



**TESTIMONY BEFORE THE
HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE**

February 21, 2024

House Bill 723: Office of the Attorney General - Rights of Residents of Health Care Facilities –
Injunctive Relief and Penalties
Written Testimony Only

POSITION: FAVORABLE WITH AMENDMENTS

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support with amendments for House Bill 723.

HFAM represents skilled nursing centers and assisted living communities in Maryland, as well as associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state. HFAM is affiliated with the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), which is the largest association in the United States representing long-term and post-acute care providers.

House Bill 723 authorizes the Attorney General to seek injunctive relief on behalf of the State on the basis of an imminent or ongoing violation of certain rights of residents of certain health care facilities; authorizes the Attorney General to request a court to impose a civil penalty not to exceed \$10,000 on an assisted living program for certain violations; and requires that the resident bill of rights for assisted living program residents include certain rights.

We appreciate that the Office of the Attorney General reached out to HFAM in advance of this legislation on amending the Maryland Patients' Bill of Rights to include assisted living providers, providing for injunctive relief, and enumerating specific rights. HFAM and our members share Attorney General Brown's commitment to patient rights.

We support such enhanced authority of the Attorney General to address egregious violations of the basic rights of residents. We believe the legislation should be supplemental to, and not duplicative of, the already extensive authority of the Maryland Department of Health (MDH) and Office of Health Care Quality (OHCQ) which, for nursing homes, already overlaps with the authority of the federal Centers for Medicare and Medicaid Services (CMS).

Here are our comments and recommendations, under the nursing home language:

- Section 19-345.3(c)(2): the new language referring to the basic rights of patients should refer instead to "residents." (This aligns the language.)
- Section 19-345.3(c)(2): the new language should refer to an imminent or ongoing "egregious" violation. This change is to avoid the legislation simply adding an additional, duplicate level of OAG enforcement to that under OHCQ's authority; additional action by the OAG should be based on a finding of a heightened violation.

- An example of such duplication is in the inclusion of violations of Section § 19-343(b)(2)(ii) in the list of basic rights that can give rise to an injunction or civil money penalty under Section 19-345.3(c)(2) and (3). This is because subsection (ii) of Section 19-343(b)(2) refers broadly to “the right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant state and federal laws, rules, and regulations.” Residents most certainly do have that right and OHCQ has broad enforcement authority to ensure this right is honored. We are simply observing that without a reference to egregious violations, this would mean the OAG has overlapping and duplicative authority over any manner of regulatory violation.
- At a minimum, if the current reference to any violation is maintained, the reference to “(ii)” should be removed from the two cross-references to Section 19-343(b)(2).
- Under section 19-345.3(c)(3), here too there is the risk of civil money penalties that overlap with existing OHCQ authority to impose financial penalties under Health General Article, Sections 19-1402 through 19-1404.
- The Centers for Medicare and Medicaid Services (CMS) also has financial penalties for violations of federal regulations applicable to the same underlying event. To avoid the new legislation simply adding yet an additional level of financial penalty, any civil money penalty requested by the OAG or imposed by a court should take into account penalties already imposed under state or federal law.
- We wish to make clear that we are not suggesting that financial penalties not be imposed for violations of resident rights. The best defense in such matters in any enterprise is to do the right thing, ensure patient and resident rights, and not commit a purposeful and egregious error demanding injunctive relief be sought in the courts. We are mindful that financial penalties divert away from the facility funds that would otherwise be available for care. New OAG authority to seek civil money penalties should simply take into account other penalties for the same violation.

Under the assisted living language:

- We suggest an amendment to the new language under section 19-1805(a)(8) to remove the reference to basic rights that “include at a minimum.” This legislation would impose important new obligations protecting the rights of assisted living residents, a concept we support. We are concerned about language suggesting that the legislature is delegating to OHCQ unilateral authority to establish new rights not listed but equally open to enforcement by the OAG.
- Concerning section 19-1805.1, giving new enforcement authority to the OAG, we support the intent of the legislation. The new language should refer to imminent or ongoing “egregious” violations to avoid simply adding an additional, duplicate level of enforcement to that under OHCQ’s authority. An additional action by the OAG should be based on a finding of a heightened violation.
- Likewise, for the reasons explained above, any new civil money penalty under Section 19-1805.1(b) should take into account other penalties for the same violation.

- Our last comment is a technical edit. Sections 19-1805.1(a) and (b) cross-reference to new section 19-1805(a)(8) ((i) through (viii).) However, the new language only goes up to 19-1805(a)(vi).

We hope that these comments and recommended clarifications are helpful. HFAM is committed to securing the passage of this legislation with the above clarifications. Again, we remain committed to partnering with the Maryland General Assembly, Attorney General Anthony Brown, and other stakeholders to protect and enhance the rights of residents and patients in long-term and post-acute care centers.

With the above considerations and amendments, we request a favorable report on House Bill 723.

Submitted by:

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