

SENATE BILL 359

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1999 Regular Session
9lr0988
CF 9lr2229

By: **Senator Astle**

Introduced and read first time: February 5, 1999

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Community Based Health Agencies - Licensure**

3 FOR the purpose of repealing certain provisions of law related to home health
4 agencies, residential service agencies, and nursing staff agencies; prohibiting a
5 person from operating, attempting to operate, or holding itself out as operating
6 a community based health agency unless the person is licensed by the Secretary
7 of Health and Mental Hygiene; requiring the Secretary to provide a regulatory
8 structure to ensure the accountability of community based health agencies in
9 the State; requiring the Secretary to adopt certain regulations regarding
10 community based health agencies; requiring the Secretary to take certain
11 actions regarding a license according to the regulations adopted under this Act;
12 requiring the Secretary to inspect the operations of each community based
13 health agency periodically; prohibiting a community based health agency from
14 withholding services from a client for certain reasons; requiring the Secretary to
15 work with certain persons and units for certain purposes; providing certain
16 penalties for certain violations of this Act; authorizing the Secretary to impose
17 sanctions for violations of the regulations adopted under this Act; providing for
18 the scope of this Act; providing for a delayed effective date; defining certain
19 terms; and generally relating to the licensure of community based health
20 agencies.

21 BY repealing

22 Article - Health - General

23 Section 19-401 through 19-410, inclusive, and the subtitle "Subtitle 4. Home
24 Health Agencies"; and 19-4A-01 through 19-4A-10, inclusive, and the
25 subtitle "Subtitle 4A. Residential Service Agencies"

26 Annotated Code of Maryland

27 (1996 Replacement Volume and 1998 Supplement)

28 BY repealing

29 Article - Health Occupations

30 Section 8-507

31 Annotated Code of Maryland

32 (1994 Replacement Volume and 1998 Supplement)

1 BY adding to
2 Article - Health - General
3 Section 19-401 through 19-407 to be under the new subtitle "Subtitle 4.
4 Community Based Health Agencies"
5 Annotated Code of Maryland
6 (1996 Replacement Volume and 1998 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That Section(s) 19-401 through 19-410, inclusive, and the subtitle
9 "Subtitle 4. Home Health Agencies"; and Section(s) 19-4A-01 through 19-4A-10,
10 inclusive, and the subtitle "Subtitle 4A. Residential Service Agencies" of Article -
11 Health - General of the Annotated Code of Maryland be repealed.

12 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 8-507 of
13 Article - Health Occupations of the Annotated Code of Maryland be repealed.

14 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
15 read as follows:

16 **Article - Health - General**

17 **SUBTITLE 4. COMMUNITY BASED HEALTH AGENCIES.**

18 19-401.

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (B) "COMMUNITY BASED HEALTH AGENCY" MEANS A PERSON THAT PROVIDES
22 AT LEAST ONE COMMUNITY BASED HEALTH SERVICE TO A CLIENT IN THE
23 RESIDENCE OF THE CLIENT THROUGH:

24 (1) ONE OR MORE EMPLOYEES; OR

25 (2) REFERRALS TO INDEPENDENT CONTRACTORS.

26 (C) "COMMUNITY BASED HEALTH SERVICE" MEANS:

27 (1) NURSING;

28 (2) OCCUPATIONAL THERAPY;

29 (3) PHYSICAL THERAPY;

30 (4) SPEECH THERAPY;

31 (5) MEDICAL SOCIAL SERVICES;

32 (6) PERSONAL HEALTH CARE;

1 (7) INFUSION THERAPY; AND

2 (8) RESPIRATORY THERAPY.

3 (D) "PERSONAL HEALTH CARE" MEANS:

4 (1) HANDS-ON ASSISTANCE WITH ACTIVITIES OF DAILY LIVING; OR

5 (2) WORK PERFORMED IN A MEDICARE-CERTIFIED HOME HEALTH
6 AGENCY BY:

7 (I) A GERIATRIC NURSING ASSISTANT;

8 (II) A CERTIFIED NURSING ASSISTANT; OR

9 (III) A HOME HEALTH CARE AIDE.

10 (E) "WORKER" MEANS:

11 (1) AN EMPLOYEE; OR

12 (2) AN INDEPENDENT CONTRACTOR.

13 19-402.

14 THIS SUBTITLE DOES NOT REQUIRE LICENSURE OF:

15 (1) A HEALTH CARE FACILITY THAT IS LICENSED UNDER ANOTHER
16 SUBTITLE OF THIS TITLE IF THE FACILITY ONLY PROVIDES COMMUNITY BASED
17 HEALTH SERVICES ON THE FACILITY SITE; OR

18 (2) A HEALTH CARE PROVIDER THAT IS LICENSED, CERTIFIED, OR
19 OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE
20 HEALTH CARE SERVICES.

21 19-403.

22 (A) A PERSON MAY NOT OPERATE, ATTEMPT TO OPERATE, OR HOLD ITSELF
23 OUT AS OPERATING A COMMUNITY BASED HEALTH AGENCY UNLESS THE PERSON IS
24 LICENSED UNDER THIS SUBTITLE.

25 (B) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
26 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

27 (1) \$1,000 FOR THE FIRST OFFENSE; AND

28 (2) \$10,000 FOR EACH SUBSEQUENT OFFENSE.

1 19-404.

2 (A) THE SECRETARY SHALL PROVIDE A REGULATORY STRUCTURE TO ENSURE
3 THE ACCOUNTABILITY OF COMMUNITY BASED HEALTH AGENCIES IN THE STATE.

4 (B) THE SECRETARY SHALL ISSUE, DENY, SUSPEND, OR REVOKE A
5 COMMUNITY BASED HEALTH AGENCY LICENSE ACCORDING TO THIS SUBTITLE AND
6 THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.

7 (C) THE SECRETARY SHALL ADOPT REGULATIONS THAT:

8 (1) PROVIDE FOR THE LICENSURE OF COMMUNITY BASED HEALTH
9 AGENCIES AND THE BIENNIAL RENEWAL OF LICENSES;

10 (2) ESTABLISH MINIMUM STANDARDS FOR THE CARE, TREATMENT,
11 HEALTH, SAFETY, WELFARE, AND COMFORT OF CLIENTS WHO RECEIVE SERVICES
12 THROUGH A COMMUNITY BASED HEALTH AGENCY;

13 (3) REQUIRE THE SECRETARY TO CHARGE FEES THAT WILL PRODUCE
14 FUNDS SUFFICIENT TO COVER AT LEAST THE COSTS OF INSPECTION AND
15 LICENSURE OF COMMUNITY BASED HEALTH AGENCIES UNDER THIS SUBTITLE;

16 (4) REQUIRE EACH COMMUNITY BASED HEALTH AGENCY TO PROVIDE
17 EACH CLIENT WITH A WRITTEN DESCRIPTION OF THE:

18 (I) TYPES OF SERVICES PROVIDED BY THAT AGENCY; AND

19 (II) QUALIFICATIONS AND EMPLOYMENT STATUS OF THE
20 WORKERS WHO PROVIDE THE SERVICES;

21 (5) REQUIRE A COMMUNITY BASED HEALTH AGENCY TO COLLECT AND
22 VERIFY INFORMATION ABOUT A WORKER, INCLUDING:

23 (I) RELEVANT EXPERIENCE AND EDUCATION;

24 (II) PROOF OF CITIZENSHIP OR, IF A NONCITIZEN, AUTHORIZATION
25 TO WORK IN THE UNITED STATES;

26 (III) REFERENCE CHECKS;

27 (IV) PRIMARY SOURCE VERIFICATION OF PROFESSIONAL LICENSES;

28 (V) CRIMINAL BACKGROUND CHECKS; AND

29 (VI) TUBERCULOSIS SCREENING;

30 (6) REQUIRE A COMMUNITY BASED HEALTH AGENCY TO CONDUCT A
31 FACE-TO-FACE INTERVIEW FOR EACH PROSPECTIVE WORKER; AND

32 (7) DIRECT THE ADMINISTRATION OF COMMUNITY BASED HEALTH
33 AGENCIES, INCLUDING:

- 1 (I) THE SUPERVISION OF WORKERS;
- 2 (II) RECORD KEEPING FOR WORKERS;
- 3 (III) QUALITY ASSURANCE;
- 4 (IV) COMPLAINT RESPONSE PROCEDURES;
- 5 (V) PROVIDING A WORKER WITH WRITTEN NOTICE OF THE
6 WORKER'S STATUS AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR AND
7 THE BENEFITS, RESPONSIBILITIES, AND PROTECTIONS ASSOCIATED WITH THAT
8 STATUS;
- 9 (VI) IF A WORKER IS AN INDEPENDENT CONTRACTOR, PROVIDING
10 CLIENTS WITH A WRITTEN NOTICE CONCERNING UNEMPLOYMENT INSURANCE,
11 LIABILITY INSURANCE, AND WORKER'S COMPENSATION COVERAGE;
- 12 (VII) PROVIDING CLIENTS WITH WRITTEN INSTRUCTION ON FILING
13 A COMPLAINT WITH THE COMMUNITY BASED HEALTH AGENCY AND WITH THE
14 SECRETARY;
- 15 (VIII) TRAINING, PARTICULARLY OF UNLICENSED WORKERS;
- 16 (IX) RECORD KEEPING FOR CLIENTS; AND
- 17 (X) DEVELOPMENT OF TREATMENT PLANS FOR CLIENTS.

18 19-405.

19 THE SECRETARY SHALL INSPECT THE OPERATIONS OF EACH COMMUNITY
20 BASED HEALTH AGENCY AT LEAST ONCE EVERY 2 YEARS.

21 19-406.

22 A COMMUNITY BASED HEALTH AGENCY MAY NOT WITHHOLD SERVICES FROM A
23 CLIENT BECAUSE OF THE CLIENT'S AGE, SEX, RACE, COLOR, CREED, MARITAL
24 STATUS, OR NATIONAL ORIGIN.

25 19-407.

26 (A) IN ADDITION TO OTHER PENALTIES AVAILABLE UNDER THE LAW, THE
27 SECRETARY MAY IMPOSE SANCTIONS AGAINST A COMMUNITY BASED HEALTH
28 AGENCY THAT FAILS TO COMPLY WITH THE REGULATIONS ADOPTED UNDER THIS
29 SUBTITLE.

30 (B) THE SANCTIONS IMPOSED BY THE SECRETARY UNDER SUBSECTION (A) OF
31 THIS SECTION MAY INCLUDE, THROUGH REGULATION:

- 32 (1) A DIRECTED PLAN OF CORRECTION;
- 33 (2) REFERRAL TO A HEALTH OCCUPATIONS BOARD;

- 1 (3) A FINE;
- 2 (4) RESTRICTIONS ON THE AGENCY'S LICENSE; OR
- 3 (5) SUSPENSION OR REVOCATION OF THE AGENCY'S LICENSE.

4 SECTION 4. AND BE IT FURTHER ENACTED, That the Secretary of Health
5 and Mental Hygiene shall work with representatives of community based health
6 agencies, the Division of Consumer Protection of the Office of the Attorney General,
7 and other relevant State units to advance consumer education about community
8 based health agencies.

9 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2000.