

HOUSE BILL 1187

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8lr2030

By: **Delegates McDonough, Beitzel, Benson, Boteler, Costa, Hubbard, Kach, Kipke, Montgomery, Oaks, Riley, V. Turner, and Weldon**
Introduced and read first time: February 8, 2008
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Persons Who Operate Nursing Homes – Licensure**

3 FOR the purpose of requiring a person to be licensed by the Secretary of Health and
4 Mental Hygiene before operating a nursing home; establishing the
5 qualifications for licensure; requiring the Secretary to evaluate the background
6 and qualifications of certain persons; requiring applicants to provide the
7 Secretary with certain information; requiring the Secretary to issue licenses to
8 applicants who meet certain requirements; authorizing licensees to renew
9 licenses under certain circumstances; requiring licensees to report to the
10 Secretary certain changes in the financial condition of a nursing home;
11 authorizing the Secretary to verify certain financial conditions; making certain
12 exceptions; requiring the Secretary to adopt certain regulations; defining
13 certain terms; and generally relating to the licensure of persons who operate
14 nursing homes.

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 19–1401
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2007 Supplement)

20 BY adding to
21 Article – Health – General
22 Section 19–1401.1, 19–1401.2, 19–1401.3, 19–1401.4, 19–1401.5, 19–1401.6,
23 19–1401.7, and 19–1401.8
24 Annotated Code of Maryland
25 (2005 Replacement Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 19–1401.

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

4 (b) “Actual harm deficiency” means a condition existing in a nursing home or
5 an action or inaction by the nursing home staff that has caused physical or emotional
6 injury or impairment to a resident.7 (c) “Concurrent review” means daily rounds by a licensed nurse which
8 include:9 (1) Appraisal and observation of each resident by the licensed nurse to
10 determine any change in the resident’s physical or mental status; and11 (2) If there is a change in the resident’s physical or mental status, an
12 evaluation by the licensed nurse of:

13 (i) The resident’s medications;

14 (ii) Laboratory values relating to the resident;

15 (iii) Clinical data relating to the resident, including the
16 resident’s:

17 1. Hydration and nutritional need;

18 2. Skin integrity;

19 3. Noted weight changes; and

20 4. Appetite;

21 (iv) Injuries sustained by the resident that result from accident
22 or incidents involving the resident; and23 (v) Any other relevant parameters affecting or reflecting the
24 resident’s physical and mental status.25 **(D) (1) “CONTROLLING PERSON” MEANS A PERSON WHO HAS THE**
26 **ABILITY, ACTING ALONE OR IN CONCERT WITH OTHERS, TO DIRECTLY OR**
27 **INDIRECTLY INFLUENCE, DIRECT, OR CAUSE THE DIRECTION OF THE**
28 **MANAGEMENT, EXPENDITURE OF MONEY, OR POLICIES OF A NURSING HOME OR**
29 **ANOTHER PERSON.**

1 **(2) “CONTROLLING PERSON” INCLUDES:**

2 **(I) A MANAGEMENT COMPANY, LANDLORD, OR OTHER**
3 **BUSINESS ENTITY THAT OPERATES OR CONTRACTS WITH OTHERS FOR THE**
4 **OPERATION OF A NURSING HOME;**

5 **(II) ANY PERSON WHO IS A CONTROLLING PERSON OF A**
6 **MANAGEMENT COMPANY OR OTHER BUSINESS ENTITY THAT OPERATES A**
7 **NURSING HOME OR THAT CONTRACTS WITH ANOTHER PERSON FOR THE**
8 **OPERATION OF A NURSING HOME; AND**

9 **(III) ANY OTHER INDIVIDUAL WHO, BECAUSE OF A**
10 **PERSONAL, FAMILIAL, OR OTHER RELATIONSHIP WITH THE OWNER, MANAGER,**
11 **LANDLORD, OR TENANT OF A NURSING HOME IS IN A POSITION OF ACTUAL**
12 **CONTROL OR AUTHORITY WITH RESPECT TO THE NURSING HOME, WITHOUT**
13 **REGARD TO WHETHER THE INDIVIDUAL IS FORMALLY NAMED AS AN OWNER,**
14 **MANAGER, DIRECTOR, OFFICER, PROVIDER, CONSULTANT, CONTRACTOR, OR**
15 **EMPLOYEE OF THE NURSING HOME.**

16 **(3) “CONTROLLING PERSON” DOES NOT INCLUDE A PERSON,**
17 **INCLUDING AN EMPLOYEE, A LENDER, A SECURED CREDITOR, OR A LANDLORD,**
18 **WHO DOES NOT EXERCISE ANY INFLUENCE OR CONTROL, WHETHER FORMAL OR**
19 **ACTUAL, OVER THE OPERATION OF A NURSING HOME.**

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

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

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

34 [[g]] **(H)** “Potential for more than minimal harm deficiency” means a
35 condition existing in a nursing home or an action or inaction by the nursing home staff
36 that has the potential to cause actual harm to a resident.

1 [(h)] (I) “Serious and immediate threat” means a situation in which
2 immediate corrective action is necessary because a nursing home’s noncompliance
3 with one or more State regulations has caused or is likely to cause serious injury,
4 harm, impairment to, or death of a resident receiving care in the nursing home.

5 [(i)] (J) “Sustained compliance” means a period of 30 days following the
6 date of notice of corrective action with no deficiencies.

7 **19-1401.1.**

8 **A PERSON SHALL BE LICENSED BY THE SECRETARY BEFORE A PERSON**
9 **MAY OPERATE A NURSING HOME.**

10 **19-1401.2.**

11 (A) **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL MEET THE**
12 **REQUIREMENTS OF THIS SUBTITLE.**

13 (B) **AN APPLICANT WHO IS AN INDIVIDUAL, AND ANY INDIVIDUAL WHO**
14 **IS APPLYING ON BEHALF OF A CORPORATION, ASSOCIATION, OR GOVERNMENT**
15 **AGENCY SHALL BE:**

16 (1) **AT LEAST 18 YEARS OLD; AND**

17 (2) **OF REPUTABLE AND RESPONSIBLE CHARACTER.**

18 **19-1401.3.**

19 (A) **AN APPLICANT FOR A LICENSE SHALL:**

20 (1) **SUBMIT AN APPLICATION TO THE SECRETARY; AND**

21 (2) **PAY TO THE SECRETARY AN APPLICATION FEE ESTABLISHED**
22 **BY THE SECRETARY.**

23 (B) **THE APPLICATION:**

24 (1) **SHALL BE ON THE FORM THAT THE SECRETARY REQUIRES;**

25 (2) **SHALL BE SIGNED AND VERIFIED AS FOLLOWS:**

26 (I) **IF THE APPLICATION IS MADE BY AN INDIVIDUAL, BY**
27 **THE INDIVIDUAL; OR**

1 **(II) IF THE APPLICATION IS MADE BY AN INDIVIDUAL WHO**
2 **IS APPLYING ON BEHALF OF A CORPORATION, ASSOCIATION, OR GOVERNMENT**
3 **AGENCY, BY TWO OFFICERS OF THE CORPORATION, ASSOCIATION, OR**
4 **GOVERNMENT AGENCY; AND**

5 **(3) SHALL INCLUDE:**

6 **(I) THE NAME OF THE APPLICANT;**

7 **(II) THE NAME OF ANY PARTNER, OFFICER, DIRECTOR, OR**
8 **MANAGING EMPLOYEE OF THE APPLICANT;**

9 **(III) THE NAME OF ANY PERSON WHO OWNS OR CONTROLS**
10 **THE PHYSICAL PLANT OF A FACILITY IN WHICH THE NURSING HOME OPERATES**
11 **OR PLANS TO OPERATE;**

12 **(IV) THE NAME OF ANY CONTROLLING PERSON WITH**
13 **RESPECT TO THE NURSING HOME FOR WHICH A LICENSE IS REQUESTED;**

14 **(V) A STATEMENT THAT THE APPLICANT MEETS THE**
15 **REQUIREMENTS OF THIS SUBTITLE;**

16 **(VI) THE LOCATION OF THE PROPOSED NURSING HOME;**

17 **(VII) THE NAME OF THE INDIVIDUAL WHO IS TO BE THE**
18 **ADMINISTRATIVE HEAD OF THE PROPOSED NURSING HOME; AND**

19 **(VIII) ANY OTHER INFORMATION THAT THE SECRETARY**
20 **REQUIRES.**

21 **(C) AN APPLICATION FEE MAY NOT BE REFUNDED.**

22 **(D) AN APPLICANT FOR INITIAL LICENSURE SHALL SUBMIT TO THE**
23 **SECRETARY EVIDENCE THAT AFFIRMATIVELY DEMONSTRATES THE ABILITY OF**
24 **THE APPLICANT TO:**

25 **(1) COMPLY WITH MINIMUM STANDARDS OF:**

26 **(I) MEDICAL CARE;**

27 **(II) NURSING CARE;**

28 **(III) FINANCIAL CONDITION; AND**

1 (IV) ANY OTHER APPLICABLE STATE OR FEDERAL LAWS AND
2 REGULATIONS; AND

3 (2) OBTAIN LIABILITY INSURANCE IN THE AMOUNT REQUIRED BY
4 THE DEPARTMENT.

5 (E) THE SECRETARY SHALL EVALUATE THE BACKGROUND AND
6 QUALIFICATIONS OF:

7 (1) A PARTNER, OFFICER, DIRECTOR, OR MANAGING EMPLOYEE
8 OF THE APPLICANT;

9 (2) ANY PERSON WHO OWNS OR CONTROLS THE PHYSICAL PLANT
10 OF A FACILITY IN WHICH THE NURSING HOME OPERATES OR PLANS TO
11 OPERATE; AND

12 (3) A CONTROLLING PERSON WITH RESPECT TO THE NURSING
13 HOME FOR WHICH A LICENSE IS REQUESTED.

14 (F) IN MAKING THE EVALUATION REQUIRED UNDER SUBSECTION (E) OF
15 THIS SECTION, THE SECRETARY SHALL REQUIRE AN APPLICANT OR ANY OTHER
16 PERSON DESCRIBED IN SUBSECTION (E) OF THIS SECTION WHO OPERATED A
17 NURSING HOME IN ANOTHER JURISDICTION DURING THE 5-YEAR PERIOD
18 PRECEDING THE DATE OF THE APPLICATION TO:

19 (1) FILE A SWORN AFFIDAVIT OF SATISFACTORY COMPLIANCE
20 HISTORY; AND

21 (2) PROVIDE ANY OTHER INFORMATION REQUIRED BY THE
22 SECRETARY TO SUBSTANTIATE THE:

23 (I) SATISFACTORY COMPLIANCE HISTORY; AND

24 (II) SOUNDNESS OF THE FINANCIAL CONDITION OF THE
25 NURSING HOME.

26 **19-1401.4.**

27 THE SECRETARY SHALL ISSUE A LICENSE TO ANY APPLICANT IF THE
28 APPLICANT MEETS THE REQUIREMENTS OF THIS SUBTITLE.

29 **19-1401.5.**

1 **WHILE IT IS EFFECTIVE, A LICENSE AUTHORIZES THE LICENSEE TO**
2 **OPERATE A NURSING HOME.**

3 **19-1401.6.**

4 **(A) A LICENSE EXPIRES ON THE SECOND ANNIVERSARY OF ITS**
5 **EFFECTIVE DATE, UNLESS IT IS RENEWED FOR A 2-YEAR TERM AS PROVIDED IN**
6 **THIS SECTION.**

7 **(B) (1) BEFORE THE LICENSE EXPIRES, THE LICENSEE**
8 **PERIODICALLY MAY RENEW IT FOR AN ADDITIONAL 2-YEAR TERM, IF THE**
9 **LICENSEE:**

10 **(I) OTHERWISE IS ENTITLED TO THE LICENSE;**

11 **(II) PAYS TO THE SECRETARY A RENEWAL FEE**
12 **ESTABLISHED BY THE SECRETARY; AND**

13 **(III) SUBMITS TO THE SECRETARY:**

14 **1. A RENEWAL APPLICATION ON THE FORM THAT**
15 **THE SECRETARY REQUIRES; AND**

16 **2. SATISFACTORY EVIDENCE OF COMPLIANCE WITH**
17 **ANY REQUIREMENTS SET UNDER THIS SUBTITLE FOR LICENSE RENEWAL.**

18 **(2) THE LICENSEE SHALL SUBMIT TO THE SECRETARY EVIDENCE**
19 **THAT AFFIRMATIVELY DEMONSTRATES THE ONGOING ABILITY OF THE**
20 **LICENSEE:**

21 **(I) TO COMPLY WITH MINIMUM STANDARDS OF:**

22 **1. MEDICAL CARE;**

23 **2. NURSING CARE; AND**

24 **3. FINANCIAL CONDITION; AND**

25 **(II) TO DOCUMENT CURRENT LIABILITY INSURANCE**
26 **COVERAGE IN AN AMOUNT REQUIRED BY THE SECRETARY.**

27 **(3) AS PART OF THE LICENSE RENEWAL APPLICATION PROCESS,**
28 **THE SECRETARY SHALL CONSIDER THE BACKGROUND AND QUALIFICATIONS OF:**

1 (I) A PARTNER, OFFICER, DIRECTOR, OR MANAGING
2 EMPLOYEE OF THE APPLICANT;

3 (II) A PERSON WHO OWNS OR CONTROLS THE PHYSICAL
4 PLANT OF A FACILITY IN WHICH THE NURSING HOME OPERATES OR PLANS TO
5 OPERATE; AND

6 (III) A CONTROLLING PERSON WITH RESPECT TO THE
7 NURSING HOME FOR WHICH RENEWAL OF A LICENSE IS REQUESTED.

8 (C) IN MAKING THE EVALUATION REQUIRED UNDER SUBSECTION (B) OF
9 THIS SECTION, THE SECRETARY SHALL REQUIRE AN APPLICANT OR ANY OTHER
10 PERSON DESCRIBED IN SUBSECTION (B)(3) OF THIS SECTION WHO OPERATED A
11 NURSING HOME IN ANOTHER JURISDICTION DURING THE 5-YEAR PERIOD
12 PRECEDING THE DATE OF THE APPLICATION TO:

13 (1) FILE A SWORN AFFIDAVIT OF SATISFACTORY COMPLIANCE
14 HISTORY; AND

15 (2) PROVIDE ANY OTHER INFORMATION REQUIRED BY THE
16 SECRETARY TO SUBSTANTIATE THE:

17 (I) SATISFACTORY COMPLIANCE HISTORY; AND

18 (II) SOUNDNESS OF THE FINANCIAL CONDITION OF THE
19 NURSING HOME.

20 (D) THE SECRETARY SHALL RENEW THE LICENSE OF EACH LICENSEE
21 WHO MEETS THE REQUIREMENTS OF THIS SECTION.

22 **19-1401.7.**

23 (A) A LICENSEE SHALL REPORT SIGNIFICANT CHANGES IN THE
24 NURSING HOME'S FINANCIAL CONDITION, INCLUDING CASH FLOW, OR ANY
25 OTHER CIRCUMSTANCE THAT COULD ADVERSELY AFFECT THE NURSING HOME'S
26 DELIVERY OF ESSENTIAL SERVICES, INCLUDING NURSING SERVICES, DIETARY
27 SERVICES, AND UTILITIES, TO RESIDENTS OF THE NURSING HOME.

28 (B) THE SECRETARY MAY VERIFY THE FINANCIAL CONDITION OF A
29 NURSING HOME IN ORDER TO IDENTIFY ANY RISK TO THE ABILITY OF THE
30 NURSING HOME TO DELIVER ESSENTIAL SERVICES.

31 (C) A PERSON WHO KNOWINGLY FILES FALSE INFORMATION UNDER
32 THIS SECTION SHALL BE SUBJECT TO CRIMINAL PROSECUTION.

1 (D) ANY INFORMATION OBTAINED BY THE SECRETARY UNDER THIS
2 SECTION IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE
3 CONSENT OF THE LICENSEE.

4 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

5 (1) THE HOLDER OF A LICENSE THAT HAS BEEN SUSPENDED OR
6 REVOKED; OR

7 (2) THE USE OF INFORMATION IN:

8 (I) AN ADMINISTRATIVE PROCEEDING INITIATED BY THE
9 DEPARTMENT; OR

10 (II) A JUDICIAL PROCEEDING.

11 **19-1401.8.**

12 THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THE
13 PROVISIONS OF THIS SUBTITLE, INCLUDING REGULATIONS THAT ESTABLISH
14 MINIMUM REQUIREMENTS FOR A LICENSEE TO BE SELF-INSURED AS AN
15 ALTERNATIVE TO OBTAINING LIABILITY INSURANCE THROUGH AN INSURER.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2008.