

SENATE BILL 689
EMERGENCY BILL

Unofficial Copy
J3

2000 Regular Session
(01r1240)

ENROLLED BILL
-- Finance/Environmental Matters --

Introduced by **Senators Collins, Hollinger, and Teitelbaum (Task Force on Quality of Care in Nursing Homes)**

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.

President.

CHAPTER _____

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 the burden of proof for the imposition of*
6 *finer; requiring the Office of Administrative Hearings to render a decision within*
7 *a certain time after a hearing; providing for a penalty discount under certain*
8 *circumstances*; establishing certain monetary penalties for certain deficiencies;
9 *repealing certain provisions of law relating to notice requirements and appeals*;
10 *authorizing the Department of Health and Mental Hygiene to appoint an*
11 *independent monitor for certain purposes*; *establishing a Health Care Quality*
12 *Account*; authorizing the Secretary of Health and Mental Hygiene to utilize
13 certain monetary fines for programs to improve the quality of care; *making this*
14 *Act an emergency measure*; and generally relating to sanctions for certain
15 deficiencies in nursing homes.

16 BY repealing and reenacting, with amendments,

1 Article - Health - General
 2 Section 19-1401, 19-1402, ~~and 19-1404, through 19-1407~~ and 19-1405 to be
 3 under the amended subtitle "Subtitle 14. Nursing Homes"
 4 Annotated Code of Maryland
 5 (1996 Replacement Volume and 1999 Supplement)

6 BY repealing
 7 Article - Health - General
 8 Section 19-1403, 19-1406, 19-1407, 19-1408, and 19-1409
 9 Annotated Code of Maryland
 10 (1996 Replacement Volume and 1999 Supplement)

11 BY adding to
 12 Article - Health - General
 13 Section ~~19-1407~~ 19-1405 and 19-1406, 19-1406, and 19-1407
 14 Annotated Code of Maryland
 15 (1996 Replacement Volume and 1999 Supplement)

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

18 **Article - Health - General**

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

20 19-1401.

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

22 (B) "ACTUAL HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
 23 NURSING HOME OR AN ACTION OR INACTION BY THE NURSING HOME STAFF THAT
 24 HAS CAUSED PHYSICAL OR EMOTIONAL INJURY OR IMPAIRMENT TO A RESIDENT.

25 [(b)] (C) "Deficiency" [shall mean any failure of a nursing facility to meet the
 26 requirements of this subtitle or any rule or regulation that the Secretary adopts
 27 under this subtitle, and, in the case of a nursing facility that participates in the
 28 Maryland Medicaid Program under Title 15 of this article as a nursing facility, any
 29 failure to meet the requirements of § 1919(b), (c), or (d) of the federal Social Security
 30 Act (42 U.S.C. § 1396R(b), (c), or (d)), that is serious or life threatening.] MEANS A
 31 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
 32 NURSING HOME STAFF THAT RESULTS IN POTENTIAL FOR MORE THAN MINIMAL
 33 HARM, ACTUAL HARM, OR SERIOUS AND IMMEDIATE THREAT TO ONE OR MORE
 34 RESIDENTS.

35 [(c)] "Life threatening" shall mean a condition existing in a nursing facility that
 36 presents an imminent danger of health or serious mental or physical harm to the

1 residents of the nursing facility and must be remedied immediately to insure their
2 health, safety, and welfare.]

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

10 (E) "ONGOING PATTERN" MEANS THE ~~RECURRENCE OF DEFICIENCIES AFTER~~
11 OCCURRENCE OF ANY POTENTIAL FOR MORE THAN MINIMAL HARM OR GREATER
12 DEFICIENCY ON TWO CONSECUTIVE ON-SITE VISITS AS A RESULT OF ANNUAL
13 SURVEYS, FOLLOW-UP VISITS, ANY UNSCHEDULED VISITS, OR COMPLAINT
14 INVESTIGATIONS.

15 (F) "POTENTIAL FOR MORE THAN MINIMAL HARM DEFICIENCY" MEANS A
16 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
17 NURSING HOME STAFF THAT ~~RESULTS IN MINIMAL DISCOMFORT TO A RESIDENT OR~~
18 HAS THE POTENTIAL TO CAUSE ACTUAL HARM TO A RESIDENT.

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

23 (G) "SERIOUS AND IMMEDIATE THREAT" MEANS A SITUATION IN WHICH
24 IMMEDIATE CORRECTIVE ACTION IS NECESSARY BECAUSE A NURSING HOME'S
25 NONCOMPLIANCE WITH ONE OR MORE STATE REGULATIONS HAS CAUSED OR IS
26 LIKELY TO CAUSE SERIOUS INJURY, HARM, IMPAIRMENT TO, OR DEATH OF A
27 RESIDENT RECEIVING CARE IN THE NURSING HOME.

28 (H) "SUSTAINED COMPLIANCE" MEANS A PERIOD OF 30 DAYS FOLLOWING THE
29 DATE OF NOTICE OF CORRECTIVE ACTION WITH NO DEFICIENCIES.

30 19-1402.

31 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
32 INCLUDE:

33 (1) A DIRECTED PLAN OF CORRECTION WITH CORRECTIVE MEASURES
34 NECESSARY TO PROTECT RESIDENTS;

35 (2) IMPOSING ADEQUATE STAFFING LEVELS IN A NURSING HOME;

36 (3) APPOINTING A STATE MONITOR SUBJECT TO § 19-1405 OF THIS
37 SUBTITLE; AND

38 (4) IMPOSING A CIVIL MONEY PENALTY.

1 [(a)] (B) A civil money penalty may be imposed when [there is clear and
2 convincing evidence of an ongoing pattern of serious or life threatening deficiencies in
3 a nursing facility.] A DEFICIENCY EXISTS OR AN ONGOING PATTERN OF
4 DEFICIENCIES EXISTS IN A NURSING HOME.

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

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

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

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

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

15 (5) ~~Such other factors as justice may require~~ A NURSING HOME'S PRIOR
16 HISTORY OF COMPLIANCE.

17 [(c)] (D) Upon determination by the Department that [an ongoing pattern of
18 serious or life threatening deficiencies exists] A DEFICIENCY OR DEFICIENCIES
19 EXIST, the Department shall notify the nursing [facility] HOME that:

20 (1) Unless corrective action taken pursuant to [§ 19-1403] THIS
21 SECTION is substantially completed, a civil money penalty will be imposed; or

22 (2) An order imposing a civil money penalty will be issued, pursuant to
23 [§ 19-1404] § 19-1403 which shall include a list of all deficiencies and notice that a
24 civil money penalty may be imposed until the time that the cited deficiencies have
25 been rectified.

26 [19-1403.

27 (a) If the Secretary issues a notice pursuant to § 19-1402(c)(1), that notice
28 shall provide:

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

31 (2) The time in which the identified deficiency or deficiencies must be
32 substantially corrected; and

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

1 (b) At the expiration of the time set forth in subsection (a)(2) of this section,
 2 the Department shall schedule a reinspection of the nursing facility to determine
 3 whether the deficiency or deficiencies have been substantially corrected.

4 (c) Following the reinspection the Department may:

5 (1) Extend the time frame in which the deficiency must be corrected; or

6 (2) Propose the imposition of a civil money penalty pursuant to §
 7 19-1404.]

8 [19-1404.] 19-1403.

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

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

15 (1) The] THE inspection OR REINSPECTION at which the deficiency is
 16 identified[;].

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

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

19 [19-1405.] 19-1404.

20 [(a) A civil money penalty imposed under this subtitle:

21 (1) May not exceed a total of \$5,000 per day in which serious or life
 22 threatening deficiencies exist; and

23 (2) May not exceed \$50,000 in total.]

24 (A) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR POTENTIAL
 25 FOR MORE THAN MINIMAL HARM DEFICIENCIES:

26 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; ~~AND~~ OR

27 (2) MAY NOT EXCEED \$1,000 PER DAY FOR AN ONGOING PATTERN OF
 28 DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

29 (B) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SUBTITLE FOR ACTUAL
 30 HARM DEFICIENCIES:

31 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; OR

1 (2) MAY NOT EXCEED \$5,000 PER ~~DAY~~, DAY FOR AN ONGOING PATTERN
2 OF DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

3 (C) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR A SERIOUS
4 AND IMMEDIATE THREAT:

5 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; ~~AND OR~~

6 (2) MAY NOT EXCEED \$10,000 PER DAY FOR AN ONGOING PATTERN OF
7 DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

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

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

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

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

16 (4) CURRENT FEDERAL GUIDELINES FOR MONEY PENALTIES;

17 [(4)] (5) Whether the amount of the proposed civil money penalty will
18 jeopardize the financial ability of the nursing [facility] HOME to continue operating
19 as a nursing [facility] HOME; and

20 [(5)] (6) Such other factors as justice may require.

21 [19-1406.] 19-1405.

22 (a) ~~The nursing [facility] HOME shall provide written notice to the~~
23 ~~Department when the deficiency or deficiencies identified in the notice issued~~
24 ~~pursuant to [§ 19-1403] § 19-1402 are substantially corrected.~~

25 (b) ~~The calculation of the amount of the civil money penalty will stop as of the~~
26 ~~date the notice in subsection (a) of this section is received by the Department IF THE~~
27 ~~DEPARTMENT VERIFIES CORRECTIVE ACTION AND SUSTAINED COMPLIANCE.~~

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

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

1 ~~[19-1407.] 19-1406.~~

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)]~~ (B) A hearing on the appeal shall be held within 10 working days of the
9 request for hearing.

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

12 ~~[(f)]~~ (D) The parties are entitled to be represented by counsel.

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

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

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

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

23 ~~[(k)]~~ (I) 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)]~~ (J) (1) The Secretary has the burden of proof with respect to the basis
28 for imposition of the civil money penalty under § 19-1402 and the amount of the civil
29 money penalty under § 19-1404.

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

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

1 ~~19-1407.~~

2 (A) WHEN THE DEPARTMENT DETERMINES THAT THERE IS A DEFICIENCY IN
3 A NURSING HOME, THE DEPARTMENT ~~IS AUTHORIZED TO~~ MAY APPOINT AN
4 INDEPENDENT MONITOR TO OVERSEE EFFORTS MADE BY A THE NURSING HOME TO
5 ACHIEVE COMPLIANCE WITH STATE AND FEDERAL REGULATIONS FOR GOVERNING
6 NURSING HOMES THAT PARTICIPATE IN THE MEDICARE AND MEDICAID PROGRAMS.

7 (B) THE APPOINTMENT OF A STATE MONITOR IS AN INTERMEDIATE
8 SANCTION THAT MAY BE IN ADDITION TO OR IN LIEU OF OTHER SANCTIONS.

9 (C) THE STATE MONITOR'S DUTIES MAY INCLUDE:

10 (1) PERIODIC INSPECTIONS OF A NURSING HOME FOR THE PURPOSE OF
11 ASSESSING THE NURSING HOME'S COMPLIANCE WITH STATE AND FEDERAL
12 REGULATIONS; AND

13 (2) REPORTING FINDINGS TO THE DEPARTMENT AND THE NURSING
14 HOME.

15 (D) THE STATE MONITOR MAY NOT BE AN EMPLOYEE OF THE DEPARTMENT.

16 (E) A NURSING HOME SHALL BE RESPONSIBLE FOR THE COSTS ASSOCIATED
17 WITH THE APPOINTMENT OF A STATE MONITOR TO THE NURSING HOME.

18 ~~19-1406.~~

19 (A) WITHIN 15 DAYS OF THE REQUEST FOR AN APPEAL BY A NURSING HOME,
20 THE NURSING HOME SHALL DEPOSIT THE AMOUNT OF THE CIVIL MONEY PENALTY
21 IN AN INTEREST BEARING ESCROW ACCOUNT, THE NURSING HOME SHALL BEAR ANY
22 COST ASSOCIATED WITH ESTABLISHING THE ESCROW ACCOUNT, AND THE ACCOUNT
23 SHALL BE TITLED IN THE NAME OF THE NURSING HOME AND THE DEPARTMENT OF
24 HEALTH AND MENTAL HYGIENE AS JOINT OWNERS.

25 (B) WHEN THE SECRETARY ISSUES THE FINAL DECISION OF THE
26 DEPARTMENT:

27 (1) IF THE DECISION UPHOLDS THE IMPOSITION OF THE FULL CIVIL
28 MONEY PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE DEPARTMENT
29 WITHIN 15 DAYS FROM THE DATE OF THE DECISION;

30 (2) IF THE DECISION UPHOLDS THE IMPOSITION OF A CIVIL PENALTY,
31 BUT REDUCES THE AMOUNT OF THE CIVIL PENALTY, THE AMOUNT DUE THE
32 DEPARTMENT WILL BE RELEASED TO THE DEPARTMENT WITH ACCRUED INTEREST
33 WITHIN 15 DAYS OF THE DATE OF THE DECISION AND THE BALANCE WILL BE
34 RELEASED TO THE NURSING HOME WITHIN 15 DAYS OF THE DATE OF THE DECISION;
35 OR

1 (3) IF THE DECISION REVERSES THE IMPOSITION OF THE CIVIL
2 PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE NURSING HOME WITHIN
3 15 DAYS OF THE DECISION.

4 (C) (1) A HEARING ON THE APPEAL SHALL BE HELD IN ACCORDANCE WITH
5 THE ADMINISTRATIVE PROCEDURE ACT, UNDER TITLE 10, SUBTITLE 2 OF THE STATE
6 GOVERNMENT ARTICLE.

7 (2) THE SECRETARY SHALL HAVE THE BURDEN OF PROOF WITH
8 RESPECT TO THE IMPOSITION OF CIVIL MONEY PENALTIES UNDER § 19-1404 OF THIS
9 SUBTITLE.

10 (3) A DECISION SHALL BE RENDERED BY THE OFFICE OF
11 ADMINISTRATIVE HEARINGS WITHIN 10 WORKING DAYS OF THE HEARING.

12 (D) A NURSING HOME IS ENTITLED TO A 40% REDUCTION IN THE AMOUNT OF
13 THE CIVIL MONEY PENALTY IF IT WAIVES ITS RIGHT TO A HEARING WITHIN 30 DAYS
14 OF THE DEPARTMENT'S ORDER.

15 ~~(D) ANY REMAINING FUNDS SHALL BE UTILIZED FOR TRAINING, GRANT~~
16 ~~AWARDS, DEMONSTRATION PROJECTS, OR OTHER PROGRAMS DESIGNED TO~~
17 ~~IMPROVE THE QUALITY OF CARE.~~

18 19-1407.

19 (A) (1) THERE IS A HEALTH CARE QUALITY ACCOUNT ESTABLISHED IN THE
20 DEPARTMENT.

21 (2) THE ACCOUNT SHALL BE FUNDED BY CIVIL MONEY PENALTIES PAID
22 BY NURSING HOMES AND OTHER PENALTIES THAT THE OFFICE OF HEALTH CARE
23 QUALITY MAY ASSESS.

24 (3) THE DEPARTMENT SHALL PAY ALL PENALTIES COLLECTED UNDER
25 THIS TITLE TO THE COMPTROLLER OF THE STATE.

26 (4) THE COMPTROLLER SHALL DISTRIBUTE THE FUNDS COLLECTED
27 UNDER THIS TITLE TO THE HEALTH CARE QUALITY ACCOUNT.

28 (5) THE FUND IS A CONTINUING NONLAPSING FUND, NOT SUBJECT TO §
29 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

30 (6) ANY UNSPENT PORTIONS OF THE FUND MAY NOT BE TRANSFERRED
31 OR REVERTED TO THE GENERAL FUND OF THE STATE, BUT SHALL REMAIN IN THE
32 FUND TO BE USED FOR THE PURPOSES SPECIFIED IN THIS SECTION.

33 (B) THE HEALTH CARE QUALITY ACCOUNT SHALL BE USED FOR TRAINING,
34 GRANT AWARDS, DEMONSTRATION PROJECTS, OR OTHER PURPOSES DESIGNED TO
35 IMPROVE THE QUALITY OF CARE.

1 (C) THE DEPARTMENT SHALL ADOPT REGULATIONS FOR THE DISTRIBUTION
2 OF FUNDS FROM THE HEALTH CARE QUALITY ACCOUNT.

3 [19-1408.

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

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

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

10 [19-1409.

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

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

16 (c) If the civil money penalty is not appealed or if it is upheld following an
17 appeal, the amount of the penalty imposed, together with any accrued interest shall
18 be placed in a fund to be established by the Secretary and shall be applied exclusively
19 for the protection of the health or property of residents of nursing facilities that have
20 been found to have deficiencies, including payment for the costs of relocation of
21 residents to other facilities, maintenance or operation of a nursing facility pending
22 correction of deficiencies or closure, and reimbursement of residents for personal
23 funds lost.]

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect~~
25 ~~October 1, 2000~~ is an emergency measure, is necessary for the immediate preservation
26 of the public health and safety, has been passed by a yea and nay vote supported by
27 three-fifths of all the members elected to each of the two Houses of the General
28 Assembly, and shall take effect from the date it is enacted.