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To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Office of the Attorney General

Re: Senate Bill 966 (Health Facilities - Assisted Living Programs - Referrals and Licenses): Support with Amendments

The Office of the Attorney General supports Senate Bill 966 and suggests an amendment relating to the bill's reference to the Consumer Protection Act. This bill would amend Title 19 of the Health General Article to expand the penalties that may be imposed on persons who operate assisted living programs without licenses, and would impose new sanctions on persons who make referrals to assisted living programs that are operating without licenses. We believe consumers requiring assisted living programs would be better protected as a result.

Section 19-1809 sets out criminal penalties that may be imposed on a person who knowingly and willfully operates, maintains or owns an assisted living program without a license. The criminal penalties increase for subsequent violations. This bill would add provisions that authorize the Office of the Attorney General to seek "appropriate injunctive or other relief" if a person violates this prohibition for the third time, including injunctive relief to immediately cease operating the program and to prohibit the person from operating, maintaining or owning an assisted living program in the future.

We agree that this Office should play a role in ensuring that assisted living programs are appropriately licensed, but we believe more appropriate language in Section 19-1809(a)(6) would be the following:

"A violation of paragraph (1) of this subsection shall be a violation of the Consumer Protection Act."

The Consumer Protection Act already provides to the Office of the Attorney General the authority to conduct investigations, seek injunctive relief and to apply penalties that are in addition to those penalties set out in Section 19-1809. An explicit reference to the Consumer Protection Act will ensure that Section 19-1809, as amended by this bill, would not be interpreted as being exempt from the Consumer Protection Act or creating a parallel line of authority to the Act that may create confusion. The amendment suggested above also would make clear that the Office of the Attorney General would not have to wait for a third offense before taking appropriate action: Section 19-1809(a)(1) contains the prohibition against operating, maintaining or owning an assisted living program without a license. Moreover, selling services that a merchant cannot legally sell due to the lack of a license or otherwise is a violation of the CPA.

Finally, the bill would impose civil penalties on persons who willfully and knowingly refer other persons to assisted living programs that are operating without licenses. We support this provision, as well as the provisions pertaining to “assisted living referrers.”

We ask the Committee to give the bill a favorable report with the proposed amendment.

cc: Sponsor and Members of the Finance Committee