



Maryland
Hospital Association

Senate Bill 486 - Labor and Employment - Employment Standards During an Emergency

Position: *Oppose*
February 11, 2021
Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in opposition to Senate Bill 486. **While we agree with many of the concerns raised by the Chamber of Commerce, the requirements of SB 486 pose unique challenges to hospitals.**

Unique Nature of Hospital Field & Regulatory Oversight

Health care is a labor-intensive field, requiring 24-hour-per-day/seven-days-per-week staffing to achieve optimal quality outcomes. Hospitals and health systems need compassionate, skilled, trained, and dedicated professionals to meet these demands. The operations of a hospital, both in and outside of a declared public emergency are extensively governed by myriad state and federal regulations and subject to extensive enforcement mechanisms.

Safety standards are regulated by multiple state and federal regulatory agencies, including the Maryland Department of Health's Office of Health Care Quality, the Centers for Medicare & Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Joint Commission, and the Occupational Safety and Health Administration (OSHA). These standards include requirements to ensure the safety of staff and patients that are science and evidence based. The standards are constantly evolving and more nimble than state statute.

There are existing standards that govern infection control, PPE, and require hospitals to establish and make public emergency preparedness plans. In summary, many of the requirements of this bill are governed by existing standards due to the unique role of the acute care hospital industry, which must be accounted for.

Hospitals Provide Essential Health Care Safety Net

Considering the unique role of hospitals in their communities, we are very concerned with provisions that provide the right for an employee to refuse work. This provision is dangerous to patient care, as it removes caregivers from the bedside and puts patients' lives at risk. We also believe this provision is unnecessary as there are existing policies that address a health care worker's right to refuse unsafe work when certain conditions are met.¹ These standards will soon

¹ www.osha.gov/right-to-refuse.html

be evaluated by the Biden administration as part of a comprehensive review of OSHA standards to respond to the COVID-19 pandemic.²

Hospital work by nature includes some amount of risk of transmission due to proximity with patients. Hospitals follow strict, evidence-based safety protocols to limit this risk, but full evacuation of patient care areas, as would be required in this bill, would be impossible. Further, the requirement for notification under this section may also conflict with HIPAA in cases where the employer is also the health care provider. We ask members of this committee to consider the unintended consequences of these requirements. Would hospitals need to close a unit, or a floor, or the facility and not care for their patients? This would be devastating for health and health care, particularly during a public health emergency.

Hazard Pay & Benefits

In addition to the 117,000 people hospitals directly employ, they also indirectly support another 113,000 related jobs. As the largest employers in most communities, and the largest private sector employers in the state, hospitals have consistently demonstrated the value we place in our employees through the compensation and benefits we deliver; however, we have significant concerns about the provisions related to hazard pay and the retroactivity. MHA's conservative estimates are this mandate alone could cost our hospitals between \$350-450 million. Because hospitals are already subject to a capped global budget and do not have a mechanism to increase revenue, this would require the Health Services Cost Review Commission to issue a 2.2% rate increase immediately upon passage of this legislation. This raises the cost of care.

In the first six months of COVID-19, nonprofit hospitals—which already operate on thin margins—absorbed more than \$200 million or 50% incremental losses, over the prior year. This is *after* the infusion of CARES Act funding and state support. Overall, the additional costs of this legislation could be catastrophic.

Hospitals' top priority is the safety and well-being of their workforce, who are essential to fulfill the mission of care. Maryland hospitals and their dedicated caregivers have been on the front lines of the battle against COVID-19 for nearly a year. They answered the call quickly and with full force to save lives and care for their communities—treating about 32,000 COVID patients since March.

The hospital field added roughly 6,000 beds in just the first months of the pandemic and created much-needed space for surge capacity. They tested hundreds of thousands of community members, patients, and staff. They shored up supplies of scarce protective gear, to keep patients and their workforce safe. And to help maintain social distancing while caring for patients, hospitals quickly expanded telehealth services. When novel vaccines were made available in late 2020, hospitals stepped in to support one of the most ambitious vaccination efforts in our country's history—prioritizing the vaccination of their health care workers and staff.

² www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/

All of this was done while continuing to care for patients during an acute care surge. None of this would be possible without the dedication of the more than 117,000 caregivers in Maryland hospitals, who have rightly been celebrated as heroes.

This is demonstrated in the way hospitals went to extraordinary lengths at the beginning of the pandemic to ensure access to the most needed supplies as global supply chains for personal protective equipment (PPE) shut down. Maryland hospitals quickly mobilized to deploy new strategies—working with local vendors that could pivot production to these vital items, partnering with other hospitals to increase purchasing power, seeking overseas vendors, and even producing their own PPE. Spending on PPE in the first six months of the pandemic alone increased by over \$125 million compared to the previous year’s spending, according to an MHA survey of member hospitals.

In addition, recognizing the additional support needed during this unprecedented time, hospitals and health systems helped their dedicated workers cope with the additional stressors of providing life-saving care during a global pandemic. Our hospitals provided wellness and resiliency support for staff, transportation and childcare assistance, meals, lodging and more to support our employees as they respond to this pandemic. **Hospitals procured these resources and provided those supports, not because they were mandated, but because they care for the people who care for their communities.**

COVID-19 has been unprecedented, but our commitment to the safety and wellbeing of our staff is steadfast. MHA’s top legislative priority this session is ensuring the safety of our health care heroes. MHA is strongly supporting legislation that provides the opportunity for an employer to request a peace order on behalf of an employee who is threatened while on the job ([Senate Bill 105](#)), and legislation to extend protections from unsubstantiated malpractice suits to apply to those essential hospital workers who played a vital role in this public health emergency ([Senate Bill 311](#)).

The broad reach of SB 486 fails to recognize the unique nature of acute care hospital operations and care delivery, creates duplicative or conflicting requirements on a highly regulated industry, and erects unnecessary barriers between hospital administrators and staff. In our view, the bill creates vague requirements on a health care field that will not only be difficult to implement but could threaten the very safety net that hospitals provide. **For these reasons we urge an unfavorable report.**

For more information, please contact:
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