

**CANDACE McLAREN LANHAM**  
*Chief Deputy Attorney General*



**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**ANTHONY G. BROWN**  
*Attorney General*

**PETER V. BERNS**  
*General Counsel*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

February 21, 2024

The Honorable Josaline Pena-Melnyk  
Chair, Health and Government Operations Committee  
241 House Office Building  
6 Bladen Street  
Annapolis, MD 21401

*Re: House Bill 723 – Office of the Attorney General – Rights of Residents of Health Care Facilities – Injunctive Relief*

Dear Chair Pena-Melnyk:

The Office of the Attorney General (OAG) supports House Bill 723 – Office of the Attorney General – Rights of Residents of Health Care Facilities – Injunctive Relief and Penalties and I urge the Health and Government Operations Committee to give this bill a favorable report. House Bill 723 (1) authorizes the OAG to seek injunctive relief and monetary penalties for certain violations of the nursing home residents' bill of rights that may not rise to the level of criminal abuse but are still a violation of an individual's fundamental human rights and (2) addresses the fundamental human rights of assisted living residents and extends enforcement authority of the OAG into assisted living facilities.

Maryland is faced with an ever-growing population of aging and vulnerable individuals. Many of these citizens must seek care and assistance services from long-term care or assisted living facilities and depend upon those facilities to help address their basic needs. Individuals enter these facilities with certain guarantees and assurances from the State that they as individuals will be

afforded certain fundamental rights, like the right to dignity, the right to be free from chemical restraints, and the right to receive adequate medical care, among others.<sup>1</sup>

For as long as these fundamental rights have been recognized, OAG (specifically the Medicaid Fraud and Vulnerable Victims Unit) has protected those rights by investigating and prosecuting the most serious cases of resident abuse, neglect, financial exploitation, and the failure to provide a baseline level of care by providers in the State. House Bill 723 seeks the authority to do even more to protect these fundamental rights and guarantees of some of our State’s most vulnerable citizens.

In 1995, the Maryland General Assembly empowered OAG to seek injunctive relief and monetary penalties to stop patient-dumping<sup>2</sup> under the nursing home residents’ bill of rights.<sup>3</sup> The General Assembly recognized that the ability to seek injunctive relief in patient dumping situations was critical to prevent ongoing or imminent harm to the vulnerable residents who were suddenly faced with homelessness.<sup>4</sup> The need to quickly and decisively address ongoing resident harm does not stop at patient dumping and is no less critical when addressing other violations of the nursing home residents’ bill of rights. Patients left in soiled diapers for hours or days, patients developing bedsores that expose the bone, and repeated falls resulting in injury are just a few examples of the complaints the OAG receives every year. While these cases cry out for criminal or civil legal action by the State, the existing remedies do not address the more immediate needs of the residents who are suffering in these conditions. House Bill 723 provides OAG with the authority to seek a more immediate solution to redress residents’ misery by requiring these actions be stopped immediately. Under the bill, follow up investigations and legal action would continue to occur as they always have, but now, the OAG will be able to seek injunctive relief to enforce the rights of residents, stop the offensive behavior, and prevent future harm.

Additionally, House Bill 723 also addresses the fundamental rights of assisted living residents and extends the enforcement authority of OAG to assisted living facilities. Assisted living facilities aid those who do not need the more intensive level of care provided by a skilled nursing home, but who nonetheless require help with daily activities. These residents also deserve protection of their dignity and fundamental rights. Where residents are suffering at the hands of those charged with their comfort and care, the OAG stands ready to take appropriate action.

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<sup>1</sup> See MD Code, Health - General, § 19-343 (Nursing Homes); Md. Code Regs. 10.07.14.35 (Assisted Living Facilities).

<sup>2</sup> Patient dumping involves the involuntary discharge of nursing home residents to locations such as homeless shelters or bus stops often to make room for more profitable patients.

<sup>3</sup> See MD Code, Health-Gen. § 19-345.3.

<sup>4</sup> See Related Institutions—Discharge, Transfer and Assets of Residents: Hearing on H.B. 343 before the H. Comm. on Envtl. Matters, 1995 Leg., 409th Sess. (Md. 1995); see also Letter from Daniel R. Anderson, Director of the Medicaid Fraud Control Unit, Office of the Attorney General, to Senator Thomas L. Bromwell, Chair of the Maryland Senate Finance Committee, Regarding House Bill 343: Related Institutions—Discharge, Transfer, and Assets of Residents, at 2 (Mar. 22, 1995)

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In closing, it should be noted that the OAG is only seeking authority to enforce specific provisions of these bills of rights. This list of enforceable provisions was carefully curated to include only those violations that are likely to result in criminal or civil enforcement actions by OAG. Indeed, OAG understands and appreciates the active role the Office of Health Care Quality (OHCQ) plays in oversight of the long-term care system. It is not OAG's intent to duplicate the efforts of OHCQ or to usurp any part of that office's role. Instead, what OAG seeks is the power to put a stop to the most egregious violations of the rights of long-term care residents.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on House Bill 723.

Sincerely,

Anthony G. Brown

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The Office of the Attorney General submits the following amendments to the Committee for consideration. The amendments provide additional clarity on the types of activity that are sufficient to trigger the safeguards in this bill:

By: Office of the Attorney General

Amendment to House Bill 723

On page 3, in line 12, strike “AN IMMINENT OR ONGOING” and substitute “A”; in line 16, after “EXCEED” insert “;”

(I) \$10,000 FOR EACH VIOLATION BY A FACILITY OF § 19-343(B)(2)(II), (IV), (V), (VIII), OR (X); AND

(II)”.

On page 4, strike beginning with “THE” in line 8 down through “(IV)” in line 10; and in lines 12, 15, 18, and 21, respectively, strike “(v)”, “(vi)”, “(vii)”, and “(viii)” and substitute “(iv)”, “(v)”, “(vi)”, and “(vii)”, respectively.

On page 5, in line 24, strike “AN IMMINENT OR ONGOING” and substitute “A”.