



6811 Campfield Road
Baltimore, MD 21207

TO: The Honorable Luke Clippinger
Chairman, Judiciary Committee

FROM: LeadingAge Maryland

SUBJECT: House Bill 1106, Civil Actions – Immunity From Liability – COVID-19 Exposure

DATE: March 3, 2021

POSITION: **Favorable**

LeadingAge Maryland supports House Bill 1106, Civil Actions – Immunity From Liability – COVID–19 Exposure.

LeadingAge Maryland is a community of not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. We represent more than 120 not-for-profit organizations, including the vast majority of CCRCs in Maryland. Our mission is to expand the world of possibilities for aging in Maryland. We partner with consumers, caregivers, researchers, faith communities and others who care about aging in Maryland.

Under House Bill 1106, an owner, a lessee, or a tenant of a premises is not civilly liable for any act or omission resulting in injury or death relating to exposure or alleged exposure to COVID-19 on the premises if the owner, lessee, or tenant, or an agent of the owner, lessee, or tenant, acted in good faith to follow and enforce on the premises all federal, state, and local health guidelines applicable at the time of the exposure or alleged exposure. It is important to note that House Bill 1106 preserves liability for certain types of extreme or intentional conduct, most commonly for willfulness, recklessness and gross negligence.

Various states, including North Carolina, Oklahoma, Utah, Wyoming, Louisiana and Kansas, have adopted state legislation providing businesses with some type of limited civil liability immunity if customers and employees contract COVID-19 at their premises. In some of

these states, the laws cover acts or omissions arising after the date of the emergency order, while in other states, the laws are effective from and after the date of adoption.

During this pandemic, LeadingAge Maryland members have diligently followed guidance from multiple authorities – including the Centers for Medicare and Medicaid Services, Centers for Disease Control, State and local orders. In addition to the catastrophic public health consequences that the COVID-19 virus has caused, the impact on the operation of businesses has also been devastating.

The long-term care industry has been on the front lines of COVID-19 and has not been immune from the operational and fiscal obstacles. Whether it is ensuring appropriate levels of personal protective equipment or access to sufficient testing kits, our sector has been impacted. Providers have faced mounting costs and decreases in revenue over the last year. The costs of required testing, PPE, increased pay for staff (including overtime and incentive pay) have cost providers hundreds of thousands to even millions of dollars. These were unbudgeted and ongoing expenses. Some organizations received federal and/or State funds to offset some of the increased cost. Unfortunately, that funding has failed to cover the full impact of the expenses and many providers are facing significant financial strife.

LeadingAge Maryland has significant concerns over lawsuits for negligence alleging that the actions or inactions of a business caused an employee or resident (or, secondarily, a family member) to become infected with the virus. Employee claims against businesses alleging workplace-acquired COVID-19 infection would be expected to trigger workers' compensation benefits in many cases. But claims by both employees and residents alleging a failure by the long-term care facility to provide a virus-free working or residential environment outside the confines of workers' compensation laws are likely.

Our industry takes aggressive steps to limit COVID-19 exposure. However, the situation is aggravated by the fact that commercial general liability policies and commercial property policies may not offer coverage for COVID-19-related claims, a determination dependent on the specific policy language used.

Passage of House Bill 1106 protects businesses from a potential deluge of frivolous lawsuits which would be prohibitively costly for our members to defend at this juncture.

For these reasons, we respectfully request a favorable report on House Bill 1106.

For additional information, please contact Aaron J. Greenfield, 410.446.1992