

SENATE BILL 689

Unofficial Copy
J3

2000 Regular Session
Olr1240
CF 0lr2722

By: **Senators Collins, Hollinger, and Teitelbaum (Task Force on Quality of Care in Nursing Homes)**

Introduced and read first time: February 4, 2000

Assigned to: Finance

A BILL ENTITLED

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; establishing certain monetary penalties for certain
6 deficiencies; authorizing the Secretary of Health and Mental Hygiene to utilize
7 certain monetary fines for programs to improve the quality of care; and
8 generally relating to sanctions for certain deficiencies in nursing homes.

9 BY repealing and reenacting, with amendments,
10 Article - Health - General
11 Section 19-1401, 19-1402, and 19-1404 through 19-1407 to be under the
12 amended subtitle "Subtitle 14. Nursing Homes"
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1999 Supplement)

15 BY repealing
16 Article - Health - General
17 Section 19-1403, 19-1408, and 19-1409
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 1999 Supplement)

20 BY adding to
21 Article - Health - General
22 Section 19-1407
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 1999 Supplement)

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

1 **Article - Health - General**

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

3 19-1401.

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

5 (B) "ACTUAL HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
6 NURSING HOME OR AN ACTION OR INACTION BY THE NURSING HOME STAFF THAT
7 HAS CAUSED PHYSICAL OR EMOTIONAL INJURY OR IMPAIRMENT TO A RESIDENT.8 [(b) (C) "Deficiency" [shall mean any failure of a nursing facility to meet the
9 requirements of this subtitle or any rule or regulation that the Secretary adopts
10 under this subtitle, and, in the case of a nursing facility that participates in the
11 Maryland Medicaid Program under Title 15 of this article as a nursing facility, any
12 failure to meet the requirements of § 1919(b), (c), or (d) of the federal Social Security
13 Act (42 U.S.C. § 1396R(b), (c), or (d)), that is serious or life threatening.] MEANS A
14 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
15 NURSING HOME STAFF THAT RESULTS IN POTENTIAL FOR HARM, ACTUAL HARM, OR
16 SERIOUS AND IMMEDIATE THREAT TO ONE OR MORE RESIDENTS.17 [(c) "Life threatening" shall mean a condition existing in a nursing facility that
18 presents an imminent danger of health or serious mental or physical harm to the
19 residents of the nursing facility and must be remedied immediately to insure their
20 health, safety, and welfare.]21 (d) "Nursing [facility] HOME" means a facility (other than a facility offering
22 domiciliary or personal care as defined in Subtitle 3 of this title) which offers
23 nonacute inpatient care to patients suffering from a disease, condition, disability of
24 advanced age, or terminal disease requiring maximal nursing care without
25 continuous hospital services and who require medical services and nursing services
26 rendered by or under the supervision of a licensed nurse together with convalescent
27 services, restorative services, or rehabilitative services.28 (E) "ONGOING PATTERN" MEANS THE RECURRENCE OF DEFICIENCIES AFTER
29 TWO CONSECUTIVE ON-SITE VISITS AS A RESULT OF ANNUAL SURVEYS, FOLLOW-UP
30 VISITS, ANY UNSCHEDULED VISITS, OR COMPLAINT INVESTIGATIONS.31 (F) "POTENTIAL FOR HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
32 NURSING HOME OR AN ACTION OR INACTION BY THE NURSING HOME STAFF THAT
33 RESULTS IN MINIMAL DISCOMFORT TO A RESIDENT OR HAS THE POTENTIAL TO
34 CAUSE ACTUAL HARM TO A RESIDENT.35 [(e) "Serious" means a condition existing in a nursing facility that does not
36 constitute a life threatening, health, or fire safety deficiency, but which is a violation
37 of departmental regulations, and is likely to endanger the health, life, or safety of
38 patients.]

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

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

8 19-1402.

9 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
10 INCLUDE:

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

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

14 (3) APPOINTING A STATE MONITOR; AND

15 (4) IMPOSING A CIVIL MONEY PENALTY.

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

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

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

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

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

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

30 (5) Such other factors as justice may require.

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

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

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

5 [19-1403.

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

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

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

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

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

19 (c) Following the reinspection the Department may:

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

21 (2) Propose the imposition of a civil money penalty pursuant to §
22 19-1404.]

23 [19-1404.] 19-1403.

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

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

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

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

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

1 [19-1405.] 19-1404.

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

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

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

6 (A) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR POTENTIAL
7 HARM DEFICIENCIES:

8 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; AND

9 (2) MAY NOT EXCEED \$1,000 PER DAY UNTIL THE NURSING HOME IS IN
10 COMPLIANCE.

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

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

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

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

18 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; AND

19 (2) MAY NOT EXCEED \$10,000 PER DAY UNTIL THE NURSING HOME IS IN
20 COMPLIANCE.

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

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

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

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

29 (4) CURRENT FEDERAL GUIDELINES FOR MONEY PENALTIES;

30 [(4)] (5) Whether the amount of the proposed civil money penalty will
31 jeopardize the financial ability of the nursing [facility] HOME to continue operating
32 as a nursing [facility] HOME; and

1 [(5)] (6) Such other factors as justice may require.

2 [19-1406.] 19-1405.

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

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

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

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

16 [19-1407.] 19-1406.

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

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

21 (c) Imposition of the civil money penalty shall be stayed until the final
22 decision is issued pursuant to subsection (m) of this section.]

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

25 [(e)] (C) The parties to the hearing shall be the aggrieved nursing facility and
26 the Secretary.

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

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

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

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

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

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

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

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

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

10 (2) The Secretary must meet his burden of proof by clear and convincing
11 evidence.

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

15 19-1407.

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

22 (B) WHEN THE SECRETARY ISSUES THE FINAL DECISION OF THE
23 DEPARTMENT:

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

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

33 (3) IF THE DECISION REVERSES THE IMPOSITION OF THE CIVIL
34 PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE NURSING HOME WITHIN
35 15 DAYS OF THE DECISION.

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

4 (D) ANY REMAINING FUNDS SHALL BE UTILIZED FOR TRAINING, GRANT
5 AWARDS, DEMONSTRATION PROJECTS, OR OTHER PROGRAMS DESIGNED TO
6 IMPROVE THE QUALITY OF CARE.

7 [19-1408.

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

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

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

14 [19-1409.

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

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

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2000.