

# SENATE BILL 777

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By: **Senator Della**

Introduced and read first time: February 6, 2009

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Home Health Agencies – Certificate of Need and Licensing**

3 FOR the purpose of repealing the requirement that a certificate of need be obtained for  
4 a home health agency and for certain services provided by a home health agency  
5 within the scope of its home health agency license; altering requirements for  
6 rules and regulations relating to licensing of home health agencies; requiring  
7 the Department of Health and Mental Hygiene, on or before a certain date, to  
8 adopt regulations for the provisional licensing of new home health agencies and  
9 the acquisition of home health agencies; establishing requirements for the  
10 regulations for provisional licensing of new home health agencies and the  
11 acquisition of home health agencies; requiring a home health agency license to  
12 permit a home health agency to operate as a home health agency anywhere in  
13 the State; authorizing a home health agency to operate with a provisional  
14 license; altering requirements for a home health agency license; requiring an  
15 applicant to meet certain requirements to qualify for a provisional license;  
16 altering requirements for certain inspections; providing that during a certain  
17 time period and notwithstanding certain actions, a home health agency may not  
18 operate in the State without a certificate of need and the Maryland Health Care  
19 Commission may not approve a certificate of need for a home health agency;  
20 providing for the termination of this Act; defining certain terms; and generally  
21 relating to home health agency licensing and certificate of need requirements.

22 BY repealing and reenacting, without amendments,

23 Article – Health – General

24 Section 19–114(a) and (c), 19–120(a)(1), 19–401(a) and (b), and 19–404(a)

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Health – General

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 19–114(d), 19–120(a)(3) and (j), 19–401(c)(1), 19–404(b), 19–405,  
 2 19–406, and 19–407  
 3 Annotated Code of Maryland  
 4 (2005 Replacement Volume and 2008 Supplement)

5 BY adding to  
 6 Article – Health – General  
 7 Section 19–401(d), 19–404(d), and 19–406.1  
 8 Annotated Code of Maryland  
 9 (2005 Replacement Volume and 2008 Supplement)

10 BY repealing  
 11 Article – Health – General  
 12 Section 19–404(d)  
 13 Annotated Code of Maryland  
 14 (2005 Replacement Volume and 2008 Supplement)

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

17 **Article – Health – General**

18 19–114.

19 (a) In this Part II of this subtitle the following words have the meanings  
 20 indicated.

21 (c) “Certificate of need” means a certification of public need issued by the  
 22 Commission under this Part II of this subtitle for a health care project.

23 (d) (1) “Health care facility” means:

24 (i) A hospital, as defined in § 19–301 of this title;

25 (ii) A limited service hospital, as defined in § 19–301 of this  
 26 title;

27 (iii) A related institution, as defined in § 19–301 of this title;

28 (iv) An ambulatory surgical facility;

29 (v) An inpatient facility that is organized primarily to help in  
 30 the rehabilitation of disabled individuals, through an integrated program of medical  
 31 and other services provided under competent professional supervision;

32 [(vi) A home health agency, as defined in § 19–401 of this title;]

1                    [(vii)] (VI) A hospice, as defined in § 19–901 of this title; and

2                    [(viii)] (VII) Any other health institution, service, or program for  
3 which this Part II of this subtitle requires a certificate of need.

4                    (2) “Health care facility” does not include:

5                    (i) A hospital or related institution that is operated, or is listed  
6 and certified, by the First Church of Christ Scientist, Boston, Massachusetts;

7                    (ii) For the purpose of providing an exemption from a certificate  
8 of need under § 19–120 of this subtitle, a facility to provide comprehensive care  
9 constructed by a provider of continuing care, as defined in § 10–401 of the Human  
10 Services Article, if:

11                    1. Except as provided under § 19–123 of this subtitle,  
12 the facility is for the exclusive use of the provider’s subscribers who have executed  
13 continuing care agreements and paid entrance fees that are at least equal to the  
14 lowest entrance fee charged for an independent living unit or an assisted living unit  
15 before entering the continuing care community, regardless of the level of care needed  
16 by the subscribers at the time of admission;

17                    2. The facility is located on the campus of the continuing  
18 care community; and

19                    3. The number of comprehensive care nursing beds in  
20 the community does not exceed:

21                    A. 24 percent of the number of independent living units  
22 in a community having less than 300 independent living units; or

23                    B. 20 percent of the number of independent living units  
24 in a community having 300 or more independent living units;

25                    (iii) Except for a facility to provide kidney transplant services or  
26 programs, a kidney disease treatment facility, as defined by rule or regulation of the  
27 United States Department of Health and Human Services;

28                    (iv) Except for kidney transplant services or programs, the  
29 kidney disease treatment stations and services provided by or on behalf of a hospital  
30 or related institution; [or]

31                    (v) The office of one or more individuals licensed to practice  
32 dentistry under Title 4 of the Health Occupations Article, for the purposes of  
33 practicing dentistry; **OR**

1 (VI) A HOME HEALTH AGENCY, AS DEFINED IN § 19-401 OF  
2 THIS TITLE.

3 19-120.

4 (a) (1) In this section the following words have the meanings indicated.

5 (3) (i) "Health care service" means any clinically related patient  
6 service.

7 (ii) "Health care service" includes a medical service.

8 (III) "HEALTH CARE SERVICE" DOES NOT INCLUDE  
9 SERVICES PROVIDED BY A HOME HEALTH AGENCY WITHIN THE SCOPE OF ITS  
10 HOME HEALTH AGENCY LICENSE.

11 (j) (1) A certificate of need is required before the type or scope of any  
12 health care service is changed if the health care service is offered:

13 (i) By a health care facility;

14 (ii) In space that is leased from a health care facility; or

15 (iii) In space that is on land leased from a health care facility.

16 (2) This subsection does not apply if:

17 (i) The Commission adopts limits for changes in health care  
18 services and the proposed change would not exceed those limits;

19 (ii) The proposed change and the annual operating revenue that  
20 would result from the addition is entirely associated with the use of medical  
21 equipment;

22 (iii) The proposed change would establish, increase, or decrease  
23 a health care service and the change would not result in the:

24 1. Establishment of a new medical service or elimination  
25 of an existing medical service;

26 2. Establishment of an open heart surgery, organ  
27 transplant surgery, or burn or neonatal intensive health care service;

28 3. Establishment of a [home health program,] hospice  
29 program[,] or freestanding ambulatory surgical center or facility; or

1                                   4.     Expansion of a comprehensive care, extended care,  
2 intermediate care, residential treatment, psychiatry, or rehabilitation medical service,  
3 except for an expansion related to an increase in total bed capacity in accordance with  
4 subsection (h)(2)(i) of this section; or

5                                   (iv)   1.     At least 45 days before increasing or decreasing the  
6 volume of 1 or more health care services, written notice of intent to change the volume  
7 of health care services is filed with the Commission;

8                                   2.     The Commission in its sole discretion finds that the  
9 proposed change:

10                                  A.     Is pursuant to the consolidation or merger of 2 or  
11 more health care facilities, the conversion of a health care facility or part of a facility  
12 to a nonhealth-related use, or the conversion of a hospital to a limited service hospital;

13                                  B.     Is not inconsistent with the State health plan or the  
14 institution-specific plan developed and adopted by the Commission;

15                                  C.     Will result in the delivery of more efficient and  
16 effective health care services; and

17                                  D.     Is in the public interest; and

18                                  3.     Within 45 days of receiving notice under item 1 of this  
19 subparagraph, the Commission shall notify the health care facility of its finding.

20                                  [(3)   Notwithstanding the provisions of paragraph (2) of this subsection,  
21 a certificate of need is required:

22                                  (i)     Before an additional home health agency, branch office, or  
23 home health care service is established by an existing health care agency or facility;

24                                  (ii)    Before an existing home health agency or health care facility  
25 establishes a home health agency or home health care service at a location in the  
26 service area not included under a previous certificate of need or license;

27                                  (iii)  Before a transfer of ownership of any branch office of a home  
28 health agency or home health care service of an existing health care facility that  
29 separates the ownership of the branch office from the home health agency or home  
30 health care service of an existing health care facility which established the branch  
31 office; or

32                                  (iv)   Before the expansion of a home health service or program by  
33 a health care facility that:

34                                  1.     Established the home health service or program  
35 without a certificate of need between January 1, 1984 and July 1, 1984; and



1           **(D) “PROVISIONAL LICENSE” MEANS A TEMPORARY LICENSE ISSUED TO**  
2 **A NEWLY APPROVED HOME HEALTH AGENCY.**

3 19–404.

4           (a) The Department shall adopt rules and regulations that set standards for  
5 the care, treatment, health, safety, welfare, and comfort of patients of home health  
6 agencies.

7           (b) The rules and regulations shall provide for the licensing of home health  
8 agencies and annual license renewal, and shall establish standards that require as a  
9 minimum, that all home health agencies:

10           (1) Within 10 days of acceptance of a patient for skilled care, make  
11 and record all reasonable efforts to contact a physician to obtain the signed order  
12 required under item (2) of this subsection;

13           (2) That accept patients for skilled care do so only on the signed order  
14 of a physician obtained within 28 days after acceptance;

15           (3) Adopt procedures for the administration of drugs and biologicals;

16           (4) Maintain clinical records on all patients accepted for skilled care;

17           (5) Establish patient care policies and personnel policies;

18           (6) Have services available at least 8 hours a day, 5 days a week, and  
19 available on an emergency basis 24 hours a day, 7 days a week;

20           (7) Make service available to an individual in need within 24 hours of  
21 a referral when stipulated by a physician’s order;

22           (8) Have a designated supervisor of patient care who is a full–time  
23 employee of the agency and is available at all times during operating hours and  
24 additionally as needed; [and]

25           (9) Have as the administrator of the agency a person who has at least  
26 1 year of supervisory experience in hospital management, home health management,  
27 or public health program management and who is:

28           (i) A licensed physician;

29           (ii) A registered nurse; or

30           (iii) A college graduate with a bachelor’s degree in a  
31 health–related field;

- 1           **(10) PARTICIPATE IN CLIENT SATISFACTION SURVEYS;**  
2           **(11) BE FEDERALLY CERTIFIED AS A HOME HEALTH AGENCY;**  
3           **(12) MEET CHARITY CARE REQUIREMENTS; AND**  
4           **(13) PARTICIPATE IN THE MARYLAND MEDICAL ASSISTANCE**  
5 **PROGRAM.**

6           [(d) The provisions of this section do not waive the requirement for a home  
7 health agency to obtain a certificate of need.]

8           **(D) (1) ON OR BEFORE MARCH 1, 2010, THE DEPARTMENT SHALL**  
9 **ADOPT REGULATIONS FOR:**

10                           **(I) THE PROVISIONAL LICENSING OF NEW HOME HEALTH**  
11 **AGENCIES; AND**

12                           **(II) THE ACQUISITION OF HOME HEALTH AGENCIES.**

13                   **(2) THE REGULATIONS FOR PROVISIONAL LICENSING OF NEW**  
14 **HOME HEALTH AGENCIES SHALL:**

15                           **(I) REQUIRE AN APPLICANT FOR A PROVISIONAL LICENSE**  
16 **TO MEET THE REQUIREMENTS OF § 19-406.1 OF THIS SUBTITLE;**

17                           **(II) ESTABLISH PATIENT VOLUME REQUIREMENTS FOR AN**  
18 **APPLICANT, DEMONSTRATING THE APPLICANT'S CAPABILITY TO PROVIDE**  
19 **SKILLED NURSING SERVICES, HOME HEALTH AID SERVICES, OR A HOME HEALTH**  
20 **CARE SERVICE LISTED UNDER § 19-401(C)(1) OF THIS SUBTITLE;**

21                           **(III) PROVIDE FOR LIMITED COMPETITIVE ENTRY FOR A**  
22 **PROVISIONAL LICENSE, DURING A SPECIFIED TIME PERIOD EACH YEAR;**

23                           **(IV) ESTABLISH A PROVISIONAL LICENSING PERIOD OF 2**  
24 **YEARS;**

25                           **(V) REQUIRE A NEW HOME HEALTH AGENCY TO MEET**  
26 **MEDICARE CERTIFICATION REQUIREMENTS AND CONDITIONS OF**  
27 **PARTICIPATION, INCLUDING SERVICE AND DOCUMENTATION REQUIREMENTS,**  
28 **BEFORE THE COMPLETION OF THE PROVISIONAL LICENSE PERIOD;**

1                   (VI) PROVIDE FOR THE DEPARTMENT TO LIMIT THE TYPE  
2 AND VOLUME OF SERVICES A HOME HEALTH AGENCY MAY PROVIDE WITH A  
3 PROVISIONAL LICENSE;

4                   (VII) REQUIRE A NEW HOME HEALTH AGENCY TO PROVIDE A  
5 SPECIFIED LEVEL OF CHARITY CARE;

6                   (VIII) REQUIRE A NEW HOME HEALTH AGENCY TO BECOME A  
7 PARTICIPATING PROVIDER IN THE MARYLAND MEDICAL ASSISTANCE  
8 PROGRAM;

9                   (IX) INCLUDE STANDARDS BY WHICH THE DEPARTMENT IS  
10 TO EVALUATE THE PERFORMANCE OF NEW HOME HEALTH AGENCIES;

11                   (X) REQUIRE A NEW HOME HEALTH AGENCY TO RECEIVE A  
12 SATISFACTORY PERFORMANCE EVALUATION BEFORE THE COMPLETION OF THE  
13 PROVISIONAL LICENSE PERIOD; AND

14                   (XI) PROVIDE FOR REGULAR INSPECTIONS TO ENSURE  
15 QUALITY OF CARE.

16                   (3) THE REGULATIONS FOR THE ACQUISITION OF HOME HEALTH  
17 AGENCIES SHALL:

18                   (I) REQUIRE A NEW OWNER TO:

19                                 1. PROVIDE INFORMATION ABOUT INDIVIDUALS  
20 WITH AN OWNERSHIP INTEREST;

21                                 2. DEMONSTRATE FINANCIAL CAPACITY;

22                                 3. PAY THE TRANSFER FEE ESTABLISHED BY THE  
23 DEPARTMENT; AND

24                                 4. MEET REQUIREMENTS FOR LICENSING UNDER  
25 THIS SUBTITLE;

26                   (II) IF A NEW OWNER IS NOT LICENSED AS A HOME HEALTH  
27 AGENCY IN THE STATE AND ACQUIRES AN EXISTING LICENSED HOME HEALTH  
28 AGENCY, REQUIRE THE NEWLY ACQUIRED HOME HEALTH AGENCY TO APPLY  
29 FOR A PROVISIONAL LICENSE UNDER THIS SUBTITLE;

30                   (III) IF A NEW OWNER IS NOT LICENSED AS A HOME HEALTH  
31 AGENCY IN THE STATE AND ACQUIRES AN EXISTING PROVISIONALLY LICENSED

1 HOME HEALTH AGENCY, REQUIRE THE NEWLY ACQUIRED HOME HEALTH  
 2 AGENCY TO APPLY FOR A NEW PROVISIONAL LICENSE UNDER THIS SUBTITLE;  
 3 AND

4 (IV) IF A NEW OWNER IS A LICENSED HOME HEALTH AGENCY  
 5 IN THE STATE AND ACQUIRES AN EXISTING PROVISIONALLY LICENSED HOME  
 6 HEALTH AGENCY:

7 1. REQUIRE THE NEWLY ACQUIRED HOME HEALTH  
 8 AGENCY TO APPLY FOR A NEW PROVISIONAL LICENSE; AND

9 2. SUBTRACT FROM THE 2-YEAR PROVISIONAL  
 10 LICENSING PERIOD FOR THE NEWLY ACQUIRED HOME HEALTH AGENCY THE  
 11 TIME ALREADY SPENT IN PROVISIONAL LICENSING STATUS UNDER THE  
 12 PREVIOUS OWNERSHIP.

13 19-405.

14 (A) Except as otherwise provided in this subtitle, a person shall be licensed  
 15 by the Department before the person may operate a home health agency.

16 (B) A HOME HEALTH AGENCY LICENSE SHALL PERMIT A HOME HEALTH  
 17 AGENCY TO OPERATE AS A HOME HEALTH AGENCY ANYWHERE IN THE STATE.

18 19-406.

19 To qualify for a license, an applicant shall:

20 (1) Show that the home health agency will provide:

21 (i) Appropriate home health care to patients who may be cared  
 22 for at a prescribed level of care, in their residence instead of in a hospital; and

23 (ii) Skilled nursing, home health aid, and at least one other  
 24 home health care service that is approved by the Secretary; and

25 (2) [Meet the requirements of Subtitle 1 of this title for certification of  
 26 need] COMPLETE A 2-YEAR PROVISIONAL LICENSING PERIOD.

27 19-406.1.

28 (A) TO QUALIFY FOR A PROVISIONAL LICENSE, AN APPLICANT SHALL:

29 (1) BE LICENSED FOR AT LEAST 2 YEARS AS:

1 (I) A RESIDENTIAL SERVICE AGENCY IN THE STATE; OR

2 (II) A HOME HEALTH AGENCY IN ANOTHER STATE;

3 (2) HAVE MET THE PATIENT VOLUME REQUIREMENTS  
4 ESTABLISHED IN REGULATION DEMONSTRATING THE APPLICANT'S CAPABILITY  
5 TO PROVIDE SKILLED NURSING SERVICES, HOME HEALTH AID SERVICES, OR A  
6 HOME HEALTH CARE SERVICE LISTED UNDER § 19-401(C)(1) OF THIS SUBTITLE;

7 (3) BE ACCREDITED BY AN ACCREDITING AGENCY THAT IS  
8 APPROVED BY THE SECRETARY UNDER § 19-2302 OF THIS TITLE; AND

9 (4) PAY THE PROVISIONAL LICENSING FEE ESTABLISHED BY THE  
10 DEPARTMENT.

11 (B) THE DEPARTMENT ANNUALLY SHALL APPROVE A PROVISIONAL  
12 LICENSE TO:

13 (1) NOT MORE THAN FOUR NEW HOME HEALTH AGENCIES  
14 ALREADY LICENSED AS RESIDENTIAL SERVICE AGENCIES; AND

15 (2) NOT MORE THAN ONE NEW HOME HEALTH AGENCY ALREADY  
16 LICENSED AS A HOME HEALTH AGENCY IN ANOTHER STATE.

17 (C) IF THE NUMBER OF APPLICANTS FOR A PROVISIONAL LICENSE IN  
18 ANY YEAR EXCEEDS THE NUMBER OF PROVISIONAL LICENSES ALLOWED UNDER  
19 SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL PROVIDE FOR A  
20 COMPETITIVE APPLICATION AND APPROVAL PROCESS BASED ON:

21 (1) VOLUME OF PATIENTS;

22 (2) DEMONSTRATED QUALITY OF CARE; AND

23 (3) FINANCIAL VIABILITY.

24 19-407.

25 The Department shall:

26 (1) Inspect the operations of each home health agency AT LEAST  
27 ONCE EVERY 3 YEARS to determine whether it is meeting the requirements of this  
28 subtitle and the rules and regulations adopted under it; and

29 (2) Issue, deny, suspend, or revoke a home health agency license in  
30 accordance with the rules and regulations adopted under this subtitle.

1           SECTION 2. AND BE IT FURTHER ENACTED, That, during the time period  
2 between the effective date of this Act and the date the Department of Health and  
3 Mental Hygiene adopts regulations for the provisional licensing and acquisition of  
4 home health agencies:

5           (a) Notwithstanding the changes to §§ 19–114(d), 19–120(a)(3) and (j), and  
6 19–406 and the repeal of § 10–404(d) of the Health – General Article, as enacted by  
7 Section 1 of this Act, a home health agency may not operate in the State without a  
8 certificate of need; and

9           (b) The Maryland Health Care Commission may not approve a certificate of  
10 need for a home health agency.

11           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 July 1, 2009. It shall remain effective for a period of 5 years and, at the end of June 30,  
13 2014, with no further action required by the General Assembly, this Act shall be  
14 abrogated and of no further force and effect.