



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 5, 2019

The Honorable Paul G. Pinsky, Chair
Senate Education, Health, and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 297 – Administrative Procedure Act – Dispositions and Summary
Suspensions – Time Periods – Letter of Opposition

Dear Chairman Pinsky and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of opposition to Senate Bill 297 (SB 297) and requests that the Committee report this bill unfavorably.

SB 297, if passed, would create the following immediate risks to public health and long-term damage to the Department's health operations:

- **Endangers the public health** by allowing for dangerous or unsafe activities to continue by individuals, health care practitioners, and within health care facilities.
- **Puts individual Marylanders' health at risk.**
- **Permits bad actors to continue with illegal or fraudulent financial activities.**
- **Puts federal matching funds at risk.**
- **Cuts short complex and nuanced health care investigations.**

Danger to Public Health

The Department is responsible for the public health of Maryland. SB 297 hinders the Secretary of Health's ability to continue a summary suspension of a license after 30 days.

Currently, the Secretary may summarily suspend a health care facility's license, such as a hospital, an assisted living facility, or a development disabilities services provider, when its patients are at substantial risk regarding their health and safety. The Secretary may also relocate patients and prevent new admissions during the summary suspension. If SB 297 passed, the Office of Administrative Hearings (OAH) would have 30 days to issue a final order and if they failed to do so, the offending facility would be free to reopen their doors and put more Marylanders lives at risk.

Put individual Marylanders' health at risk

There are 20 health occupation licensing boards within the Department that collectively license, regulate, and discipline hundreds of thousands of physicians, nurses, pharmacists, social workers, and other critical health care professionals. SB 297 as drafted, appears to require that the Office of Administrative Hearings (OAH) start and conclude the health occupation boards' entire disciplinary process within 90 days. This is simply not enough time for an individual to file exceptions to any evidentiary findings and appear before a disciplinary panel prior to the issuance of a final decision and order. SB 297 may act to technically terminate pending cases against a bad actor health care practitioner and allow them to continue their activities.

Permits ongoing financial fraud against the taxpayer

SB 297 allows bad actors to continue with financial activities that may defraud the federal and state taxpayer.

Pursuant to federal requirements from the Centers for Medicare and Medicaid Services (CMS), the Department must have an administrative decision and appeals process for matters involving Medicaid eligibility and services for individuals and providers. SB 297's 90-day deadline does not provide the Department with enough time to effectively carry out its process, which includes sending contested cases to OAH for final and proposed decisions. Proposed decisions also require ratification by the Secretary of Health and are subject to an exceptions process under COMAR 10.01.03.18, which can take up to 35 days.

Puts federal matching funds at risk

If SB 297 acts to technically terminate an administrative appeal involving federal matching funds, and the federal government determines that the decision was in error, Maryland stands to lose those federal funds.

Cuts short complex and nuanced health care investigations

OAH is unlikely to resolve cases within the 90-day timeframe imposed by SB 297, as it requires an administrative law judge to review complex clinical determinations and health information. Furthermore, the law as written does not provide any flexibility to account for additional fact finding or the investigation into other pertinent factors that may be necessary to make an informed decision.

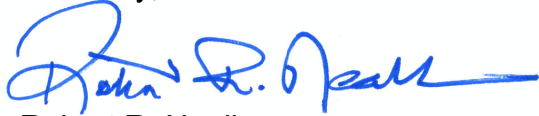
Citizens receiving services maintain their benefits during the appeals process, therefore they will not lose services while cases are resolved.

Forcing the Department and OAH into making rushed decisions because of statutorily imposed deadlines may lead to hasty outcomes that may be detrimental to the health

and wellbeing of Marylanders. The Department respectfully requests that the Committee report SB 297 unfavorably.

If you have additional questions, please contact Director of Governmental Affairs, Webster Ye, at (410) 260-3190 or webster.ye@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert R. Neall", with a long horizontal flourish extending to the right.

Robert R. Neall
Secretary