



6811 Campfield Road
Baltimore, MD 21207

TO: The Honorable Dereck E. Davis
Chairman, Economic Matters

FROM: LeadingAge Maryland

SUBJECT: House Bill 1326, Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave

DATE: March 2, 2021

POSITION: Unfavorable

LeadingAge Maryland writes to request an unfavorable report on House Bill 1326, Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave.

LeadingAge Maryland is a community of not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. We represent more than 120 not-for-profit organizations, including the vast majority of CCRCs in Maryland. Our mission is to expand the world of possibilities for aging in Maryland. We partner with consumers, caregivers, researchers, faith communities and others who care about aging in Maryland.

Background: The Healthy Working Families Act currently applies to all employers with employees whose primary work location is in Maryland. They are required to provide earned sick and safe leave, regardless of where the employer is located. Employers who employ 15 or more employees are required to provide paid earned safe and sick leave. Employers with 14 or fewer employees are required to provide unpaid earned sick and safe leave.

Public Health Emergency: Under this legislation, on the date that a public health emergency is declared or proclaimed for a jurisdiction, each employer in the jurisdiction shall provide each employee paid earned sick and safe leave in addition to the earned sick and safe

leave required to be provided under § 3–1304 of this subtitle (Healthy Working Families Act; Requirements; Calculation of Leave). Employer would include temporary services agencies, employees of temporary staffing agencies. .

Hours Earned: For full–time employees who regularly work 40 hours or more per week, they earn 112 hours. Those employees who regularly work fewer than 40 hours per week receive an amount of hours equivalent to the amount of hours the employee works on average over a typical 2–week or 4–week working period, whichever is greater. An employee provided paid earned sick and safe and whose work schedule varies from week to week, the employer must determine the amount of hours worked on average in a 2–week period by averaging a 6 month period on the date of the public emergency was declared or if the employee did not work over the 6–month period, the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee normally would be scheduled to work. The employer shall provide paid earned sick and safe leave to an employee regardless of the employee’s length of employment with the employer.

Use of Leave: Each employer must allow an employee to use the paid earned sick and safe leave during the 3 weeks immediately following the official termination or suspension of the public health emergency. There are a number of instances when an employee may use paid earned sick and safe leave provided in relation to a public health emergency. Those reasons include:

- isolation without an order because the employee has been diagnosed with a communicable disease
- to seek or obtain a medical diagnosis, care, or treatment due to symptoms associated with a communicable disease
- care for a family member who is isolating
- because of a diagnosis or symptoms of a communicable disease
- due to the employee’s inability to work because the employee has a health condition that may increase susceptibility to, or risk of, a communicable disease including age or asthma.

An employee may use the paid earned sick and safe leave provided under this section before using the earned sick and safe leave under the Healthy Working Families Act.

Notice: An employer may require an employee to provide notice to the employer of the need for paid earned sick and safe leave provided as soon as practicable only if the need for paid sick leave is foreseeable and the employer’s place of business has not been closed due to the public health emergency. An employer may not require an employee to provide documentation for the use of leave. Within 7 days after a public health emergency is declared or proclaimed,

each employer must provide each employee with written notice of the public health emergency and the employee's right to paid earned sick and safe leave. If a public health emergency continues for a period longer than 3 months, each employer must provide the notice every 3 months.

LeadingAge Maryland Comments: The field of aging services has been on the front lines of COVID-19 and has not been immune from the operational and fiscal obstacles. Nursing homes and assisted living across the country are reporting operating losses of several hundred thousand dollars a month or more, and many affordable senior housing providers have COVID-related expenses far beyond their means. The pandemic has triggered revenue losses of up to 23% in nursing homes, and across the country we are seeing nursing homes beginning to close. In a recent survey, almost $\frac{3}{4}$ of nursing homes (72%) reported they will be unable to maintain operations for another year at this rate—and 40% said they would last less than six months. Whether it is ensuring appropriate levels of personal protective equipment or access to sufficient testing kits, our sector has been impacted. Providers have faced mounting costs and decreases in revenue over the last year. The costs of required testing, PPE, increased pay for staff (including overtime and incentive pay) have cost providers hundreds of thousands to even millions of dollars. These were unbudgeted and ongoing expenses.

These increased expenditures have been necessary and have helped providers effectively protect and support both residents and staff during this unprecedented time. Some organizations received federal and/or State funds to offset some of the increased cost. Unfortunately, this funding has failed to cover the full impact of the expenses and lost revenue, leaving many providers facing significant financial strife. Based on 270 employees, one LeadingAge Maryland member estimates that this legislation will require \$434,676.92. House Bill 1326 places an enormous funding mandate on our sector, at a time our members and residents can least afford it.

For these reasons, LeadingAge Maryland respectfully requests an unfavorable report for House Bill 1326.

For additional information, please contact Aaron J. Greenfield, 410.446.1992