



**TESTIMONY BEFORE THE
HOUSE ECONOMIC MATTERS COMMITTEE**

February 5, 2021

House Bill 581: Labor and Employment - Employment Standards During an Emergency
(Maryland Essential Workers' Protection Act)
Written Testimony Only

POSITION: FAVORABLE WITH AMENDMENTS

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support with amendments for House Bill 581. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to health care providers. Our members provide services and employ individuals in nearly every jurisdiction in the state.

Thousands of Marylanders across the state depend on the high-quality care and services that our members offer every day. HFAM skilled nursing and rehabilitation center members provide the majority of post-acute and long-term care to Marylanders in need: 6 million days of care across all payer sources annually, including more than 4 million Medicaid days of care and one million Medicare days of care.

We appreciate and support the intent of this legislation, and recognize the challenge to crafting it to have impact on a broad cross-section of enterprises, health care and non-health care, federally regulated and not, as well as for- and not-for-profit. It is indeed critical to protect essential workers who we rely on each and every day to provide health care, keep us connected, ensure we are safe, make sure we have access to food, and so many other services that are sometimes taken for granted. The COVID-19 pandemic has highlighted the importance of this work and the individuals who have often gone above and beyond to continue doing their jobs despite the challenges they face.

While these individuals certainly deserve recognition and protection, we have several concerns with this legislation as currently drafted with overly broad language, vague definitions, and certain other specific provisions. To be clear, we support this legislation and we offer these amendments to make it more focused and operationally effective.

First, the definition of “Essential Worker” in §3- 1601(D)(1) is overly broad. For example, there are employees who cannot work remotely during an emergency due to the nature of their job duties (*i.e.*, office persons working with Protected Health Information), but these individuals work primarily in private offices, or sections of a health care facility where they are not in frequent contact with other persons. Narrowing this definition would also address which employees are rightfully eligible for Hazard Pay and other benefits under the Proposed Act.

- **Proposed Amendment #1:** The definition of “Essential Worker” under the Proposed Act should be revised to read: “An individual who performs a duty or work responsibility during an emergency that substantially increases the risk of harm arising from the Emergency to the individual and cannot be performed remotely or is required to be completed at the worksite in areas where there is a significant risk of harm.”

Second, in §3-1602(9)(VI), the reference to "Home Health Care Companies" is vague. Instead, this should refer specifically to licensed home health agencies. There are a myriad of companies providing home based services such as Residential Services Agencies.

- **Proposed Amendment #2:** Refer specifically to "Licensed Home Health Agencies" instead of "Home Health Care Companies."

Third, as currently written, §3-1604(2) requires Essential Employers to provide necessary amounts of personal protective equipment (PPE) at no cost to Essential Workers during an emergency. This language fails to consider the ongoing shortage of PPE.

- **Proposed Amendment #3:** This language should be revised to read: "Provide available Personal Protective Equipment at no cost to Essential Workers and/or establish proper protocols for prioritization, extended use, and re-use of PPE, in accordance with Maryland Department of Health requirements."

Fourth, section §3-1607(A)(2) would require a worksite to be evacuated during an emergency, if an Essential Worker has contracted an infectious disease at the worksite. Health care facilities, including nursing homes, assisted living facilities, hospitals, and other care settings cannot be evacuated.

- **Proposed Amendment #4:** This section should include: "provided, however, this requirement shall not apply to any setting in which health care services are provided."

Fifth, it is unreasonably burdensome to require employers to pay all costs associated with COVID-19 testing, when there are several facilities that offer free testing. Therefore, we request that section §3-1607(B) be revised.

- **Proposed Amendment #5:** Revise §3-1607(B) to read "If an Essential Worker's health insurance coverage or other benefits do not cover the cost of testing for a contagious illness or disease, during an emergency the Essential Employer shall assist with providing Essential Workers access to testing at no cost to the Essential Worker, or pay the costs associated with that testing."

Sixth, as written in the Proposed Act, all Essential Workers of hospitals and senior living facilities are entitled to Hazard Pay. Additionally, the Hazard Pay cutoff point of \$100,000 is very high, especially considering the average salary range for hospital, long-term care, and other health care facility employees.

- **Proposed Amendment #6:** In §3-1609(A)(1)(II), the \$100,000 cutoff point should be reduced to \$80,000.

Seventh, internally inconsistent language about the effective date for Hazard Pay should be removed. The proposed legislation as drafted already states clearly under Section 2: "That this Act shall be construed to apply only prospectively and may not be applied or interpreted to require the payment of hazard pay for work performed in an emergency before the effective date of this Act."

- **Proposed Amendment #7:** In §3-1609(A)(2) should be revised to read "**AN ESSENTIAL WORKER IS ELIGIBLE FOR HAZARD PAY DURING AN EMERGENCY PROSPECTIVELY FROM THE EFFECTIVE DATE OF THIS SECTION.**"

Eighth, under §3-1611 (A)(1), the proposed legislation allows a person that alleges a violation to file a complaint within two years after the date the person knew or should have known of the alleged violation. This two-year reporting period is overly broad in its duration. Employees have thirty (30) days to make a report under Maryland's Occupational Safety and Health Act. It would logically make sense to provide the same time frame here.

- **Proposed Amendment #8:** §3-1611 (A)(1) of the Proposed Act should be revised to read: “A person that alleges a violation of this subtitle may file a complaint with the Commissioner up to thirty (30) days after the date the person knew or should have known of the alleged violation.”

For these reasons and with these amendments, we request a favorable report from the Committee on House Bill 581.

Submitted by:

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