

SENATE BILL 740

Unofficial Copy
J3

1999 Regular Session
(91r2540)

ENROLLED BILL
-- Finance/Environmental Matters --

Introduced by ~~Senator Conway~~ **Senators Conway and Collins**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Nursing Facilities - Licensure Requirements - Staffing**
3 **Nursing Facilities - Maryland Medical Assistance Program - Reserved Beds**
4 **- Task Force on Quality of Care in Nursing Facilities - Nursing Home**
5 **Comparative Evaluation System**

6 FOR the purpose of ~~requiring nursing facilities to meet certain staffing requirements~~
7 ~~to qualify for licensure; requiring nursing facilities to employ certain individuals~~
8 ~~for certain positions; specifying certain duties that certain individuals may not~~
9 ~~perform; specifying the staffing to resident ratio requirements for nursing~~
10 ~~facilities; requiring nursing facilities to post certain information in certain areas~~
11 ~~of the facility on a certain form developed by the Department of Health and~~
12 ~~Mental Hygiene; providing for certain penalties; providing for the application of~~
13 ~~this Act; requiring the Department to conduct a certain study and to report to~~
14 ~~the General Assembly by a certain date; authorizing the Department to adopt~~
15 ~~certain regulations; defining a certain term; and generally relating to staffing~~
16 ~~requirements for nursing facilities providing that certain payments to nursing~~
17 ~~facilities for reserving beds for Maryland Medical Assistance Program recipients~~

1 may not include payment for certain nursing services; repealing the
 2 requirement that certain payments to nursing facilities for reserving beds for
 3 Program recipients may not be less than a certain amount; requiring that
 4 savings resulting from certain provisions of this Act be used for a certain
 5 purpose; establishing a Task Force on Quality of Care in Nursing Facilities;
 6 specifying the membership of the Task Force; specifying the duties of the Task
 7 Force; requiring the Task Force to make certain recommendations and to take
 8 into account and examine certain issues; requiring the Secretary of the
 9 Department of Aging to chair the Task Force; requiring the Department of Aging
 10 to provide staff support for the Task Force; requiring the Task Force to submit a
 11 certain report on or before a certain date; providing for the termination of the
 12 Task Force; providing for the termination of certain provisions of this Act;
 13 requiring the Health Care Access and Cost Commission, in consultation with the
 14 Department of Health and Mental Hygiene and the Department of Aging, to
 15 develop a system to comparatively evaluate nursing facility quality of care and
 16 performance on an objective basis and to annually publish certain summary
 17 findings; establishing the purpose of the comparative evaluation system;
 18 requiring the Commission to consider a certain factor in developing the system;
 19 requiring the system to solicit certain information under certain circumstances;
 20 authorizing the Commission to adopt certain regulations; requiring a certain
 21 report on or before a certain date; and generally relating to the reservation of
 22 beds for Program recipients and quality of care in nursing facilities.

23 ~~BY repealing and reenacting, with amendments,~~
 24 ~~Article - Health - General~~
 25 ~~Section 19-319(a)~~
 26 ~~Annotated Code of Maryland~~
 27 ~~(1996 Replacement Volume and 1998 Supplement)~~

28 ~~BY adding to~~
 29 ~~Article - Health - General~~
 30 ~~Section 19-319.3~~
 31 ~~Annotated Code of Maryland~~
 32 ~~(1996 Replacement Volume and 1998 Supplement)~~

33 BY repealing and reenacting, with amendments,
 34 Article - Health - General
 35 Section 15-117
 36 Annotated Code of Maryland
 37 (1994 Replacement Volume and 1998 Supplement)

38 BY repealing and reenacting, with amendments,
 39 Article - Health - General
 40 Section 19-1501
 41 Annotated Code of Maryland
 42 (1996 Replacement Volume and 1998 Supplement)

1 BY adding to
 2 Article - Health - General
 3 Section 19-1508(d)
 4 Annotated Code of Maryland
 5 (1996 Replacement Volume and 1998 Supplement)

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

8 **Article - Health - General**

9 ~~19-319.~~

10 (a) (1) ~~To qualify for a license, an applicant and the hospital or related~~
 11 ~~institution to be operated shall meet the requirements of this section.~~

12 (2) ~~IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, TO QUALIFY~~
 13 ~~FOR A LICENSE, A NURSING FACILITY SHALL MEET THE REQUIREMENTS OF § 19-319.3~~
 14 ~~OF THIS SUBTITLE.~~

15 ~~19-319.3.~~

16 (A) ~~IN THIS SECTION, "LICENSED PERSONNEL" MEANS:~~

17 (1) ~~A REGISTERED NURSE WHO IS LICENSED TO PRACTICE IN THE~~
 18 ~~STATE; OR~~

19 (2) ~~A PRACTICAL NURSE WHO IS LICENSED TO PRACTICE IN THE STATE.~~

20 (B) ~~A NURSING FACILITY SHALL EMPLOY STAFF SUFFICIENT IN NUMBER AND~~
 21 ~~QUALIFICATIONS TO MEET THE SCHEDULED AND UNSCHEDULED NURSING CARE~~
 22 ~~NEEDS OF THE RESIDENTS.~~

23 (C) ~~TO ENSURE COMPLIANCE WITH SUBSECTION (B) OF THIS SECTION, A~~
 24 ~~NURSING FACILITY SHALL:~~

25 (1) ~~ESTABLISH AND EMPLOY REGISTERED NURSES WHO ARE LICENSED~~
 26 ~~TO PRACTICE IN THE STATE FOR THE FOLLOWING POSITIONS:~~

27 (I) ~~A FULL-TIME DIRECTOR OF NURSING;~~

28 (II) ~~FOR NURSING FACILITIES WITH 100 BEDS OR MORE, A~~
 29 ~~FULL-TIME ASSISTANT DIRECTOR OF NURSING;~~

30 (III) ~~NURSING SUPERVISORS ON DUTY AT ALL TIMES, 24 HOURS A~~
 31 ~~DAY, 7 DAYS A WEEK; AND~~

32 (IV) ~~A FULL-TIME DIRECTOR TO SUPERVISE THE IN-SERVICE~~
 33 ~~EDUCATION PROGRAM REQUIRED UNDER § 19-319.1 OF THIS SUBTITLE;~~

1 (2) MAINTAIN A RATIO OF LICENSED PERSONNEL TO RESIDENTS OF NO
2 FEWER THAN:

3 (I) ONE LICENSED PERSONNEL TO 15 RESIDENTS DURING THE
4 MORNING SHIFT;

5 (II) ONE LICENSED PERSONNEL TO 25 RESIDENTS DURING THE
6 AFTERNOON SHIFT; AND

7 (III) ONE LICENSED PERSONNEL TO 35 RESIDENTS DURING THE
8 NIGHT SHIFT; AND

9 (3) MAINTAIN A RATIO OF CERTIFIED NURSING ASSISTANTS TO
10 RESIDENTS OF NO FEWER THAN:

11 (I) ONE CERTIFIED NURSING ASSISTANT TO FIVE RESIDENTS
12 DURING THE MORNING SHIFT;

13 (II) ONE CERTIFIED NURSING ASSISTANT TO 10 RESIDENTS
14 DURING THE AFTERNOON SHIFT; AND

15 (III) ONE CERTIFIED NURSING ASSISTANT TO 15 RESIDENTS
16 DURING THE NIGHT SHIFT.

17 (D) (1) LICENSED PERSONNEL AND CERTIFIED NURSING ASSISTANTS MAY
18 NOT PROVIDE FOOD PREPARATION, HOUSEKEEPING, LAUNDRY, OR MAINTENANCE
19 SERVICES.

20 (2) AN INDIVIDUAL EMPLOYED TO PROVIDE FOOD PREPARATION,
21 HOUSEKEEPING, LAUNDRY, OR MAINTENANCE SERVICES MAY NOT PROVIDE
22 NURSING CARE TO RESIDENTS.

23 (E) (1) A NURSING FACILITY SHALL DISPLAY ON EACH FLOOR OF THE
24 FACILITY A NOTICE THAT EXPLAINS THE CURRENT RATIO OF LICENSED PERSONNEL
25 TO RESIDENTS AND CERTIFIED NURSING ASSISTANTS TO RESIDENTS.

26 (2) THE NOTICE SHALL BE:

27 (I) POSTED IN A LOCATION THAT IS VISIBLE AND ACCESSIBLE TO
28 RESIDENTS, FAMILY MEMBERS OF THE RESIDENTS, CAREGIVERS, AND POTENTIAL
29 CONSUMERS; AND

30 (II) ON A FORM PROVIDED BY THE DEPARTMENT.

31 (F) THE STAFFING REQUIREMENTS UNDER THIS SECTION ARE MINIMUM
32 STAFFING REQUIREMENTS AND SHALL NOT BE CONSTRUED TO LIMIT THE ABILITY
33 OF THE NURSING FACILITY TO EMPLOY ADDITIONAL STAFF.

34 (G) THE SECRETARY MAY ADOPT REGULATIONS NECESSARY TO CARRY OUT
35 THE PROVISIONS OF THIS SECTION.

1 ~~(H) IF A NURSING FACILITY FAILS TO MEET THE REQUIREMENTS OF THIS~~
 2 ~~SECTION, THE SECRETARY MAY IMPOSE THE FOLLOWING PENALTIES:~~

3 ~~(1) DELICENSURE OF THE NURSING FACILITY;~~

4 ~~(2) \$500 PER DAY FOR EACH DAY THE VIOLATION CONTINUES; OR~~

5 ~~(3) BOTH.~~

6 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

7 ~~(a) The Department of Health and Mental Hygiene shall:~~

8 ~~(1) Conduct a study to determine whether the staffing ratios and~~
 9 ~~standards provided in this Act are sufficient to meet the needs of residents in nursing~~
 10 ~~facilities including determining appropriate levels of staffing based on resident~~
 11 ~~acuity; and~~

12 ~~(2) Recommend, if necessary, a methodology for determining appropriate~~
 13 ~~levels of staffing.~~

14 ~~(b) In conducting the study, the Department shall consider recommendations~~
 15 ~~from nursing facilities, licensed health care providers, advocacy groups, and other~~
 16 ~~interested parties.~~

17 ~~(c) On or before January 2001 and every 5 years thereafter, the Department~~
 18 ~~shall submit its findings and recommendations to the General Assembly, in~~
 19 ~~accordance with § 2-1246 of the State Government Article.~~

20 15-117.

21 ~~(a) In this section, "leave of absence" includes:~~

22 ~~(1) A visit with friends or relatives; and~~

23 ~~(2) A leave to participate in a State approved therapeutic or~~
 24 ~~rehabilitative program.~~

25 ~~(b) (1) To ensure that a bed is reserved for a Program recipient who is~~
 26 ~~absent temporarily from a nursing facility, the Program shall include the following~~
 27 ~~payments for nursing facilities that have made a provider agreement with the~~
 28 ~~Department.~~

29 ~~(2) If the Program recipient is absent from a nursing facility due to~~
 30 ~~hospitalization for an acute condition, the facility shall receive payment for each day~~
 31 ~~that the Program recipient is hospitalized and a bed is reserved and made available~~
 32 ~~for the return of that Program recipient.~~

33 ~~(3) If a Program recipient is on leave of absence from a nursing facility,~~
 34 ~~the facility shall receive payment for each day that the Program recipient is absent~~
 35 ~~and a bed is reserved and made available for the return of that Program recipient.~~

1 (c) (1) Payments under subsection (b)(2) of this section may not be made for
 2 more than 15 days for any single hospital stay.

3 (2) (i) Payments under subsection (b)(3) of this section may not be made
 4 for more than 18 days in any calendar year.

5 (ii) Notwithstanding any rule or regulation, a leave of absence is
 6 not subject to any requirement that it may not exceed a particular number of days a
 7 visit, except that the leave of absence may not exceed a total of 18 days during any
 8 [12-month period] CALENDAR YEAR.

9 (d) (1) Payments required under this section shall be made according to the
 10 per diem payment procedures that the Department sets [and may not be less than
 11 the per diem payments made to the nursing facility for days when the Program
 12 recipient is present in the facility].

13 (2) PAYMENTS REQUIRED UNDER THIS SECTION MAY NOT INCLUDE
 14 PAYMENT FOR NURSING SERVICES FOR BEDS RESERVED FOR PROGRAM RECIPIENTS
 15 ON A LEAVE OF ABSENCE.

16 (e) A nursing facility may not make additional charges against a Program
 17 recipient because the Program recipient is absent temporarily from the nursing
 18 facility.

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 20 read as follows:

21 **Article - Health - General**

22 19-1501.

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

24 (b) "Commission" means the Maryland Health Care Access and Cost
 25 Commission.

26 (c) "Comprehensive standard health benefit plan" means the comprehensive
 27 standard health benefit plan adopted in accordance with § 15-1207 of the Insurance
 28 Article.

29 (d) (1) "Health care provider" means:

30 (i) A person who is licensed, certified, or otherwise authorized
 31 under the Health Occupations Article to provide health care in the ordinary course of
 32 business or practice of a profession or in an approved education or training program;
 33 or

34 (ii) A facility where health care is provided to patients or recipients,
 35 including a facility as defined in § 10-101(e) of this article, a hospital as defined in §
 36 19-301(f) of this article, a related institution as defined in § 19-301(n) of this article,

1 a health maintenance organization as defined in § 19-701(e) of this article, an
2 outpatient clinic, and a medical laboratory.

3 (2) "Health care provider" includes the agents and employees of a facility
4 who are licensed or otherwise authorized to provide health care, the officers and
5 directors of a facility, and the agents and employees of a health care provider who are
6 licensed or otherwise authorized to provide health care.

7 (e) "Health care practitioner" means any person that provides health care
8 services and is licensed under the Health Occupations Article.

9 (f) "Health care service" means any health or medical care procedure or service
10 rendered by a health care practitioner that:

11 (1) Provides testing, diagnosis, or treatment of human disease or
12 dysfunction; or

13 (2) Dispenses drugs, medical devices, medical appliances, or medical
14 goods for the treatment of human disease or dysfunction.

15 (G) "NURSING FACILITY" HAS THE MEANING STATED IN § 19-1401 OF THIS
16 TITLE.

17 [(g)] (H) (1) "Office facility" means the office of one or more health care
18 practitioners in which health care services are provided to individuals.

19 (2) "Office facility" includes a facility that provides:

20 (i) Ambulatory surgery;

21 (ii) Radiological or diagnostic imagery; or

22 (iii) Laboratory services.

23 (3) "Office facility" does not include any office, facility, or service operated
24 by a hospital and regulated under Subtitle 2 of this title.

25 [(h)] (I) "Payor" means:

26 (1) A health insurer or nonprofit health service plan that holds a
27 certificate of authority and provides health insurance policies or contracts in the State
28 in accordance with this article or the Insurance Article;

29 (2) A health maintenance organization that holds a certificate of
30 authority in the State; or

31 (3) A third party administrator as defined in § 15-111 of the Insurance
32 Article.

1 19-1508.

2 (D) (1) THE COMMISSION, IN CONSULTATION WITH THE DEPARTMENT OF
3 HEALTH AND MENTAL HYGIENE AND THE DEPARTMENT OF AGING, SHALL:

4 (I) ON OR BEFORE JULY 1, 2001, DEVELOP AND IMPLEMENT A
5 SYSTEM TO COMPARATIVELY EVALUATE THE QUALITY OF CARE AND PERFORMANCE
6 OF NURSING FACILITIES ON AN OBJECTIVE BASIS; AND

7 (II) ANNUALLY PUBLISH THE SUMMARY FINDINGS OF THE
8 EVALUATION.

9 (2) (I) THE PURPOSE OF THE COMPARATIVE EVALUATION SYSTEM
10 ESTABLISHED UNDER THIS SECTION IS TO IMPROVE THE QUALITY OF CARE
11 PROVIDED BY NURSING FACILITIES BY ESTABLISHING A COMMON SET OF
12 PERFORMANCE MEASURES AND DISSEMINATING THE FINDINGS OF THE
13 COMPARATIVE EVALUATION TO NURSING FACILITIES, CONSUMERS, AND OTHER
14 INTERESTED PARTIES.

15 (II) IN DEVELOPING THE COMPARATIVE EVALUATION SYSTEM, THE
16 COMMISSION SHALL CONSIDER THE HEALTH STATUS OF THE POPULATION SERVED.

17 (3) THE SYSTEM, AS APPROPRIATE, SHALL SOLICIT PERFORMANCE
18 INFORMATION FROM CONSUMERS AND THEIR FAMILIES.

19 (4) THE COMMISSION MAY ADOPT REGULATIONS TO ESTABLISH THE
20 COMPARATIVE EVALUATION SYSTEM PROVIDED UNDER THIS SECTION.

21 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before January 1,
22 2001, the Commission shall report to the Governor and, subject to § 2-1246 of the State
23 Government Article, to the General Assembly on the nursing facility comparative
24 evaluation system required by Section 2 of this Act.

25 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That General Fund savings
26 that result from Section 1 of this Act shall be used to increase the *payments for*
27 *services to Program recipients under the nursing services cost center of the Medicaid*
28 *nursing home reimbursement formula, in accordance with the study conducted*
29 *pursuant to Chapter 724 of the Acts of 1998.*

30 SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That:

31 (a) There is a Task Force on Quality of Care in Nursing Facilities.

32 (b) The Task Force shall consist of the following members:

33 (1) two members of the Senate Finance Committee, appointed by the
34 President of the Senate;

35 (2) two members of the Senate Economic and Environmental Affairs
36 Committee, appointed by the President of the Senate;

1 (3) four members of the House Environmental Matters Committee,
2 appointed by the Speaker of the House;

3 (4) the Secretary of the Department of Aging;

4 (5) the Secretary of the Department of Health and Mental Hygiene, or
5 the Secretary's designee; and

6 (6) three representatives of area agencies on aging, appointed by the
7 Secretary of Aging.

8 (c) The Secretary of Aging shall chair the Task Force.

9 (d) The Task Force shall study the quality of care in Maryland nursing
10 facilities, including:

11 (1) current quality of care standards for nursing facilities;

12 (2) current staffing patterns and staffing standards;

13 (3) current policies and procedures for inspecting nursing facilities and
14 responding to quality of care complaints;

15 (4) the findings of a March 1999 U.S. General Accounting Office report
16 on nursing home complaints to the Special Committee on Aging of the U.S. Congress;

17 (5) a comparison of the Maryland standards, policies, and procedures to
18 those in other states;

19 (6) the labor pool available to fill nursing jobs; and

20 (7) State funding mechanisms for nursing facilities and regulation of
21 nursing facilities.

22 (e) The Task Force shall recommend:

23 (1) changes to current standards, policies, and procedures necessary to
24 ensure quality of care in nursing facilities;

25 (2) if necessary, a methodology for determining appropriate levels of
26 staffing and standards; and

27 (3) if necessary, changes to funding mechanisms.

28 (f) The Task Force shall report its findings and recommendations to the
29 Governor and, subject to § 2-1246 of the State Government Article, to the General
30 Assembly on or before December 1, 1999.

31 (g) The Department of Aging, with assistance from the Department of Health
32 and Mental Hygiene and the Department of Legislative Services, shall provide staff
33 support for the Task Force.

1 ~~SECTION 4. 6. AND BE IT FURTHER ENACTED, That Section 3 5 of this Act~~
2 ~~shall take effect June 1, 1999. It shall remain effective for a period of 1 year and, at~~
3 ~~the end of May 31, 2000, with no further action required by the General Assembly,~~
4 ~~Section 3 5 of this Act shall be abrogated and of no further force and effect.~~

5 ~~SECTION 3. 5. AND BE IT FURTHER ENACTED, That, subject to Section 4 of~~
6 ~~this Act, this Act shall take effect October July 1, 1999.~~

7 ~~SECTION 7. AND BE IT FURTHER ENACTED, That Sections 1 and 4 of this~~
8 ~~Act shall take effect July 1, 1999. Sections 1 and 4 of this Act shall remain effective for~~
9 ~~a period of 3 years and, at the end of June 30, 2002, with no further action required by~~
10 ~~the General Assembly, Sections 1 and 4 of this Act shall be abrogated and of no further~~
11 ~~force and effect.~~

12 ~~SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in~~
13 ~~Sections 6 and 7 of this Act, this Act shall take effect October 1, 1999.~~