



COMMISSION ON AGING

March 5, 2019

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 669, Health Care Facilities-Comprehensive and Extended Care Facilities-Discharges and Transfers

Dear Senator Kelley:

I am writing to express the Montgomery County Commission on Aging's strong support for SB 669, which would strengthen the legal protections for residents of comprehensive and extended care facilities (nursing homes) when the facility wants to involuntarily transfer or discharge that resident. The bill, introduced by the Speaker at the request of the Attorney General, would authorize the Attorney General to seek civil penalties against a facility of up to \$100,000 for each violation of the transfer and discharge protections.

For years leading up to 2018, NMS, a nursing home chain that operated five facilities in Maryland including in Montgomery County, illegally discharged hundreds of frail and disabled residents, "dumping" them in homeless shelters and sham assisted living facilities, far from their families and communities, without regard for their health status or needs. Lacking necessary care, many of these extremely vulnerable individuals ended up in hospital emergency rooms suffering from life-threatening conditions. The incentive for this horrific behavior was financial – NMS dumped residents whose payment source was shifting from higher-level Medicare to lower-level Maryland Medical Assistance (Medicaid). As a result of legal action by the Attorney General, all NMS facilities in Maryland have been closed, and the company was fined and barred from doing business in this state.

These actions are shocking, and the scale on which they were taken is appalling. However, other nursing homes continue to discharge residents without complying with legal protections for residents. Even one such incident is one too many.

Current Maryland law provides residents of comprehensive and extended care facilities with legal rights and protections in the event of an involuntary transfer or discharge. These protections are referred to as the "Patients' Bill of Rights." Residents may only be involuntarily transferred or discharged for certain reasons. Facilities seeking to transfer or discharge a resident in non-emergency situations must provide the resident and/or the resident's representative with a 30-day written notice of the action to be taken.

Department of Health and Human Services

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The notice must include the reason(s) for the action; the right to request a hearing and to consult with a lawyer; and information about legal and other resources, including the Long-Term Care Ombudsman Program and Older Americans Act funded Senior Legal Assistance Programs. The nursing home is also required to develop a discharge plan for the resident. Current law allows the Secretary of Health to impose fines up to \$10,000 for violation of these provisions and gives the Attorney General authority to act on behalf of a resident to stop an illegal involuntary transfer or discharge.

While the laws currently in effect have provided significant protections against illegal actions by nursing homes, they do not go far enough.

SB 669 strengthens legal protections for residents by requiring that the discharge notice also include: the date of the intended discharge or transfer; the location to which the resident will be discharged or transferred; the names of facility staff designated to provide social work and discharge planning services in connection with the intended action, and who will actually be responsible for developing the discharge plan; and a proposed date within 10 days of the notice, for a meeting between the resident (and his or her representatives) and facility staff to develop the post discharge plan. HB 592 requires discharge plans to identify the resident's reasonably anticipated medical and basic needs and to establish a plan for how those needs will be met. HB 592 requires participation of the resident or the resident's representative in the development of the plan, or a written explanation in the resident's medical record, of why this was not possible.

The Montgomery County Commission on Aging was established in 1974 to advise County government on the needs, interests, and issues of older adult residents, and to advocate on their behalf. We continue to prioritize the protection of vulnerable adults. For a frail older person, any relocation from familiar surroundings is stressful, but it can be particularly distressing for those with dementia or other cognitive impairment, leading to mental and physical decline and even death. An involuntary relocation from familiar surroundings can be even more traumatic.

By enhancing procedural protections in situations of involuntary transfer or discharge from a nursing home or similar facility, SB 669 is a step in the right direction. In addition, by allowing the Attorney General to request a civil penalty of up to \$100,000 for each violation of the transfer and discharge provisions, SB 669 creates a deterrent and gives the Attorney General a tool that can be used against the most egregious violators.

We urge you and members of the Committee to support this Bill, and we thank you for your consideration of the Commission on Aging's position.

Sincerely,
Jean M. Dinwiddie, Chair

cc:
Montgomery County Delegation
Leslie Frey