

HOUSE BILL 626

Unofficial Copy
J3

2001 Regular Session
(11r1138)

ENROLLED BILL

-- Environmental Matters/Economic and Environmental Affairs --

Introduced by **Delegate Hammen**

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 428

1 AN ACT concerning

2 **Nursing Staff Agencies - Quality Oversight and Improvement**

3 FOR the purpose of transferring oversight of nursing staff agencies from the Board of
4 Nursing to the Office of Health Care Quality; requiring nursing staff agencies to
5 ~~register with~~ be licensed by the Office; providing for the procedures and
6 requirements for licensing nursing staff agencies ~~registering with~~ by the Office;
7 requiring nursing staff agencies to submit certain information to the Office;
8 ~~requiring the Office to conduct periodic site visits and surveys of nursing staff~~
9 ~~agencies; requiring the Office to investigate certain factors during the survey;~~
10 ~~requiring the Office to maintain a report of each survey; providing for certain~~
11 ~~penalties for certain nursing staff agencies; requiring that fines collected by the~~
12 ~~Office be deposited into a certain account; requiring the Office to ensure that all~~
13 ~~surveys are unannounced; requiring the Department of Health and Mental~~
14 ~~Hygiene to make certain reports to the General Assembly on or before certain~~
15 ~~dates; authorizing the Office to adopt certain regulations and conduct certain~~
16 inspections; requiring a nursing staff agency to perform certain personnel duties
17 and verify certain conditions; providing certain penalties for certain violations;

1 requiring a nursing staff agency to attest to compliance with certain federal
2 laws; providing for a delayed effective date; and generally relating to quality
3 oversight and improvement of nursing staff agencies.

4 BY transferring

5 Article - Health Occupations

6 Section 8-507

7 Annotated Code of Maryland

8 (2000 Replacement Volume)

9 to be

10 Article - Health - General

11 Section 19-2001

12 Annotated Code of Maryland

13 (2000 Replacement Volume)

14 BY repealing and reenacting, with amendments,

15 Article - Health - General

16 Section 19-2001 to be under the new subtitle "Subtitle 20. Nursing Staff

17 Agencies"

18 Annotated Code of Maryland

19 (2000 Replacement Volume)

20 (As enacted by Section 1 of this Act)

21 BY adding to

22 Article - Health - General

23 Section 19-2002

24 Annotated Code of Maryland

25 (2000 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

27 MARYLAND, That Section(s) 8-507 of Article - Health Occupations of the Annotated

28 Code of Maryland be transferred to be Section(s) 19-2001 of Article - Health -

29 General of the Annotated Code of Maryland.

30 SECTION 2. BE IT FURTHER ENACTED, That the Laws of Maryland read as

31 follows:

32 **Article - Health - General**

33 **SUBTITLE 20. NURSING STAFF AGENCIES.**

34 19-2001.

35 (a) (1) In this [section] SUBTITLE the following words have the meanings

36 indicated.

1 (2) "CLIENT FACILITY" MEANS A HEALTH CARE FACILITY THAT
2 CONTRACTS WITH A NURSING STAFF AGENCY FOR THE REFERRAL OF NURSING
3 PERSONNEL.

4 [(2)] (3) "Health care facility" means a hospital or related institution as
5 defined in § 19-301 of [the Health - General Article] THIS ARTICLE.

6 [(3)] (4) "Initially providing or referring" means the first time a nursing
7 staff agency provides or refers a particular licensed practical nurse, registered nurse,
8 or [geriatric] CERTIFIED nursing assistant to a health care facility.

9 [(4)] (5) "Nursing personnel" means:

10 (i) Any individual licensed by the State Board of Nursing as a:

11 1. Licensed practical nurse; or

12 2. Registered nurse; or

13 (ii) A [geriatric] CERTIFIED nursing assistant [who complies with
14 the provisions of § 19-308.1 of the Health - General Article for patient care
15 personnel].

16 [(5)] (6) (i) "Nursing staff agency" means any person, firm,
17 corporation, partnership, or other business entity engaged in the business of
18 ~~providing or referring nursing personnel~~ AS EMPLOYEES OR INDEPENDENT
19 CONTRACTORS to render temporary nursing services at a health care facility in the
20 State.

21 (ii) "Nursing staff agency" does not include:

22 [1. Any person, firm, corporation, partnership, or other
23 business entity engaged solely in the business of providing or referring nursing
24 personnel to render private duty nursing care at a health care facility;

25 2.] 1. A nursing staff agency operated by a health care
26 facility solely for the purpose of procuring, furnishing, or referring temporary or
27 permanent nursing personnel for employment at that health care facility;

28 [3.] 2. A home health agency regulated under Title 19,
29 Subtitle 4 of [the Health - General Article] THIS ARTICLE; or

30 [4.] 3. Any nursing personnel procuring, furnishing, or
31 referring their own services to a health care facility without the direct or indirect
32 assistance of a nursing staff agency.

33 (7) "OFFICE" MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE
34 DEPARTMENT.

35 [(6)] (8) "Responsible party" means the individual at a nursing staff
36 agency who controls the day to day operation of the nursing staff agency.

1 (b) (1) A NURSING STAFF AGENCY SHALL BE LICENSED BY THE OFFICE
 2 BEFORE REFERRING NURSING PERSONNEL TO A HEALTH CARE FACILITY TO RENDER
 3 TEMPORARY NURSING SERVICES AT A HEALTH CARE FACILITY IN THIS STATE.

4 (2) All nursing staff agencies shall submit to the [Board] OFFICE, ~~the~~:

5 (I) THE nursing staff agency's:

6 (1) 1. Business name;

7 (2) 2. Business address;

8 (3) 3. Business telephone number; ~~and~~ and

9 (4) 4. Responsible party; AND

10 (II) ANY OTHER INFORMATION THE OFFICE REQUIRES BY
 11 REGULATION TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

12 (c) (1) A nursing staff agency ~~registration~~ LICENSE expires on the 28th day
 13 of the month in which the agency was originally ~~registered~~ LICENSED unless the
 14 license is renewed for a 1-year term as provided in this section.

15 (2) At least 1 month before the ~~registration~~ LICENSE expires, the
 16 [Board] OFFICE shall send to the nursing staff agency, by first-class mail to the last
 17 known address of the nursing staff agency, a renewal notice that states:

18 (i) The date on which the current ~~registration~~ LICENSE expires;

19 (ii) The date by which the renewal application must be received by
 20 the [Board] OFFICE for the renewal to be issued and mailed before the ~~registration~~
 21 LICENSE expires; and

22 (iii) The amount of the renewal fee.

23 (3) Before a ~~registration~~ LICENSE expires, the nursing staff agency
 24 periodically may renew it for an additional term, if the nursing staff agency:

25 (i) Otherwise is entitled to be ~~registered~~ LICENSED; and

26 (ii) Pays to the [Board] OFFICE the renewal fee set by the [Board]
 27 OFFICE.

28 (d) If a nursing staff agency fails to renew, the nursing staff agency must
 29 immediately stop referring personnel to health care facilities.

30 (e) (1) A nursing staff agency shall notify the [Board] OFFICE of any change
 31 in ownership, agency name, or address within 30 days of the change.

1 (2) Notwithstanding the provisions of subsection ~~(j)(4)~~ (I)(1) of this
2 section, if a nursing staff agency fails to notify the [Board] OFFICE within the time
3 required under this subsection, the [Board] OFFICE may impose a fine of \$100.

4 (f) (1) Before initially providing or referring a licensed practical nurse, ~~or~~
5 registered nurse, OR CERTIFIED NURSING ASSISTANT to health care facilities to
6 render temporary nursing services the nursing staff agency shall:

7 ~~(i) Submit the name and license number of the licensed practical~~
8 ~~nurse or registered nurse to the [Board] OFFICE; and~~

9 ~~(ii) Verify~~ VERIFY the licensure status of the licensed practical
10 nurse, ~~or~~ registered nurse, OR CERTIFIED NURSING ASSISTANT.

11 (2) At the time a licensed practical nurse, ~~or~~ registered nurse, OR
12 CERTIFIED NURSING ASSISTANT who is being referred to health care facilities by a
13 nursing staff agency must renew their license to practice licensed practical nursing,
14 ~~or~~ registered nursing, OR CERTIFIED NURSING ASSISTANCE, the nursing staff agency
15 shall:

16 (i) Submit the name and license number of the licensed practical
17 nurse, ~~or~~ registered nurse, OR CERTIFIED NURSING ASSISTANT to the [Board]
18 OFFICE; and

19 (ii) Verify the licensure status of the licensed practical nurse, ~~or~~
20 registered nurse, OR CERTIFIED NURSING ASSISTANT.

21 [(3) (i) On the request of a nursing staff agency, the Board shall verify
22 by telephone or other electronic means the licensure status of any licensed practical
23 nurse or registered nurse that the nursing staff agency plans to refer to health care
24 facilities within 24 hours of the request.

25 (ii) The Board shall provide written confirmation of the information
26 provided in accordance with the provisions of item (i) of this paragraph to the nursing
27 staff agency within 10 working days of the request.

28 (4) (i) At least quarterly, the Board shall report by telephone or other
29 electronic means to a nursing staff agency any disciplinary action taken against a
30 licensed practical nurse or registered nurse who is being referred to health care
31 facilities by that nursing staff agency within the previous quarter.

32 (ii) The Board shall provide written confirmation of the information
33 provided in accordance with the provisions of item (i) of this paragraph to the nursing
34 staff agency within 10 working days of the disciplinary action being taken.

35 (g) Before initially providing or referring a geriatric nursing assistant to
36 related institutions to render temporary services, the nursing staff agency shall verify
37 with the Office of Licensing and Certification Programs of the Department that the
38 geriatric nursing assistant complies with the applicable standards under the
39 regulations adopted under § 19-308.1 of the Health - General Article.]

1 (h) (G) (1) A nursing staff agency may not knowingly provide or refer a
2 licensed practical nurse who is not authorized to practice licensed practical nursing
3 under [this title] TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE to a health care
4 facility to render temporary nursing services.

5 (2) A nursing staff agency may not knowingly provide or refer a
6 registered nurse who is not authorized to practice registered nursing under [this
7 title] TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE to a health care facility to
8 render temporary nursing services.

9 (3) ~~A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR ONLY
10 REFER A CERTIFIED NURSING ASSISTANT WHO IS CERTIFIED UNDER TITLE 8,
11 SUBTITLE 6A OF THE HEALTH OCCUPATIONS ARTICLE TO PERFORM DELEGATED
12 NURSING FUNCTIONS TO PRACTICE CERTIFIED NURSING UNDER TITLE 8 OF THE
13 HEALTH OCCUPATIONS ARTICLE TO A HEALTH CARE FACILITY TO RENDER
14 TEMPORARY DELEGATED NURSING SERVICES.~~

15 (3) *A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR
16 REFER A CERTIFIED NURSING ASSISTANT WHO IS NOT AUTHORIZED TO PRACTICE
17 AS A CERTIFIED NURSING ASSISTANT UNDER TITLE 8, SUBTITLE 6A OF THE HEALTH
18 OCCUPATIONS ARTICLE TO A HEALTH CARE FACILITY TO RENDER DELEGATED
19 NURSING SERVICES.*

20 (i) (H) (1) Except as provided in paragraph (2) of this subsection:

21 (i) If a nursing staff agency knows of an action or condition
22 performed by a licensed practical nurse [or], registered nurse, OR CERTIFIED
23 NURSING ASSISTANT provided or referred by that nursing staff agency that might be
24 grounds for action under § 8-316 of [this title] THE HEALTH OCCUPATIONS ARTICLE,
25 the nursing staff agency shall report the action or condition to the Board; and

26 (ii) An individual shall have immunity from liability described
27 under § 5-709 of the Courts and Judicial Proceedings Article for making a report as
28 required under this paragraph.

29 (2) A nursing staff agency is not required under this subsection to make
30 any report that would be in violation of any federal or State law, rule, or regulation
31 concerning the confidentiality of alcohol and drug abuse patient records.

32 (j) (I) (1) Subject to the provisions of Title 10, Subtitle 2 of the State
33 Government Article, the [Board] OFFICE may impose a penalty of up to \$2,000 for a
34 violation of any provision of this section:

35 (I) FOR A FIRST OFFENSE, UP TO \$2,500 PER VIOLATION OR UP TO
36 \$2,500 PER DAY UNTIL THE NURSING STAFF AGENCY COMPLIES WITH THE
37 REQUIREMENTS OF THIS SUBTITLE;

38 (II) FOR A SECOND OFFENSE, UP TO \$5,000 PER VIOLATION OR UP
39 TO \$5,000 PER DAY UNTIL THE NURSING STAFF AGENCY COMPLIES WITH THE
40 REQUIREMENTS OF THIS SUBTITLE; AND

1 (III) FOR A THIRD OR SUBSEQUENT OFFENSE, UP TO \$10,000 PER
 2 VIOLATION OR UP TO \$10,000 PER DAY UNTIL THE NURSING STAFF AGENCY
 3 COMPLIES WITH THE REQUIREMENTS OF THIS SUBTITLE.

4 (2) Each day a violation continues is a separate violation.

5 (J) A NURSING STAFF AGENCY IS NOT A HEALTH CARE PROVIDER.

6 19-2002.

7 (A) IN THIS SECTION, "OFFICE" MEANS THE OFFICE OF HEALTH CARE
 8 QUALITY IN THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

9 (B) ~~THE OFFICE SHALL MAKE A SITE VISIT AND CONDUCT A FULL SURVEY OF~~
 10 ~~EACH REGISTERED NURSING STAFF AGENCY PERIODICALLY MAY INSPECT A~~
 11 NURSING STAFF AGENCY TO VERIFY COMPLIANCE WITH THIS SUBTITLE.

12 (C) WHEN THE OFFICE CONDUCTS ~~A SURVEY AN INSPECTION~~, THE OFFICE
 13 SHALL VERIFY THAT THE NURSING PERSONNEL REFERRED BY THE NURSING STAFF
 14 AGENCY:

15 (1) ~~(1)~~ IF REGISTERED NURSES OR LICENSED PRACTICAL NURSES,
 16 ARE LICENSED BY THE BOARD; OR

17 ~~(1)~~ (2) IF CERTIFIED NURSING ASSISTANTS, ARE CERTIFIED BY
 18 ~~THE BOARD; AND BOARD.~~

19 ~~(2) ARE COMPLETING HAVE COMPLETED CONTINUING EDUCATION~~
 20 ~~REQUIREMENTS.~~

21 (D) WHEN THE OFFICE CONDUCTS ~~A SURVEY AN INSPECTION~~, THE OFFICE
 22 SHALL VERIFY THAT THE NURSING STAFF AGENCY HAS DEVELOPED, DOCUMENTED,
 23 AND IMPLEMENTED PROCEDURES FOR:

24 (1) SELECTING AND ~~CREDENTIALING~~ VERIFYING THE CREDENTIALS OF
 25 ~~NURSING PERSONNEL PROVIDED~~ REFERRED BY THE AGENCY;

26 (2) ~~VALIDATING COMPETENCIES AND PROCEDURES FOR PERFORMANCE~~
 27 ~~EVALUATION SKILLS EXPERIENCE PRIOR TO REFERRING NURSING PERSONNEL TO A~~
 28 CLIENT FACILITY OF NURSING PERSONNEL PRIOR TO REFERRAL BY THE AGENCY;

29 ~~(3) DISCIPLINING NURSING PERSONNEL PROVIDED BY THE AGENCY;~~

30 ~~(3) TRACKING OR AND ACTING ON SERIOUS OR LIFE-THREATENING~~
 31 COMPLAINTS RECEIVED BY A CLIENT OR THE CLIENT'S AGENT FACILITY OR THE
 32 CLIENT FACILITY'S AGENT;

33 ~~(4) REFERRAL REPORTING OF AN ACTION OR CONDITION UNDER §~~
 34 19-2001(H) OF THIS SUBTITLE;

1 ~~(4)~~ (5) VERIFYING THAT NURSING PERSONNEL REFERRED BY THE
2 NURSING STAFF AGENCY ARE OF SATISFACTORY HEALTH STATUS AND CURRENT
3 IMMUNIZATION STATUS HAVE RECEIVED THE NECESSARY TESTING AND
4 IMMUNIZATION AS REQUIRED OR REQUESTED BY THE CLIENT FACILITY;

5 ~~(5)~~ (6) VERIFYING THAT NON UNITED STATES CITIZENS NURSING
6 PERSONNEL REFERRED BY THE NURSING STAFF AGENCY HAVE I-9 STATUS;

7 ~~(6)~~ (7) PERFORMING PREEMPLOYMENT VERIFYING PRIOR TO AN
8 INITIAL REFERRAL BY A NURSING STAFF AGENCY, DRUG SCREENING AS A
9 CONDITION FOR ASSIGNMENT TO A FACILITY IF THE CLIENT FACILITY HAS A
10 SIMILAR REQUIREMENT FOR VERIFYING, PRIOR TO INITIAL REFERRAL OF NURSING
11 PERSONNEL TO A CLIENT FACILITY BY THE AGENCY, DRUG SCREENING OF NURSING
12 PERSONNEL REFERRED BY THE AGENCY IF THE CLIENT FACILITY REQUIRES DRUG
13 SCREENING FOR FACILITY EMPLOYEES;

14 ~~(7)~~ (8) PERFORMING VERIFYING DRUG TESTING ON NURSING
15 PERSONNEL REFERRED BY THE NURSING STAFF AGENCY, WHEN THERE IS
16 PROBABLE CAUSE TO PERFORM A DRUG TEST BASED ON THE REQUEST OF A CLIENT
17 VERIFYING, WHEN THERE IS PROBABLE CAUSE TO PERFORM A DRUG TEST OR WHEN
18 A CLIENT FACILITY REQUESTS A DRUG TEST, DRUG TESTING OF NURSING
19 PERSONNEL REFERRED BY THE AGENCY;

20 (8) (9) CONDUCTING VERIFYING PRIOR TO AN INITIAL REFERRAL BY
21 THE NURSING STAFF AGENCY, THE CRIMINAL BACKGROUND CHECKS IF THE CLIENT
22 FACILITY HAS A SIMILAR REQUIREMENT VERIFYING, PRIOR TO INITIAL REFERRAL OF
23 NURSING PERSONNEL TO A CLIENT FACILITY BY THE AGENCY, CRIMINAL
24 BACKGROUND CHECKS OF NURSING PERSONNEL REFERRED BY THE AGENCY IF THE
25 CLIENT FACILITY REQUIRES CRIMINAL BACKGROUND CHECKS FOR FOR FACILITY
26 EMPLOYEES; AND

27 ~~(9)~~ (10) VERIFYING THE REFERENCES OF NURSING PERSONNEL
28 REFERRED BY THE NURSING STAFF AGENCY;

29 (10) COMMUNICATING SCHEDULING POLICIES AND PROCEDURES TO
30 NURSES AND CLIENT FACILITIES, INCLUDING STATE REQUIREMENTS FOR
31 STANDARDS OF CARE; AND

32 (11) COLLABORATING WITH CLIENT FACILITIES TO ASSURE THAT
33 NURSING PERSONNEL REFERRED BY THE NURSING STAFF AGENCY COMPLETE
34 CLIENT SPECIFIC ORIENTATION AS NEEDED FOR THE INDIVIDUAL PLACEMENT.

35 (E) A NURSING STAFF AGENCY SHALL ~~WARRANT~~ ATTEST THAT THE NURSING
36 STAFF AGENCY IS IN COMPLIANCE WITH THE:

37 (1) CIVIL RIGHTS ACT OF 1964;

38 (2) REHABILITATION ACT OF 1973;

39 (3) AMERICANS WITH DISABILITIES ACT OF 1990; AND

1 (4) DRUG FREE WORKPLACE ACT OF 1988, IF APPLICABLE.

2 (F) THE OFFICE SHALL KEEP A REPORT OF EACH INSPECTION.

3 (G) A NURSING STAFF AGENCY THAT EMPLOYS NURSING PERSONNEL WHO
4 ARE IN VIOLATION OF THE REQUIREMENTS OF THIS TITLE IS SUBJECT TO A PENALTY
5 OF \$10,000 PER INCIDENT OR UP TO \$10,000 PER DAY PER VIOLATION UNTIL THE
6 NURSING STAFF AGENCY COMPLIES WITH THE REQUIREMENTS OF THIS TITLE.

7 (H) FINES COLLECTED UNDER SUBSECTION (G) OF THIS SECTION SHALL BE
8 DEPOSITED INTO THE HEALTH CARE QUALITY ACCOUNT.

9 (I) (F) THE OFFICE MAY SURVEY INSPECT A NURSING STAFF AGENCY UPON
10 RECEIVING A COMPLAINT, AND SHALL MAY GIVE NOTICE OF THE INSPECTION TO
11 THE NURSING STAFF AGENCY WITHIN AT LEAST 24 HOURS OF INSPECTING THE
12 NURSING STAFF AGENCY.

13 (J) THE OFFICE SHALL ENSURE THAT ALL SURVEYS ARE UNANNOUNCED.

14 ~~SECTION 3. AND BE IT FURTHER ENACTED, That the Department of~~
15 ~~Health and Mental Hygiene, in consultation with the Health Services Cost Review~~
16 ~~Commission and the Maryland Health Care Commission, shall report to the General~~
17 ~~Assembly on or before October 1, 2002, in accordance with § 2-1246 of the State~~
18 ~~Government Article on the prospect of setting rates for nursing staff agencies.~~

19 ~~SECTION 4. AND BE IT FURTHER ENACTED, That the Department of~~
20 ~~Health and Mental Hygiene, in consultation with the Health Services Cost Review~~
21 ~~Commission and the Maryland Health Care Commission, shall report to the General~~
22 ~~Assembly on or before October 1, 2002, in accordance with § 2-1246 of the State~~
23 ~~Government Article on the trends, utilization rates, and costs of using nursing staff~~
24 ~~agencies in hospitals and nursing homes.~~

25 ~~SECTION 5. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
26 effect ~~October 1, 2001~~ January 1, 2002.