

SENATE BILL 576

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2000 Regular Session
0lr0999
CF 0lr2658

By: **Senators Kelley, Della, Hooper, Dorman, Bromwell, Astle, Hafer,
Mitchell, and Hughes**

Introduced and read first time: February 4, 2000

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health - Assisted Living Programs - Regulation**

3 FOR the purpose of requiring a local health department to provide certain medication
4 management reviews for licensed assisted living programs under certain
5 circumstances; prohibiting a county from considering certain individuals as
6 occupants of an assisted living program facility under certain circumstances;
7 excluding individuals who provide certain assistance in an assisted living
8 program from certain certification requirements; requiring the Department of
9 Health and Mental Hygiene to adopt certain regulations; altering a certain
10 definition; providing for a delayed effective date for a certain portion of this Act;
11 and generally relating to the regulation of assisted living programs.

12 BY repealing and reenacting, with amendments,
13 Article - Health - General
14 Section 19-1801
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 1999 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Health - General
19 Section 19-1805
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1999 Supplement)
22 (As enacted by Chapter 681 of the Acts of the General Assembly of 1998)

23 BY adding to
24 Article - Health - General
25 Section 19-1807 and 19-1808
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 1999 Supplement)

28 BY repealing and reenacting, with amendments,

1 Article - Health Occupations
2 Section 8-6A-02
3 Annotated Code of Maryland
4 (1994 Replacement Volume and 1999 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - Health - General
7 Section 19-1805
8 Annotated Code of Maryland
9 (1996 Replacement Volume and 1999 Supplement)
10 (As enacted by Chapter 195 of the Acts of the General Assembly of 1999)

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

13 **Article - Health - General**

14 19-1801.

15 In this subtitle:

16 (1) "Assisted living program" means a residential or facility-based
17 program that provides housing and supportive services, supervision, personalized
18 assistance, health-related services, or a combination thereof that meets the needs of
19 individuals who are unable to perform or who need assistance in performing the
20 activities of daily living or instrumental activities of daily living in a way that
21 promotes optimum dignity and independence for the individuals.

22 (2) "Assisted living program" does not include:

23 (i) A nursing home, as defined under § 19-301 of this title;

24 (ii) A State facility, as defined under § 10-101 of this article;

25 (iii) A program licensed by the Department under Title 7 or Title 10
26 of this article;

27 (iv) A hospice care program regulated by the Department under
28 Subtitle 9 of this title;

29 (v) Services provided by family members; [or]

30 (vi) Services provided in an individual's own home; OR

31 (VII) A BOARDING HOUSE IN WHICH UNRELATED INDIVIDUALS LIVE
32 TOGETHER BUT DO NOT REQUIRE ASSISTED LIVING SERVICES.

1 19-1805.

2 (a) The Department shall:

3 (1) Define different levels of assisted living according to the level of care
4 provided;

5 (2) Require all assisted living programs to be licensed to operate
6 according to the level of the program;

7 (3) Develop a waiver process for authorizing an assisted living program
8 to continue to care for an individual whose medical or functional condition has
9 changed since admission to the program to an extent that the level of care required by
10 the individual exceeds the level of care for which the program is licensed;

11 (4) Promote affordable and accessible assisted living programs
12 throughout the State;

13 (5) Establish and enforce quality standards for assisted living programs;

14 (6) Require periodic inspections of assisted living program facilities,
15 including at least an annual unannounced on-site inspection;

16 (7) Establish requirements for the qualifications or training or both of
17 assisted living program employees;

18 (8) Establish a "resident bill of rights" for residents of assisted living
19 program facilities; and

20 (9) Define which, if any, assisted living programs may be exempt from
21 the requirements of § 19-311 of this title.

22 (b) (1) In this subsection, "level of care 3 plus waiver" means a
23 resident-specific waiver granted by the Department under COMAR 10.07.14.10 for
24 an individual who resides in an assisted living facility licensed by the Department
25 and who is within one or more of the categories specified in COMAR 10.07.14.10(j).

26 (2) On or before December 15 of each year, the Department shall submit
27 to the Governor and, subject to § 2-1246 of the State Government Article, to the
28 General Assembly, a report concerning its experience with level of care 3 plus waivers
29 for the preceding 12-month period that ends on November 30.

30 (3) For each and all assisted living facilities, the report shall include:

31 (i) The total number of level of care 3 plus waivers requested from
32 and total granted by the Department;

33 (ii) The duration of each level of care 3 plus waiver and the average
34 duration of all level of care 3 plus waivers granted by the Department;

1 (iii) The total number of residents who were granted a level of care
2 3 plus waiver by the Department and remained at their assisted living facility under
3 that waiver; and

4 (iv) The total number of residents who were granted a level of care
5 3 plus waiver and were subsequently transferred.

6 (c) (1) The Department, in consultation with representatives of the affected
7 industry and advocates for residents of the facilities and with the approval of the
8 Department of Aging and the Department of Human Resources, shall adopt
9 regulations to implement this subtitle.

10 (2) The regulations adopted under paragraph (1) of this subsection shall:

11 (i) Provide for the licensing of assisted living programs and the
12 renewal of licenses;

13 (ii) Require the Secretary to charge fees in a manner that will
14 produce funds not to exceed the actual direct and indirect costs to the Department for
15 inspecting assisted living program facilities and maintaining the licensure program
16 for assisted living programs under this subtitle; [and]

17 (iii) Require the Department, during a survey or other inspection of
18 an assisted living program, to review the number of waivers granted to the program
19 under subsection (a)(3) of this section and determine whether a change in the
20 program's licensure status is warranted;

21 (IV) REQUIRE THE DEPARTMENT TO ISSUE A PROVISIONAL LICENSE
22 TO AN ENTITY THAT APPLIES FOR AN ASSISTED LIVING PROGRAM LICENSE BEFORE
23 FEBRUARY 1, 2001, IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS
24 NOT BEEN CITED FOR ANY LIFE-THREATENING DEFICIENCIES AND:

25 1. THE APPLICANT WAS LICENSED OR CERTIFIED AS AN
26 ASSISTED LIVING FACILITY AS OF DECEMBER 31, 1998; OR

27 2. THE APPLICANT WAS REGISTERED AS A DOMICILIARY
28 CARE FACILITY WITH LESS THAN FIVE BEDS AS OF DECEMBER 31, 1998; AND

29 (V) REQUIRE A MEDICATION MANAGEMENT REVIEW PERFORMED
30 BY A REGISTERED NURSE OR PHARMACIST ONCE EVERY 90 DAYS FOR EACH
31 LICENSED ASSISTED LIVING PROGRAM WITH LESS THAN 17 BEDS.

32 19-1807.

33 IF AT LEAST 50 PERCENT OF THE RESIDENTS OF A LICENSED ASSISTED LIVING
34 PROGRAM HAVE MONTHLY INCOMES OF LESS THAN \$900 EACH, THE LOCAL HEALTH
35 DEPARTMENT SHALL PROVIDE THE REQUIRED PERIODIC MEDICATION
36 MANAGEMENT REVIEWS AT NO COST TO THE LICENSED ASSISTED LIVING PROGRAM.

1 19-1808.

2 IN DETERMINING WHETHER TO ISSUE A PERMIT FOR ZONING, SPECIAL USE, OR
3 OCCUPANCY TO AN ASSISTED LIVING PROGRAM WITH LESS THAN SIX BEDS THAT
4 HAS APPLIED TO THE DEPARTMENT FOR A LICENSE, A COUNTY MAY NOT CONSIDER
5 AS AN OCCUPANT OF THE FACILITY A PROVIDER OF ASSISTED LIVING SERVICES OR A
6 MEMBER OF THE PROVIDER'S IMMEDIATE FAMILY WHO RESIDES AT THE FACILITY
7 BUT DOES REQUIRE ASSISTED LIVING SERVICES.

8

Article - Health Occupations

9 8-6A-02.

10 (a) Except as otherwise provided in this subtitle, an individual shall be
11 certified by the Board to practice as a nursing assistant before the individual may
12 practice as a nursing assistant in the State.

13 (b) This subtitle does not apply to an individual who:

14 (1) Practices a health occupation that the individual is authorized to
15 practice under this article;

16 (2) Provides for the gratuitous care of friends or family members;

17 (3) Performs nursing assistant tasks while a nursing student enrolled in
18 an accredited nursing program and practicing under the direct supervision of
19 qualified faculty or preceptors; [or]

20 (4) Performs nursing assistant tasks as a student while:

21 (i) Enrolled in a Board approved nursing assistant training
22 program;

23 (ii) Practicing under the direct supervision of qualified faculty or
24 preceptors; or

25 (iii) Practicing under the direct supervision of a licensed nurse while
26 working as a nursing assistant; OR

27 (5) PROVIDES ASSISTANCE WITH ACTIVITIES OF DAILY LIVING IN AN
28 ASSISTED LIVING PROGRAM, UNLESS THE INDIVIDUAL ROUTINELY PERFORMS
29 DELEGATED NURSING FUNCTIONS.

30 (c) Nothing in this section shall preclude a registered nurse or licensed
31 practical nurse from delegating a nursing task to an unlicensed individual provided
32 that acceptance of delegated nursing tasks does not become a routine part of the
33 unlicensed individual's job duties.

34 (d) Nothing in this subtitle may be construed as creating a scope of practice for
35 nursing assistants.

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

3 **Article - Health - General**

4 19-1805.

5 (a) The Department shall:

6 (1) Define different levels of assisted living according to the level of care
7 provided;

8 (2) Require all assisted living programs to be licensed to operate
9 according to the level of the program;

10 (3) Develop a waiver process for authorizing an assisted living program
11 to continue to care for an individual whose medical or functional condition has
12 changed since admission to the program to an extent that the level of care required by
13 the individual exceeds the level of care for which the program is licensed;

14 (4) Promote affordable and accessible assisted living programs
15 throughout the State;

16 (5) Establish and enforce quality standards for assisted living programs;

17 (6) Require periodic inspections of assisted living program facilities,
18 including at least an annual unannounced on-site inspection;

19 (7) Establish requirements for the qualifications or training or both of
20 assisted living program employees;

21 (8) Establish a "resident bill of rights" for residents of assisted living
22 program facilities; and

23 (9) Define which, if any, assisted living programs may be exempt from
24 the requirements of § 19-311 of this title.

25 (b) (1) The Department, in consultation with representatives of the affected
26 industry and advocates for residents of the facilities and with the approval of the
27 Department of Aging and the Department of Human Resources, shall adopt
28 regulations to implement this subtitle.

29 (2) The regulations adopted under paragraph (1) of this subsection shall:

30 (i) Provide for the licensing of assisted living programs and the
31 renewal of licenses;

32 (ii) Require the Secretary to charge fees in a manner that will
33 produce funds not to exceed the actual direct and indirect costs to the Department for

1 inspecting assisted living program facilities and maintaining the licensure program
2 for assisted living programs under this subtitle; [and]

3 (iii) Require the Department, during a survey or other inspection of
4 an assisted living program, to review the number of waivers granted to the program
5 under subsection (a)(3) of this section and determine whether a change in the
6 program's licensure status is warranted;

7 (IV) REQUIRE THE DEPARTMENT TO ISSUE A PROVISIONAL LICENSE
8 TO AN ENTITY THAT APPLIES FOR AN ASSISTED LIVING PROGRAM LICENSE BEFORE
9 FEBRUARY 1, 2001, IF THE DEPARTMENT DETERMINES THAT THE APPLICANT DOES
10 NOT HAVE ANY LIFE-THREATENING DEFICIENCIES AND:

11 1. THE APPLICANT WAS LICENSED OR CERTIFIED AS AN
12 ASSISTED LIVING FACILITY AS OF DECEMBER 31, 1998; OR

13 2. THE APPLICANT WAS REGISTERED AS A DOMICILIARY
14 CARE FACILITY WITH LESS THAN FIVE BEDS AS OF DECEMBER 31, 1998; AND

15 (V) REQUIRE A MEDICATION MANAGEMENT REVIEW PERFORMED
16 BY A REGISTERED NURSE ONCE EVERY 90 DAYS FOR EACH LICENSED ASSISTED
17 LIVING PROGRAM WITH LESS THAN 17 BEDS.

18 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
19 take effect October 1, 2004.

20 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
21 Section 3 of this Act, this Act shall take effect October 1, 2000.