HFAM

Health Facilities Association of Maryland
Partners in Quality Care

TESTIMONY BEFORE THE
HOUSE APPROPRIATIONS COMMITTEE

March 10, 2022

House Bill 1350: Funding for Wage Increases for Medical Provider Workers

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to respectfully express our opposition to House Bill 1350. 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.

House Bill 1350 requires that funding provided for Medicaid programs be used for wage increases for healthcare workers and staff in nursing homes who provide direct care to residents. Under this legislation, 100 percent of the annual four percent Medicaid rate increase that was enacted as part of the "Fight for Fifteen" legislation would be dedicated to paying wages.

HFAM vigorously supported the legislation that incrementally increased the minimum wage and provided for a Medicaid rate increase as part of the enacted legislation. The four percent annual Medicaid rate increase was meant to support the increases in the minimum wage, as well as wage compression.

While we commend the Service Employees International Union (SEIU) and the sponsor for bringing forth this bill, we oppose House Bill 1350 because it is not supported by the currently underfunded Medicaid rate nor the historic operational challenges currently faced by our sector.

HFAM's position on wages and benefits for nursing home employees has been consistent prior to the pandemic, during the pandemic, and will be going forward. Wages and benefits in nursing homes are directly related to Medicare and Medicaid reimbursement rates. Those rates are set and funded by the federal and state government and they are non-negotiable. Unlike other employers, nursing homes cannot simply increase their prices to support increased wages or other expenses.

Prior to the pandemic, nursing home occupancy in Maryland averaged around 88 to 90 percent with a total licensed capacity of approximately 28,000 beds. Over the last two years, Maryland nursing homes were actually paid less in Medicaid reimbursement rates by the State than they would have been if there was no pandemic (see more on this in the bullet points below).

Nursing home occupancy in Maryland is now hovering around 78 percent, meaning there are approximately 22,000 individuals receiving care in our sector. And, occupancy is recovering slowly. Separate from this piece of legislation, going forward it is possible that nursing homes would have to reduce capacity and jobs. Of course, this scenario would not be ideal and it would be counterproductive to Maryland's Total Cost of Care contract.

We stand ready to pay healthcare heroes, who are the backbone of our sector, wages that Medicare and Medicaid rates support while also covering other essential aspects of care such as medical supplies, food, housing, and utilities.

In the recent Department of Legislative Services (DLS) report before this committee, DLS factually outlined in their analysis that Medicaid has paid nursing homes 10 percent less over the last two years than historic levels. We are at a momentous crossroads in terms of critically needed Medicaid funding to provide quality care to Marylanders in our skilled nursing and rehabilitation centers and in settings across the continuum of care.

Today skilled nursing and rehabilitation centers remain challenged. Historically high labor costs and skyrocketing operational expenses have left Maryland nursing homes severely underfunded. Occupancy levels in skilled nursing and rehabilitation centers are at historic lows. Direct and agency labor costs are at an all-time high and labor shortages are more severe than ever.

In reviewing federal Medicare cost report data, direct labor hourly wages are up in a range from eight to nine percent among nursing assistants, licensed practical nurses, and registered nurses. **The federal data indicates that the average geriatric nursing assistant (GNA) hourly wage rate in our sector was $16.68 an hour in 2019 pre-COVID and $18.19 in 2020.** Note that this is excluding bonuses and shift differentials.

In nursing homes, hospitals, and all healthcare settings in Maryland and across the nation, the use of agency staffing has increased dramatically throughout the pandemic and hourly rates for agency staff are set at unprecedented levels. Before COVID, a staffing agency would charge a nursing home around $60 per hour for a registered nurse; now, the cost is around $180 to $200 per hour.

The current minimum wage in Maryland is $12.50. Again, the yearly four percent Medicaid rate increase was designed to help get to $15.00 per hour.

Before the pandemic, nursing homes spent perhaps thousands of dollars per year on personal protective equipment (PPE) and infectious disease infrastructure. Of course, nursing homes did not spend anything on COVID-19 testing pre-pandemic. Today, those same nursing homes spend many millions of dollars per year on PPE, testing, and direct labor wages and bonuses. They also spend many millions more on food, utilities, supplies, and additional necessities such as security. And, inflation is at historic highs not seen since the 1980s.

Amid all of this, here are some important facts to consider:

- Maryland's skilled nursing and rehabilitation centers did not receive a base Medicaid rate increase to fight the COVID-19 pandemic.
- The State of Maryland paid skilled nursing and rehabilitation centers less in Medicaid reimbursement rates during the pandemic than they otherwise would have absent the pandemic.
- This is due to lower nursing home utilization; fewer people in hospitals resulted in fewer referrals to nursing homes. The other primary factor in the State paying less to nursing homes was due to the enhanced federal match.
- In 2020, utilization was down in nursing homes by 491,224 days of care and thus lower than budgeted by $144 million in total funds.
- In 2021, utilization was down in nursing homes by 759,606 days of care and thus lower than budgeted by $214 million in total funds.

- Throughout many periods of the pandemic, Maryland skilled nursing and rehabilitation centers provided at or around 4.0 direct care hours per day, which is above the 3.0-hour requirement.
- This was possible because of direct federal payments made to the sector in 2020 and greatly reduced utilization.
- The cost to provide 4.0 hours of direct care per day in 2020 with normal utilization would have added $26M to state costs. Because of reduced occupancy, many facilities were providing higher hours of care per day. The cost to staff at 4.0 hours would normally be much higher – closer to $170M.
- Finally, the pandemic has really thrown nursing home utilization data upside down. Fewer days are being provided in our setting, staffing is up, Medicaid rates are increasingly underfunded, and there is the prospect of a reduction in Medicare rates later this year. Frankly, we likely will not have a good baseline analysis of all of this until March or April of 2023.

A recent report commissioned by the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) and produced by independent firm Clifton Larson Allen shows that nursing home finances are much worse than previously realized. The cost of care and operations is far exceeding reimbursement rates, resulting in a 4.8 percent negative margin.

<u>Key findings of this report include:</u>

- **Increasing costs due to labor and inflation.** The average increase in wages for nurses at all levels doubled from 2020 to 2021. Rates for contracted agency nurses are also two to three times higher than pre-pandemic rates.
- **Negative margins.** The median 2022 year-end operating margins are projected to be negative 4.8 percent, with a median occupancy of 77.3 percent. Any reduction in reimbursement could deepen existing financial issues.
- **Increased risk for closures.** The report found that 32 percent to 40 percent of residents are currently living in nursing homes that are considered financially "at risk," including buildings with Five-Star quality ratings.
- **Challenges with access to capital.** Medicare margins and public health emergency-related funding provided much-needed support throughout 2020 and into early 2021. However, potential cuts pose a risk to nursing homes that face challenges such as occupancy decline, staffing shortages, and increased labor costs.

<u>Finally, I would like to end on two points:</u>

- There are nursing homes that are pro-organized labor and some that are not. However, I believe being pro-worker unites us all because our sector is one where trained hands and caring hearts save lives.

- For my part, being pro-labor is part of my DNA. I am proud that my first salaried job was as the personal aide to the Chair of the Hawai'i House of Representatives Health and Human Services Committee, which is the equivalent of the Health and Government Operations Committee in Maryland. This job led to a three-year tenure at SEUI and with other union coalitions in Hawai'i at a time when organized labor in this country was truly under siege. To this point of interest, I've attached a record of US Senate Judiciary hearing proceedings on Labor Violence and the Hobbs Act from 1984. **<u>NOTE</u>: The top of the last page is highlighted and marked by a handwritten star.**

Again, we commend SEIU and the sponsor for bringing forth this important legislation. While we do not agree with this proposed legislation, we are dedicated to continuing to work directly with our sisters and brothers at SEIU on seeking consistent, adequate, and robust funding of Medicaid rates and on the issues of this legislation.

For the reasons outlined in this testimony, we request an unfavorable report on House Bill 1350.

Submitted by:

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S. Hrg. 98-1009

LABOR VIOLENCE AND THE HOBBS ACT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 462

A BILL TO AMEND SECTION 1951 OF TITLE 18 OF THE UNITED STATES CODE, AND FOR OTHER PURPOSES

OCTOBER 25, 1983; APRIL 30 AND MAY 1, 1984

Serial No. J-98-76

Printed for the use of the Committee on the Judiciary

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COMMITTEE ON THE JUDICIARY

tors to protect and they are held at a disadvantage when somebody comes in and bids five or six dollars lower," Kupau said.

[From the Honolulu Advertiser, Aug. 19, 1983]

U.S. Jury Indicts Kupau on Seven Perjury Counts

(By Walter Wright)

Walter Kupau, financial secretary of the Carpenter's Union in Hawaii, was indicted by a federal grand jury yesterday on seven counts of perjury for denying he tried to sign up a non-union Maui contractor in 1981.

Kupau last night dismissed the charges as part of a Reagan administration campaign to "bust unions." He also said the U.S. attorney's office was "very timely" in bringing the charges on the day that his mother, Mrs. Jesse Kupau, 80, entered the Queen's Medical Center for a cancer operation.

Kupau, who is also president of the state AFL-CIO, said he did not remember making any false statements, but added that "there may have been statements made, a state of mind or in the context that they're asking, if they want to play word games with it."

It was not immediately clear what impact a conviction of the felony charges would have on Kupau's right to serve as a union official or as trustee of its multimillion-dollar pension fund.

But Kupau could face several years in federal prison. Each count against him is punishable by five years in federal prison and a $2,000 fine.

Indicted along with Kupau, also on seven counts, was union business agent Steven Suyat of Maui.

Two other Carpenter's Union business agents, William O. "Billy" Nishibayashi and Ralph Torres, were each convicted of four perjury charges in May and sentenced to six months in federal prison.

The entire case relates to the union officials' denial that their picketing and other activity, were intended to get a union contract with Maui contractor Walter Mungovan.

Mungovan has been placed in the federal witness protection program because federal officials feared for his life after he testified against the union officials. He has been given a new identity and a start on a job in another location.

Mungovan probably would be returned to Hawaii to testify in the trial of Kupau, since some of the charges relate a telephone conversation with the labor leader that Mungovan secretly taped.

Mungovan's tapes and testimony were key elements in the trial of Nishibayashi and Torres.

Mungovan's wife, who is in New York continuing a national campaign for changes in laws dealing with labor union violence, said last night when informed of the new indictments that "I'm glad that justice is finally being done."

Mrs. Mungovan also has sued the union, saying the contracting company she and her husband ran on Maui has been destroyed as a result of their refusal to sign a union contract. Her husband's willingness to take the stand against union officials, she says, has forced him to go into hiding for his own safety, and has caused their family to break up.

Kupau was charged with lying in four different proceedings: in sworn affidavits for two National Labor Relations Board cases in federal court in 1981, in his testimony before a federal grand jury in 1982, and in his testimony during the Nishibayashi-Torres trial this year.

The case turns partly on labor regulations that limit a union's right to picket for "organizational" purposes to 30 days.

"Informational" picketing can continue indefinitely. The government contends that the union's picketing was actually an attempt to organize Mungovan's firm—and not informational, as the union claims.

One of the key charges deals with Kupau's statements to Mungovan in a telephone conversation Feb. 27, 1981, which Mungovan secretly tape-recorded.

At one point on the tape, Kupau tells Mungovan:

"But, ah, in order to settle the whole beef, is going to have to be some type of agreement consummated and effective at some future date on all new projects prior to you negotiating or bidding on 'em. If anything bid or negotiated already, we don't

[From the Honolulu Advertiser, Sept. 2, 1983]

KUPAU PLEADS NOT GUILTY; PERJURY TRIAL SET FOR NOVEMBER 1

(By Walter Wright)

Walter Kupau, financial secretary of the Carpenter's Union in Hawaii and president of the state AFL–CIO, yesterday pleaded not guilty to seven counts of perjury over what the government says was his attempt to organize a non-union contractor on Maui.

"We are not guilty of any wrongdoing, we are innocent," Kupau told reporters outside the federal courthouse after his arraignment before U.S. Magistrate Joseph Gedan.

The indictment against him, Kupau charged, was part of a continuous effort by the Reagan administration and U.S. Attorney Dan Bent of Honolulu "to take the labor movement apart."

Kupau said he believes that Bent is trying to get appointed to a federal judgeship next year.

Bent, who was out of town, could not be reached for comment.

Also entering a plea of not guilty to seven related perjury counts was Carpenter's Union business agent Steven Suyat of Maui. Suyat told reporters he had no comment on the case.

Trial for Kupau was set for Nov. 1, but may be postponed because of defense attorney Matt Pyun's schedule. Trial for Suyat was set for Nov. 8; he is represented by Mark Kawata.

Both men were released without any restriction on their travel despite Assistant U.S. Attorney Elliot Enoki's attempt to have their movements limited at least to the state.

"There will be no travel restriction for Mr. Kupau," Magistrate Gedan said.

Kupau is charged with lying when he gave a sworn statement that picketing of non-union Maui contractor Walter Mungovan in 1981 was not intended to get Mungovan to sign a union contract.

The government says secret tape recordings that Mungovan made of a conversation with Kupau prove the contrary.

Kupau suggested to reporters that the government is using a double standard in the case.

"What a non-union contractor says can be called a misstatement of fact, but a person carrying a union card is committing perjury," Kupau said, referring to his earlier charge that Mungovan lied in the case.

Mungovan's testimony helped convict two other Carpenter's Union business agents, William O. Nishibayashi and Ralph Torres, on perjury charges earlier this year.

They were sentenced to six months in prison, but are free on bail pending appeal.

Mungovan has been placed in the federal witness protection program because of government fears that his life was in danger. He was sent to the Mainland and given a new identity and a job in the construction business.

Kupau, in response to questions, yesterday discounted a death threat that he last month told the county prosecutor's office he received in the form of an unsigned post card addressed to "Walter Deadman Kupau."

"I receive all kinds of letters. I never did consider it a threat," Kupau said. He said he felt the post card had been blown out of proportion by some of the media.

Meanwhile, a spokesman for unions supporting Kupau said the Hawaii United Labor Coalition will try to raise a defense fund for the Carpenter's Union official.

Joe DeMattos, chairman of the fund-raising committee of the Hawaii United Labor Coalition, said his group has 40 unions that are united in their efforts to resist what he called "union busting" efforts by management, the Reagan administration and others opposed to labor.

The committee hopes to supplement the fund with a banquet in October.

"We feel Walter is being singled out," DeMattos said.

The Hawaii United Labor Coalition was formed earlier this year by unions supporting the Machinists union employees of Qantas Airways, who lost their jobs when the airline decided to use non-union ground workers.

[From the Honolulu Advertiser, Aug. 27, 1983]

KUPAU COULD KEEP UNION POST EVEN IF CONVICTED OF PERJURY

Carpenters' Union financial secretary Walter Kupau would not be barred from holding that or other union offices even if he is convicted of perjury, a review of labor laws reveals.

Kupau was indicted Aug. 18 by a federal grand jury on seven counts of perjury over what the government says were his efforts to get a Maui contractor to sign with the union.

But perjury is not one of the crimes for which a person can be barred from union office.

The Labor Management Reporting and Disclosure Act of 1959 bars from union office any person convicted of any of a number of crimes, including robbery, bribery, extortion, murder and rape, for a period of five years following completion of their sentence.

Kupau could face a lengthy sentence in federal prison if convicted. Each count is punishable by a maximum of five years in prison and a $2,000 fine.

Kupau and union business agent Steven Suyat of Maui, who also was charged with several perjury counts, will be arraigned at 10 a.m. Sept. 1 before U.S. Magistrate Joseph Gedan.

WHY THE UNION WANTS MY HUSBAND DEAD!

(By Sharon Churcher)

Before the nighmare began, before the death threats and the bomb scare and the menacing visits by strangers in the black of the foreign night, Cher Mungovan, a 31-year-old English woman, though she had found paradise in that haven of free enterprise, the United States.

She was living with her American husband, Walter, and small son on the magically beautiful Hawaiian island of Maui. Her house, set in a tropical garden and with its own swimming pool, looked out on one side to the shimmering, turquoise ocean.

Weary of the industrial strife plaguing the Midlands, Cher's father, Ian Norrie, a British Leyland manager in Coventry, and her mother, a Birmingham comprehensive school department head who had braved picket lines to reach her pupils during teachers' strikes, emigrated to join the young family in 1979.

Cher's brother went with them, and the three pitched in with Cher and Walter to found a house-building company which made £ 340,000 in its first year, and seemed set to top £ 1 million in its second.

SECRET

Today, the company has closed, the family can't afford the mortgage on their home, and Walter, fearing for his life, has had to go into hiding, guarded by Federal marshals in a location kept secret even from Cher.