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In Senior Care and Services

TO: The Honorable Joseline A. Pena-Melnyk, Chair  
Members, House Health and Government Operations Committee  
The Honorable Speaker of the House Adrienne A. Jones (Office of the Attorney General)

FROM: Danna L. Kauffman  
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DATE: February 21, 2024

RE: **OPPOSE** – House Bill 723 – *Office of the Attorney General – Rights of Residents of Health Care Facilities – Injunctive Relief and Penalties*

On behalf of the LifeSpan Network, the largest and most diverse senior care provider association in Maryland representing nursing facilities, assisted living providers, continuing care retirement communities (CCRCs), medical adult day care centers, senior housing communities, and other home and community-based services, we **respectfully oppose** House Bill 723.

For nursing homes, the bill expands the authority of the Attorney General’s Office (“Office”) to seek injunctive relief on behalf of the State (not on behalf of a resident) on the basis of an imminent or ongoing violation of a basic right of residents. The specific rights noted in the bill currently exist in statute and are: (1) the right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State and federal laws, rules, and regulations; (2) the right to be free from mental and physical abuse; (3) the right to notice, procedural fairness, and humane treatment when being transferred or discharged from a facility; (4) the right to be free from physical and chemical restraints, except for restraints that a physician authorizes for a clearly indicated medical need; (5) the right to manage personal financial affairs.

For assisted living programs, the bill defines what must be included in a “resident’s bill of rights” by restating current regulations under COMAR 10.07.14.35 and then authorizes the Office to seek injunctive relief on behalf of the State (not on behalf of a resident) on the basis of an imminent or ongoing violation of these basic rights. The Office may then request the court to issue a civil money penalty not to exceed \$10,000 for each violation by an assisted living program.

<b>Resident Right</b>	<b>Citation</b>
The right to be treated with consideration, respect, and full recognition of human dignity and individuality.	10.07.14.35(a)(1)

The right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant federal and state laws, rules, and regulations.	10.07.14.35(a)(2)
The right to be free from mental and physical abuse.	10.07.14.35(a)(7)
The right to be free from mental, verbal, sexual, and physical abuse, neglect, or involuntary seclusion or exploitation.	10.07.14.35(a)(7)
The right to notice, procedural fairness, and humane treatment when being transferred or discharged from a facility.	10.07.14.33
The right to participate in decision making regarding transitions in care, including a transfer or discharge from a facility.	10.07.14.26
The right to be free from physical and chemical restraints, except for restraints that a physician authorizes for a clearly indicated medical need.	10.07.14.37
The right to manage personal financial affairs;	10.07.14.38, .39

It is important to note that, in order to ensure that the above rights are being respected, there are extensive regulations that must be followed by each industry, which are enforced by the Maryland Department of Health, through the Office of Health Care Quality. This occurs through the survey process, complaint investigations and the issuance of deficiencies and fines when standards are not satisfied. The process for nursing homes is more complex given that nursing homes must also comply with federal regulations, which mirrors State requirements. When a nursing home fails to meet one or more of the requirements, surveyors cite a deficiency based on four categories – 1) immediate jeopardy; (2) actual harm that is not immediate jeopardy; (3) no actual harm with a potential for more than minimal harm, but not immediate jeopardy; and (4) no actual harm with a potential for minimal harm. Surveyors also decide the scope and severity of the deficiency based on a matrix – isolated, pattern, and widespread. Each deficiency requires a plan of action. Immediate jeopardy requires the nursing home to take immediate corrective action. While assisted living programs are not subject to federal regulations, State regulations impose similar requirements. In addition, regardless of whether it is a nursing home or an assisted living program, the Secretary has the authority to impose sanctions and/or other actions, such as restricting admissions, requiring the hiring of a management firm or consultant, and requiring a staffing plan or additional staff training. The Secretary always has the authority to revoke a license.

Our opposition to House Bill 723 is that it is not only duplicative of the authority of the Secretary of Health, but it outlines no standards or procedure for how the Office would determine “an imminent or ongoing violation.” Unlike the current authority to seek injunctive relief on the basis of an involuntary discharge or transfer, which is a defined act, the authority sought in this bill is elusive and each “right” related is addressed by multiple regulations to determine if it has been satisfied or violated. In addition, if the Attorney General were to impose a fine, is this fine in addition to a fine imposed by the Department? If so, would the fines be deposited to the General Fund or to the appropriate civil money penalty fund to be used for quality initiatives in each respective industry? Lastly, we are concerned that imposing yet another punitive (and elusive) measure may have the effect of deterring good providers from coming into the market. Rather than always focusing on punitive measures, Maryland must develop initiatives to bolster affordable senior housing options. For these reasons, we request an unfavorable vote.

