

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 863

(The President)(By Request - Office of the Attorney
General)

Finance

Office of the Attorney General - Rights of Residents of Health Care Facilities -
Injunctive Relief and Penalties

This bill authorizes the Attorney General to seek injunctive relief on behalf of the State on the basis of an imminent or ongoing violation of a specified basic right of residents of a facility or assisted living program. The bill alters the definition of “resident bill of rights” for residents of assisted living program facilities. In an action brought by the Attorney General regarding a violation of a basic right of residents, the Attorney General may request that the court impose a civil penalty of up to \$10,000 for each violation by a facility or assisted living program. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. General fund revenues from penalty provisions are not likely materially affected.

Local Effect: None.

Small Business Effect: Minimal overall, but potential meaningful for small business assisted living facilities that may receive a penalty under the bill.

Analysis

Bill Summary:

Rights of a Resident of a Facility

Generally, under current law, “facility” means a related institution that, under the rules and regulations of the Maryland Department of Health (MDH), is a comprehensive care facility or an extended care facility. Maryland regulations define “comprehensive care facility” as

a nursing home that admits patients suffering from disease or disabilities or advanced age, requiring medical service and nursing service rendered by or under the supervision of a registered nurse. “Extended care facility” means a nursing home that offers subacute care, providing treatment services for patients requiring inpatient care but who do not currently require continuous hospital services.

Under current law, it is the policy of the State that, in addition to any other rights, each resident of a facility has the following basic rights:

- the right to be treated with consideration, respect, and full recognition of human dignity and individuality;
- the right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State and federal laws, rules, and regulations;
- the right to privacy;
- the right to be free from mental and physical abuse;
- the right to notice, procedural fairness, and humane treatment when being transferred or discharged from a facility;
- the right to participate in decision making regarding transitions in care, including a transfer or discharge from a facility;
- the right to expect and receive appropriate assessment, management, and treatment of pain as an integral component of the patient’s care;
- the right to be free from physical and chemical restraints, except for residents that a physician authorizes for a clearly indicated medical need;
- the right to receive respect and privacy in a medical care program; and
- the right to manage personal financial affairs.

Involuntary Transfer or Discharge

In general, under current law, a facility must provide a resident with a written notice 30 days before any proposed discharge or transfer and provide the resident with the opportunity for a hearing before the discharge or transfer. A resident of a facility may not be transferred or discharged involuntarily except for the following reasons: (1) the transfer or discharge is necessary for the resident’s welfare and their needs cannot be met in the facility; (2) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so that the resident no longer needs the services provided by the facility; (3) the health or safety of an individual in a facility is endangered; (4) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or (5) the facility ceases to operate.

Under current law, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before the discharge or transfer, the facility has (1) provided or obtained a

SB 863/ Page 2

comprehensive medical assessment and evaluation, a post discharge plan of care, and written documentation from the attending physician indicating the transfer or discharge is in accordance with the post discharge plan of care, and (2) provided specified information to the resident concerning the resident's rights to make decisions concerning health care.

Current law authorizes the Secretary to impose a civil money penalty of up to \$10,000 for (1) each violation by a facility of involuntary discharge or transfer requirements, or (2) each willful or grossly negligent violation by a resident's agent or legal representative regarding involuntary discharge or transfer requirements. If a civil money penalty is imposed, the facility, agent, or legal representative of the resident must have the right to appeal from an order imposing the civil money penalty. A resident, resident's agent, or resident's attorney, or the Attorney General on behalf of the resident, who believes that an involuntary discharge or transfer that violates the specified requirements is imminent or has taken place may request injunctive relief from a circuit court. In an action brought by the Attorney General, the Attorney General may request that the court impose a civil penalty of up to \$100,000 for each violation of specified resident involuntary transfer or discharge requirements by a facility.

Resident Bill of Rights

Under current law, an "assisted living program" is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of such services that meets the needs of individuals who need assistance with the activities of daily living in a way that promotes optimum dignity and independence for the individuals. Assisted living programs are licensed by the Office of Health Care Quality within MDH. MDH must, among other things, establish a resident bill of rights for residents of assisted living program facilities.

The bill alters the definition of "resident bill of rights" for residents of assisted living program facilities to include, at a minimum:

- the right to be treated with consideration, respect, and full recognition of human dignity and individuality;
- the right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant federal and state laws, rules, and regulations;
- the right to be free from mental and physical abuse;
- the right to be free from mental, verbal, sexual, and physical abuse, neglect, or involuntary seclusion or exploitation;
- the right to notice, procedural fairness, and humane treatment when being transferred or discharged from a facility;

- the right to participate in decision making regarding transitions in care, including a transfer or discharge from a facility;
- the right to be free from physical and chemical restraints, except for restraints that a physician authorizes for a clearly indicated medical need; and
- the right to manage personal financial affairs.

Additional Information

Recent Prior Introductions: Recent legislation has not been introduced within the last three years.

Designated Cross File: HB 723 (The Speaker)(By Request - Office of the Attorney General) - Health and Government Operations and Judiciary.

Information Source(s): Maryland Department of Aging; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2024
js/jc

Analysis by: Amberly E. Holcomb

Direct Inquiries to:
(410) 946-5510
(301) 970-5510