

HOUSE BILL 325

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2000 Regular Session
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CF 0lr1240

By: **Delegates Boutin, Hammen, Nathan-Pulliam, and Klausmeier**
Introduced and read first time: January 31, 2000
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Homes - Sanctions and Penalties**

3 FOR the purpose of authorizing the Secretary of Health and Mental Hygiene to
4 impose certain sanctions for certain deficiencies found in nursing homes;
5 defining certain terms; establishing certain monetary penalties for certain
6 deficiencies; authorizing the Secretary of Health and Mental Hygiene to utilize
7 certain monetary fines for programs to improve the quality of care; and
8 generally relating to sanctions for certain deficiencies in nursing homes.

9 BY repealing and reenacting, with amendments,
10 Article - Health - General
11 Section 19-1401 through 19-1403 and 19-1405 through 19-1409 to be under
12 the amended subtitle "Subtitle 14. Nursing Homes"
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1999 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Health - General
17 Section 19-1404
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 1999 Supplement)

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

22 **Article - Health - General**

23 Subtitle 14. Nursing Homes [- Civil Money Penalties].

24 19-1401.

25 (a) In this subtitle, the following words have the meanings indicated.

1 (B) "ACTUAL HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
2 NURSING HOME THAT HAS CAUSED DEATH OR A SERIOUS INJURY OR HAS THE
3 POTENTIAL FOR CAUSING DEATH OR SERIOUS INJURY.

4 [(b)] (C) "Deficiency" shall mean any failure of a nursing facility to meet the
5 requirements of this subtitle or any rule or regulation that the Secretary adopts
6 under this subtitle, and, in the case of a nursing [facility] HOME that participates in
7 the Maryland Medicaid Program under Title 15 of this article as a nursing [facility]
8 HOME, any failure to meet the requirements of § 1919(b), (c), or (d) of the federal
9 Social Security Act (42 U.S.C. § 1396R(b), (c), or (d)), that is serious or life
10 threatening.

11 [(c)] (D) "Life threatening" shall mean a condition existing in a nursing
12 [facility] HOME that presents an imminent danger of health or serious mental or
13 physical harm to the residents of the nursing [facility] HOME and must be remedied
14 immediately to insure their health, safety, and welfare.

15 [(d)] (E) "Nursing facility" means a facility (other than a facility offering
16 domiciliary or personal care as defined in Subtitle 3 of this title) which offers
17 nonacute inpatient care to patients suffering from a disease, condition, disability of
18 advanced age, or terminal disease requiring maximal nursing care without
19 continuous hospital services and who require medical services and nursing services
20 rendered by or under the supervision of a licensed nurse together with convalescent
21 services, restorative services, or rehabilitative services.

22 (F) "ONGOING PATTERN" MEANS THE REOCCURRENCE OF THE SAME TYPE OF
23 DEFICIENCY AFTER TWO REVISITS OR TWO ANNUAL SURVEYS OR IF A HOME DOES
24 NOT CORRECT ALL OF ITS DEFICIENCIES WITHIN 30 DAYS AFTER THE DEFICIENCY
25 WAS FIRST CITED.

26 (G) "POTENTIAL FOR HARM DEFICIENCY" MEANS THAT A DEFICIENCY EXISTS
27 THAT IS NOT AN ACTUAL HARM DEFICIENCY BUT COULD CAUSE MINIMAL HARM OR
28 MORE THAN MINIMAL HARM.

29 [(e)] (H) "Serious" means a condition existing in a nursing facility that [does
30 not constitute] CONSTITUTES a life threatening, health, or fire safety deficiency, [but
31 which] is a violation of departmental regulations, and is likely to endanger the
32 health, life, or safety of patients.

33 19-1402.

34 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
35 INCLUDE:

36 (1) REQUIRING A NURSING HOME TO PROVIDE AN ACCEPTABLE PLAN OF
37 CORRECTION;

38 (2) REQUIRING A NURSING HOME TO MAINTAIN MINIMUM STAFFING
39 LEVELS IN A NURSING HOME, PENDING ANY APPEAL OF A DECISION;

1 (3) APPOINTING A STATE MONITOR; AND

2 (4) IMPOSING A CIVIL MONEY PENALTY.

3 [(a)] (B) A civil money penalty may be imposed when [there is clear and
4 convincing evidence of an ongoing pattern of serious or life threatening deficiencies in
5 a nursing facility.]:

6 (1) THERE IS CLEAR AND CONVINCING EVIDENCE THAT A DEFICIENCY
7 EXISTS THAT HAS THE POTENTIAL FOR CAUSING ACTUAL HARM;

8 (2) THERE IS CLEAR AND CONVINCING EVIDENCE THAT A DEFICIENCY
9 EXISTS THAT HAS CAUSED ACTUAL HARM; OR

10 (3) THERE IS CLEAR AND CONVINCING EVIDENCE OF AN ONGOING
11 PATTERN OF SERIOUS OR LIFE THREATENING DEFICIENCIES IN A NURSING
12 FACILITY.

13 [(b)] (C) In determining whether a civil money penalty is to be imposed, the
14 Secretary shall consider, pursuant to guidelines set forth in regulations promulgated
15 by the Secretary, the following factors:

16 (1) The number, nature, and seriousness of the deficiencies;

17 (2) The extent to which the deficiency or deficiencies are part of an
18 ongoing pattern during the preceding 24 months;

19 (3) The degree of risk to the health, life, or safety of the residents of the
20 nursing [facility] HOME caused by the deficiency or deficiencies;

21 (4) The efforts made by, and the ability of, the nursing [facility] HOME to
22 correct the deficiency or deficiencies; and

23 (5) Such other factors as justice may require.

24 [(c)] (D) Upon determination by the Department that an ongoing pattern of
25 serious or life threatening deficiencies exists, the Department shall notify the nursing
26 [facility] HOME that:

27 (1) Unless corrective action taken pursuant to § 19-1403 is substantially
28 completed, a civil money penalty will be imposed; or

29 (2) An order imposing a civil money penalty will be issued, pursuant to §
30 19-1404 which shall include a list of all deficiencies and notice that a civil money
31 penalty may be imposed until the time that the cited deficiencies have been rectified.
32 19-1403.

33 (a) If the Secretary issues a notice pursuant to [§ 19-1402(c)(1)] §
34 19-1402(D)(1), that notice shall provide:

1 (1) The time in which a plan of correction acceptable to the Department
2 is to be submitted;

3 (2) The [time in] DATE BY which the identified deficiency or deficiencies
4 must be substantially corrected; and

5 (3) That failure to submit an acceptable plan of correction pursuant to
6 paragraph (1) of this subsection or to substantially correct the identified deficiency or
7 deficiencies pursuant to paragraph (2) of this subsection may result in an order
8 imposing a civil money penalty pursuant to § 19-1404.

9 (b) At the expiration of the [time] DATE set forth in subsection (a)(2) of this
10 section, the Department shall schedule a reinspection of the nursing [facility] HOME
11 to determine whether the deficiency or deficiencies have been substantially corrected.

12 (c) Following the reinspection the Department may:

13 (1) Extend the [time frame in] DATE BY which the deficiency must be
14 corrected; or

15 (2) Propose the imposition of a civil money penalty pursuant to §
16 19-1404.

17 19-1404.

18 (a) If a civil money penalty is proposed, the Secretary shall issue an order
19 which shall state the basis on which the order is made, the deficiency or deficiencies
20 on which the order is based, the amount of civil money penalties to be imposed, and
21 the manner in which the amount of civil money penalties imposed was calculated.

22 (b) An order issued pursuant to subsection (a) of this section shall be void
23 unless issued within 60 days of the later of:

24 (1) The inspection at which the deficiency is identified;

25 (2) The date identified in § 19-1403(a)(2); or

26 (3) The date identified in § 19-1403(c)(1).

27 19-1405.

28 (a) A civil money penalty imposed under this subtitle FOR ACTUAL HARM
29 DEFICIENCIES:

30 (1) May not exceed [a total of \$5,000] \$15,000 per [day] INSTANCE [in
31 which serious or life threatening deficiencies exist]; and

32 (2) May not exceed [\$50,000 in total] \$5,000 PER DAY, FOR A PATTERN OF
33 DEFICIENCIES, UNTIL THE FACILITY IS IN COMPLIANCE.

1 (B) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR POTENTIAL
2 HARM DEFICIENCIES:

3 (1) MAY NOT EXCEED \$1,000 PER INSTANCE; AND

4 (2) MAY NOT EXCEED \$5,000 PER DAY UNTIL THE FACILITY IS IN
5 COMPLIANCE.

6 (C) AT ANY TIME THAT THE SECRETARY FINDS THAT THERE ARE TWO OR
7 MORE CONCURRENT DEFICIENCIES OF A SERIOUS NATURE THAT HAVE CAUSED
8 ACTUAL HARM AND WOULD BE CLASSED AS A "G" LEVEL DEFICIENCY ACCORDING TO
9 FEDERAL GUIDELINES, AN IMMEDIATE FINE OF \$10,000 MAY BE IMPOSED.

10 [(b)] (D) In setting the amount of a civil money penalty under this section, the
11 Secretary shall consider, pursuant to guidelines set forth in regulations promulgated
12 by the Secretary, the following factors:

13 (1) The number, nature, and seriousness of the deficiencies;

14 (2) The degree of risk to the health, life, or safety of the residents of the
15 nursing [facility] HOME caused by the deficiency or deficiencies;

16 (3) The efforts made by the nursing [facility] HOME to correct the
17 deficiency or deficiencies;

18 (4) CURRENT FEDERAL GUIDELINES FOR MONEY PENALTIES;

19 [(4)] (5) Whether the amount of the proposed civil money penalty will
20 jeopardize the financial ability of the nursing [facility] HOME to continue operating
21 as a nursing [facility] HOME; and

22 [(5)] (6) Such other factors as justice may require.

23 19-1406.

24 (a) The nursing [facility] HOME shall provide written notice to the
25 Department when the deficiency or deficiencies identified in the notice issued
26 pursuant to § 19-1404 are substantially corrected.

27 (b) The calculation of the amount of the civil money penalty will stop as of the
28 date the notice in subsection (a) of this section is received by the Department.

29 (c) The Department shall schedule and conduct a reinspection of the nursing
30 [facility] HOME within 24 hours of its receipt of the notice pursuant to subsection (a)
31 of this section.

32 (d) If, following the reinspection, the Department determines that the
33 deficiency or deficiencies have not been substantially corrected, the [facility's]
34 NURSING HOME'S notice under subsection (a) of this section shall be invalid and the
35 civil money penalty imposed under § 19-1405(a) shall remain in effect.

1 19-1407.

2 (a) The nursing [facility] HOME shall have the right to appeal from the order
3 within 30 days from the receipt of the order.

4 (b) The appeal shall be heard by the Hearings Office of the Department, which
5 shall render the final agency decision for purposes of judicial review.

6 (c) Imposition of the civil money penalty shall be stayed until the final
7 decision is issued pursuant to subsection (m) of this section.

8 (d) A hearing on the appeal shall be held within 10 working days of the
9 request for hearing.

10 (e) The parties to the hearing shall be the aggrieved nursing facility and the
11 Secretary.

12 (f) The parties are entitled to be represented by counsel.

13 (g) The Hearings Office may permit or modify a timely request by the nursing
14 [facility] HOME for prehearing discovery.

15 (h) The Hearings Office, upon its own motion or upon motion of either party,
16 may subpoena any person or evidence, administer oaths, and take depositions and
17 other testimony.

18 (i) The Hearings Office shall inquire fully into all of the matters at issue and
19 shall receive into evidence the testimony of witnesses and any documents which are
20 relevant and material to such matters.

21 (j) The parties shall have the right to present evidence and testimony and to
22 cross-examine that presented by the opposing party.

23 (k) The purpose of the hearing is to consider and render a decision on the
24 following matters:

25 (1) The existence of a deficiency or deficiencies; and

26 (2) The amount of the civil money penalty.

27 (l) (1) The Secretary has the burden of proof with respect to the basis for
28 imposition of the civil money penalty under § 19-1402 and the amount of the civil
29 money penalty under § 19-1405.

30 (2) The Secretary must meet his burden of proof by clear and convincing
31 evidence.

32 (m) A decision shall be rendered by the Hearings Office within 7 days of the
33 hearing. The decision shall be the final agency decision of the Department, subject to
34 judicial appeal.

1 19-1408.

2 (a) A nursing [facility] HOME subject to a civil money penalty shall have the
3 right to appeal a decision of the Hearings Office upholding the finding of a deficiency
4 or deficiencies or the imposition of a civil money penalty.

5 (b) Such appeal shall be filed within 30 days of the action to be appealed.

6 (c) The appeal under subsection (b) of this section shall be taken directly to
7 the circuit court of the jurisdiction in which the nursing [facility] HOME is located.

8 19-1409.

9 (a) All civil money penalties imposed under this subtitle shall be placed in an
10 interest bearing account during any judicial appeal under § 19-1408.

11 (b) If the civil money penalty is reversed as a result of an appeal filed by the
12 nursing [facility] HOME, the amount of the civil money penalty, with interest, shall
13 be returned to the nursing [facility] HOME within 14 days of the reversal.

14 (c) If the civil money penalty is not appealed or if it is upheld following an
15 appeal, the amount of the penalty imposed, together with any accrued interest shall
16 be placed in a fund to be established by the Secretary and shall be applied
17 [exclusively]:

18 (1) FIRST, for the protection of the health or property of residents of
19 nursing [facilities] HOMES that have been found to have deficiencies, including
20 payment for the costs of relocation of residents to other [facilities] NURSING HOMES,
21 maintenance or operation of a nursing [facility] HOME pending correction of
22 deficiencies or closure, and reimbursement of residents for personal funds lost; AND

23 (2) ANY REMAINING FUNDS SHALL BE UTILIZED FOR TRAINING, GRANT
24 AWARDS, DEMONSTRATION PROJECTS OR OTHER PROGRAMS DESIGNED TO IMPROVE
25 THE QUALITY OF CARE.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2000.