



**TESTIMONY BEFORE THE
HOUSE ECONOMIC MATTERS COMMITTEE**

March 2, 2021

HB 765 - Workers' Compensation – Occupational Disease Presumptions – Novel Coronavirus
(Essential Workers' Compensation Act)

Written Testimony Only

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our opposition for House Bill 765 - Workers' Compensation – Occupational Disease Presumptions – Novel Coronavirus (Essential Workers' Compensation Act).

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 healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state.

HFAM 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. Thousands of Marylanders across the state depend on the high-quality services that our skilled nursing and rehabilitation centers offer every day.

Research from Brown, Harvard, and the University of Chicago indicates that there is a correlation between the positivity rate in the community and the positivity rate in congregate settings in that community. For example, a higher positivity rate in Laurel, Elkridge, Silver Spring, Gambrills, or Hagerstown would mean that there are more likely more positive cases among skilled nursing centers, assisted living campuses, and correctional facilities in those communities. Workers most often contract COVID-19 in the community as an accidental injury, not at work as an occupational disease.

Furthermore, this legislation is written so broadly that its provisions could extend to additional viruses and ailments that are spread in the community once the COVID-19 pandemic is behind us. Currently, there is a lack of a scientific basis to support the presumptions in this legislation. The presumptions laid out in Section 9-503 were all created as a result of science showing that police officers, firefighters, etc., had greater instances of certain types of cancers and ailments because of their exposures at work. To date, there has been no scientific study that has shown healthcare workers are necessarily at a greater risk for COVID (although there is certainly a public perception that healthcare workers are at greater risk).

Additionally, the financial impact of this bill could be wide-reaching for some municipalities and other organizations. The necessity of HB 765 is also in question. We understand from our Workers' Compensation consultants that there are numerous COVID-19 cases on file with the Workers' Compensation Commission. It appears that these cases are being properly dealt with by the Commission; the ones that should be found compensable are being found compensable, and the ones that should be disallowed are being disallowed.

Presumption by its very nature places a burden on the employer to prove a negative, which is much more onerous than the burden a Claimant usually carries to prove a positive. The Claimant has knowledge of their comings and goings and possible exposures (or lack thereof), where the Employer does not.

Finally, and considering each of these points of opposition, the retroactivity of impact proposed in HB 765 is not proven necessary, and it is important to note additionally that other states draft pieces of such legislation include sunset provisions.

For these reasons, we request an unfavorable report from the Committee on House Bill 765.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

AND

LaShuan Bethea J.D., M.Ed., BSN, RN
Vice President, Reimbursement & Legislative Affairs
Genesis Healthcare