TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Brian J. Feldman

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: March 17, 2021

RE: **OPPOSE** – Senate Bill 727 – *Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave*

On behalf of the LifeSpan Network, the Hospice & Palliative Care Network of Maryland, the Maryland Association of Adult Day Services, and the Maryland-National Capital Homecare Association, we **oppose** Senate Bill 727. Senate Bill 727 makes changes that affect Maryland's current Earned Safe and Sick Leave Act and requires additional leave to be provided to ALL employees by ALL employers during a public health emergency.

Senate Bill 727 changes Maryland's current Earned Safe and Sick Leave Act, by removing the exemption that was originally granted for "on call" (also known as PRN) individuals (page 5, lines 13-18). These are individuals who may be called on by businesses to work a shift but who are not guaranteed to be called to work and can reject or accept the shift offered. They are not employees of any one business and often work for many businesses. It is a well-known practice in the medical field that businesses rely on these individuals to fill in for an absent employee or to cover a special situation. This category is beneficial for both the employer and the individual because it provides the employer with quick coverage to ensure it can meet the daily health needs of its patients/clients, as required by licensure regulations. For the individual, it provides flexibility for he/she to work in his/her chosen field without committing to a regular schedule.

The operational challenges that will be presented by removing this exemption will be insurmountable. A business will need to allow an individual on its "on-call" or "PRN" list to accrue leave and be paid leave when they are sick, even if the business did not call the individual to work or even have any intention of calling the individual to work, adding additional costs to the business. Another complication will be that many of these individuals offer services to many businesses. Will each business be required to provide leave, which could result in weeks of leave being available to these individuals? These challenges will only be exacerbated by the additional changes in Senate Bill 727 related to a declared public health emergency. For these reasons and many more, we oppose any removal of this exemption.

In addition to the above change, Senate Bill 727 requires employers to offer an additional 112 hours of leave for full-time employees and additional leave for part-time employees based on a specific calculation in the bill. The legislation states that employers are not allowed to request documentation for the leave and notice by the employee is only necessary if foreseeable. The leave in this bill goes into effect the day the bill is enacted and can be retroactive. The bill also expands the reasons for when leave can be taken and will allow the leave to be taken to care for any individual whose close association with the employee is the equivalent of a family relationship (new definition of "family member"). Again, this leave is in addition to the leave that is already required to be provided under the current Earned Safe and Sick Leave Act.

At the onset of the pandemic, the federal government required employers to provide additional paid sick leave to employees under the Families First Coronavirus Response Act, which ended on December 31, 2020. An employee was able to take this leave prior to taking any leave under Maryland's Earned Safe and Sick Leave Act. Senate Bill 727 appears to continue this leave policy. For the healthcare industry, the COVID-19 pandemic exacerbated and shed a greater light on the healthcare shortages that have existed now for years. Health care providers were often scrambling to find additional staff when employers did not show for work due to a multitude of reasons. Unlike other businesses, healthcare providers must meet certain licensure and certification standards related to staffing. More importantly, care must be provided, and staff must be replaced, often requiring overtime to be paid or contracting with temporary agencies at a higher cost.

At the height of the COVID-19 pandemic, the need to provide greater leave policies was justified. However, with the increasing vaccination rates and declining metrics, Maryland's current Earned Safe and Sick Leave Act provides employees with the opportunity to take leave and employers have continued to be flexible with leave as it relates to COVID-19. It is important to note that the federal Health and Human Services Department has already stated that the current public health emergency will be extended through the end of 2021, meaning that it is likely that the State's emergency proclamation will also remain in effect, triggering the implementation of the bill's provisions. In addition, the retroactive provision of this bill and the inability of the employer to request documentation will cause operational challenges for employers as they continue to struggle to provide health care services to Marylanders. Lastly, the language in the bill allows the leave to be taken for a "communicable disease" but does not specify that the "communicable disease" must be the subject of the declared public health emergency, which could theoretically provide for an even greater expansion of the leave than what may be intended.

To continue to provide necessary care during the COVID-19 pandemic, health care providers have made large investments in personal protective equipment, environmental modifications to accommodate the need to isolate and quarantine, testing of both residents/patients and staff for surveillance purposes, and the payment of hazard pay to recruit and maintain a workforce. These were unbudgeted expenses. While some organizations received federal and/or State funds to offset some of the increased cost, that funding has failed to cover the full impact of the expenses and many health care organizations are facing significant financial strife, given that many of these unbudgeted expenses are ongoing rather than one-time purchases. This bill will further strain the finances of these organizations, putting many, especially smaller providers, in greater financial strife.

For these reasons, the above-referenced associations respectfully request an unfavorable vote.

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