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To: The Honorable Luke Clippinger  
Chair, Judiciary Committee

From: The Office of the Attorney General

Re: House Bill 1084 (Catastrophic Health Emergencies- Immunity from Civil Liability): Opposition

The Office of the Attorney General (the Office) opposes House Bill 1084. Current law imposes civil and criminal penalties for violations of orders issued during a catastrophic health emergency (CHE) and provides civil and criminal immunity to health care providers who act in good faith and under a CHE proclamation. This bill provides that a person is not civilly liable for an act or omission related to the person's failure to comply with guidance during a CHE unless it is shown by clear and convincing evidence that the act or omission was committed with malice or gross negligence, and allows for an interlocutory appeal if immunity is denied. "Person" is broadly defined and includes individuals, business entities, nonprofits, public and private schools and institutions of higher education. "Guidance" is broadly defined and means any state or county order, declaration, rule or regulation issued in response to a CHE. This Office regards the proposed expansion of immunity as unjustifiable and likely to increase the harms Marylanders are suffering during the ongoing pandemic with disproportionate impact on those in low income and communities of color, whose vulnerabilities are documented in the Attorney General's COVID-19 Access to Justice Task Force report.

<https://www.marylandattorneygeneral.gov/Pages/A2JC/default.aspx>

A recent report of the New York Attorney General illustrates some of the problems that a misguided attempt to provide expanded immunity can create, leading the New York Attorney General to urge repeal of immunity that could put vulnerable seniors at risk. <https://ag.ny.gov/press-release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19> The immunity provided by HB 1084 is far more sweeping than the immunity that was criticized by the New York Attorney General and

will cause Marylanders to be harmed by businesses that simply ignore guidelines issued by state and local health officials.

Expanding immunity as proposed in the bill would protect acts or omissions that should not be immune from liability. We urge the Committee to give House Bill 1084 an unfavorable report.

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