

HOUSE BILL 634
EMERGENCY BILL

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2000 Regular Session
0lr2722
CF 0lr1240

By: **Delegates Boutin, Klausmeier, Nathan-Pulliam, and ~~Hammen~~ Hammen, Hubbard, Frush, Morhaim, Mohorovic, Oaks, Sher, and Stern**

Introduced and read first time: February 9, 2000

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2000

CHAPTER _____

1 AN ACT concerning

2 **Nursing Homes - Sanctions and Penalties**

3 FOR the purpose of authorizing the Secretary of Health and Mental Hygiene to
4 impose certain sanctions for certain deficiencies found in nursing homes;
5 defining certain terms; authorizing the Department to appoint an independent
6 nursing home monitor under certain circumstances; establishing the burden of
7 proof for the imposition of fines; requiring the Office of Administrative Hearings
8 to render a decision within a certain time after a hearing; providing for a
9 penalty discount under certain circumstances; establishing a Health Care
10 Quality Account funded by certain penalties; establishing certain monetary
11 penalties for certain deficiencies; authorizing the Secretary of Health and
12 Mental Hygiene to utilize certain monetary fines for programs to improve the
13 quality of care; making this Act an emergency measure; and generally relating
14 to sanctions for certain deficiencies in nursing homes.

15 BY repealing and reenacting, with amendments,
16 Article - Health - General
17 Section 19-1401, 19-1402, ~~and 19-1404 through 19-1407~~, and 19-1405 to be
18 under the amended subtitle "Subtitle 14. Nursing Homes"
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 1999 Supplement)

21 BY repealing
22 Article - Health - General
23 Section 19-1403, ~~19-1408, and~~ and 19-1406 through 19-1409
24 Annotated Code of Maryland

1 (1996 Replacement Volume and 1999 Supplement)

2 BY adding to

3 Article - Health - General

4 Section 19-1405 through 19-1407

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 1999 Supplement)

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

9 **Article - Health - General**

10 Subtitle 14. Nursing Homes [- Civil Money Penalties].

11 19-1401.

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

13 (B) "ACTUAL HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
14 NURSING HOME OR AN ACTION OR INACTION BY THE NURSING HOME STAFF THAT
15 HAS CAUSED PHYSICAL OR EMOTIONAL INJURY OR IMPAIRMENT TO A RESIDENT.

16 [(b)] (C) "Deficiency" [shall mean any failure of a nursing facility to meet the
17 requirements of this subtitle or any rule or regulation that the Secretary adopts
18 under this subtitle, and, in the case of a nursing facility that participates in the
19 Maryland Medicaid Program under Title 15 of this article as a nursing facility, any
20 failure to meet the requirements of § 1919(b), (c), or (d) of the federal Social Security
21 Act (42 U.S.C. § 1396R(b), (c), or (d)), that is serious or life threatening.] MEANS A
22 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
23 NURSING HOME STAFF THAT RESULTS IN POTENTIAL FOR MORE THAN MINIMAL
24 HARM, ACTUAL HARM, OR SERIOUS AND IMMEDIATE THREAT TO ONE OR MORE
25 RESIDENTS.

26 [(c)] "Life threatening" shall mean a condition existing in a nursing facility that
27 presents an imminent danger of health or serious mental or physical harm to the
28 residents of the nursing facility and must be remedied immediately to insure their
29 health, safety, and welfare.]

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

37 (E) "ONGOING PATTERN" MEANS THE ~~RECURRENCE OF DEFICIENCIES AFTER~~
38 OCCURENCE OF ANY POTENTIAL FOR MORE THAN MINIMAL HARM OR GREATER

1 DEFICIENCY ON TWO CONSECUTIVE ON-SITE VISITS AS A RESULT OF ANNUAL
2 SURVEYS, FOLLOW-UP VISITS, ANY UNSCHEDULED VISITS, OR COMPLAINT
3 INVESTIGATIONS.

4 (F) "POTENTIAL FOR MORE THAN MINIMAL HARM DEFICIENCY" MEANS A
5 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
6 NURSING HOME STAFF THAT ~~RESULTS IN MINIMAL DISCOMFORT TO A RESIDENT OR~~
7 HAS THE POTENTIAL TO CAUSE ACTUAL HARM TO A RESIDENT.

8 [(e) "Serious" means a condition existing in a nursing facility that does not
9 constitute a life threatening, health, or fire safety deficiency, but which is a violation
10 of departmental regulations, and is likely to endanger the health, life, or safety of
11 patients.]

12 (G) "SERIOUS AND IMMEDIATE THREAT" MEANS A SITUATION IN WHICH
13 IMMEDIATE CORRECTIVE ACTION IS NECESSARY BECAUSE A NURSING HOME'S
14 NONCOMPLIANCE WITH ONE OR MORE STATE REGULATIONS HAS CAUSED OR IS
15 LIKELY TO CAUSE SERIOUS INJURY, HARM, IMPAIRMENT TO, OR DEATH OF A
16 RESIDENT RECEIVING CARE IN THE NURSING HOME.

17 (H) "SUSTAINED COMPLIANCE" MEANS A PERIOD OF 30 DAYS FOLLOWING THE
18 DATE OF NOTICE OF CORRECTIVE ACTION WITH NO DEFICIENCIES.

19 19-1402.

20 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
21 INCLUDE:

22 (1) A DIRECTED PLAN OF CORRECTION WITH CORRECTIVE MEASURES
23 NECESSARY TO PROTECT RESIDENTS;

24 (2) IMPOSING ADEQUATE STAFFING LEVELS IN A NURSING HOME;

25 (3) APPOINTING A STATE MONITOR SUBJECT TO § 19-1405 OF THIS
26 SUBTITLE; AND

27 (4) IMPOSING A CIVIL MONEY PENALTY.

28 [(a) (B) A civil money penalty may be imposed when [there is clear and
29 convincing evidence of an ongoing pattern of serious or life threatening deficiencies in
30 a nursing facility.] A DEFICIENCY EXISTS OR AN ONGOING PATTERN OF
31 DEFICIENCIES EXISTS IN A NURSING HOME.

32 [(b) (C) In determining whether a civil money penalty is to be imposed, the
33 Secretary shall consider, pursuant to guidelines set forth in regulations promulgated
34 by the Secretary, the following factors:

35 (1) The number, nature, and seriousness of the deficiencies;

1 (2) The extent to which the deficiency or deficiencies are part of an
2 ongoing pattern during the preceding 24 months;

3 (3) The degree of risk to the health, life, or safety of the residents of the
4 nursing [facility] HOME caused by the deficiency or deficiencies;

5 (4) The efforts made by, and the ability of, the nursing [facility] HOME to
6 correct the deficiency or deficiencies; and

7 (5) ~~Such other factors as justice may require~~ A NURSING HOME'S PRIOR
8 HISTORY OF COMPLIANCE.

9 [(c)] (D) Upon determination by the Department that [an ongoing pattern of
10 serious or life threatening deficiencies exists] A DEFICIENCY OR DEFICIENCIES
11 EXIST, the Department shall notify the nursing [facility] HOME that:

12 (1) Unless corrective action taken pursuant to [§ 19-1403] THIS
13 SECTION is substantially completed, a civil money penalty will be imposed; or

14 (2) An order imposing a civil money penalty will be issued, pursuant to
15 [§ 19-1404] § 19-1403 which shall include a list of all deficiencies and notice that a
16 civil money penalty may be imposed until the time that the cited deficiencies have
17 been rectified.

18 [19-1403.

19 (a) If the Secretary issues a notice pursuant to § 19-1402(c)(1), that notice
20 shall provide:

21 (1) The time in which a plan of correction acceptable to the Department
22 is to be submitted;

23 (2) The time in which the identified deficiency or deficiencies must be
24 substantially corrected; and

25 (3) That failure to submit an acceptable plan of correction pursuant to
26 paragraph (1) of this subsection or to substantially correct the identified deficiency or
27 deficiencies pursuant to paragraph (2) of this subsection may result in an order
28 imposing a civil money penalty pursuant to § 19-1404.

29 (b) At the expiration of the time set forth in subsection (a)(2) of this section,
30 the Department shall schedule a reinspection of the nursing facility to determine
31 whether the deficiency or deficiencies have been substantially corrected.

32 (c) Following the reinspection the Department may:

33 (1) Extend the time frame in which the deficiency must be corrected; or

34 (2) Propose the imposition of a civil money penalty pursuant to §
35 19-1404.]

1 [19-1404.] 19-1403.

2 (a) If a civil money penalty is proposed, the Secretary shall issue an order
3 which shall state the basis on which the order is made, the deficiency or deficiencies
4 on which the order is based, the amount of civil money penalties to be imposed, and
5 the manner in which the amount of civil money penalties imposed was calculated.

6 (b) An order issued pursuant to subsection (a) of this section shall be void
7 unless issued within 60 days of [the later of:

8 (1) The] THE inspection OR REINSPECTION at which the deficiency is
9 identified[;].

10 [(2) The date identified in § 19-1403(a)(2); or

11 (3) The date identified in § 19-1403(c)(1).]

12 [19-1405.] 19-1404.

13 [(a) A civil money penalty imposed under this subtitle:

14 (1) May not exceed a total of \$5,000 per day in which serious or life
15 threatening deficiencies exist; and

16 (2) May not exceed \$50,000 in total.]

17 (A) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR POTENTIAL
18 FOR MORE THAN MINIMAL HARM DEFICIENCIES:

19 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; ~~AND~~ OR

20 (2) MAY NOT EXCEED \$1,000 PER DAY FOR AN ONGOING PATTERN OF
21 DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

22 (B) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SUBTITLE FOR ACTUAL
23 HARM DEFICIENCIES:

24 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; OR

25 (2) MAY NOT EXCEED \$5,000 PER DAY; ~~FOR AN ONGOING PATTERN OF~~
26 DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

27 (C) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR A SERIOUS
28 AND IMMEDIATE THREAT:

29 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; ~~AND~~ OR

30 (2) MAY NOT EXCEED \$10,000 PER DAY FOR AN ONGOING PATTERN OF
31 DEFICIENCIES UNTIL THE NURSING HOME IS IN COMPLIANCE.

1 [(b)] (D) In setting the amount of a civil money penalty under this section, the
2 Secretary shall consider, pursuant to guidelines set forth in regulations promulgated
3 by the Secretary, the following factors:

4 (1) The number, nature, and seriousness of the deficiencies;

5 (2) The degree of risk to the health, life, or safety of the residents of the
6 nursing [facility] HOME caused by the deficiency or deficiencies;

7 (3) The efforts made by the nursing [facility] HOME to correct the
8 deficiency or deficiencies;

9 (4) CURRENT FEDERAL GUIDELINES FOR MONEY PENALTIES;

10 [(4)] (5) Whether the amount of the proposed civil money penalty will
11 jeopardize the financial ability of the nursing [facility] HOME to continue operating
12 as a nursing [facility] HOME; and

13 [(5)] (6) Such other factors as justice may require.

14 ~~§ 19-1406.~~ 19-1405.

15 (a) ~~The nursing [facility] HOME shall provide written notice to the~~
16 ~~Department when the deficiency or deficiencies identified in the notice issued~~
17 ~~pursuant to [§ 19-1403] § 19-1402 are substantially corrected.~~

18 (b) ~~The calculation of the amount of the civil money penalty will stop as of the~~
19 ~~date the notice in subsection (a) of this section is received by the Department IF THE~~
20 ~~DEPARTMENT VERIFIES CORRECTIVE ACTION AND SUSTAINED COMPLIANCE.~~

21 ~~[(c) The Department shall schedule and conduct a reinspection of the nursing~~
22 ~~facility within 24 hours of its receipt of the notice pursuant to subsection (a) of this~~
23 ~~section.~~

24 (d) ~~If, following the reinspection, the Department determines that the~~
25 ~~deficiency or deficiencies have not been substantially corrected, the facility's notice~~
26 ~~under subsection (a) of this section shall be invalid and the civil money penalty~~
27 ~~imposed under § 19-1405(a) shall remain in effect.]~~

28 ~~§ 19-1407.~~ 19-1406.

29 (a) ~~The nursing [facility] HOME shall have the right to appeal from the order~~
30 ~~within 30 days from the receipt of the order.~~

31 ~~[(b) The appeal shall be heard by the Hearings Office of the Department, which~~
32 ~~shall render the final agency decision for purposes of judicial review.~~

33 (e) ~~Imposition of the civil money penalty shall be stayed until the final~~
34 ~~decision is issued pursuant to subsection (m) of this section.]~~

1 ~~[(d)] (B)~~ A hearing on the appeal shall be held within 10 working days of the
2 ~~request for hearing.~~

3 ~~[(e)] (C)~~ The parties to the hearing shall be the aggrieved nursing facility and
4 ~~the Secretary.~~

5 ~~[(f)] (D)~~ The parties are entitled to be represented by counsel.

6 ~~[(g)] (E)~~ The Hearings Office may permit or modify a timely request by the
7 ~~nursing [facility] HOME for prehearing discovery.~~

8 ~~[(h)] (F)~~ The Hearings Office, upon its own motion or upon motion of either
9 ~~party, may subpoena any person or evidence, administer oaths, and take depositions~~
10 ~~and other testimony.~~

11 ~~[(i)] (G)~~ The Hearings Office shall inquire fully into all of the matters at issue
12 ~~and shall receive into evidence the testimony of witnesses and any documents which~~
13 ~~are relevant and material to such matters.~~

14 ~~[(j)] (H)~~ The parties shall have the right to present evidence and testimony
15 ~~and to cross-examine that presented by the opposing party.~~

16 ~~[(k)] (I)~~ The purpose of the hearing is to consider and render a decision on the
17 ~~following matters:~~

18 (1) The existence of a deficiency or deficiencies; and

19 (2) The amount of the civil money penalty.

20 ~~[(l)] (J) (1)~~ The Secretary has the burden of proof with respect to the basis
21 ~~for imposition of the civil money penalty under § 19-1402 and the amount of the civil~~
22 ~~money penalty under § 19-1404.~~

23 (2) The Secretary must meet his burden of proof by clear and convincing
24 ~~evidence.~~

25 ~~[(m)] (K)~~ A decision shall be rendered by the Hearings Office within 7 days of
26 ~~the hearing. The decision shall be the final agency decision of the Department, subject~~
27 ~~to judicial appeal.~~

28 ~~19-1407.~~

29 ~~19-1405.~~

30 (A) WHEN THE DEPARTMENT DETERMINES THAT THERE IS A DEFICIENCY IN
31 A NURSING HOME, THE DEPARTMENT MAY APPOINT AN INDEPENDENT MONITOR TO
32 OVERSEE EFFORTS MADE BY THE NURSING HOME TO ACHIEVE COMPLIANCE WITH
33 STATE AND FEDERAL REGULATIONS GOVERNING NURSING HOMES THAT
34 PARTICIPATE IN THE MEDICARE AND MEDICAID PROGRAMS.

1 (B) THE APPOINTMENT OF A STATE MONITOR IS AN INTERMEDIATE
2 SANCTION THAT MAY BE IN ADDITION TO OR IN LIEU OF OTHER SANCTIONS.

3 (C) THE STATE MONITOR'S DUTIES MAY INCLUDE:

4 (1) PERIODIC INSPECTIONS OF A NURSING HOME FOR THE PURPOSE OF
5 ASSESSING THE NURSING HOME'S COMPLIANCE WITH STATE AND FEDERAL
6 REGULATIONS; AND

7 (2) REPORTING TO THE DEPARTMENT AND THE NURSING HOME ITS
8 FINDINGS.

9 (D) THE STATE MONITOR MAY NOT BE AN EMPLOYEE OF THE DEPARTMENT.

10 (E) A NURSING HOME SHALL BE RESPONSIBLE FOR THE COSTS ASSOCIATED
11 WITH THE APPOINTMENT OF A STATE MONITOR TO THE NURSING HOME.

12 19-1406.

13 (A) WITHIN 15 DAYS OF THE REQUEST FOR AN APPEAL BY A NURSING HOME,
14 THE NURSING HOME SHALL DEPOSIT THE AMOUNT OF THE CIVIL MONEY PENALTY
15 IN AN INTEREST BEARING ESCROW ACCOUNT, THE NURSING HOME SHALL BEAR ANY
16 COST ASSOCIATED WITH ESTABLISHING THE ESCROW ACCOUNT, AND THE ACCOUNT
17 SHALL BE TITLED IN THE NAME OF THE NURSING HOME AND THE DEPARTMENT OF
18 HEALTH AND MENTAL HYGIENE AS JOINT OWNERS.

19 (B) WHEN THE SECRETARY ISSUES THE FINAL DECISION OF THE
20 DEPARTMENT:

21 (1) IF THE DECISION UPHOLDS THE IMPOSITION OF THE FULL CIVIL
22 MONEY PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE DEPARTMENT
23 WITHIN 15 DAYS FROM THE DATE OF THE DECISION;

24 (2) IF THE DECISION UPHOLDS THE IMPOSITION OF A CIVIL PENALTY,
25 BUT REDUCES THE AMOUNT OF THE CIVIL PENALTY, THE AMOUNT DUE THE
26 DEPARTMENT WILL BE RELEASED TO THE DEPARTMENT WITH ACCRUED INTEREST
27 WITHIN 15 DAYS OF THE DATE OF THE DECISION AND THE BALANCE WILL BE
28 RELEASED TO THE NURSING HOME WITHIN 15 DAYS OF THE DATE OF THE DECISION;
29 OR

30 (3) IF THE DECISION REVERSES THE IMPOSITION OF THE CIVIL
31 PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE NURSING HOME WITHIN
32 15 DAYS OF THE DECISION.

33 (C) (1) A HEARING ON THE APPEAL SHALL BE HELD IN ACCORDANCE WITH
34 THE ADMINISTRATIVE PROCEDURE ACT, UNDER TITLE 10, SUBTITLE 2 OF THE STATE
35 GOVERNMENT ARTICLE.

1 (2) THE SECRETARY SHALL HAVE THE BURDEN OF PROOF WITH
2 RESPECT TO THE IMPOSITION OF CIVIL MONEY PENALTIES UNDER § 19-1404 OF THIS
3 SUBTITLE.

4 (3) A DECISION SHALL BE RENDERED BY THE OFFICE OF
5 ADMINISTRATIVE HEARINGS WITHIN 10 WORKING DAYS OF THE HEARING.

6 (D) A NURSING HOME IS ENTITLED TO A 40% REDUCTION IN THE AMOUNT OF
7 THE CIVIL MONEY PENALTY IF IT WAIVES ITS RIGHT TO A HEARING WITHIN 30 DAYS
8 OF THE DEPARTMENT'S ORDER.

9 ~~(D) ANY REMAINING FUNDS SHALL BE UTILIZED FOR TRAINING, GRANT~~
10 ~~AWARDS, DEMONSTRATION PROJECTS, OR OTHER PROGRAMS DESIGNED TO~~
11 ~~IMPROVE THE QUALITY OF CARE.~~

12 19-1407.

13 (A) (1) THERE IS A HEALTH CARE QUALITY ACCOUNT ESTABLISHED IN THE
14 DEPARTMENT.

15 (2) THE ACCOUNT SHALL BE FUNDED BY CIVIL MONEY PENALTIES PAID
16 BY NURSING HOMES AND OTHER PENALTIES THAT THE OFFICE OF HEALTH CARE
17 QUALITY MAY ASSESS.

18 (3) THE DEPARTMENT SHALL PAY ALL PENALTIES COLLECTED UNDER
19 THIS TITLE TO THE COMPTROLLER OF THE STATE.

20 (4) THE COMPTROLLER SHALL DISTRIBUTE THE FUNDS COLLECTED
21 UNDER THIS TITLE TO THE HEALTH CARE QUALITY ACCOUNT.

22 (5) THE FUND IS A CONTINUING, NONLAPSING FUND, NOT SUBJECT TO §
23 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

24 (6) ANY UNSPENT PORTIONS OF THE FUND MAY NOT BE TRANSFERRED
25 OR REVERTED TO THE GENERAL FUND OF THE STATE, BUT SHALL REMAIN IN THE
26 FUND TO BE USED FOR THE PURPOSES SPECIFIED IN THIS SECTION.

27 (B) THE HEALTH CARE QUALITY ACCOUNT SHALL BE USED FOR TRAINING,
28 GRANT AWARDS, DEMONSTRATION PROJECTS, OR OTHER PURPOSES DESIGNED TO
29 IMPROVE THE QUALITY OF CARE.

30 (C) THE DEPARTMENT SHALL ADOPT REGULATIONS FOR THE DISTRIBUTION
31 OF FUNDS FROM THE HEALTH CARE QUALITY ACCOUNT.

32 [19-1408.

33 (a) A nursing facility subject to a civil money penalty shall have the right to
34 appeal a decision of the Hearings Office upholding the finding of a deficiency or
35 deficiencies or the imposition of a civil money penalty.

36 (b) Such appeal shall be filed within 30 days of the action to be appealed.

1 (c) The appeal under subsection (b) of this section shall be taken directly to
2 the circuit court of the jurisdiction in which the nursing facility is located.]

3 [19-1409.

4 (a) All civil money penalties imposed under this subtitle shall be placed in an
5 interest bearing account during any judicial appeal under § 19-1408.

6 (b) If the civil money penalty is reversed as a result of an appeal filed by the
7 nursing facility, the amount of the civil money penalty, with interest, shall be
8 returned to the nursing facility within 14 days of the reversal.

9 (c) If the civil money penalty is not appealed or if it is upheld following an
10 appeal, the amount of the penalty imposed, together with any accrued interest shall
11 be placed in a fund to be established by the Secretary and shall be applied exclusively
12 for the protection of the health or property of residents of nursing facilities that have
13 been found to have deficiencies, including payment for the costs of relocation of
14 residents to other facilities, maintenance or operation of a nursing facility pending
15 correction of deficiencies or closure, and reimbursement of residents for personal
16 funds lost.]

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect~~
18 October 1, 2000 is an emergency measure, is necessary for the immediate
19 preservation of the public health and safety, has been passed by a yea and nay vote
20 supported by three-fifths of all the members elected to each of the two Houses of the
21 General Assembly, and shall take effect from the date it is enacted.