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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 22, 2012

The Honorable Martin O'Malley
Governor
State House
100 State Circle
Annapolis, Maryland 21401

RE: Senate Bill 737 and House Bill 1118

Dear Governor O'Malley:

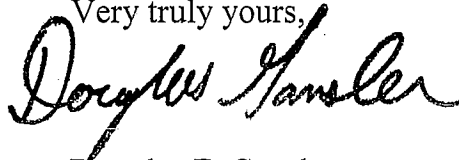
By letter dated, April 26, 2012, we informed you that SB 737 and HB 1118, identical bills adopted this past regular legislative session, were constitutional and legally sufficient. It has subsequently been brought to our attention that the bills contain a minor drafting error. We write today to suggest the proper future course of action if you choose to allow either or both of these bills to become law.

As introduced, the bills would prohibit a nursing home or nursing home management firm hiring or retaining as a consultant, persons who had either surrendered their license or had their license revoked for certain specified reasons. The legislature amended the bills to create a "redemption provision" to allow those who had lost their license but had it reinstated by the State Board of Nursing Home Administrators to be employed. Proposed Health Occupations ("HO") Article, §9-314.2 (B)(2). In drafting that redemption provision, however, the legislature mentioned only those whose license had been "revoked," not those who had "surrendered" their license, as eligible to take advantage of the redemption provision. It strikes us that reading this provision to allow redemption only to those whose licenses were revoked but not those who had surrendered their licenses is illogical and ultimately counterproductive as it would provide a disincentive for negotiated surrenders. Our review of the bill file reveals no such intention and the floor reports strongly suggest an opposite conclusion. Thus, it is our conclusion that the legislature intended to make redemption equally available to those who surrender their licenses as well as those who have their licenses revoked.

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We suggest that the Department of Legislative Services include a correction in next year's corrective bill. One way to accomplish this would be to add the words "SURRENDERED A LICENSE OR" into HO §9-314.2(B)(2) after the first "who." There may be other ways to accomplish the same purpose. Until that change is made, however, if there is an individual who previously surrendered his or her license and whose license is subsequently restored by the State Board of Nursing Home Administrators, that individual should be permitted to be hired or retained as a consultant as if that individual's license had been revoked.

Very truly yours,

A handwritten signature in cursive script that reads "Douglas F. Gansler". The signature is written in black ink and is positioned above the printed name.

Douglas F. Gansler
Attorney General