends that this body of information be made available to all EFO candidates, irrespective of the specific course or year in the program.

On August 23, 2013, the researcher interviewed the Anne Arundel County Ombudsman for the Office of Aging, Ms. Sharlene Liberto, and the County Department of Aging housing officer, Mr. Mike Banscher. The interview took place in the Office of Aging and lasted approximately one hour. During the interview, both subjects provided contacts at the Department of Social Services, as well as representatives from placement agencies involved in working with senior citizens. The researcher also obtained the 2009 Transmittal provided to the County Office of Aging by the State of Maryland Department of Health and Mental Hygiene outlining the criteria for determining license-required facilities.

Simultaneously, the researcher attempted to contact the State Department of Health and Mental Hygiene, Office of Health Care Quality which authored and communicated the transmittal in 2009. The researcher was eventually able to speak with Mr. Sean Settles from the Office of Health Care Quality who provided background and contextual information (described in the next section).

A significant volume of research was conducted via the internet. Both Google and Google Scholar were employed as search engines for keywords including: “personal board and care” and “regulations,” “vulnerability” and “senior citizens,” “elderly” and “natural disasters,” “fires in personal board and care homes,” and specific events including Hurricane Katrina and Sandy. Census data from the US Census, coupled with information from the County Office of Economic Development and Office of Planning and Zoning, formed the basis for demographic data specific to Anne Arundel County. The researcher was able to find extensive

information available from the CDC, HHS, DHS, and other federally-sponsored research efforts. It should be noted that a considerable amount of information identified on Google Scholar was only available for purchase and subscription, which could pose a limiting factor to researchers. Nonetheless, the site was valuable in identifying researchers and their contact information. Individuals following this research model are encouraged to contact subject matter experts identified in this manner. In the course of conducting this effort, Dr. Catherine Hawes was identified as a primary researcher in the area of at-risk elderly. Dr. Hawes is a researcher at the Texas A&M University School of Public Health. Dr. Hawes was contacted via email and responded immediately, providing both information germane to the research and additional contacts to support the research effort, including Dr. Darcy McMaughan and Ms. Emily Rosenoff of the US Department of Health and Human Services.

Dr. McMaughan was interviewed via telephone on April 4, 2014. Dr. McMaughan is a Professor and Health Services researcher at Texas A&M University and has studied the problem of unlicensed board and care homes in the United States extensively. The results of her interview are provided later in the paper. Dr. McMaughan also provided a series of bibliographies from previous research efforts, as well as media information gathered on the research subject. These documents were transmitted electronically and their contents were reviewed, explored via the internet, and referenced throughout the paper. Dr. McMaughan provided an introduction to Officer Doug Anders of the Houston Police Department who has been working on the same topic. Officer Anders was contacted and provided electronic copies of presentations and supporting documentation used to create legislative solutions in Houston, TX.

Concurrently, the researcher contacted and subsequently interviewed Emily Rosenoff and Cheryl Levine of the US Department of Health and Human Services. On April 7, 2014, the

researcher traveled to Washington, D.C. and met with Ms. Rosenoff in her office. Dr. Levine joined the interview via teleconference. Ms. Rosenoff is a researcher in the office of the Assistant Secretary for Planning and Evaluation and Dr. Levine works in the office of the Assistant Secretary for Preparedness and Response. Both work in research offices designed to provide the Secretary of Health and Human Services with information designed to guide policy priorities on a federal level. Ms. Rosenoff and Dr. Levine both provided invaluable information concerning the scope of the challenges associated with identifying personal board and care homes in the United States and confirmed the vulnerability of the populations served.

Ms. Rosenoff provided contact information for Ms. Becky Kurtz, Director of the National Ombudsman program for the Office of Aging at HHS. Ms. Kurtz was interviewed via telephone and provided perspective on the issue of personal board and care homes in the United States.

Dr. Levine discussed geo-coding of certain types of Medicaid-funded housing units in the US available through the US Housing and Urban Development (HUD) and a contact was made at that office through Dr. Levine. Dr. Levine spoke about Section 202 and Section 811 housing funding; the former delineated for older adults and the latter delineated for adults with disabilities. Such geo-coding is difficult to navigate on the public website available but direct contact through networking yielded positive results.

In answering the first question: What state and/or local regulations define and govern personal board and care homes in Anne Arundel County, the researcher compiled interview data provided from the AACOFD FMO, reviewed applicable sections on the Maryland Fire Code, Code of Maryland Regulations (COMAR) Title 10 defining and controlling Assisted Living Facilities, and the AACO Fire Code. The researcher compared and contrasted Maryland's regulations with those of other states, available through data found via internet search and

interviews with subject matter experts. On March 18, 2014, the researcher met with representatives from the AACOFD Fire Marshal Office at 2660 Riva Road Annapolis, Maryland. Interviewees included Captain Wes Clark, Lieutenant Frank Fennell, and Lieutenant Dave Wroten, all of the Fire Prevention Division. All three had previously responded to the questionnaire and provided comprehensive information relating to the first question of the ARP. The Fire Marshal Office also maintains a database of all inspections conducted at any type of facility and that database was made available to the researcher in EXCEL format allowing for data review and analysis. In addition, Captain Clark provided extensive information in the form of legal opinions concerning the application of the fire prevention code to personal board and care homes including the Federal Fair Housing Amendments Act (FHAA) which was found to impact the ability of jurisdictions to regulate, inspect, and investigate such facilities. The researcher also met on that date with the Commander of the Fire Investigation Unit, Captain Robert Howarth, who provided a complete Fire Investigation Report of the personal board and care home incident that occurred on April 28, 2009.

On March 29, 2014, the researcher contacted Ms. Mary Marchone, Training Specialist in the Leadership and Fire Risk Reduction Section at the NFA. Ms. Marchone had previously served with the Montgomery County, MD Fire Department (MCDFRS) in their Fire Prevention Office and is a valuable asset in research efforts. The researcher strongly encourages other researchers to contact Ms. Marchone when engaged in research for community risk reduction and emergency management. Ms. Marchone provided the name and contact information for Mr. Mike Donahue, retired Section Chief for the MCDFRS Fire Marshal Office. Mr. Donahue (a contract instructor at the NFA) was interviewed via telephone on April 8, 2014, and provided model legislation as well as historical data concerning his experience with unlicensed personal

board and care homes in Montgomery County, MD, a larger, but demographically similar, county in Maryland.

Dr. Stephanie Hull of the Maryland Department of Aging was contacted via email and subsequently forwarded the request for assistance to Ms. Teja Rau, Acting Chief of the Long Term Services and Support Division of the Maryland Department of Aging. A brief phone interview was conducted on April 9, 2014 in which the DHMH transmittals were discussed. The transmittals were subsequently sent to Ms. Rau who identified representatives at the MD DHMH to interview.

The second question: What is the scope of unlicensed personal board and care homes in Anne Arundel County, was answered through a combination of interviews and questionnaires. The questionnaire (Appendix B) was sent to all members of the AACOFD and the Anne Arundel County Police Department electronically through the County email system and reached over 2000 uniformed emergency services personnel who provide direct service in response to 9-1-1 emergency calls. The researcher also enlisted the Director of OEM, Police Captain Eric Hodge, who covered the questionnaire with a memo citing the importance of the research effort and indicating that the questionnaire was endorsed by the OEM. The researcher worked with the AACOFD GIS specialist, Mr. John Blair, to geo-code facilities identified by firefighters, police officers, and the FMO database.

On March 18, 2014, the AACOFD FMO provided the researcher with an Excel spreadsheet containing 313 lines of data memorializing inspection activity on “group homes” and similar facilities that the FMO did not otherwise categorize according to the NFPA 101 code. Lt. David Wroten, the individual who accessed the spreadsheet on behalf of the FMO, indicated that personal board and care homes under research would potentially fall into the data set (D. Wroten,

personal communication, March 18, 2014). Lt Wroten explained that at some point in the existence of a facility, a request was made for an inspection, either as a pre-requisite for licensing, or as a listed business, or because the facility was classified as requiring one (D. Wroten, personal communication, March 18, 2014). An evaluation of the spreadsheet revealed inspections dating to June 1996, the earliest observed in the spreadsheet. The researcher conducted a comparison between the list provided by the FMO and the list of licensed ALF's provided by the Anne Arundel County Department of Aging Housing Officer. Duplicate addresses listed by the Department of Aging as license-required were removed from the FMO spreadsheet. This action, resulting in the removal of 25 lines of data, diminished the opportunity for reporting a false positive number of unlicensed personal board and care homes previously inspected by the FMO that are currently under the jurisdiction of the Department of Aging. The spreadsheet was further evaluated and results provided in the next section.

Answering the third question: What resources are available in Anne Arundel County to mitigate the effects of a natural or man-made disaster impacting the residents and staff of personal board and care homes, required the researcher review the EOP for Anne Arundel County, with specific attention to the ability of the County to open and operate Special Needs Shelters (SNS) which are separate and distinct from traditional shelters (designed to protect non-impaired individuals). The researcher compared and contrasted Anne Arundel County's preparedness efforts with the Center for Disease Control (CDC) *Public health workbook to define, locate, and reach special, vulnerable, and at-risk populations in an emergency* (2012).

RESULTS

The results for the first question: What state and/or local regulations define and govern personal board and care homes in Anne Arundel County are herein provided. Prior to 1996,

there was a wide array of agencies and organizations in Maryland charged with the responsibility of monitoring “assisted living” facilities. In 1995, then-Governor Paris Glendening formed a task force to evaluate the need for changes in the system which found,

“Over the last several years, the State of Maryland along with other states, has seen an increase in group homes, sheltered housing, domiciliary care homes and board and care homes for the elderly. In part, the demand for more community-based services is due to the increase in numbers of the aging population and also to changes in health care delivery. In Maryland, a variety of programs are considered Assisted Living; however, no comprehensive or coordinated definition exists. In addition, there is fragmentation among the Office on Aging (OOA), the Department of Human Resources (DHR) and the Department of Health and Mental Hygiene (DHMH); those agencies that fund, monitor and regulate public and private Assisted Living programs in the State. Recognizing this problem, the Governor charged the Task Force with developing a consolidated, consistent and comprehensive Assisted Living policy for the State of Maryland.”(*Task Force on Assisted Living*, 1995, p. ii)

From this report came a series of recommendations, including one to make the DHMH the sole regulatory agency for assisted living in Maryland. Applicable legislation was enacted thereafter designating DHMH as the agency charged with defining the parameters of an assisted-living program. It should be noted, however, that in Anne Arundel County, the Department of Aging currently inspects ALF’s with the approval of DHMH. This did not occur as a result of a state mandate. In Anne Arundel County, the Office of Aging saw a need to become more involved in safeguarding residents of license-required ALF’s and voluntarily accepted responsibility for inspecting ALF’s with fewer than 17 residents, primarily out of an awareness that the state lacked the resources to regularly inspect the smaller facilities (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014).

Although used interchangeably in the literature, there is a significant, i.e. regulatory, difference between an unlicensed personal board and care home (UBCH) in Maryland and an Assisted Living Facility (ALF).

Title 10 of the Annotated Code of Maryland defines an Assisted Living Facility as a:

“residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of individuals who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the individuals,”(Department of Health and Mental Hygiene, 2009).

For the purposes of the definition above, “activities of daily living” are defined as normal daily activities, including eating or being fed, grooming, bathing and hygiene, mobility, ambulation, toileting, and dressing in clean, weather appropriate clothing (Department of Health and Mental Hygiene, 2009). The 2009 Transmittal from the Office of Health Care Quality, DHMH, provides guidance to program managers concerning the threshold for licensure. In it, a license to operate a facility under Title 10 is not required for a provider whose residents are only dependent on the provider for room, board, and the control and security of medications (Kronmiller, 2009). The transmittal continues by placing the responsibility for assessing the ability of residents to remain in a non-licensed facility on the provider of the services. “If a decision is made that your program no longer requires licensure, it will be incumbent upon you to promptly contact this office should the care needs of an individual you serve increase ...” (Kronmiller, 2009, p. 2). Anne Arundel County’s ombudsman confirmed the perception that the regulation and clarifying definition created a loophole in the system. “We have no ability to even know whether these homes exist in Anne Arundel County,” (S. Liberto, personal communication, August 23, 2013). “I simply cannot tell how many unlicensed homes exist in the County, how many people are living in each one, and what level of care or assistance they need because we have no legal authority to enter or inspect and the owners have no impetus to engage the system,” (S. Liberto, personal communication, August 23, 2013). It should be noted that under Maryland Law, if even a single client/resident requires assistance with ADL’s, the owner/operator must apply for an application to become a licensed ALF. In this area, Maryland’s regulations are more patient-centered than

other states whose threshold may be three (3) or more (Arkansas, Illinois, Idaho, Iowa) or six (6) or more as in Kansas (National Center for Assisted Living [NCAL], 2013).

Turning to a discussion of the Fire and Life Safety code, Anne Arundel County has adopted NFPA 101- Life Safety Code as amended by the Anne Arundel County. Section 6.1.9.1 of NFPA 101 states, “Definition – Residential Board and Care Occupancy: an occupancy used for lodging and boarding of four or more residents, not related by blood or marriage to the owners or operators, for the purpose of providing personal care services,” (National Fire Protection Association [NFPA], 2012). It is further amended by Anne Arundel County, increasing the number from four to six (*Amended Life Safety Code of Anne Arundel County*, 2013, p. 21). The functional result of this action moves such facilities housing five or less unrelated individuals to Chapter 24 of the Life Safety Code – One and Two-Family Dwellings. The applicable section (24.1.1.1) reads, “The requirements of this chapter shall apply to one and two-family dwellings, which shall include those buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms” (NFPA, 2012, p. 101-251). The code was amended by Anne Arundel County to strike “three” and substitute “five” and strikes the language of “if any, accommodated in rented rooms” (*Amended Life Safety Code of Anne Arundel County*, 2013, p. 26). This action ensured consistency between two chapters of the Life Safety code and ultimately created a standing code that allows up to five (5) unrelated individuals (in addition to the property owner and any family) to reside in a one and two –family dwelling without invoking a more stringent chapter of the Life Safety Code. The main applicable section in Chapter 24 for existing homes relates to the requirement for hard-wired smoke alarms with battery back-up, although the County does not have the authority to routinely

enter or inspect one and two-family dwellings. If, during an emergency (e.g., fire, medical emergency, service call) within the residence, authorized personnel identify a lack of compliance they are authorized to issue a restoration order, but they do not have the authority to return to the residence and subsequently determine compliance.

The interview with the AACOFD Fire Marshal staff revealed the complexity of the problem. “We will frequently get phone calls asking for our assistance in determining who has jurisdiction over inspecting a particular home, and after huge efforts to find out, we have to tell the person that we do not have jurisdiction to help them and that, ultimately, it is not entirely clear if anyone has jurisdiction,” (N. W. Clark, F. X. Fennell, & D. Wroten, personal communication, March 18, 2014). Captain Clark identified a challenge associated with the Federal Fair Housing Amendments Act (FHAA) which generally states that no jurisdiction may apply a more stringent set of criteria (e.g., the installation of residential sprinklers) upon an UBCH when the same requirement is not applied to every other home in the community (N. W. Clark, F. X. Fennell, & D. Wroten, personal communication, March 18, 2014). This construct has been upheld by the Attorney General of the State of Maryland (Curran & Schwartz, 1993). The interpretation by the Attorney General underscored the state’s unwillingness to challenge the applicability of the FHAA or the Americans with Disabilities act (N. W. Clark, F. X. Fennell, & D. Wroten, personal communication, March 18, 2014). The problem is even more complicated in that provisions of the FHAA and ADA protect up to eight unrelated individuals, provided they fall into a “protected class” (defined within) which include the elderly. “It gets into this grey, no-man’s land. Under certain conditions, up to eight unrelated elderly individuals could be residing in a group setting in a single family dwelling in the County and the FD would have no

jurisdiction to inspect the property or even make entry under other than emergent circumstances” (N. W. Clark, F. X. Fennell, & D. Wroten, personal communication, March 18, 2014).

An interview with Sean Settles, Program Manager at the DHMH Office of Health Care Quality responsible for license-required ALF’s explained in an interview that unlicensed board and care homes are not currently on the state’s list of priorities.

“We have at least 500 unlicensed illegal assisted living facilities operating in the State of Maryland and we are having a challenging time addressing them. We know that there is a fine line between boarding homes and assisted living but our focus has been and remains on the most serious known issues we are facing. We do investigate all complaints in all facilities including boarding homes when we receive those” (S. Settles, personal communication, April, 2014).

Mr. Settles (2014) continued by explaining that operating an illegal ALF is a felony in Maryland, with criminal and civil penalties as a reflection of Maryland’s commitment to the safety of senior citizens. Mr. Settles was unable to provide any context or historical perspective for the 2009 transmittal defining license-required ALF’s.

As previously identified, there are no federal regulations pertaining to personal board and care homes, homes for the aged, domiciliary care facilities, or others that fall under the broad catchment phrase of “Assisted Living.” Due to the regulatory responsibility at the state level, it is appropriate to compare Maryland and other states’ regulations. In Arizona, a 1998 revision to regulations consolidated a previous set of six different classes of residential settings for seniors into a single umbrella term of “assisted living,” with three sub-classifications of facilities that “provides or contracts to provide supervisory care services, personal care services, or directed care services on a continuing basis” (National Center for Assisted Living [NCAL], 2013, p. 8). There are three licensed levels of care. Under the applicable legislation, “supervisory care services” means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis, and assistance in the self-administration of

medications. This language is consistent with the “personal board and care” definition below the threshold of licensure requirement in Maryland. “Personal Care Services” means assistance with activities of daily living and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments. A facility licensed to provide Personal Care Services may not accept or retain residents unable to direct their own care. This definition corresponds to Maryland’s “Assisted Living Program” requirements. “Directed Care Services” means programs and services provided to persons who are incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions which also falls into the assisted living program guidelines in Maryland (NCAL, 2013).

In Colorado, assisted living residences are “residential facilities that make available to three or more adults who are unrelated to the owner, either directly or indirectly through an agreement between the provider and the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that must be available on a 24-hour basis, but not to the extent that regular 24-hour medical nursing care is required” (NCAL, 2013, p. 21).

Colorado’s regulations also reference NFPA 101 and other applicable life safety regulations pertaining to sprinkler requirements which are, in the specific state’s rules, dependent on other rescue capabilities of the facility if they were already in business as an assisted living facility before enactment of the regulations in 2012 (NCAL, 2013).

In Indiana, a facility that provides residential nursing care or administers medications prescribed by a physician must be licensed as a Residential Care Facility. By contrast, a facility that provides services such as room, meals, laundry, activities, housekeeping, and limited assistance with activities of daily living (ADLs) without providing administration of medication

or residential nursing care is not required to be licensed (NCAL, 2013); *however*, the Indiana Family and Social Services Administration (FSSA), through the Division of Aging, maintains a registry of establishments filing disclosures for Housing with Services Establishments. The Housing with Services Establishments Act has been in effect since 1998 and requires any Residential Care Facility or *any entity providing assisted living services that does not require licensure* (emphasis added) to register with the Division of Aging of the FSSA and disclose its name, address, and telephone number. This is not a certification or licensure process, but instead helps the FSSA to learn about the number and types of facilities in Indiana (NCAL, 2013, p. 61). Such registry requirements are more comprehensive than a significant segment of other states, including Maryland.

Kentucky and Missouri, as examples, attempt to address the issue of defining the word “family” which is generally found within the applicable NFPA Life Safety Code but is not therein defined. In Kentucky, a family is defined by the 3rd degree of consanguinity and in Missouri it is defined by the 4th degree of consanguinity as the threshold for applicability of regulations defining a residential care facility (NCAL, 2013). In Missouri, a residential care facility provides board and care services, excluding assistance with ADL’s, but requires the residents to be capable of unassisted self-rescue (NCAL, 2013). By comparison, Maryland’s regulations are silent on the issue of defining familial relationships between residents and owner/operator/managers.

Rhode Island’s umbrella-style definition of an assisted living facility underscores the complexity of the issue of regulating such facilities.

“Assisted living residence means a publicly or privately operated residence that provides directly or indirectly by means of contracts or arrangements, personal assistance to meet the resident's changing needs and preferences, lodging, and meals to two or more adults who are unrelated to the licensee or administrator ... Assisted living residences include

sheltered care homes, board and care residences, or any other entity by any other name providing the above services that meet the definition of assisted living residences.” (NCAL, 2013, p. 192)

This contrasts with Maryland’s standards which are not as encompassing. In addition, Rhode Island’s regulations address terminology not covered in the Code of Maryland Regulations (COMAR) including board and care residences.

In 2012, the state of Washington amended its language from “boarding homes” to “Assisted Living Facilities.” “An ALF is any home or institution, however named, that is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents ...” (NCAL, 2013, p. 225). This definition, similar to Rhode Island’s, appears to illuminate two examples of states seeking to strengthen regulations predicated on inclusive language.

The City of Houston adopted model legislation in 2013 that appears to address the issue of unlicensed board and care homes directly. The legislation (Appendix C) requires any occupancy housing three or more individuals who are elderly or with disabilities, and who are not related to the owner/operator to register with the jurisdiction (<http://library.municode.com/index.aspx?clientId=10123&stateId=43&stateName=Texas>). Section 28-453 requires any person operating a boarding home within the city limits to first register with the city and obtain a registration certificate. Section 28-451 provides certain definitions:

Boarding home or boarding home facility means an establishment that:

1. Furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
2. Provides residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication, but does not provide

personal care services as defined by §247.002 of the Texas Health and Safety code to those persons.

Assistance with self-administering medication means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.
(<http://library.municode.com/index.aspx?clientId=10123&stateId=43&stateName=Texas>)

The code also requires certain inspections and written plans for life safety of the occupants including fire escape planning, installation of carbon monoxide and smoke alarms, storage of flammable materials, and training for staff. The code also provides for required criminal background checks for owners.

The results for the second research question: What is the scope of unlicensed personal board and care homes in Anne Arundel County are addressed next. The questionnaire sent electronically to more than 2000 emergency responders county-wide in the police and fire departments yielded 22 addresses, provided by 15 responses. Ninety-nine percent of the responses were provided by fire department company officers and fire department paramedics. One police officer provided a response. Of the 22, six were excluded based on a review of the addresses, which confirmed them as licensed group homes for intellectually-challenged individuals inspected separately by the Department of Social Services. The remaining 16 were cross-checked against the Department of Aging's published list of licensed ALF's and congregate living locations. No additional addresses were excluded from the list. The list was then compared with the AACOFD FMO spreadsheet. Seven of the 16 addresses appeared on the FMO spreadsheet indicating that at some point, the FMO was involved in an inspection. A determination was made in each case that the facility fell under the criteria of NFPA 101 Section 24 and therefore qualified as a single-family dwelling. As a result, the FMO determined that it

did not have jurisdiction to continue to inspect the facility, noted same in the file, and archived the event.

The results of a separate review of the AACOFD FMO spreadsheet, excluding the seven identified by emergency response personnel, revealed 58 addresses identified as “group homes” or “assisted living facilities” whose NFPA occupancy code was 419 – one and two family dwellings. In each of the entries, a notation was made that the home was classified under NFPA 101 Chapter 24.1.1.1 as the exclusionary criteria for discontinuing inspections. Many of the occupancies listed a facility name consistent with their mission including Angels Paradise, Abdullah Assisted Living, Great Esteem Group Home, and Greenhaven Group Home. This does not indicate definitively that the facility was operating, or continues to operate as an assisted living facility or personal board and care home. However, none of the 78 total occupancies identified in the AACOFD FMO document (combined with reports from the questionnaire) are listed in the 2014 Department of Aging and Disabilities Guide to Assisted Housing Program. The documents lists 109 ALF’s licensed in the County (Department of Aging and Disabilities, 2014): two (2) ALF’s serving 1-3 persons; eighty-nine (89) ALF’s serving 4-16 residents; and eighteen (18) ALF’s serving 17 or more residents. The total capacity of these facilities is 1,790 residents (*Assisted Living Program Homes*, 2014). The total number of beds in unlicensed facilities may be 370-400, depending on the number of beds per facility which in this case was estimated at five, based on the NFPA 101 threshold for re-classification. Appendix D shows all licensed Assisted Living Facilities, Skilled Nursing Facilities, and all *possible* locations of unlicensed personal board and care homes tabulated through the research effort (Blair, 2014)

In the process of continuing to assess the scope of unlicensed legal and illegal personal board and care homes, the researcher met with representatives of the Anne Arundel County

Department of Aging to discuss the results. Sharlene Liberto (County Ombudsman) and Mike Bansher (Housing Officer) were asked to assess the scope of the problem from their perspective of both legal unlicensed personal board and care homes and illegal unlicensed personal board and care homes that should be operating as licensed ALF's. Neither could definitely provide a number, but estimated that the number might actually be less than 20 for legal personal board and care homes which they referred to as "threshold housing," and less than five illegally operated ALF's (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014). Staff confirmed the existence of both types of facilities through personal knowledge and experience but simultaneously identified the challenge of determining the true scope: "the combination of federal housing regulations and state laws makes it difficult, if not impossible, to pro-actively find these types of occupancies simply because there is no requirement that they register or license with anyone," said Sharlene Liberto, County Ombudsman (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014).

One experience, shared during the interview, was particularly instructive. The Department of Aging (DoA) had, for years, found violations at a specific ALF. The proprietor of the facility grew increasingly frustrated with the County for its continued "harassment" and the DoA found itself constantly engaged in attempting to get problems resolved. The woman eventually relinquished her license to operate an ALF but did not close the facility, and continued to operate as an unlicensed personal board and care home, allegedly below the threshold for licensure. The relinquishment of her license negated the DoA's nexus to regularly inspect the conduct of the owner/operator (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014).

Returning to the body of research, the challenge to answer the second research question on a local level in Anne Arundel County is consistent with federal efforts to conduct research in the same arena. The CDC in 2010 attempted to conduct the first-ever research effort to define the scope of assisted-living housing in the United States. In doing so, it found that the variety of definitions, capacity of facility, and services provided led them to effectively draw a “line in the sand” by defining a residential care facility for inclusion in the study as having four or more beds (Park-Lee et al., 2011). This led the researchers to determine that there were 31,100 facilities providing 971,900 beds (Park-Lee et al., 2011, p. 1). By contrast, an AARP-funded facility found that there were a total of 51,367 licensed residential care settings with a total capacity of 1,233,690 beds—a dramatic increase from an estimated 1,046,631 beds in 2007 (Mollica et al., 2010, p. 1). Again, these numbers refer to license-required facilities.

Comparing Anne Arundel County with another Maryland jurisdiction, Mr. Donahue provided insight into his experience in Montgomery County. By his estimation, there may be twice as many unlicensed facilities as licensed facilities (M. Donahue, personal communication, April, 2014). This translates into 1500 unlicensed occupancies, overwhelmingly in single-family dwellings (M. Donahue, personal communication, April, 2014). Mr. Donahue indicated that it would be nearly impossible to find homes with three or less occupants as they tended to exist without alerting the attention of first responders, the group most likely to alert regulatory officials based upon their status as “required reporters”. Mr. Donahue attributed the significant number of unlicensed facilities to two main factors: the profit-driven nature of assisted living; and a burgeoning immigrant population untrusting of governmental agencies (M. Donahue, personal communication, April, 2014).

The results for the third research question: What resources are available in Anne Arundel County to mitigate the effects of a natural or man-made disaster impacting the residents and staff of personal board and care homes reveals a commitment to emergency preparedness. Anne Arundel County has had a comprehensive Emergency Operations Plan (EOP) in place since 2010 designed to be an all-hazards plan for all individuals living, working, and traveling through the County. To that end, the comprehensive nature of the plan is designed as an umbrella for at-risk populations including residents of unlicensed board and care homes.

Concurrently, the State of Maryland's regulations under Title 10 requires significant pre-planning by licensed ALF's. To the extent that the State confirms the existence and exercising of said plans, coupled with on-going communication with the OEM, such independent resiliency positively impacts the County's ability to maintain limited resources for other at-risk populations. The results, however, do not support this postulate. A discussion with Anne Arundel County's Lead Emergency Planner and Exercise Coordinator revealed that the quality of plans ranged from "comprehensive on the high end to notes on a cocktail napkin on the low end and everything in between" (C. Calp, & T. Chapman, personal communication, April, 2014). "Many of the facilities do not have and have not exercised their plans or believe that calling 9-1-1 is a viable option for re-locating their residents" (C. Calp, & T. Chapman, personal communication, April, 2014). A three-person team comprised of the exercise coordinator, a representative from the Office of Aging and a representative from the Department of Health have undertaken within the last year to meet with the operators of licensed ALF's and SNF's to review, revise and in many cases offer template plans for disaster preparedness with a specific goal of increasing each facility's capacity for preparedness (C. Calp, & T. Chapman, personal

communication, April, 2014). This does not, however, specifically address the needs of residents of unlicensed board and care homes.

The researcher posed a scenario-based question during the interview to assess OEM's perception of preparedness. The scenario was presented as follows:

Engine 17, with a crew of three personnel, is sent to a single-family dwelling for a report of flooding in the home in the immediate aftermath of a Category II hurricane which has affected the County consistent with previous similar events. Upon arrival, the crew enters a home and finds five elderly residents in varying degrees of cognitive impairment and physical limitation. None of the residents appears to be experiencing a medical emergency; however, no caregiver is present in the facility, no residents are able to articulate the clear circumstances of their housing arrangement and the home is uninhabitable due to flooding. The Engine officer calls the Emergency Operations Center and asks for direction. How would our jurisdiction handle this scenario?

Ms. Chapman and Ms. Calp provided the following response within the confines of the scenario:

"In all likelihood, we would rely on the Fire Department to transport the residents to our closest shelter by whatever means were at their disposal [in this case the FD would most likely use its Mobile Ambulance Bus (MAB)]. We would contact the Department of Aging representative in the EOC to assist with providing personal care aides to help meet the needs of the residents. If any of them needed medical care beyond an initial assessment by a nurse located in the shelter (provided by the Health Department) we would direct them to a hospital. The residents would potentially remain in the shelter as long as the shelter was open, until they were placed with family, or until alternate housing was found through the Department of Aging" (C. Calp, & T. Chapman, personal communication, April, 2014).

The Anne Arundel County Office of Aging has been pro-active in its efforts to ensure preparedness. After the Derecho in 2012, the Governor of Maryland formed a task force to promulgate comprehensive procedures to assess the needs of licensed facilities experiencing power outages and loss of essential medical supplies including oxygen during natural disasters (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014). The Office of Aging in Anne Arundel County had previously identified such a need and put into place procedures through OEM to communicate with and assess ALF's and Skilled Nursing

Centers (P. Jordan, S. Liberto, M. Bansher, & A. Rubino, personal communication, April, 2014).

This policy became the model for state-wide actions during man-made and natural disasters.

While not directly applicable to unlicensed board and care homes, it is indicative of the agency's commitment to at-risk populations.

The County has adopted the Code Red® program to transmit critical messages tailored to specific sections of the County, permitting accurate information on closest shelters (e.g.) to be communicated. Unlicensed board and care homes in a targeted area would be contacted through this mechanism similar to traditional populations. In addition, the Anne Arundel County EOC is equipped with multiple communication networks composed of telephones, cell phones, web based programs such as WebEOC, amateur radios, and a Radio Amateur Civil Emergency Services (RACES), which is composed of the Anne Arundel Radio Club, Maryland Mobileers Radio Club, and HAM radio personnel (Anne Arundel County Office of Emergency Management [OEM], 2010).

Consistent with recommendations that appear in the CDC Public Health Workbook (2012), OEM has used community partners to reach at-risk populations (Department of Health and Human Services Centers for Disease Control and Prevention Office of Public Health Preparedness and Response [HHS OPHPR], 2012). Through partnerships with Meals on Wheels®, applications for Code Red® have been, and continue to be, distributed. The county has observed a substantial level of participation when applications are shared via this mechanism. OEM has also partnered with the Department of Health field providers serving as vaccination technicians and community health officers who make similar community visits, sharing Code Red® applications and preparedness information.

The Baltimore-area Urban Area Security Initiative (UASI) has a sheltering group charged with developing plans and contingencies for man-made and natural disasters. This ensures a regional approach with coordination among potentially affected communities. Anne Arundel County is a primary participant in the UASI and has hosted, developed, and delivered training programs to community and faith-based organizations, in accordance with the HHS guidance document (HHS OPHPR, 2012). Although the Office of Emergency Management's focus has been on licensed facilities, a robust preparedness effort county-wide evidenced by performance in past events of local, regional, and national significance point to the ability to provide essential services to at-risk populations in the County.

DISCUSSION

The goal of the research effort was to identify the scope of senior citizens living in unlicensed board and care homes in Anne Arundel County. The reality is that the identified population remains largely hidden from the view of public safety officials charged with their safety during man-made and natural disasters. Although beyond the scope of this research effort, these same populations are hidden from public health, social services, and Department of Aging ombudsman who are interested in their general well-being on a day-to-day basis. What is clear is that there are both legal and illegal unlicensed board and care homes in the County.

It is important to note that personal board and care homes provide an essential service for a category of senior citizens who cannot/should not live alone but do not have the financial resources to afford an Assisted Living Facility which can routinely cost \$5,000.00 per month. Many senior citizens live on a fixed income via Social Security (SSI) and are living longer than anyone envisioned when the SSI program was initiated. Approximately 21,000 adults over aged

65 live below the poverty line in Anne Arundel County. The fact that such individuals are over 65 and live below the poverty line categorizes them as potentially vulnerable.

In addition, there continues to be a huge push for community-based care encased in the ADA, FHAA, and the Affordable Care Act (ACA) (D. McManaugh, personal communication, April, 2014). Such facilities also provide refuge for indigent individuals who would otherwise be homeless or living in shelters. Unfortunately, such circumstances also place these same individuals at risk for predatory criminals who deal in fraud and human trafficking. The ARP led the researcher to become aware of an extensive underworld of illegal activity that appears to be predominantly opaque to most public safety and political leaders (D. Anders, personal communication, April, 2014). This does not indicate indifference; rather, it is reflective of the complex layers of an issue that, on the surface, appears simple to solve but in reality is incredibly difficult.

Dr. McManaugh (2014) of Texas A&M University identifies four main issues contributing to the abuse problem: 1) unlicensed personal board and care homes warehouse vulnerable older adults with “hard to place” mental health and paroled individuals; 2) unlicensed board and care homes operate as family businesses in single family dwellings with a wide network of providers allowing the transient movement of residents; 3) there is a significant profit motive to maintain maximum occupancy with owner / operators becoming payees for residents’ social security payments while retaining residents long after they no longer meet the definition of being able to maintain their own ADL’s and 4) unchecked neglect resulting in homicide. The problem is compounded when increased attention is directed to such occupancies, “when operators feel the heat, they simply close down the shop and move their residents to another state” (D. McManaugh, personal communication, April, 2014).

The issue of vulnerable at-risk senior citizens is not being ignored. On a federal level, in the Office of Planning and Evaluation and in the Office of Preparedness and Response (both at HHS) efforts are being undertaken to look at the problem of unlicensed board and care homes (C. Levine, & E. Rosenoff, personal communication, April 7, 2014). In a wide-ranging conversation, both confirm the challenge of quantifying a primarily hidden population. Notwithstanding, there are efforts to improve community resiliency through outreach programs designed to make neighbors responsible for each other (C. Levine, & E. Rosenoff, personal communication, April 7, 2014). There are also extensive efforts underway to ensure coordination between federal agencies including FEMA, DHS, HHS, HUD, and the Center for Medicare Services (CMS) to ensure maximal information sharing (C. Levine, & E. Rosenoff, personal communication, April 7, 2014). The issue remains in its infancy as resources continue to look first to licensed facilities since they are easier to identify and engage.

On a state level, the commitment to locating and protecting at-risk senior citizens spans the spectrum. All states have, on some level, established regulations defining the existence of assisted living settings in some manner. There are commonalities across the states that seem to reflect a collaborative effort, based upon the similarity in regulatory language. Having said that, there remains a wide range of solutions and only a few states (<5) have undertaken to install language that attempts to capture more, as opposed to less, senior citizens. Maryland appears to be somewhere in the middle of a large group of states that are doing what they can, constrained by funding, resources, and human capital.

On a local level, this research effort appears to be the first attempt at defining the scope of unlicensed board and care homes in Anne Arundel County. Representatives from the Department of Aging have, for years, been responding to complaints and alerts from a wide array

of sources including facility staff, public safety first responders and family members reporting abuse, neglect, and inappropriate operations. This is by definition reactive, but it is exponentially better than being unable to react or failing to act, and the work of the County Ombudsman should be specifically recognized and appreciated.

Several significant limitations to the results exist. First, the researcher did not undertake to physically visit each facility identified as an unlicensed board and care home to determine its current use and occupancy. Such action research could be the basis of a future research effort.

Second, the information received from field providers was not vetted for more specific data concerning the reason(s) for their inclusion or the capacity of the facility. The researcher did not want to artificially exclude any facilities from submission, opting instead to evaluate each address after receipt compared with known data available from independent sources.

Third, the determination of occupancy was made at the time of inspection by the FMO. A change in occupancy density subsequent to inspection is neither known nor estimated. The researcher accepted the data as provided by the individual FMO inspector. Ultimately, the number could be higher or lower depending on subsequent research and should not be relied upon for decision-making purposes without additional investigation. Fourth, the researcher did not interview discharge planners, social workers, or Department of Social Services personnel to gain their insight into the scope and nature of the problem. Finally, the research effort exposed, but was not prepared for, the issue of illegally unlicensed personal board and care homes operating as a criminal enterprise. The issue of co-locating at-risk seniors with “hard to place” younger adults poses a serious issue worth examination.

RECOMMENDATIONS

Anne Arundel County is one of the most livable communities in America, while being subject to the effects of man-made and natural disasters. Recognizing this, the County has undertaken significant efforts to ensure its preparedness with comprehensive planning, vulnerability assessments, resource identification, asset management, and extensive training throughout all branches of government including cooperating and coordinating agencies. The County has been subject to hurricanes, floods, tornadoes, and other significant natural disasters as well as man-made incidents. In each instance, the loss of life and overall impact has been diminished through planning and practice. The Office of Emergency Management is an integrated partner, serving as a coordinating agency in accordance with federal and state laws, standards, and best practices.

Yet work remains to be done. Having identified that a hidden population of at-risk citizens live in the County, the following recommendations are offered:

1. Upon review and approval by the Chief of the Anne Arundel County Fire Department and Director of Emergency Management, the ARP should be shared with representatives of key stakeholders in County Government as the foundation for additional action, including formal applied research.
2. A permanent task force with representation from key stakeholder organizations should be formed to begin sharing information with a goal of increasing awareness of the scope of unlicensed board and care homes in Anne Arundel County. Suggested participants include the AACOFD, AACOPD, OEM, Department of Health, Department of Aging, Department of Social Services, Inspections and Permits,

- Planning and Zoning, and key constituent services offices including the Office of County Executive and the County Council.
3. A central repository / registry should be established, maintained and routinely updated with connectivity to GIS and geo-coding. A lead agency should be designated responsible for the maintenance and accuracy of the registry. The registry should be accessible to all stakeholders.
 4. Consideration should be given to evaluating model legislation enacted in other jurisdictions that are simultaneously compliant with federal housing laws and federal mandates to ensure the safety of at-risk populations. Such legislation, in place in other jurisdictions including the city of Houston, TX, could be adapted for Anne Arundel County and Maryland.
 5. Additional education for first responders and community-based organizations with direct contact to at-risk populations centered on recognition and identification of potentially endangered or at-risk populations should be undertaken immediately. Such training programs could be incorporated into a wide array of disciplines. Examples beyond public safety entities include Meals on Wheels®, home healthcare workers, immunization technicians, faith-based organizations, and culturally-specific organizations.
 6. The Office of Emergency Management Sheltering Working Group should be encouraged to explore the use of large (>17 residents) Assisted Living Facilities and Skilled Nursing Facilities as emergency shelters under a memorandum of agreement for vulnerable residents of personal board and care homes who might be encountered during a man-made or natural disaster.

7. Fires continue to be the single most prevalent risk to populations in unlicensed board and care homes, Assisted Living Facilities, and Skilled Nursing Facilities. On-going community risk reduction efforts should advocate for the mandatory installation of fire sprinkler systems in all structures, including the retrofitting of licensed facilities. Grant programs and State funding should supplement this effort.

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APPENDIX A



APPENDIX B

Electronic Correspondence – Questionnaire

I am writing to request your assistance. I am currently participating in a research effort to identify at-risk populations in Anne Arundel County. One of our key at-risk populations are senior citizens who represent a large and rapidly-growing segment of the County's population. Of particular concern are those residents who may be living in what are commonly known as "personal board and care" homes.

Personal Board and Care homes exist to provide room and board (meals) for senior citizens who are independently able to take care of their own activities of daily living (ADL's). Personal Board and Care homes might be considered the most basic level of congregate living services provided for senior citizens. At a higher level of services, Assisted Living Facilities provide room, board, and levels of assistance for ADL's and/or a wide array of other services. Assisted Living Facilities are licensed by the State and regulated and inspected by the County Department of Aging and the State. The highest level of care available to senior citizens are skilled nursing facilities which are similarly regulated.

By contrast, personal board and care homes are not regulated by any County or State agency. Intuitively, it is widely believed that such occupancies exist within the County. They are commonly operated in a private residence and may house two or more individuals as residents (excluding the provider). In the event of a man-made or natural disaster (flood, hurricane, fire, tornado, etc) such occupancies pose a unique hazard for first-responders and emergency planners. Without the knowledge of the location and occupancy, it is difficult to ensure preparedness. This is where your assistance is requested:

If you have ever responded to a call in what you would define as a "personal board and care" home in Anne Arundel County and can provide the address, please direct it to my attention via email. Use your judgment in determining whether to include the location but if there is any chance that it may fall into the category as described, please send it to my attention. My goal is to enhance our preparedness by increasing our awareness of the number and location of such homes.

Thanks in advance for any assistance and feedback you can provide. I can be reached via email or cell if you have any questions concerning a specific circumstance you have identified.

Matthew Tobia, Battalion Chief
Anne Arundel County Fire Department
Operations Bureau
8501 Veterans Highway
Millersville, MD 21108
[410-222-8200](tel:410-222-8200) - HQ Main
[443-871-8324](tel:443-871-8324) - cell
fdtobia@aacounty.org
"Remember Fallen Firefighters and their Families"
<http://www.aacounty.org/fire>

CONFIDENTIAL AND PRIVILEGED: This e-mail is confidential and privileged, and intended only for the review and use of the addressee(s). If you have received this e-mail in error, please delete it after notifying the sender at [\(443\) 871-8324](tel:443-871-8324) or by sending a reply. Thank you.

APPENDIX C

City of Houston, TX Municipal Code Article XIV §28-450

ARTICLE XIV. BOARDING HOMES [5]

Sec. 28-451. Definitions.

Sec. 28-452. Exemptions.

Sec. 28-453. Registration required.

Sec. 28-454. Registration procedure.

Sec. 28-455. Criminal background history checks.

Sec. 28-456. Posting.

Sec. 28-457. Records, reporting, and inspections.

Sec. 28-458. Accurate information required.

Sec. 28-459. Effect of registration.

Sec. 28-460. Penalty; continuing violations.

Secs. 28-461—28-480. Reserved.

Sec. 28-451. Definitions.

As used in this article, the following words, terms and phrases shall have the meanings assigned to them in this section, unless the context of their usage clearly indicates a different meaning:

Assistance with self-administering medication means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

Boarding home or boarding home facility means an establishment that:

(1)Furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

(2)Provides residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication, but does not provide personal care services as defined by § 247.002 of the Texas Health and Safety Code to those persons.

Director, unless otherwise clearly specified in this article, means the chief of police and such employees of the Houston Police Department as the chief may designate to perform the duties of the 'director' under this article.

Elderly person means a person 65 years of age or older.

Employee means a person who regularly works in a boarding home facility.

Operator means the person in control of a boarding home facility.

Owner means a person who owns or has an ownership interest in a corporation or other legal entity operating a boarding home facility.

Person with a disability means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is:

(1) 18 years of age or older; or

(2) Under 18 years of age and who has had the disabilities of minority removed.

Registration certificate means a certificate issued for a boarding home as provided under this article.

Resident means a person who is residing in a boarding home facility.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-452. Exemptions.

This article does not apply to:

(1) Home and community support services licensed under Texas Health and Safety Code ch. 142, as amended.

(2) Convalescent and nursing homes and related institutions licensed under Texas Health and Safety Code ch. 242, as amended.

(3) Continuing care facilities licensed under Texas Health and Safety Code ch. 246, as amended.

(4) Assisted living facilities licensed under Texas Health and Safety Code ch. 247, as amended.

(5) Intermediate care facilities for the mentally retarded licensed under Texas Health and Safety Code ch. 252, as amended.

(6) A person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by a state agency with jurisdiction over mental health and mental disability and monitored by that state agency or its designated local authority in accordance with standards set by that agency as defined in Texas Health and Safety Code § 142.003(a)(19), as amended.

(7) An establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules as defined in Texas Health and Safety Code § 242.003(3), as amended.

(8) A facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by a state department or agency and that is monitored by a state department or agency

or its designated local mental retardation authority in accordance with standards set by the state department or agency, as defined in Texas Health and Safety Code § 247.004(4), as amended.

(9)A hotel as defined by Texas Tax Code § 156.001, as amended.

(10)A retirement community as defined by Texas Tax Code § 11.18, as amended.

(11)The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows, such as a monastery or convent.

(12)A childcare facility as defined by Texas Human Resources Code § 42.002, as amended.

(13)A family violence shelter center as defined by Texas Human Resources Code § 51.002, as amended.

(14)A fraternity or sorority house, or other dormitory, associated with an institution of higher education.

(15)A multi-family rental building, as defined in section 10-152 of this Code.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-453. Registration required.

It shall be unlawful for any person to operate a boarding home within the city limits without first registering with the city in accordance with this article.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-454. Registration procedure.

(a)In order to register a boarding home, the operator of a boarding home shall annually provide the following information to the Director of Administration and Regulatory Affairs (ARA):

(1)a.The name, street address (and mailing address if different) and Texas driver's license number of the intended operator;

b.The name and street address (and mailing address if different) of the owner(s);

(2)If the boarding home is to be operated under an assumed name, a certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Business and Commerce Code, chapter 36);

(3)If the boarding home is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(4)If the boarding home is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(5)If the boarding home is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act or its successor statute;

(6) If the boarding home is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act or its successor statute;

(7) The address and legal description of the tract of land on which the boarding home is to be located;

(8) Proof of the current fee ownership of the tract of land on which the boarding home is to be situated in the form of a copy of the recorded deed;

(9) If the persons identified as the fee owner(s) of the tract of land in item (8) are not also the owners of the boarding home, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the boarding home to have or obtain the use and possession of the tract or portion thereof that is to be used for the boarding home for the purpose of the operation of the boarding home;

(10) The name under which the boarding home is to be operated;

(11) A general description of the services to be or currently provided, and if in current operation, the total number of residents;

(12) The maximum number of beds which are provided as well as the number of beds which are intended to be used;

(13) All security and resident monitoring plans and any additional security and monitoring measures which are to be implemented;

(14) The telephone number of the boarding home;

(15) If the boarding home is in operation, the date on which the owner(s) acquired the boarding home, and the date on which the boarding home began operations as a boarding home at the location;

(16) If the boarding home is not in operation, the expected start-up date;

(17) A statement by both the owner and operator of the boarding home facility, supported by a sworn affidavit properly verified by a notary or other individual authorized to administer oaths, that neither the owner, nor the operator, nor any of the employees of the boarding home facility have been convicted of any of the criminal offenses designated in section 1-10(b)(6) of this Code within the five-year period immediately preceding the date of the filing of the application, and stating further that the owner and operator acknowledge that non-compliance with section 1-10(b)(6) of this Code shall constitute cause to deny, revoke, suspend, or refuse for renewal, as applicable, the registration for the boarding home facility;

(18) A statement by the operator of the home that it is in full compliance with Chapter 325 of the Texas Health and Safety Code; and

(19) An affidavit stating that the applicant's operation will not violate deed restrictions.

(b) Registration shall be submitted to ARA and shall be accompanied by payment in full of the annual, non-refundable registration fee for an original registration or for a renewal registration, as applicable, stated for this provision in the city fee schedule.

(c) A separate registration shall be required for each boarding home.

(d) Each boarding home facility registered under this article shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement in a form acceptable to the director that the employee acknowledges that the employee may be criminally liable under § 48.052, Texas Human Resources Code, for failure to report abuse, neglect, or exploitation of any resident. Copies of said statements shall accompany each registration, and each boarding home facility shall provide the director copies of said statements for new employees within 10 days of their hire.

(Ord. No. 2013-674, §§ 7, 8, 7-24-2013)

Sec. 28-455. Criminal background history checks.

(a) The registration for a boarding home facility may be denied, revoked, suspended, or denied for renewal in accordance with section 1-9 of this Code if (1) the owner or operator has been convicted of a criminal offense listed in section 1-10(b)(6) of this Code, or if (2) the owner, operator, or boarding home facility has any employee convicted of a criminal offense listed in section 1-10(b)(6) of this Code.

(b) As part of the annual registration process, the owner and operator shall consent to and complete any state or federal request and release forms that are required for the city to obtain a criminal history report for the owner and operator. In addition to the registration fee required by section 28-454(b) of this Code, the owner and operator shall reimburse the city for any fees imposed by state or federal agencies for the report.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-456. Posting.

A boarding home facility shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents and visitors (1) the registration certificate issued by the city under this article, (2) in a font of sufficient size to be easily read, the provisions of § 102.003 of the Texas Human Resources Code, and (3) a phone number for the Department of Family and Protective Services for reporting abuse, neglect and exploitation.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-457. Records, reporting, and inspections.

(a) The owner and operator of each boarding home facility shall maintain on the premises of the facility records sufficient to verify and substantiate all information provided under section 28-454 of this Code. In addition, the owner and operator of each boarding home shall maintain on the premises of the boarding home documentation showing staffing and shift assignments for all employees; resident service agreements signed by each resident or the resident's legal representative detailing the services to be provided to the resident by the boarding home facility, and the cost of those services; the name of each resident, accompanied by personal identifier information, including date of birth, driver's license, social security card, or other acceptable state recognized identification; and contact information for the resident's legal representative, if any. The information required under this section shall be maintained for a period of at least five years.

(b) The owner and operator of each boarding home facility shall immediately notify the director of any fatality or criminal activity which occurs on the premises of the boarding home facility.

(c)The director may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation to assure compliance with this ordinance and to protect the health, safety, or welfare of the residents of a boarding home. The director may be assisted in any investigation by representatives of the department of public works and engineering, the fire department, the neighborhood protection official, the health and human services department, or other city agencies or entities with appropriate jurisdiction over matters affecting the health, safety, or welfare of the residents of a boarding home. During the course of any inspection, the owner, operator, and any employee of the boarding home facility shall be required to identify themselves and provide documentation of their identity upon the request of the director or any other city representative participating in the inspection.

(d)At the time of any inspection, each boarding home facility shall provide the director access to books, records, and other documents maintained by or on behalf of a boarding home facility as required under this section.

(e)The owner and operator of each boarding home facility shall implement the following emergency precautions and schedule and pay for an annual fire inspection by the fire marshal:

(1)The owner and operator shall implement a written fire and evacuation plan that sets forth the responsibilities and steps to be taken by staff and residents in the event of a fire or other emergency and identifies two points of entry and egress. The owner and operator shall ensure that all staff and residents are shown how to use all emergency exits from the boarding home facility within 24 hours after arrival at the boarding home facility. The owner and operator shall maintain documentation of such training.

(2)The owner and operator shall post an emergency evacuation plan in a common area, such as the kitchen or living room.

(3)The owner and operator shall ensure that staff receive training on the emergency evacuation plan at least two times per year and shall maintain documentation of such training.

(4)The owner and operator shall ensure that flammable supplies, gasoline-operated equipment, and compressed gas equipment are stored outside of the living area.

(5)The owner and operator shall provide a sufficient number of accessible fire extinguishers. The owner and operator shall ensure that a person licensed to inspect fire extinguishers inspects the fire extinguishers annually. The owner and operator shall ensure the fire extinguishers are recharged when needed by a person licensed to inspect fire extinguishers.

(6)The owner and operator shall provide and maintain an operable smoke alarm and carbon monoxide detector in each sleeping area, kitchen, and laundry. The owner and operator shall ensure these devices remain in good working order. If a boarding home facility has a resident that is hearing impaired, the owner and operator shall install and properly maintain a visual smoke alarm that is capable of alerting a hearing impaired person of the presence of fire or smoke.

(7)The owner and operator shall ensure that first aid supplies are readily accessible to all the residents and inform the residents of the location of the supplies.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-458. Accurate information required.

It shall be unlawful for a boarding home facility or its representative to:

- (1) Fail to supply all of the information required by this article; or
- (2) Give materially false, fraudulent or untruthful information.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-459. Effect of registration.

Registration under this article shall not be interpreted to excuse or relieve a boarding home facility or its owners, operators, or employees from compliance with any state laws or other ordinances of the city as the same shall apply.

(Ord. No. 2013-674, § 7, 7-24-2013)

Sec. 28-460. Penalty; continuing violations.

(a) Violation of any provision of this article shall be punishable by a fine in accordance with section 1-6 of this Code. Each day any violation continues shall constitute and be punishable as a separate offense.

(b) All fines and fees collected by the city pursuant to this article shall be used to administer the registration process or for other purposes directly related to providing boarding home facility or other similar assisted living services to elderly persons and persons with disabilities.

(Ord. No. 2013-674, § 7, 7-24-2013)

Secs. 28-461—28-480. Reserved.

FOOTNOTE(S):

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Editor's note— It should be noted that § 10 of Ord. No. 2013-674, provides an effective date of November 21, 2013. (Back)

APPENDIX D

