

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 20, 2000

CHAPTER _____

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

1 Article - Health - General
2 Section 19-1807 and 19-1808
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1999 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - Health Occupations
7 Section 8-6A-02
8 Annotated Code of Maryland
9 (1994 Replacement Volume and 1999 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article - Health - General
12 Section 19-1805
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1999 Supplement)
15 (As enacted by Chapter 195 of the Acts of the General Assembly of 1999)

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

18 **Article - Health - General**

19 19-1801.

20 In this subtitle:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (iii) The total number of residents who were granted a level of care
4 3 plus waiver by the Department and remained at their assisted living facility under
5 that waiver; and

6 (iv) The total number of residents who were granted a level of care
7 3 plus waiver and were subsequently transferred.

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

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

13 (i) Provide for the licensing of assisted living programs and the
14 renewal of licenses;

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

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

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

27 ~~1. THE APPLICANT WAS LICENSED OR CERTIFIED AS AN~~
28 ~~ASSISTED LIVING FACILITY AS OF DECEMBER 31, 1998; OR~~

29 ~~2. THE APPLICANT WAS REGISTERED AS A DOMICILIARY~~
30 ~~CARE FACILITY WITH LESS THAN FIVE BEDS AS OF DECEMBER 31, 1998, THE~~
31 ~~APPLICANT HAS COMPLIED WITH THE ASSESSMENT, SERVICE PLAN, AND~~
32 ~~MEDICATION ADMINISTRATION REQUIREMENTS OF THE ASSISTED LIVING~~
33 ~~REGULATIONS, AND THE APPLICANT:~~

34 1. WAS CERTIFIED BY THE DEPARTMENT OF AGING BEFORE
35 DECEMBER 31, 1998;

36 2. WAS CERTIFIED BY THE DEPARTMENT OF HUMAN
37 RESOURCES BEFORE DECEMBER 31, 1998; OR

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

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

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

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

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

14 **Article - Health - General**

15 19-1805.

16 (a) The Department shall:

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

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

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

25 (4) Promote affordable and accessible assisted living programs
26 throughout the State;

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

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

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

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

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

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

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

8 (i) Provide for the licensing of assisted living programs and the
9 renewal of licenses;

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

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

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

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

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

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

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

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

