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By: **Delegate Kach**

Introduced and read first time: February 11, 2005

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Homes - Undercover Patients**

3 FOR the purpose of authorizing the Department of Health and Mental Hygiene to use  
4 an undercover patient to conduct a certain evaluation of a nursing home under  
5 certain circumstances; providing that the undercover patient may be an  
6 employee of the Department or may be an individual who contracts with the  
7 Department; providing that an undercover patient is immune from certain  
8 liability under certain circumstances; providing that the use of an undercover  
9 patient is an intermediate sanction; requiring the Department to adopt certain  
10 regulations; and generally relating to the use of undercover patients in nursing  
11 homes.

12 BY repealing and reenacting, without amendments,  
13 Article - Health - General  
14 Section 19-1401  
15 Annotated Code of Maryland  
16 (2000 Replacement Volume and 2004 Supplement)

17 BY adding to  
18 Article - Health - General  
19 Section 19-1405.1  
20 Annotated Code of Maryland  
21 (2000 Replacement Volume and 2004 Supplement)

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

24 **Article - Health - General**

25 19-1401.

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

1 (b) "Actual harm deficiency" means a condition existing in a nursing home or  
2 an action or inaction by the nursing home staff that has caused physical or emotional  
3 injury or impairment to a resident.

4 (c) "Concurrent review" means daily rounds by a licensed nurse which  
5 include:

6 (1) Appraisal and observation of each resident by the licensed nurse to  
7 determine any change in the resident's physical or mental status; and

8 (2) If there is a change in the resident's physical or mental status, an  
9 evaluation by the licensed nurse of:

10 (i) The resident's medications;

11 (ii) Laboratory values relating to the resident;

12 (iii) Clinical data relating to the resident, including the resident's:

13 1. Hydration and nutritional need;

14 2. Skin integrity;

15 3. Noted weight changes; and

16 4. Appetite;

17 (iv) Injuries sustained by the resident that result from accident or  
18 incidents involving the resident; and

19 (v) Any other relevant parameters affecting or reflecting the  
20 resident's physical and mental status.

21 (d) "Deficiency" means a condition existing in a nursing home or an action or  
22 inaction by the nursing home staff that results in potential for more than minimal  
23 harm, actual harm, or serious and immediate threat to one or more residents.

24 (e) "Nursing home" means a facility (other than a facility offering domiciliary  
25 or personal care as defined in Subtitle 3 of this title) which offers nonacute inpatient  
26 care to patients suffering from a disease, chronic illness, condition, disability of  
27 advanced age, or terminal disease requiring maximal nursing care without  
28 continuous hospital services and who require medical services and nursing services  
29 rendered by or under the supervision of a licensed nurse together with convalescent,  
30 restorative, or rehabilitative services.

31 (f) "Ongoing pattern" means the occurrence of any potential for more than  
32 minimal harm or greater deficiency on two consecutive on-site visits as a result of  
33 annual surveys, follow-up visits, any unscheduled visits, or complaint investigations.

1 (g) "Potential for more than minimal harm deficiency" means a condition  
2 existing in a nursing home or an action or inaction by the nursing home staff that has  
3 the potential to cause actual harm to a resident.

4 (h) "Serious and immediate threat" means a situation in which immediate  
5 corrective action is necessary because a nursing home's noncompliance with one or  
6 more State regulations has caused or is likely to cause serious injury, harm,  
7 impairment to, or death of a resident receiving care in the nursing home.

8 (i) "Sustained compliance" means a period of 30 days following the date of  
9 notice of corrective action with no deficiencies.

10 19-1405.1.

11 (A) WHEN THE DEPARTMENT DETERMINES THAT THERE IS AN ACTUAL HARM  
12 DEFICIENCY OR A SERIOUS AND IMMEDIATE THREAT IN A NURSING HOME, THE  
13 DEPARTMENT MAY USE AN UNDERCOVER PATIENT TO CONDUCT AN UNANNOUNCED  
14 QUALITY CARE EVALUATION OF THE NURSING HOME.

15 (B) THE UNDERCOVER PATIENT MAY BE AN EMPLOYEE OF THE DEPARTMENT  
16 OR MAY BE AN INDIVIDUAL WHO CONTRACTS WITH THE DEPARTMENT.

17 (C) AN INDIVIDUAL ACTING AS AN UNDERCOVER PATIENT IS IMMUNE FROM  
18 LIABILITY IN ANY CIVIL ACTION RELATED TO THE QUALITY CARE EVALUATION IF  
19 THE INDIVIDUAL CONDUCTED THE EVALUATION IN GOOD FAITH.

20 (D) THE USE OF AN UNDERCOVER PATIENT IS AN INTERMEDIATE SANCTION  
21 THAT MAY BE IN ADDITION TO OR IN LIEU OF OTHER SANCTIONS.

22 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS IMPLEMENTING THE  
23 PROVISIONS OF THIS SECTION.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2005.