

# CHAPTER 686

(House Bill 1187)

AN ACT concerning

## Persons Who Operate Nursing Homes – Licensure

FOR the purpose of requiring ~~a person to be licensed by the Secretary of Health and Mental Hygiene before operating a nursing home; establishing the qualifications for licensure; requiring the Secretary to evaluate the background and qualifications of certain persons~~ an applicant for licensure or relicensure of a nursing home to include certain information in the application; requiring applicants to provide the Secretary with certain information; requiring the Secretary to issue licenses to applicants who meet certain requirements; authorizing licensees to renew licenses under certain circumstances authorizing the Secretary of Health and Mental Hygiene to make certain approvals or denials of licensure applications after a certain review; requiring licensees to report to the Secretary certain changes in the financial condition of a nursing home; authorizing the Secretary to verify certain financial conditions requiring the Secretary to convene a certain workgroup to make certain recommendations; requiring the Secretary to review certain recommendations and to publish certain regulations on or before a certain date; making certain exceptions; requiring the Secretary to adopt certain regulations; defining certain terms; and generally relating to the licensure of persons who operate nursing homes.

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

BY adding to  
Article – Health – General  
Section 19-1401.1, 19-1401.2, and 19-1401.3 ~~19-1401.3, 19-1401.4, 19-1401.5,  
19-1401.6, 19-1401.7, and 19-1401.8~~  
Annotated Code of Maryland  
(2005 Replacement Volume and 2007 Supplement)

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

### Article – Health – General

~~19-1401.~~

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

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

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

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

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

~~(i) The resident's medications;~~

~~(ii) Laboratory values relating to the resident;~~

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

~~1. Hydration and nutritional need;~~

~~2. Skin integrity;~~

~~3. Noted weight changes; and~~

~~4. Appetite;~~

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

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

~~(D) (1) "CONTROLLING PERSON" MEANS A PERSON WHO HAS THE ABILITY, ACTING ALONE OR IN CONCERT WITH OTHERS, TO DIRECTLY OR INDIRECTLY INFLUENCE, DIRECT, OR CAUSE THE DIRECTION OF THE MANAGEMENT, EXPENDITURE OF MONEY, OR POLICIES OF A NURSING HOME OR ANOTHER PERSON.~~

~~(2) "CONTROLLING PERSON" INCLUDES:~~

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

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

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

~~(3) "CONTROLLING PERSON" DOES NOT INCLUDE A PERSON, INCLUDING AN EMPLOYEE, A LENDER, A SECURED CREDITOR, OR A LANDLORD, WHO DOES NOT EXERCISE ANY INFLUENCE OR CONTROL, WHETHER FORMAL OR ACTUAL, OVER THE OPERATION OF A NURSING HOME.~~

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

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

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

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

~~[(h)] (I) "Serious and immediate threat" means a situation in which immediate corrective action is necessary because a nursing home's noncompliance~~

~~with one or more State regulations has caused or is likely to cause serious injury, harm, impairment to, or death of a resident receiving care in the nursing home.~~

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

**19-1401.1.**

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

**(A) IN ADDITION TO THE REQUIREMENTS FOR LICENSURE OF A RELATED INSTITUTION AS PROVIDED IN THIS TITLE, AN APPLICANT FOR INITIAL LICENSURE OR RELICENSURE OF A NURSING HOME SHALL INCLUDE IN THE APPLICATION THE IDENTITY OF:**

**(1) ANY PERSON WITH AN OWNERSHIP INTEREST IN THE NURSING HOME; AND**

**(2) ANY MANAGEMENT COMPANY, LANDLORD, OR OTHER BUSINESS ENTITY THAT WILL OPERATE OR CONTRACT WITH THE APPLICANT TO MANAGE THE NURSING HOME.**

**(B) AN APPLICANT FOR INITIAL LICENSURE SHALL SUBMIT TO THE SECRETARY OR THE SECRETARY'S DESIGNEE EVIDENCE:**

**(1) THAT AFFIRMATIVELY DEMONSTRATES THE ABILITY OF THE APPLICANT TO COMPLY WITH MINIMUM STANDARDS OF:**

**(I) MEDICAL CARE;**

**(II) NURSING CARE;**

**(III) FINANCIAL CONDITION; AND**

**(IV) OTHER APPLICABLE STATE OR FEDERAL LAWS AND REGULATIONS; AND**

**(2) REGARDING THE REGULATORY COMPLIANCE HISTORY AND FINANCIAL CONDITION OF ANY HEALTH CARE FACILITY OWNED OR OPERATED BY THE APPLICANT IN OTHER JURISDICTIONS.**

**19-1401.2.**

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

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

~~(1) AT LEAST 18 YEARS OLD; AND~~

~~(2) OF REPUTABLE AND RESPONSIBLE CHARACTER.~~

ON REVIEW OF THE INFORMATION REQUIRED UNDER § 19-1401.1 OF THIS SUBTITLE AND ANY OTHER INFORMATION THAT IS RELEVANT TO THE ABILITY OF THE APPLICANT TO OPERATE A NURSING HOME, THE SECRETARY MAY:

(1) APPROVE AN APPLICATION FOR A LICENSE OR LICENSE RENEWAL;

(2) DENY AN APPLICATION FOR A LICENSE OR LICENSE RENEWAL; OR

(3) APPROVE AN APPLICATION FOR LICENSE OR LICENSE RENEWAL SUBJECT TO CONDITIONS.

**19-1401.3.**

~~(A) AN APPLICANT FOR A LICENSE SHALL:~~

~~(1) SUBMIT AN APPLICATION TO THE SECRETARY; AND~~

~~(2) PAY TO THE SECRETARY AN APPLICATION FEE ESTABLISHED BY THE SECRETARY.~~

~~(B) THE APPLICATION:~~

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

~~(2) SHALL BE SIGNED AND VERIFIED AS FOLLOWS:~~

~~(i) IF THE APPLICATION IS MADE BY AN INDIVIDUAL, BY THE INDIVIDUAL; OR~~

~~(ii) IF THE APPLICATION IS MADE BY AN INDIVIDUAL WHO IS APPLYING ON BEHALF OF A CORPORATION, ASSOCIATION, OR GOVERNMENT~~

~~AGENCY, BY TWO OFFICERS OF THE CORPORATION, ASSOCIATION, OR GOVERNMENT AGENCY; AND~~

~~(3) SHALL INCLUDE:~~

~~(I) THE NAME OF THE APPLICANT;~~

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

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

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

~~(V) A STATEMENT THAT THE APPLICANT MEETS THE REQUIREMENTS OF THIS SUBTITLE;~~

~~(VI) THE LOCATION OF THE PROPOSED NURSING HOME;~~

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

~~(VIII) ANY OTHER INFORMATION THAT THE SECRETARY REQUIRES.~~

~~(C) AN APPLICATION FEE MAY NOT BE REFUNDED.~~

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

~~(1) COMPLY WITH MINIMUM STANDARDS OF:~~

~~(I) MEDICAL CARE;~~

~~(II) NURSING CARE;~~

~~(III) FINANCIAL CONDITION; AND~~

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

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

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

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

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

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

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

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

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

~~(I) SATISFACTORY COMPLIANCE HISTORY; AND~~

~~(II) SOUNDNESS OF THE FINANCIAL CONDITION OF THE NURSING HOME.~~

~~19-1401.4.~~

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

~~19-1401.5.~~

~~WHILE IT IS EFFECTIVE, A LICENSE AUTHORIZES THE LICENSEE TO OPERATE A NURSING HOME.~~

~~19-1401.6.~~

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

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

~~(I) OTHERWISE IS ENTITLED TO THE LICENSE;~~

~~(II) PAYS TO THE SECRETARY A RENEWAL FEE ESTABLISHED BY THE SECRETARY; AND~~

~~(III) SUBMITS TO THE SECRETARY:~~

~~1. A RENEWAL APPLICATION ON THE FORM THAT THE SECRETARY REQUIRES; AND~~

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

~~(2) THE LICENSEE SHALL SUBMIT TO THE SECRETARY EVIDENCE THAT AFFIRMATIVELY DEMONSTRATES THE ONGOING ABILITY OF THE LICENSEE:~~

~~(I) TO COMPLY WITH MINIMUM STANDARDS OF:~~

~~1. MEDICAL CARE;~~

~~2. NURSING CARE; AND~~

~~3. FINANCIAL CONDITION; AND~~

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

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

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



~~(H) A PERSON WHO OWNS OR CONTROLS THE PHYSICAL PLANT OF A FACILITY IN WHICH THE NURSING HOME OPERATES OR PLANS TO OPERATE; AND~~

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

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

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

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

~~(I) SATISFACTORY COMPLIANCE HISTORY; AND~~

~~(II) SOUNDNESS OF THE FINANCIAL CONDITION OF THE NURSING HOME.~~

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

~~19-1401.7.~~

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

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

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

(A) A LICENSEE SHALL REPORT TO THE SECRETARY OR THE SECRETARY'S DESIGNEE ANY SIGNIFICANT CHANGE IN THE FINANCIAL

CONDITION OF THE NURSING HOME, INCLUDING CASH FLOW OR ANY OTHER CIRCUMSTANCES THAT COULD ADVERSELY AFFECT THE NURSING HOME'S DELIVERY OF ESSENTIAL SERVICES TO PATIENTS, INCLUDING NURSING SERVICES, DIETARY SERVICES, AND UTILITIES.

~~(D)~~ (B) ANY EXCEPT AS PROVIDED BY SUBSECTION (C) OF THIS SECTION, ANY INFORMATION OBTAINED BY THE SECRETARY UNDER THIS SECTION IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE CONSENT OF THE LICENSEE.

~~(E)~~ (C) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT APPLY TO:

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

(2) THE USE OF INFORMATION IN:

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

(II) A JUDICIAL PROCEEDING.

~~19-1401.8.~~

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) the Secretary of Health and Mental Hygiene shall convene a workgroup consisting of representatives of advocacy organizations, nursing homes, and government agencies;

(b) the workgroup shall make recommendations to the Secretary regarding regulations on:

(1) the specific information to be required during the licensure and relicensure process established under § 19-1401.1 of the Health – General Article, as enacted by Section 1 of this Act;

(2) the significant changes in financial condition to be reported to the Secretary under § 19-1401.3 of the Health – General Article, as enacted by Section 1 of this Act; and

(3) any other issues related to the licensure of nursing homes; and

(c) on or before December 1, 2008, the Secretary shall review the recommendations of the workgroup established under subsection (a) of this section and shall publish regulations to implement Section 1 of this Act.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

**Approved by the Governor, May 22, 2008.**