July 27, 2020

Senator Delores Kelley
Miller Senate Office Building, 3 East Wing
11 Bladen Street., Annapolis, MD 21401

Delegate Shane Pendergrass
House Office Building, Room 241
6 Bladen Street., Annapolis, MD 21401

Senator Paul Pinsky
Miller Senate Office Building, 2 West Wing
11 Bladen St., Annapolis, MD 21401

Delegate Dereck Davis
House Office Building, Room 231
6 Bladen St., Annapolis, MD 21401

Re: <u>Oversight Hearing Request – Quality of Care at Residential Service Agencies</u>

Dear Chairs Kelley, Pendergrass, Pinsky and Davis,

Our organizations write to request a joint oversight hearing this fall on the quality of care provided by residential service agencies (RSAs).

The state of Maryland licenses RSAs, commonly known as home care agencies, to provide personal, in-home care to older adults and people with disabilities. This care includes assistance with activities of daily living (such as eating, bathing, getting dressed, toileting, and mobility) and instrumental activities

of daily living (such as light cleaning and transportation to appointments). RSAs typically pay home care workers to perform this work.

As of February 2020, the Maryland Department of Health (MDH) Office of Healthcare Quality (OHCQ) licensed 1,351 RSAs in Maryland. **We have significant concerns about MDH's oversight of RSAs, the day-to-day operations of RSAs, the conditions facing the workforce of RSAs, and the impact of these issues on the vulnerable populations RSAs serve:**

- **Lack of MDH oversight:** A theme underlying all of these issues is the lack of adequate oversight of RSAs by MDH. Unlike Maryland's nursing homes and assisted living facilities, there are no annual inspections of these providers of care, which aid some of our most vulnerable Marylanders; OHCQ inspects RSAs only on complaint. The most recent OHCQ annual report, released in December of 2019, showed that:
    - Just 2 percent of RSAs were fully surveyed by the state;
    - Fewer than 1 percent of RSAs had a follow-up survey conducted; and
    - Fewer than 8 percent of RSAs were subject to complaint-based inspections.

  In total, the Dec. 2019 report indicated that OHCQ requires 4.53 surveyors to oversee RSAs. The report's rate of surveyors per provider—OHCQ has .0035 surveyors per RSA—is the lowest for any provider of care in the state. In addition, Chapter 661 of 2018 repealed the requirement for annual renewal of RSA licenses; thus, once issued, RSA licenses do not expire. This removes the added quality check of registering again with the State, which was previously in place.

- **Lack of COVID-19 workforce protections:** As Maryland continues to confront the COVID-19 pandemic, the state has still not required any pandemic-specific training of any kind for the tens of thousands of home care workers employed by RSAs, despite the availability and low cost of such training. Further, the state has not set COVID-19 testing protocols for RSAs, and has not required nor provided adequate funding for RSAs to provide lifesaving PPE (such as masks) to their workers. These failures endanger workers, consumers, and industry.

- **Lack of a dementia-capable workforce:** RSA staff—the home care workers who provide care to thousands of Marylanders with dementia—must be properly trained in dementia care, and understand effective patient communication and behavioral intervention strategies. Maryland regulations require dementia training annually for staff in nursing homes and assisted living facilities. Yet there are no dementia training requirements for staff who provide home care, who unlike workers at congregate care facilities, have no other staff on-site to aid them in a challenging situation.

- **Employee misclassification:** Maryland lacks a consistent mechanism to prevent the misclassification of home care employees as independent contractors. Misclassification can lead to a variety of serious harms, including: greater tax burdens for workers; nonpayment of required overtime and travel-time wages to this already low-wage workforce; and difficulties obtaining workers' compensation when workers are injured, despite the very high incidence of injuries in this workforce. Misclassification of home care employees as independent contractors makes home care even less desirable work, keeps much of the workforce—which is approximately 90 percent women of color—in poverty, and hurts quality of care.

- **Low wages and high turnover for home care workers:** A key concern underlying RSA quality is the low wages and high turnover of this workforce. According to the workforce advocacy organization PHI, home care workers provide an estimated 70 to 80 percent of the paid hands-on long-term care and personal assistance to older adults, people with disabilities, and those suffering from chronic conditions. Despite their importance, the U.S. Bureau of Labor Statistics estimates that 2.8 million workers will leave the workforce for other jobs, increasing the gap between the critical need for this workforce and the actual size of the workforce.

  The extraordinarily high turnover—and the resulting knowledge and experience lost—emanates from both very low wages and the poor working conditions associated with misclassification as independent contractors. Many home care workers rely on public assistance to survive. The median hourly wage for home care workers in the Maryland is a little more than $12 per hour, an amount that has remained stagnant for the past ten years. These concerns are exacerbated by the failure to protect frontline care workers during the COVID-19 pandemic. Increased attention to the needs of this workforce could lead to increased job satisfaction and retention, ultimately improving the quality of care for older adults, including those with dementia, people with disabilities, and those with other care needs.

- **Low Medicaid reimbursement for providers:** The workforce crisis—and its impact on quality of care—is directly linked to low Medicaid reimbursement rates for care provided by RSAs. Maryland, unlike other jurisdictions such as the District of Columbia, has not increased reimbursement rates during the COVID-19 pandemic for Medicaid home care providers to account for the increased risk and help retain a qualified workforce. Higher rates, and a requirement that a percentage of the increase go to the workers, are needed now more than ever.

Thank you for your time and consideration of this request. We appreciate the leadership of the legislature on these issues, which are critical to the health and wellbeing of many thousands of the most vulnerable Marylanders. Should you have any questions, or wish to discuss this issue further, please contact Alzheimer's Association Director of Government Affairs Eric Colchamiro at ercolchamiro@alz.org.

Sincerely,

1199 SEIU: United Healthcare Workers East
AARP of Maryland
Alzheimer's Association, Greater Maryland Chapter
Alzheimer's Association, National Capital Area Chapter
Caroline Center
Maryland Association of Centers for Independent Living
Marylanders for Patient Rights
Maryland Coalition on Mental Health and Aging
Mental Health Association of Maryland
National Domestic Workers Alliance
National Employment Law Project
Public Justice Center

cc: Secretary Robert R. Neall, Maryland Department of Health
Secretary Rona Kramer, Maryland Department of Aging
Senator Brian Feldman, Vice Chair, Finance Committee
Senator Cheryl Kagan, Vice Chair, Education, Health and Environmental Affairs Committee
Delegate Joseline Pena-Melnyk, Vice Chair, Health and Government Operations Committee
Delegate Kathleen Dumais, Vice Chair, Economic Matters Committee