

HOUSE BILL 791

Unofficial Copy
J3

1999 Regular Session
(9r1564)

ENROLLED BILL
-- Environmental Matters/Finance --

Introduced by **Delegates Nathan-Pulliam, Benson, Cadden, Cane, C. Davis, D. Davis, Dobson, Frush, Howard, Klausmeier, Marriott, Morhaim, Oaks, Paige, ~~and Stull~~ Stull, and Stern**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Nursing Facilities – Licensure Requirements – Staffing**
3 **Task Force on Staffing Requirements in Nursing Facilities**
4 **Nursing Facilities - Maryland Medical Assistance Program - Reserved Beds -**
5 **Task Force on Quality of Care in Nursing Facilities - Nursing Home**
6 **Comparative Evaluation System**

7 FOR the purpose of ~~requiring nursing facilities to meet certain staffing requirements~~
8 ~~to qualify for licensure; requiring nursing facilities to employ certain individuals~~
9 ~~for certain positions; specifying certain duties that certain individuals may not~~
10 ~~perform; specifying the staffing to resident ratio requirements for nursing~~
11 ~~facilities; requiring nursing facilities to post certain information in certain areas~~
12 ~~of the facility on a certain form developed by the Department of Health and~~
13 ~~Mental Hygiene; providing for certain penalties; providing for the application of~~
14 ~~this Act; requiring the Department to conduct a certain study and to report to~~
15 ~~the General Assembly by a certain date; authorizing the Department to adopt~~

1 certain regulations; defining a certain term; and generally relating to staffing
 2 requirements for nursing facilities ~~establishing a Task Force on Staffing~~
 3 ~~Requirements in Nursing Facilities to examine certain staffing requirements in~~
 4 ~~nursing facilities; requiring the Task Force to submit a certain report on or~~
 5 ~~before a certain date; providing for the membership of the Task Force; requiring~~
 6 ~~the Governor to appoint the Chairman of the Task Force; requiring the~~
 7 ~~Department of Health and Mental Hygiene to staff the Task Force; providing~~
 8 ~~that a member of the Task Force may not be compensated but may receive travel~~
 9 ~~expenses; providing for the termination date of the Task Force; and generally~~
 10 ~~relating to a Task Force to examine the staffing requirements in nursing~~
 11 ~~facilities; providing that certain payments to nursing facilities for reserving beds~~
 12 ~~for Maryland Medical Assistance Program recipients may not include payment~~
 13 ~~for certain nursing services; repealing the requirement that certain payments to~~
 14 ~~nursing facilities for reserving beds for Program recipients may not be less than~~
 15 ~~a certain amount; requiring that savings resulting from certain provisions of this~~
 16 ~~Act be used for a certain purpose; establishing a Task Force on Quality of Care in~~
 17 ~~Nursing Facilities; specifying the membership of the Task Force; specifying the~~
 18 ~~duties of the Task Force; requiring the Task Force to make certain~~
 19 ~~recommendations and to take into account and examine certain issues; requiring~~
 20 ~~the Secretary of the Department of Aging to chair the Task Force; requiring the~~
 21 ~~Department of Aging to provide staff support for the Task Force; requiring the~~
 22 ~~Task Force to submit a certain report on or before a certain date; providing for the~~
 23 ~~termination of the Task Force; providing for the termination of certain provisions~~
 24 ~~of this Act; requiring the Health Care Access and Cost Commission, in~~
 25 ~~consultation with the Department of Health and Mental Hygiene and the~~
 26 ~~Department of Aging, to develop a system to comparatively evaluate nursing~~
 27 ~~facility quality of care and performance on an objective basis and to annually~~
 28 ~~publish certain summary findings; establishing the purpose of the comparative~~
 29 ~~evaluation system; requiring the Commission to consider a certain factor in~~
 30 ~~developing the system; requiring the system to solicit certain information under~~
 31 ~~certain circumstances; authorizing the Commission to adopt certain regulations;~~
 32 ~~requiring a certain report on or before a certain date; and generally relating to~~
 33 ~~the reservation of beds for Program recipients and quality of care in nursing~~
 34 ~~facilities.~~

35 ~~BY repealing and reenacting, with amendments,~~
 36 ~~Article Health General~~
 37 ~~Section 19-319(a)~~
 38 ~~Annotated Code of Maryland~~
 39 ~~(1996 Replacement Volume and 1998 Supplement)~~

40 ~~BY adding to~~
 41 ~~Article Health General~~
 42 ~~Section 19-319.3~~
 43 ~~Annotated Code of Maryland~~
 44 ~~(1996 Replacement Volume and 1998 Supplement)~~

1 BY repealing and reenacting, with amendments,
 2 Article - Health - General
 3 Section 15-117
 4 Annotated Code of Maryland
 5 (1994 Replacement Volume and 1998 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article - Health - General
 8 Section 19-1501
 9 Annotated Code of Maryland
 10 (1996 Replacement Volume and 1998 Supplement)

11 BY adding to
 12 Article - Health - General
 13 Section 19-1508(d)
 14 Annotated Code of Maryland
 15 (1996 Replacement Volume and 1998 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows the Laws of Maryland read
 18 as follows:

19 **~~Article - Health - General~~**

20 ~~19-319.~~

21 ~~(a) (1) To qualify for a license, an applicant and the hospital or related~~
 22 ~~institution to be operated shall meet the requirements of this section.~~

23 ~~(2) IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, TO QUALIFY~~
 24 ~~FOR A LICENSE, A NURSING FACILITY SHALL MEET THE REQUIREMENTS OF § 19-319.3~~
 25 ~~OF THIS SUBTITLE.~~

26 ~~19-319.3.~~

27 ~~(A) IN THIS SECTION, "LICENSED PERSONNEL" MEANS:~~

28 ~~(1) A REGISTERED NURSE WHO IS LICENSED TO PRACTICE IN THE~~
 29 ~~STATE; OR~~

30 ~~(2) A PRACTICAL NURSE WHO IS LICENSED TO PRACTICE IN THE STATE.~~

31 ~~(B) A NURSING FACILITY SHALL EMPLOY STAFF SUFFICIENT IN NUMBER AND~~
 32 ~~QUALIFICATIONS TO MEET THE SCHEDULED AND UNSCHEDULED NURSING CARE~~
 33 ~~NEEDS OF THE RESIDENTS.~~

1 (C) TO ENSURE COMPLIANCE WITH SUBSECTION (B) OF THIS SECTION, A
2 NURSING FACILITY SHALL:

3 (1) ESTABLISH AND EMPLOY REGISTERED NURSES WHO ARE LICENSED
4 TO PRACTICE IN THE STATE FOR THE FOLLOWING POSITIONS:

5 (I) A FULL-TIME DIRECTOR OF NURSING;

6 (II) FOR NURSING FACILITIES WITH 100 BEDS OR MORE, A
7 FULL-TIME ASSISTANT DIRECTOR OF NURSING;

8 (III) NURSING SUPERVISORS ON DUTY AT ALL TIMES, 24 HOURS A
9 DAY, 7 DAYS A WEEK; AND

10 (IV) A FULL-TIME DIRECTOR TO SUPERVISE THE IN-SERVICE
11 EDUCATION PROGRAM REQUIRED UNDER § 19-319.1 OF THIS SUBTITLE;

12 (2) MAINTAIN A RATIO OF LICENSED PERSONNEL TO RESIDENTS OF NO
13 FEWER THAN:

14 (I) ONE LICENSED PERSONNEL TO 15 RESIDENTS DURING THE
15 MORNING SHIFT;

16 (II) ONE LICENSED PERSONNEL TO 25 RESIDENTS DURING THE
17 AFTERNOON SHIFT; AND

18 (III) ONE LICENSED PERSONNEL TO 35 RESIDENTS DURING THE
19 NIGHT SHIFT; AND

20 (3) MAINTAIN A RATIO OF CERTIFIED NURSING ASSISTANTS TO
21 RESIDENTS OF NO FEWER THAN:

22 (I) ONE CERTIFIED NURSING ASSISTANT TO FIVE RESIDENTS
23 DURING THE MORNING SHIFT;

24 (II) ONE CERTIFIED NURSING ASSISTANT TO 10 RESIDENTS
25 DURING THE AFTERNOON SHIFT; AND

26 (III) ONE CERTIFIED NURSING ASSISTANT TO 15 RESIDENTS
27 DURING THE NIGHT SHIFT.

28 (D) (1) LICENSED PERSONNEL AND CERTIFIED NURSING ASSISTANTS MAY
29 NOT PROVIDE FOOD PREPARATION, HOUSEKEEPING, LAUNDRY, OR MAINTENANCE
30 SERVICES.

31 (2) AN INDIVIDUAL EMPLOYED TO PROVIDE FOOD PREPARATION,
32 HOUSEKEEPING, LAUNDRY, OR MAINTENANCE SERVICES MAY NOT PROVIDE
33 NURSING CARE TO RESIDENTS.

~~(E) (1) A NURSING FACILITY SHALL DISPLAY ON EACH FLOOR OF THE FACILITY A NOTICE THAT EXPLAINS THE CURRENT RATIO OF LICENSED PERSONNEL TO RESIDENTS AND CERTIFIED NURSING ASSISTANTS TO RESIDENTS.~~

~~(2) THE NOTICE SHALL BE:~~

~~(I) POSTED IN A LOCATION THAT IS VISIBLE AND ACCESSIBLE TO RESIDENTS, FAMILY MEMBERS OF THE RESIDENTS, CAREGIVERS, AND POTENTIAL CONSUMERS; AND~~

~~(II) ON A FORM PROVIDED BY THE DEPARTMENT.~~

~~(F) THE STAFFING REQUIREMENTS UNDER THIS SECTION ARE MINIMUM STAFFING REQUIREMENTS AND SHALL NOT BE CONSTRUED TO LIMIT THE ABILITY OF THE NURSING FACILITY TO EMPLOY ADDITIONAL STAFF.~~

~~(G) THE SECRETARY MAY ADOPT REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.~~

~~(H) IF A NURSING FACILITY FAILS TO MEET THE REQUIREMENTS OF THIS SECTION, THE SECRETARY MAY IMPOSE THE FOLLOWING PENALTIES:~~

~~(1) DELICENSURE OF THE NURSING FACILITY;~~

~~(2) \$500 PER DAY FOR EACH DAY THE VIOLATION CONTINUES; OR~~

~~(3) BOTH.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

~~(a) The Department of Health and Mental Hygiene shall:~~

~~(1) Conduct a study to determine whether the staffing ratios and standards provided in this Act are sufficient to meet the needs of residents in nursing facilities including determining appropriate levels of staffing based on resident acuity; and~~

~~(2) Recommend, if necessary, a methodology for determining appropriate levels of staffing.~~

~~(b) In conducting the study, the Department shall consider recommendations from nursing facilities, licensed health care providers, advocacy groups, and other interested parties.~~

~~(c) On or before January 2001 and every 5 years thereafter, the Department shall submit its findings and recommendations to the General Assembly, in accordance with § 2-1246 of the State Government Article.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1999.~~

1 (a) ~~There is a Task Force on Staffing Requirements in Nursing Facilities.~~

2 (b) ~~The Task Force shall consist of the following members:~~

3 (1) ~~a member of the Senate Finance Committee, appointed by the~~
4 ~~President of the Senate;~~

5 (2) ~~a member of the House Environmental Matters Committee,~~
6 ~~appointed by the Speaker of the House;~~

7 (3) ~~the Secretary of Health and Mental Hygiene, or the Secretary's~~
8 ~~designee;~~

9 (4) ~~two representatives from the nursing facility industry, appointed by~~
10 ~~the Governor;~~

11 (5) ~~a registered nurse with training and experience in geriatric medicine,~~
12 ~~appointed by the Governor;~~

13 (6) ~~a certified nursing assistant with training and experience in geriatric~~
14 ~~medicine, appointed by the Governor;~~

15 (7) ~~a licensed physician with training and experience in geriatric~~
16 ~~medicine, appointed by the Governor;~~

17 (8) ~~a licensed social worker, appointed by the Governor;~~

18 (9) ~~a representative from a local union representing employees in~~
19 ~~nursing facilities, appointed by the Governor;~~

20 (10) ~~a public member representing a patient advocacy group for seniors,~~
21 ~~appointed by the Governor; and~~

22 (11) ~~two consumers of nursing facility services which may include a~~
23 ~~consumer who has a relative in a nursing facility, appointed by the Governor.~~

24 (b) ~~The Governor shall designate one of the members as chairman of the Task~~
25 ~~Force.~~

26 (c) ~~The Task Force shall:~~

27 (1) ~~examine the staffing patterns and standards that currently exist in~~
28 ~~nursing facilities in Maryland;~~

29 (2) ~~conduct a study to determine the appropriate staffing ratios and~~
30 ~~standards necessary to meet the needs of residents in nursing facilities, including~~
31 ~~determining appropriate levels of staffing based on resident acuity;~~

32 (3) ~~recommend, if necessary, a methodology for determining appropriate~~
33 ~~levels of staffing and standards; and~~

1 ~~(4) report its recommendations to the Governor and, in accordance with~~
 2 ~~§ 2-1246 of the State Government Article, to the Senate Finance Committee and the~~
 3 ~~House Environmental Matters Committee on or before August 1, 2000.~~

4 ~~(d) The Department of Health and Mental Hygiene shall provide staff support~~
 5 ~~for the Task Force.~~

6 ~~(e) A member of the Task Force:~~

7 ~~(1) may not receive compensation; but~~

8 ~~(2) is entitled to reimbursement for expenses under the Standard State~~
 9 ~~Travel Regulations, as provided in the State budget.~~

10 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
 11 ~~July 1, 1999. It shall remain effective for a period of 1 year and 10 months and, at the~~
 12 ~~end of April 30, 2001, with no further action required by the General Assembly, this~~
 13 ~~Act shall be abrogated and of no further force and effect.~~

14 Article - Health - General

15 15-117.

16 (a) In this section, "leave of absence" includes:

17 (1) A visit with friends or relatives; and

18 (2) A leave to participate in a State approved therapeutic or rehabilitative
 19 program.

20 (b) (1) To ensure that a bed is reserved for a Program recipient who is absent
 21 temporarily from a nursing facility, the Program shall include the following payments
 22 for nursing facilities that have made a provider agreement with the Department.

23 (2) If the Program recipient is absent from a nursing facility due to
 24 hospitalization for an acute condition, the facility shall receive payment for each day
 25 that the Program recipient is hospitalized and a bed is reserved and made available
 26 for the return of that Program recipient.

27 (3) If a Program recipient is on leave of absence from a nursing facility,
 28 the facility shall receive payment for each day that the Program recipient is absent and
 29 a bed is reserved and made available for the return of that Program recipient.

30 (c) (1) Payments under subsection (b)(2) of this section may not be made for
 31 more than 15 days for any single hospital stay.

32 (2) (i) Payments under subsection (b)(3) of this section may not be
 33 made for more than 18 days in any calendar year.

1 (e) "Health care practitioner" means any person that provides health care
 2 services and is licensed under the Health Occupations Article.

3 (f) "Health care service" means any health or medical care procedure or service
 4 rendered by a health care practitioner that:

5 (1) Provides testing, diagnosis, or treatment of human disease or
 6 dysfunction; or

7 (2) Dispenses drugs, medical devices, medical appliances, or medical
 8 goods for the treatment of human disease or dysfunction.

9 (G) "NURSING FACILITY" HAS THE MEANING STATED IN § 19-1401 OF THIS
 10 TITLE.

11 [(g)] (H) (1) "Office facility" means the office of one or more health care
 12 practitioners in which health care services are provided to individuals.

13 (2) "Office facility" includes a facility that provides:

14 (i) Ambulatory surgery;

15 (ii) Radiological or diagnostic imagery; or

16 (iii) Laboratory services.

17 (3) "Office facility" does not include any office, facility, or service operated
 18 by a hospital and regulated under Subtitle 2 of this title.

19 [(h)] (I) "Payor" means:

20 (1) A health insurer or nonprofit health service plan that holds a
 21 certificate of authority and provides health insurance policies or contracts in the State
 22 in accordance with this article or the Insurance Article;

23 (2) A health maintenance organization that holds a certificate of
 24 authority in the State; or

25 (3) A third party administrator as defined in § 15-111 of the Insurance
 26 Article.

27 19-1508.

28 (D) (1) THE COMMISSION, IN CONSULTATION WITH THE DEPARTMENT OF
 29 HEALTH AND MENTAL HYGIENE AND THE DEPARTMENT OF AGING, SHALL:

30 (1) ON OR BEFORE JULY 1, 2001, DEVELOP AND IMPLEMENT A
 31 SYSTEM TO COMPARATIVELY EVALUATE THE QUALITY OF CARE AND PERFORMANCE
 32 OF NURSING FACILITIES ON AN OBJECTIVE BASIS; AND

1 (II) ANNUALLY PUBLISH THE SUMMARY FINDINGS OF THE
2 EVALUATION.

3 (2) (I) THE PURPOSE OF THE COMPARATIVE EVALUATION SYSTEM
4 ESTABLISHED UNDER THIS SECTION IS TO IMPROVE THE QUALITY OF CARE
5 PROVIDED BY NURSING FACILITIES BY ESTABLISHING A COMMON SET OF
6 PERFORMANCE MEASURES AND DISSEMINATING THE FINDINGS OF THE
7 COMPARATIVE EVALUATION TO NURSING FACILITIES, CONSUMERS, AND OTHER
8 INTERESTED PARTIES.

9 (II) IN DEVELOPING THE COMPARATIVE EVALUATION SYSTEM, THE
10 COMMISSION SHALL CONSIDER THE HEALTH STATUS OF THE POPULATION SERVED.

11 (3) THE SYSTEM, AS APPROPRIATE, SHALL SOLICIT PERFORMANCE
12 INFORMATION FROM CONSUMERS AND THEIR FAMILIES.

13 (4) THE COMMISSION MAY ADOPT REGULATIONS TO ESTABLISH THE
14 COMPARATIVE EVALUATION SYSTEM PROVIDED UNDER THIS SECTION.

15 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before January 1,
16 2001, the Commission shall report to the Governor and, subject to § 2-1246 of the State
17 Government Article, to the General Assembly on the nursing facility comparative
18 evaluation system required by Section 2 of this Act.

19 SECTION 4. AND BE IT FURTHER ENACTED, That General Fund savings
20 that result from Section 1 of this Act shall be used to increase the payments for services
21 to Program recipients under the nursing services cost center of the Medicaid nursing
22 home reimbursement formula, in accordance with the study conducted pursuant to
23 Chapter 724 of the Acts of 1998.

24 SECTION 5. AND BE IT FURTHER ENACTED, That:

25 (a) There is a Task Force on Quality of Care in Nursing Facilities.

26 (b) The Task Force shall consist of the following members:

27 (1) two members of the Senate Finance Committee, appointed by the
28 President of the Senate;

29 (2) two members of the Senate Economic and Environmental Affairs
30 Committee, appointed by the President of the Senate;

31 (3) four members of the House Environmental Matters Committee,
32 appointed by the Speaker of the House;

33 (4) the Secretary of the Department of Aging;

34 (5) the Secretary of the Department of Health and Mental Hygiene, or the
35 Secretary's designee; and

1 (6) three representatives of area agencies on aging, appointed by the
2 Secretary of Aging.

3 (c) The Secretary of Aging shall chair the Task Force.

4 (d) The Task Force shall study the quality of care in Maryland nursing
5 facilities, including:

6 (1) current quality of care standards for nursing facilities;

7 (2) current staffing patterns and staffing standards;

8 (3) current policies and procedures for inspecting nursing facilities and
9 responding to quality of care complaints;

10 (4) the findings of a March 1999 U.S. General Accounting Office report
11 on nursing home complaints to the Special Committee on Aging of the U.S. Congress;

12 (5) a comparison of the Maryland standards, policies, and procedures to
13 those in other states;

14 (6) the labor pool available to fill nursing jobs; and

15 (7) State funding mechanisms for nursing facilities and regulation of
16 nursing facilities.

17 (e) The Task Force shall recommend:

18 (1) changes to current standards, policies, and procedures necessary to
19 ensure quality of care in nursing facilities;

20 (2) if necessary, a methodology for determining appropriate levels of
21 staffing and standards; and

22 (3) if necessary, changes to funding mechanisms.

23 (f) The Task Force shall report its findings and recommendations to the
24 Governor and, subject to § 2-1246 of the State Government Article, to the General
25 Assembly on or before December 1, 1999.

26 (g) The Department of Aging, with assistance from the Department of Health
27 and Mental Hygiene and the Department of Legislative Services, shall provide staff
28 support for the Task Force.

29 SECTION 6. AND BE IT FURTHER ENACTED, That Section 5 of this Act shall
30 take effect June 1, 1999. It shall remain effective for a period of 1 year and, at the end
31 of May 31, 2000, with no further action required by the General Assembly, Section 5 of
32 this Act shall be abrogated and of no further force and effect.

33 SECTION 7. AND BE IT FURTHER ENACTED, That Sections 1 and 4 of this
34 Act shall take effect July 1, 1999. Sections 1 and 4 of this Act shall remain effective for

1 a period of 3 years and, at the end of June 30, 2002, with no further action required by
2 the General Assembly, Sections 1 and 4 of this Act shall be abrogated and of no further
3 force and effect.

4 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
5 Sections 6 and 7 of this Act, this Act shall take effect October 1, 1999.