

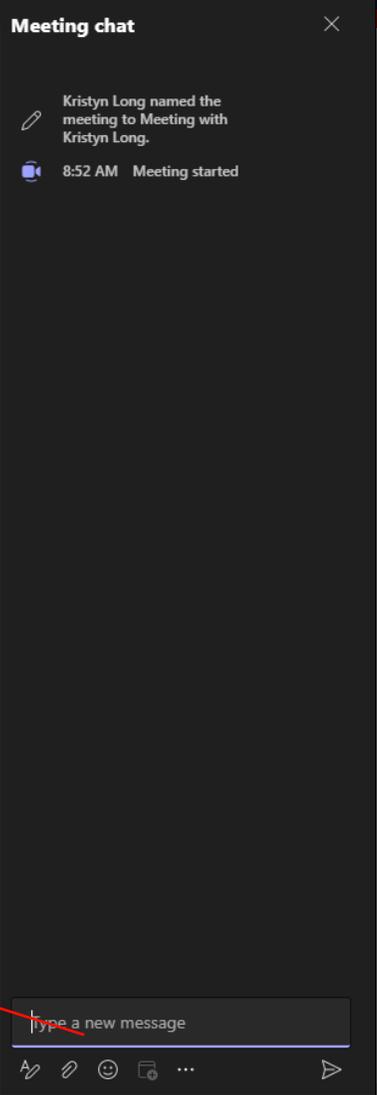
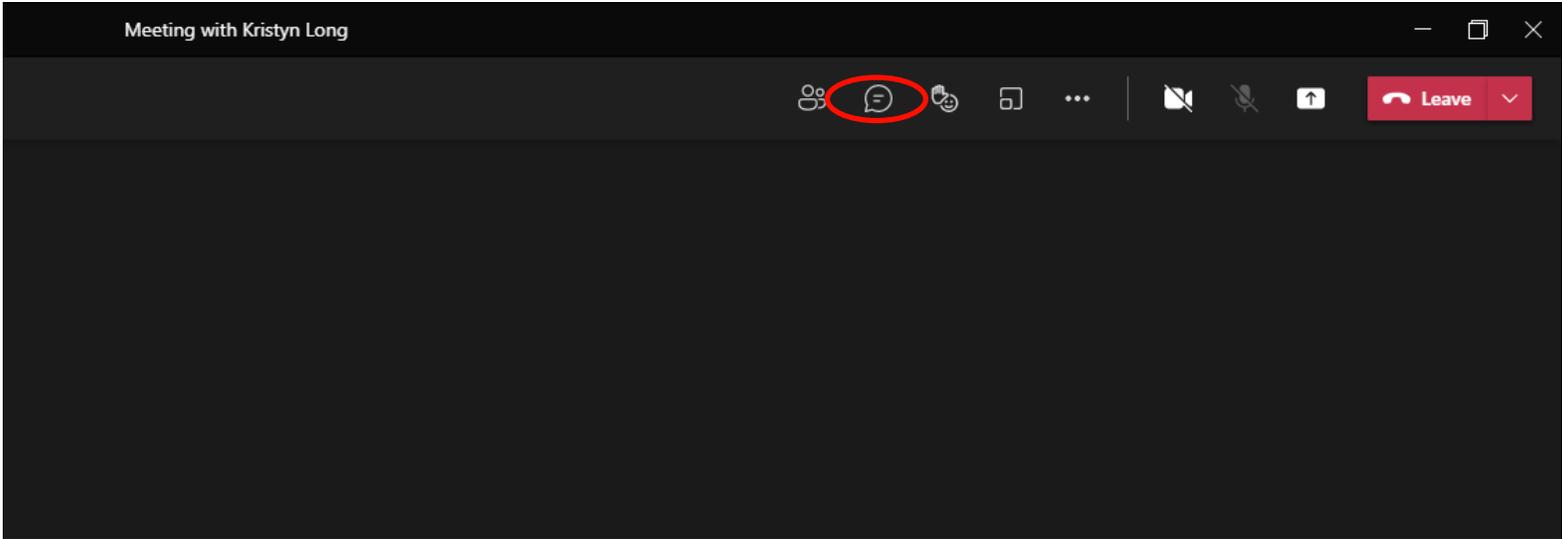


Department of
Health

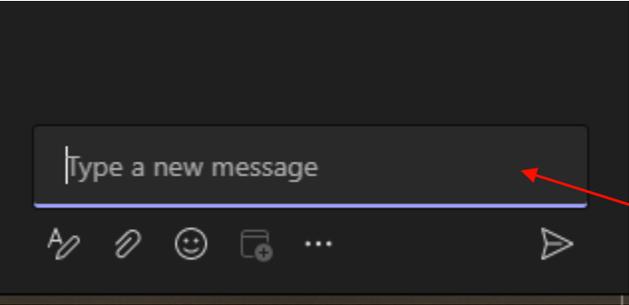
**CMP Special Topics Webinar:
TN Elder Justice Efforts & An Examination of
Unlicensed Facilities
November 17, 2021 @ 1:00 PM CST**

Kristyn Long, Assistant Director, Nursing Home Civil Monetary Penalty Reinvestment Program

Teams Chat Box



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CMP Project Highlight

- Visit the [CMP website](#)
- CMP Project Highlight: *Tennessee Person-Centered Music Program*
 - Tennessee Arts Commission
 - Statewide person-centered care program to improve the quality of life and care for up to 1800 nursing home residents.
 - The key outcomes for nursing home residents include:
 - Reduced reliance on antipsychotic, anti-anxiety, and anti-depressive medications
 - Reduced physical, verbal, and other adverse behavioral symptoms of participating residents
 - Increased access to activities that engage residents and enhance person-centered care by staff
- Contact Kim Johnson at Kim.Johnson@tn.gov

An Examination of Unlicensed Facilities in Tennessee

**Tennessee Commission on Aging and Disability
Presented by Caroline R. Tippens, Chief of Staff**

Public Chapter 464 – Elder Abuse/Financial Exploitation Taskforce

Purpose:

- Assess the current status of elders and other vulnerable adults covered by the Tennessee Adult Protection Act related to financial exploitation, compiled in this part;
- Examine the existing barriers, services, and resources addressing the needs of these elder persons and vulnerable adults; and
- Develop recommendations to address problems associated with the financial exploitation of these elder persons and vulnerable adults.

The task force shall include an examination of the following in its assessment and recommendations:

- A determination of the economic and human impact of financial exploitation of elder persons and vulnerable adults in Tennessee;
- A review of the remedies to reduce the number of individuals suffering such abuse;
- Legislative remedies for consideration in the 112th general assembly; and
- Needed state policies or responses, including directions for the provision of clear and coordinated services and support to protect and assist such persons.

Collaborative Response to Elder and Vulnerable Adult Abuse (CREVAA)

- The Collaborative Response to Elder and Vulnerable Adult Abuse (CREVAA) is a Victims of Crime Act (VOCA) grant funded program in Tennessee. CREVAA is managed at the Tennessee Commission on Aging and Disability (TCAD), and partners with the Area Agencies on Aging and Disability (AAADs), and Human Resource Agencies (HRAs) across the state to provide services.
- The CREVAA program provides emergency services and supports to older and vulnerable adult victims of crime in all 95 counties in Tennessee. CREVAA works closely within the community to provide resources to clients and addresses the unmet needs of those who have been the victim of crime.
- CREVAA works closely with stakeholders, including Adult Protective Services (APS), law enforcement (LE), District Attorneys (DA's), and other aging service providers.

Case Study

Purpose

- This report examines the gaps between the regulatory entities who license residential facilities for elderly and vulnerable adults, identifies the individuals who fall victim to unlicensed facilities, and offers proposed solutions discussed between the State stakeholders.
- External State stakeholders include: Department of Health (TDH), Department of Mental Health and Substance Abuse Services (TDMHSAS), Department of Human Services, Division of Adult Protective Services (APS), Department of Intellectual and Developmental Disabilities (DIDD), Tennessee Bureau of Investigation (TBI), State Fire Marshal's Office, multiple local Area Aging on Aging and Disability (AAADs), District Attorneys, and the Tennessee Commission on Aging and Disability (TCAD).

Problems

- Elderly and vulnerable adults who reside in unlicensed facilities often become victims of abuse, neglect, or financial exploitation. The majority of the residents found in these unlicensed facilities were over aged sixty (60) and were not able to live independently but were not yet eligible for Medicare or Medicaid.
- The data collected for this paper evidences that the lack of small residential placement facilities for elderly and vulnerable adults in some counties may allow unlicensed facilities to flourish.
- From January 1, 2021 to July 2021, the Tennessee Bureau of Investigation calculated that it had received sixty-four (64) complaints of unlicensed facilities. In the time frame that the stakeholders have been convening to discuss unlicensed facilities, the stakeholders have been involved in the removal of residents from at least thirteen (13) unlicensed facilities with more being identified every day.
- Each agency has jurisdictional limitations, which include, but are not limited to: specific numbers of residents who must be found in a facility before an agency can investigate, specific services provided, such as medication administration or nursing services, or the types of benefits received by residents. Data also cannot be freely shared between agencies which would allow cases to be linked. As a result, it is difficult to obtain a unique count of cases specifically affecting elder and vulnerable adults.

Persons Affected

The majority of the individuals identified in unlicensed facilities have been over the age of sixty (60) but did not have private insurance and had not been assessed for Medicaid. Many of these individuals needed some assistance with activities of daily living but did not meet TennCare criteria to qualify for CHOICES. The great majority of these residents were low income, but most did not receive Supplemental Security Income (SSI). In order to qualify for CHOICES, a resident must fall into one of the three CHOICES groups:

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

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

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

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

- 1) Need the level of care provided in a nursing home; AND
 - 2) Qualify for Medicaid long-term services and supports.
- To qualify for Medicaid long-term services and supports: (1) An individual's income can't be more than \$2,382 per month; (2) The total value of things an individual owns can't be more than \$2,000 (The home where you live doesn't count); AND (3) An individual can't have given away or sold anything for less than what it's worth in the last five (5) years.
 - To qualify for and remain in CHOICES Group 3, an individual must be "at risk" of needing the level of care provided in a nursing home unless the individual receives home care; AND be receiving Supplemental Security Income (SSI) payments from the Social Security Administration.

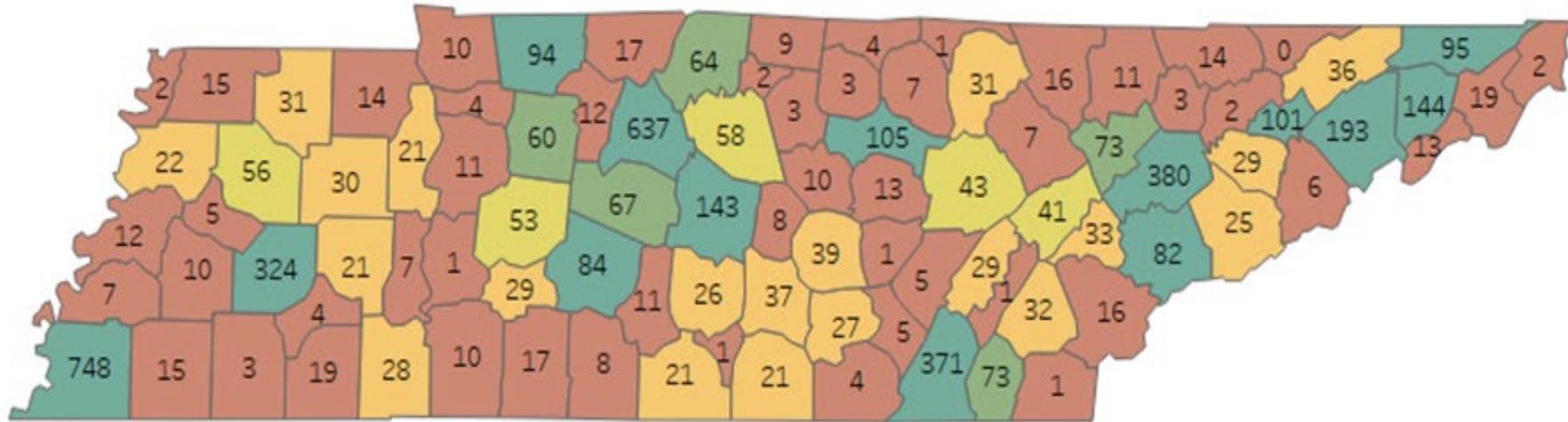
Unlicensed Facility Residents Continued

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

Data

- As of 2018 there were 52.4 million adults 65 and over in the United States. By 2040, that number is expected to climb to 80 million, comprising nearly 21% of the total population. People aged 85 and older are predicted to almost triple from their current 6.7 million to 19 million by 2060.
- Studies have found that at least one in 10 community-dwelling older adults experienced some form of abuse in the prior year. Global estimates from a recent meta-analysis reflect that one in six elders, or 15.7%, in the community experienced past year abuse.
- Prevalence rates by type of abuse differ across studies. One study, relying on self-reports of abuse, assigned the following percentages by type of abuse: psychological (11.6%), physical (2.6%), financial (6.8%), neglect (4.2%), and sexual (0.9%) abuse.
- Another recent study found the following: emotional (4.6%), physical (1.6%), financial (family: 5.2%), financial (stranger: 6.5%), neglect (5.1%), and sexual (.6%).
- A recent meta-analysis assessing the global prevalence rates of the abuse of older women found that one in six experienced abuse in the prior year. By type, the pooled prevalence rates reflected the following percentages: psychological abuse (11.8%), physical abuse (1.9%), financial abuse (3.8%), neglect (4.1%), and sexual abuse (2.2%).
- In Tennessee, by 2040, 2,088,906 million Tennesseans will be over the age of 60. In 2070, 2,559,725 residents will be over the age of 60 . Finding affordable residential housing for elderly Tennesseans is a growing program.

Licensed Facility By Department



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

[Licensed / Unlicensed Facilities August 2021 | Tableau Public](#)

Criminal Penalties

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

Nationwide Studies

- Assistant Secretary for Planning and Evaluation (“ASPE”) as the Advisor to the Secretary of the U.S. Department of Health and Human Services (HHS) wrote a report entitled, “Understanding Unlicensed Care Homes: Final Report” which was published on August 31, 2015.
- Although there were a few examples of unlicensed care homes where receive what they categorized as good care, it appears that abuse, neglect, and financial exploitation of these vulnerable residents is commonplace.
- Residents of these homes are extremely vulnerable. While some unlicensed homes reportedly serve elderly and physically disabled residents, formerly homeless, persons who may have substance use disorders, persons with severe and persistent mental illness, and parolees are often found in unlicensed facilities. Some of these homes also serve mixed populations (e.g., elderly residents as well as individuals with severe and persistent mental illness).
- Many residents of unlicensed care home are Supplemental Security Income (SSI) beneficiaries. Several informants explained that some unlicensed care home operators require residents to make the care home operator or the operator's designee their representative payee for SSI benefits, and that some operators also collect food stamps, medications, or other resources from residents, which the operators can then sell for profit.
- Conditions in unlicensed care homes are often abusive, financially exploitative, and neglectful of residents' basic needs, and depicted situations that involved false imprisonment of the residents and repeatedly moving the residents from one facility to another, both within and across states, to evade law enforcement.

Nationwide Studies Continued

- Interagency, multidisciplinary teams at state and local levels are imperative to the success of shutting down unlicensed care homes, and to address the various issues involved in such closures, such as meeting the housing and services needs of residents, addressing any criminal behaviors of the care home operators, and ensuring the safety of the house or facility and neighboring properties. The informants recommended the formation of teams including a range of stakeholders, including state licensure officials, Adult Protective Services (APS), ombudsmen, police, firefighters, emergency medical services, code enforcement, and local advocacy organization workers.
- States commonly use a strategy that includes penalty systems that fine operators as a way to try and close illegally unlicensed care homes. However, fines have had little impact on closing the homes, as they were often unenforceable and rarely paid.
- Some states may implement public awareness campaigns to support identification of unlicensed care homes. Two of our three site visit states aimed to enhance awareness of poor and inadequate unlicensed care homes by increasing education for the public and key stakeholders: Pennsylvania held a statewide education and marketing campaign to inform the public about unlicensed care homes, and Georgia conducted training sessions to educate law enforcement and first responders about these homes.

Common factors found in unlicensed homes across the United States:

- The policies that licensed care homes have against admitting residents who exhibit behavior problems and those who have substance use disorders, or to discharge residents who develop these problems.
- The modest payments made by SSI or State Supplemental Payments to residential care homes, are inadequate to cover expenses in licensed facilities.
- The closure of large mental health institutions and concomitant transition of previously-institutionalized individuals with severe and persistent mental issues to community-based care settings, such as legally unlicensed care homes.
- The financial pressure hospitals feel to free up hospital beds sometimes results in discharges to unlicensed care homes, both unintentionally and for expediency.

Jurisdictional Limitations

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

Jurisdictional Limitations Continued

- There are investigation restrictions on the number of persons in the home and the types of services provided. For example, pursuant to Tenn. Code Ann. § 68-11-201(18), Department of Health licenses residential homes for the aged which are defined as a home which accepts primarily aged persons for relatively permanent, domiciliary care. A home for the aged provides room, board and personal services to four (4) or more nonrelated persons. The Department of Health is unable to investigate unlicensed care homes that contain less than four (4) unrelated persons.
- For TDMHSAS, the following three elements must all be found at the unlicensed home for TDMHSAS to generate a finding that they require licensure and are operating unlawfully:
 1. Owner/operator is providing “medication assistance” to residents.
 2. Owner/operator is providing “personal care” services to residents.
 3. There is more than one (1) resident residing in the home who is unrelated to the owner/operator and who has been diagnosed with a mental illness under the DSM criteria OR whose primary purpose is restoring service recipients with alcohol and/or drug abuse or dependency disorders to levels of positive functioning and abstinence appropriate to the service recipient.
- There are also limitations placed on each Department regarding the sharing of information. Pursuant to Tenn. Code Ann. § 63-1-117(f), the Department of Health cannot share any information on unlicensed facility complaints. Similarly, given the mental health treatment records that it holds, the Department of Mental Health and Substance Abuse Services has information that is prohibited from disclosure pursuant to Tenn. Code Ann. § 33-3-103

Strike Force/Strike Force Protocols

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

Increased Criminal Penalties

- After working with the strike team for several months, a common theme has emerged. Many of the unlicensed facility providers that the team has come into contact with over the course of several months are chronic offenders.
- For example, TDMHSAS has one unlicensed facility provider, that over the course of several years, has operated thirteen (13) unlicensed facilities. When the Department becomes aware of this provider, it investigates, and if substantiated that the facility is an unlicensed provider, it sends a Cease and Desist Order signed by its Commissioner. If the individual continues to operate the facility, the Department can seek injunctive relief pursuant to Tenn. Code Ann. § § 34-2-405 and 33-2-417. This is a labor-intensive process, which can be circumvented by the provider, when the provider closes up shop and moves on to a new location. It can be difficult to track unlicensed providers, especially if they do not own the homes which they operate, but instead lease residential homes or move across county lines.
- Simply put, a Class B misdemeanor and civil penalties may not be enough to deter these chronic or habitual offenders. A viable option may be to amend Tenn. Code Ann. § § 68-11-213(h), 68-102-117, 33-2-405, and 33-2-417 to provide that the continuous or chronic operation of multiple unlicensed facilities is a Class D felony. Each Department would have discretion as to how it defines a chronic offender. Notice of this statute would also be provided to unlicensed facility operators in advance.

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

- TennCare has authorized the use of an “Emergency Placement” rate of \$245/day for Community Living Supports which was implemented early in 2018. It is provided for up to 30 days and in exceptional circumstances, can be extended for up to another 30 days. It is only for people in CHOICES or ECF CHOICES who are referred by APS and need immediate housing supports because their home is uninhabitable or they have been subject to abuse and neglect to the degree that their immediate safety, health, and welfare is in jeopardy. Unlike typical residential services, due to the nature of these circumstances, it is more of a respite benefit and the daily rate covers the individual’s room and board expenses. This is only until suitable longer-term living arrangements can be made.
- More attention should be given to publicizing this benefit and informing law enforcement and others of this potential emergency placement rate. Further, additional consideration should be given to economically incentivizing providers to keep beds open for emergent places, especially for those potential residents who may not be approved for CHOICES.

Tiny Homes

- Nationwide, the use of tiny homes is on the rise. A pilot program in Pennsylvania has been developed which features tiny homes and even “tiny villages” as an option for affordable senior housing, as discussed in a recent article entitled, “Senior Living Innovators Zero In On Small Homes, Pocket Neighborhoods” by Tim Regan and published in the Senior Housing News on February 6, 2020 . The article highlighted a pilot program for “pocket neighborhoods” developed in New Holland, Pennsylvania, Denver, Colorado, Portland, Oregon, and in Austin, Texas. Pocket neighborhoods consist of smaller homes in walkable clusters, usually around a common area. Pocket neighborhoods would be geared more toward independent older adults. However, it’s possible that eventually home health services could be expanded to a group of tiny homes, so that elders can age in place.
- Tennessee is also jumping on the tiny home bandwagon, with the Department of Commerce and Insurance, Division of Fire Prevention, Modular Building Units adopting rules in June 2021 allowing for tiny homes to be built and inspected through its Modular Building Units’ Division. The tiny homes will be inspected after a permit is purchased through CORE with inspections for rough-in, final for electrical, and residential occupancy .
- Additionally, Nashville itself has created “The Village at Glencliff” which provide respite services for unhoused persons after a hospital stay. There are twenty-two (22) tiny homes in the village.

Conclusion

- The unlicensed facility problem in Tennessee is growing. With the “silver tsunami” coming, as Tennesseans continue to age, affordable residential facilities will become an issue which can no longer be ignored. Over the course of six (6) months, approximate sixty-four (64) unlicensed facilities have been identified. In the thirteen (13) cases that the strike force has been involved in, many of the residents in these homes have been subjected to abuse, neglect, and financial exploitation. The residents of these homes are vulnerable, as they often have no healthcare benefits, little money, and often, no one to advocate for them or work on their behalf.
- Compounding this problem further, is that there are few placement options and unlicensed facilities are found in counties where healthcare “deserts” occur. The lack of small residential health care facilities in these areas has allowed unlicensed facilities to flourish.
- While there are a number of remedies to this problem, the ultimate decision as to how unlicensed facilities will be handled will be left up to the will of the Tennessee General Assembly.

Questions?

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