

SENATE BILL 740

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1999 Regular Session
9lr2540
CF 9lr1564

By: ~~Senator Conway~~ **Senators Conway and Collins**

Introduced and read first time: February 25, 1999

Assigned to: Rules

Re-referred to: Finance, March 3, 1999

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 31, 1999

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**

5 FOR the purpose of requiring nursing facilities to meet certain staffing requirements
6 to qualify for licensure; requiring nursing facilities to employ certain individuals
7 for certain positions; specifying certain duties that certain individuals may not
8 perform; specifying the staffing to resident ratio requirements for nursing
9 facilities; requiring nursing facilities to post certain information in certain areas
10 of the facility on a certain form developed by the Department of Health and
11 Mental Hygiene; providing for certain penalties; providing for the application of
12 this Act; requiring the Department to conduct a certain study and to report to
13 the General Assembly by a certain date; authorizing the Department to adopt
14 certain regulations; defining a certain term; and generally relating to staffing
15 requirements for nursing facilities providing that certain payments to nursing
16 facilities for reserving beds for Maryland Medical Assistance Program recipients
17 may not include payment for certain nursing services; repealing the
18 requirement that certain payments to nursing facilities for reserving beds for
19 Program recipients may not be less than a certain amount; requiring that
20 savings resulting from certain provisions of this Act be used for a certain
21 purpose; establishing a Task Force on Quality of Care in Nursing Facilities;
22 specifying the membership of the Task Force; specifying the duties of the Task
23 Force; requiring the Task Force to make certain recommendations and to take
24 into account and examine certain issues; requiring the Secretary of the
25 Department of Aging to chair the Task Force; requiring the Department of Aging
26 to provide staff support for the Task Force; requiring the Task Force to submit a
27 certain report on or before a certain date; providing for the termination of the

1 Task Force; and generally relating to the reservation of beds for Program
 2 recipients and quality of care in nursing facilities.

3 ~~BY repealing and reenacting, with amendments,~~
 4 ~~Article - Health - General~~
 5 ~~Section 19-319(a)~~
 6 ~~Annotated Code of Maryland~~
 7 ~~(1996 Replacement Volume and 1998 Supplement)~~

8 ~~BY adding to~~
 9 ~~Article - Health - General~~
 10 ~~Section 19-319.3~~
 11 ~~Annotated Code of Maryland~~
 12 ~~(1996 Replacement Volume and 1998 Supplement)~~

13 BY repealing and reenacting, with amendments,
 14 Article - Health - General
 15 Section 15-117
 16 Annotated Code of Maryland
 17 (1994 Replacement Volume and 1998 Supplement)

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

20 **Article - Health - General**

21 ~~19-319.~~

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

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

27 ~~19-319.3.~~

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

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

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

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

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

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

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

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

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

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

12 ~~(2) MAINTAIN A RATIO OF LICENSED PERSONNEL TO RESIDENTS OF NO~~
13 ~~FEWER THAN:~~

14 ~~(I) ONE LICENSED PERSONNEL TO 15 RESIDENTS DURING THE~~
15 ~~MORNING SHIFT;~~

16 ~~(II) ONE LICENSED PERSONNEL TO 25 RESIDENTS DURING THE~~
17 ~~AFTERNOON SHIFT; AND~~

18 ~~(III) ONE LICENSED PERSONNEL TO 35 RESIDENTS DURING THE~~
19 ~~NIGHT SHIFT; AND~~

20 ~~(3) MAINTAIN A RATIO OF CERTIFIED NURSING ASSISTANTS TO~~
21 ~~RESIDENTS OF NO FEWER THAN:~~

22 ~~(I) ONE CERTIFIED NURSING ASSISTANT TO FIVE RESIDENTS~~
23 ~~DURING THE MORNING SHIFT;~~

24 ~~(II) ONE CERTIFIED NURSING ASSISTANT TO 10 RESIDENTS~~
25 ~~DURING THE AFTERNOON SHIFT; AND~~

26 ~~(III) ONE CERTIFIED NURSING ASSISTANT TO 15 RESIDENTS~~
27 ~~DURING THE NIGHT SHIFT.~~

28 ~~(D) (1) LICENSED PERSONNEL AND CERTIFIED NURSING ASSISTANTS MAY~~
29 ~~NOT PROVIDE FOOD PREPARATION, HOUSEKEEPING, LAUNDRY, OR MAINTENANCE~~
30 ~~SERVICES.~~

31 ~~(2) AN INDIVIDUAL EMPLOYED TO PROVIDE FOOD PREPARATION,~~
32 ~~HOUSEKEEPING, LAUNDRY, OR MAINTENANCE SERVICES MAY NOT PROVIDE~~
33 ~~NURSING CARE TO RESIDENTS.~~

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

4 ~~(2) THE NOTICE SHALL BE:~~

5 ~~(I) POSTED IN A LOCATION THAT IS VISIBLE AND ACCESSIBLE TO~~
 6 ~~RESIDENTS, FAMILY MEMBERS OF THE RESIDENTS, CAREGIVERS, AND POTENTIAL~~
 7 ~~CONSUMERS; AND~~

8 ~~(II) ON A FORM PROVIDED BY THE DEPARTMENT.~~

9 ~~(F) THE STAFFING REQUIREMENTS UNDER THIS SECTION ARE MINIMUM~~
 10 ~~STAFFING REQUIREMENTS AND SHALL NOT BE CONSTRUED TO LIMIT THE ABILITY~~
 11 ~~OF THE NURSING FACILITY TO EMPLOY ADDITIONAL STAFF.~~

12 ~~(G) THE SECRETARY MAY ADOPT REGULATIONS NECESSARY TO CARRY OUT~~
 13 ~~THE PROVISIONS OF THIS SECTION.~~

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

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

17 ~~(2) \$500 PER DAY FOR EACH DAY THE VIOLATION CONTINUES; OR~~

18 ~~(3) BOTH.~~

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

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

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

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

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

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

33 15-117.

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

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

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

4 (b) (1) To ensure that a bed is reserved for a Program recipient who is
5 absent temporarily from a nursing facility, the Program shall include the following
6 payments for nursing facilities that have made a provider agreement with the
7 Department.

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

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

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

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

19 (ii) Notwithstanding any rule or regulation, a leave of absence is
20 not subject to any requirement that it may not exceed a particular number of days a
21 visit, except that the leave of absence may not exceed a total of 18 days during any
22 [12-month period] CALENDAR YEAR.

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

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

30 (e) A nursing facility may not make additional charges against a Program
31 recipient because the Program recipient is absent temporarily from the nursing
32 facility.

33 SECTION 2. AND BE IT FURTHER ENACTED, That General Fund savings
34 that result from Section 1 of this Act shall be used to increase the nursing services
35 cost center of the Medicaid nursing home reimbursement formula, in accordance with
36 the study conducted pursuant to Chapter 724 of the Acts of 1998.

37 SECTION 3. AND BE IT FURTHER ENACTED, That:

- 1 (a) There is a Task Force on Quality of Care in Nursing Facilities.
- 2 (b) The Task Force shall consist of the following members:
- 3 (1) two members of the Senate Finance Committee, appointed by the
4 President of the Senate;
- 5 (2) two members of the Senate Economic and Environmental Affairs
6 Committee, appointed by the President of the Senate;
- 7 (3) four members of the House Environmental Matters Committee,
8 appointed by the Speaker of the House;
- 9 (4) the Secretary of the Department of Aging;
- 10 (5) the Secretary of the Department of Health and Mental Hygiene, or
11 the Secretary's designee; and
- 12 (6) three representatives of area agencies on aging, appointed by the
13 Secretary of Aging.
- 14 (c) The Secretary of Aging shall chair the Task Force.
- 15 (d) The Task Force shall study the quality of care in Maryland nursing
16 facilities, including:
- 17 (1) current quality of care standards for nursing facilities;
- 18 (2) current staffing patterns and staffing standards;
- 19 (3) current policies and procedures for inspecting nursing facilities and
20 responding to quality of care complaints;
- 21 (4) the findings of a March 1999 U.S. General Accounting Office report
22 on nursing home complaints to the Special Committee on Aging of the U.S. Congress;
- 23 (5) a comparison of the Maryland standards, policies, and procedures to
24 those in other states;
- 25 (6) the labor pool available to fill nursing jobs; and
- 26 (7) State funding mechanisms for nursing facilities and regulation of
27 nursing facilities.
- 28 (e) The Task Force shall recommend:
- 29 (1) changes to current standards, policies, and procedures necessary to
30 ensure quality of care in nursing facilities;
- 31 (2) if necessary, a methodology for determining appropriate levels of
32 staffing and standards; and

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

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

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

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

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