

SENATE BILL 690

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2000 Regular Session
0lr1251
CF 0lr1250

By: **Senators Hollinger, Teitelbaum, and Collins (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 - Quality Assurance**

3 FOR the purpose of requiring a nursing home, as a condition of licensure, to establish
4 a quality assurance program that meets certain requirements and is approved
5 by the Department of Health and Mental Hygiene; requiring a nursing home to
6 employ a quality assurance nurse to manage and monitor the quality of care in
7 the nursing home and a medical director; requiring a nursing home to establish
8 a Quality Assurance Committee that must review and approve annually a
9 quality assurance plan; defining certain terms; requiring the Secretary of
10 Health and Mental Hygiene to define the role of the medical director for a
11 nursing home; requiring the Secretary of Health and Mental Hygiene to adopt
12 regulations that will provide for medical staff accountability; requiring the
13 Secretary of Health and Mental Hygiene to create a technical assistance unit;
14 authorizing the Secretary of Health and Mental Hygiene to partially reimburse
15 a nursing home for installing certain automated health systems; authorizing the
16 Secretary of Health and Mental Hygiene to adopt certain regulations; requiring
17 a nursing home to give notice and establish certain procedures in the event of
18 injury, closure, or loss of funds; and generally relating to quality assurance in
19 nursing homes.

20 BY repealing and reenacting, with amendments,
21 Article - Health - General
22 Section 19-1401 through 19-1403 and 19-1405 through 19-1409 to be under
23 the amended subtitle "Subtitle 14. Nursing Homes"
24 Annotated Code of Maryland
25 (1996 Replacement Volume and 1999 Supplement)

26 BY repealing and reenacting, without amendments,
27 Article - Health - General
28 Section 19-1404
29 Annotated Code of Maryland
30 (1996 Replacement Volume and 1999 Supplement)

1 BY adding to
2 Article - Health - General
3 Section 19-1410 through 19-1415
4 Annotated Code of Maryland
5 (1996 Replacement Volume and 1999 Supplement)

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

8 **Article - Health - General**

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

10 19-1401.

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

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

15 [(b)] (C) "Deficiency" [shall mean any failure of a nursing facility to meet the
16 requirements of this subtitle or any rule or regulation that the Secretary adopts
17 under this subtitle, and, in the case of a nursing facility that participates in the
18 Maryland Medicaid Program under Title 15 of this article as a nursing facility, any
19 failure to meet the requirements of § 1919(b), (c), or (d) of the federal Social Security
20 Act (42 U.S.C. § 1396R(b), (c), or (d)), that is serious or life threatening] MEANS A
21 CONDITION EXISTING IN A NURSING HOME OR AN ACTION OR INACTION BY THE
22 NURSING HOME STAFF THAT RESULTS IN POTENTIAL FOR HARM, ACTUAL HARM, OR
23 A SERIOUS AND IMMEDIATE THREAT TO ONE OR MORE 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, CHRONIC ILLNESS,
31 condition, disability of advanced age, or terminal disease requiring maximal nursing
32 care without continuous hospital services and who require medical services and
33 nursing services rendered by or under the supervision of a licensed nurse together
34 with convalescent [services], restorative [services], or rehabilitative services.

35 (E) "ONGOING PATTERN" MEANS THE RECURRENCE OF DEFICIENCIES AFTER
36 TWO CONSECUTIVE SITE VISITS AS A RESULT OF ANNUAL SURVEYS, FOLLOW-UP
37 VISITS, UNSCHEDULED VISITS, OR COMPLAINT INVESTIGATIONS.

1 (F) "POTENTIAL FOR HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A
2 NURSING HOME OR AN ACTION OR INACTION BY THE NURSING HOME STAFF THAT
3 RESULTS IN MINIMAL DISCOMFORT TO A RESIDENT OR HAS THE POTENTIAL TO
4 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 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, OR DEATH TO A RESIDENT
13 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) A civil money penalty may be imposed when there is clear and convincing
18 evidence of an ongoing pattern of serious or life threatening deficiencies in a nursing
19 [facility] HOME.

20 (b) 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) Upon determination by the Department that an ongoing pattern of serious
32 or life threatening deficiencies exists, the Department shall notify the nursing
33 [facility] HOME that:

34 (1) Unless corrective action taken pursuant to § 19-1403 is substantially
35 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 which shall include a list of all deficiencies and notice that a civil money
3 penalty may be imposed until the time that the cited deficiencies have been rectified.
4 19-1403.

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

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

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

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

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

18 (c) Following the reinspection the Department may:

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

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

22 19-1404.

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

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

29 (1) The inspection at which the deficiency is identified;

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

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

32 19-1405.

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

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

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

4 (b) In setting the amount of a civil money penalty under this section, the
5 Secretary shall consider, pursuant to guidelines set forth in regulations promulgated
6 by the Secretary, the following factors:

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

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

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

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

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

16 19-1406.

17 (a) The nursing [facility] HOME shall provide written notice to the
18 Department when the deficiency or deficiencies identified in the notice issued
19 pursuant to § 19-1404 are substantially corrected.

20 (b) The calculation of the amount of the civil money penalty will stop as of the
21 date the notice in subsection (a) of this section is received by the Department.

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

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

29 19-1407.

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

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

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

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

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

5 (f) The parties are entitled to be represented by counsel.

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

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

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

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

16 (k) 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) (1) The Secretary has the burden of proof with respect to the basis for
21 imposition of the civil money penalty under § 19-1402 and the amount of the civil
22 money penalty under § 19-1405.

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

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

28 19-1408.

29 (a) A nursing [facility] HOME subject to a civil money penalty shall have the
30 right to appeal a decision of the Hearings Office upholding the finding of a deficiency
31 or deficiencies or the imposition of a civil money penalty.

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

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

1 19-1409.

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

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

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

15 19-1410.

16 (A) IN ORDER TO QUALIFY FOR A LICENSE OR RENEWAL LICENSE, A NURSING
17 HOME SHALL DEVELOP A QUALITY ASSURANCE PROGRAM.

18 (B) (1) BY SEPTEMBER 1, 2000, EACH NURSING HOME SHALL EMPLOY AT
19 LEAST ONE FULL-TIME QUALITY ASSURANCE NURSE WHOSE SOLE RESPONSIBILITY
20 IS THE MANAGEMENT AND MONITORING OF QUALITY OF CARE IN THE NURSING
21 HOME.

22 (2) EACH NURSING HOME SHALL ESTABLISH A QUALITY ASSURANCE
23 COMMITTEE AND SHALL INCLUDE AT LEAST THE FOLLOWING MEMBERS:

24 (I) THE NURSING HOME ADMINISTRATOR;

25 (II) THE DIRECTOR OF NURSING;

26 (III) THE MEDICAL DIRECTOR;

27 (IV) THE OMBUDSMAN;

28 (V) THE PRESIDENT OF THE RESIDENT'S COUNCIL; AND

29 (VI) A FAMILY MEMBER.

30 (3) THE QUALITY ASSURANCE COMMITTEE SHALL:

31 (I) MEET AT LEAST MONTHLY;

32 (II) MAINTAIN RECORDS OF ALL QUALITY ASSURANCE ACTIVITIES;

33 AND

1 (III) KEEP RECORDS OF COMMITTEE MEETINGS THAT SHALL BE
2 AVAILABLE TO THE DEPARTMENT DURING ANY ON-SITE VISIT.

3 (4) THE QUALITY ASSURANCE COMMITTEE FOR A NURSING HOME
4 SHALL REVIEW AND APPROVE ANNUALLY THE QUALITY ASSURANCE PLAN FOR THE
5 NURSING HOME.

6 (5) EACH NURSING HOME SHALL ESTABLISH A WRITTEN QUALITY
7 ASSURANCE PLAN THAT:

8 (I) INCLUDES PROCEDURES FOR CONCURRENT REVIEW FOR ALL
9 RESIDENTS;

10 (II) INCLUDES CRITERIA FOR REVIEW, INCLUDING BUT NOT
11 LIMITED TO, NURSING CARE, MEDICATION ADMINISTRATION, UNPLANNED WEIGHT
12 LOSS, DECUBITUS ULCERS, FALLS, ACCIDENTS, UNEXPLAINED HOSPITAL VISITS OR
13 ADMISSIONS OF RESIDENTS, AND INCIDENT REPORTS;

14 (III) INCLUDES METHODS TO IDENTIFY AND CORRECT PROBLEMS;
15 AND

16 (IV) IS READILY AVAILABLE TO NURSING HOME RESIDENTS AND
17 THEIR FAMILIES, GUARDIANS, OR SURROGATE DECISION MAKERS.

18 (6) THE QUALITY ASSURANCE PLAN SHALL BE SUBMITTED TO THE
19 DEPARTMENT BY JANUARY 1, 2001, AND AT THE TIME OF LICENSE RENEWAL.

20 (7) THE NURSING HOME ADMINISTRATOR SHALL TAKE APPROPRIATE
21 REMEDIAL ACTIONS BASED ON THE RECOMMENDATIONS OF THE NURSING HOME'S
22 QUALITY ASSURANCE COMMITTEE.

23 19-1411.

24 (A) (1) EACH NURSING HOME SHALL EMPLOY A MEDICAL DIRECTOR.

25 (2) THE MEDICAL DIRECTOR IS RESPONSIBLE FOR MONITORING
26 PHYSICIAN SERVICES AT THE NURSING HOME.

27 (3) THE MEDICAL DIRECTOR SHALL REPORT MONTHLY TO THE QUALITY
28 ASSURANCE COMMITTEE ON THE QUALITY OF MEDICAL CARE AT THE NURSING
29 HOME.

30 (B) THE SECRETARY SHALL:

31 (1) ESTABLISH QUALIFICATIONS FOR THE MEDICAL DIRECTOR OF A
32 NURSING HOME OR ANYONE ACTING FOR THE MEDICAL DIRECTOR IN HIS OR HER
33 ABSENCE;

34 (2) DEFINE THE DUTIES OF THE MEDICAL DIRECTOR; AND

1 (3) ADOPT REGULATIONS FOR THE MEDICAL STAFF OF NURSING HOMES
2 THAT WILL PROVIDE FOR STAFF ACCOUNTABILITY.

3 19-1412.

4 (A) THE SECRETARY SHALL:

5 (1) ESTABLISH A TECHNICAL ASSISTANCE UNIT WITHIN THE
6 DEPARTMENT TO SUPPORT COMPLIANCE EFFORTS AND BEST PRACTICES; AND

7 (2) ESTABLISH A LIST OF APPROVED MEDICAL AUTOMATED SYSTEMS.

8 (B) THE SECRETARY MAY:

9 (1) PARTIALLY REIMBURSE A NURSING HOME FOR INSTALLATION OF
10 AUTOMATED SYSTEMS THAT HAVE BEEN APPROVED BY THE DEPARTMENT;

11 (2) DEVELOP GUIDELINES FOR REIMBURSEMENT; AND

12 (3) ADOPT REGULATIONS FOR THE IMPLEMENTATION OF THIS
13 SUBTITLE.

14 19-1413.

15 EACH NURSING HOME SHALL:

16 (1) ESTABLISH A PROCEDURE TO PROVIDE FOR THE SMOOTH AND
17 ORDERLY TRANSFER OF RESIDENTS IN THE EVENT OF CLOSURE;

18 (2) PROVIDE A 30-DAY NOTICE TO RESIDENTS AND THEIR FAMILIES OR
19 GUARDIANS WHEN THE NURSING HOME LEARNS OF THE PROBABLE CLOSURE OF
20 THE HOME OR TERMINATION OF PUBLIC FUNDING TO THE HOME; AND

21 (3) NOTIFY THE RESIDENT'S REPRESENTATIVE OR GUARDIAN OF ANY
22 INJURY.

23 19-1414.

24 THE DEPARTMENT MAY REVIEW FINANCIAL AND PERFORMANCE RECORDS OF
25 A POTENTIAL LICENSEE TO DETERMINE ABILITY OF THE APPLICANT TO COMPLY
26 WITH APPROPRIATE LAWS AND REGULATIONS.

27 19-1415.

28 THIS SUBTITLE MAY BE CITED AS THE "MARYLAND NURSING HOME QUALITY
29 ASSURANCE ACT".

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