

SENATE BILL 689

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2000 Regular Session
0lr1240
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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 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; establishing certain monetary penalties for certain
6 deficiencies; repealing certain provisions of law relating to notice requirements
7 and appeals; authorizing the Department of Health and Mental Hygiene to
8 appoint an independent monitor for certain purposes; establishing a Health
9 Care Quality Account; authorizing the Secretary of Health and Mental Hygiene
10 to utilize certain monetary fines for programs to improve the quality of care; and
11 generally relating to sanctions for certain deficiencies in nursing homes.

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

18 BY repealing
19 Article - Health - General
20 Section 19-1403, 19-1406, 19-1407, 19-1408, and 19-1409
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 1999 Supplement)

23 BY adding to

1 Article - Health - General
2 Section ~~19-1407~~ 19-1405 and 19-1406
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1999 Supplement)

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

7 **Article - Health - General**

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

9 19-1401.

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

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

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

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

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

35 (E) "ONGOING PATTERN" MEANS THE ~~RECURRENCE OF DEFICIENCIES AFTER~~
36 OCCURRENCE OF ANY POTENTIAL FOR MORE THAN MINIMAL HARM OR GREATER
37 DEFICIENCY ON TWO CONSECUTIVE ON-SITE VISITS AS A RESULT OF ANNUAL
38 SURVEYS, FOLLOW-UP VISITS, ANY UNSCHEDULED VISITS, OR COMPLAINT
39 INVESTIGATIONS.

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

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

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

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

16 19-1402.

17 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
18 INCLUDE:

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

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

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

24 (4) IMPOSING A CIVIL MONEY PENALTY.

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

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

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

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

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

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

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

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

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

10 (2) An order imposing a civil money penalty will be issued, pursuant to
11 [§ 19-1404] § 19-1403 which shall include a list of all deficiencies and notice that a
12 civil money penalty may be imposed until the time that the cited deficiencies have
13 been rectified.

14 [19-1403.

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

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

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

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

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

28 (c) Following the reinspection the Department may:

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

30 (2) Propose the imposition of a civil money penalty pursuant to §
31 19-1404.]

32 [19-1404.] 19-1403.

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

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

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

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

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

7 [19-1405.] 19-1404.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (4) CURRENT FEDERAL GUIDELINES FOR MONEY PENALTIES;

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

7 [(5)] (6) Such other factors as justice may require.

8 [19-1406.] 19-1405.

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

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

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

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

22 [19-1407.] 19-1406.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~19-1407.~~

22 (A) THE DEPARTMENT IS AUTHORIZED TO APPOINT AN INDEPENDENT
23 MONITOR TO OVERSEE EFFORTS MADE BY A NURSING HOME TO ACHIEVE
24 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS FOR NURSING HOMES THAT
25 PARTICIPATE IN THE MEDICARE AND MEDICAID PROGRAMS.

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

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

29 (1) PERIODIC INSPECTIONS OF A NURSING HOME FOR THE PURPOSE OF
30 ASSESSING THE NURSING HOME'S COMPLIANCE WITH STATE AND FEDERAL
31 REGULATIONS; AND

32 (2) REPORTING FINDINGS TO THE DEPARTMENT AND THE NURSING
33 HOME.

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

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

3 19-1406.

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

10 (B) WHEN THE SECRETARY ISSUES THE FINAL DECISION OF THE
11 DEPARTMENT:

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

15 (2) IF THE DECISION UPHOLDS THE IMPOSITION OF A CIVIL PENALTY,
16 BUT REDUCES THE AMOUNT OF THE CIVIL PENALTY, THE AMOUNT DUE THE
17 DEPARTMENT WILL BE RELEASED TO THE DEPARTMENT WITH ACCRUED INTEREST
18 WITHIN 15 DAYS OF THE DATE OF THE DECISION AND THE BALANCE WILL BE
19 RELEASED TO THE NURSING HOME WITHIN 15 DAYS OF THE DATE OF THE DECISION;
20 OR

21 (3) IF THE DECISION REVERSES THE IMPOSITION OF THE CIVIL
22 PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE NURSING HOME WITHIN
23 15 DAYS OF THE DECISION.

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

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

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

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

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

1 19-1407.

2 (A) (1) THERE IS A HEALTH CARE QUALITY ACCOUNT ESTABLISHED IN THE
3 DEPARTMENT.

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

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

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

11 (5) THE FUND IS A CONTINUING NONLAPSING FUND, NOT SUBJECT TO §
12 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

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

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

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

21 [19-1408.

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

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

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

28 [19-1409.

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

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

34 (c) If the civil money penalty is not appealed or if it is upheld following an
35 appeal, the amount of the penalty imposed, together with any accrued interest shall

1 be placed in a fund to be established by the Secretary and shall be applied exclusively
2 for the protection of the health or property of residents of nursing facilities that have
3 been found to have deficiencies, including payment for the costs of relocation of
4 residents to other facilities, maintenance or operation of a nursing facility pending
5 correction of deficiencies or closure, and reimbursement of residents for personal
6 funds lost.]

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