

Department of Legislative Services
 Maryland General Assembly
 2000 Session

FISCAL NOTE
 Revised

House Bill 634 (Delegate Boutin. *et al.*)

Environmental Matters

Nursing Homes - Sanctions and Penalties

This bill strengthens the State’s regulation of nursing homes. It revises the current law that allows the Department of Health and Mental Hygiene (DHMH) to take corrective action and impose civil money penalties against a nursing home in situations where a resident suffers potential for more than minimal or actual harm. The bill redefines certain terms relating to deficiencies in resident care by outlining more specific types of deficiencies, including situations that may cause potential harm, actual harm, or serious and immediate threat to one or more residents. The bill also allows DHMH to take more stringent corrective action against a nursing home.

Fiscal Summary

State Effect: Special fund revenues and expenditures would each increase by \$75,000 in FY 2001. Out-year estimates reflect annualization and assume that the number and amount of fines imposed remains constant. Any additional hearings within DHMH could be handled with existing budgeted resources.

(in dollars)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
SF Revenues	\$75,000	\$100,000	\$100,000	\$100,000	\$100,000
SF Expenditures	\$75,000	\$100,000	\$100,000	\$100,000	\$100,000
Net Effect	\$0	\$0	\$0	\$0	0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - =indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill redefines “deficiency” to mean a condition existing in a nursing home or an action or inaction by the nursing home staff that results in potential for more than minimal harm, actual harm, or serious and immediate threat to one or more residents.

If a deficiency exists in a nursing home, DHMH may impose sanctions that include: (1) a directed plan of correction; (2) imposing adequate staffing levels in a nursing home; (3) appointing a State monitor; and (4) imposing a civil money penalty. If DHMH determines that a deficiency exists, a civil money penalty will be imposed unless the nursing home takes and substantially completes corrective action.

The bill also specifies civil money penalty limits against a related institution for acts ranging from potential harm situations to situations where there is a serious and immediate threat to a resident. Penalties range from \$1,000 per day or \$10,000 per instance for a potential for more than minimal harm deficiency to \$10,000 per day or \$10,000 per instance for a serious and immediate threat deficiency.

If a nursing home chooses to appeal DHMH’s decision to impose a civil money penalty, the bill repeals the requirement that the imposition of a civil money penalty must be stayed until DHMH’s final decision is issued. Instead, a nursing home must deposit the amount of the civil money penalty in an interest bearing escrow account within 15 days of the nursing home’s request for an appeal. When DHMH renders a final decision, the escrow funds will be released to the proper party within 15 days from the day of the decision. Any civil money penalty funds that go to DHMH must be used for training, grant awards, demonstration projects, or other programs designed to improve the quality of care in nursing homes.

DHMH may appoint an independent monitor to oversee efforts made by a nursing home to achieve compliance with State and federal regulations for nursing homes that participate in the Medicare and Medicaid programs. The appointment of a State monitor is an intermediate sanction that may be in addition to or in lieu of other sanctions. The State monitor may conduct periodic inspections of a nursing home to assess its compliance with State and federal regulations and report findings to DHMH and the nursing home. The State monitor cannot be a State employee, and the nursing home is responsible for all costs associated with appointing a State monitor.

DHMH may require a nursing home to submit a plan of correction for DHMH’s approval, and DHMH may impose civil money penalties against the nursing home. A civil money penalty may not exceed \$5,000 per day in which serious or life threatening deficiencies exist and may not exceed \$50,000 total.

The bill also establishes a Health Care Quality Account within DHMH. The account will be funded by civil money penalties paid by nursing homes and other penalties that the Office of Health Care Quality may assess. Any unspent portions of the fund may not be transferred or

reverted to the general fund of the State, but must remain in the fund to be used for the purposes specified in the bill.

Current Law: A “deficiency” is defined as any failure of a nursing facility to meet the requirements of subtitle 14 in the Health - General Article, or fails to meet the requirements set forth in the federal Social Security Act and is serious or life-threatening.

Background: Chapters 382 and 383 of 1999 established a Task Force on the Quality of Care in Maryland Nursing Facilities. The task force issued its report to the Governor and the General Assembly in December 1999, with the following findings: (1) nursing home residents have more complex and acute medical needs than in previous decades; (2) personal care needs of residents are not being met and there has been a decline in the quality of care in Maryland’s nursing homes; (3) nursing assistants provide most of the care in nursing homes and are paid poorly, resulting in large turnover and continued staff shortages; (4) the federal Balanced Budget Act of 1997 reduced federal Medicare reimbursement to nursing homes; (5) the 1998 federal Nursing Home Initiatives had a major, detrimental, impact on Maryland’s regulatory system, compounded by DHMH’s difficulty in recruiting qualified survey staff; (6) DHMH has made complaint investigation a higher priority as directed by the Health Care Financing Administration; (7) State licensure laws for enforcing action against nursing homes with poor quality of care are not effective; (8) nursing homes are not practicing internal health quality assurance; (9) advocacy efforts on the behalf of nursing home residents are underfunded and need to be strengthened; and (10) councils of residents’ family members can be a valuable source of advocacy for residents if they operate independently of nursing home administration.

This bill implements the task force’s recommendations to strengthen State regulation of nursing homes. The bill defines more specific types of deficiencies that better reflect serious or life-threatening conditions that can exist within a nursing home. In addition, the bill specifies certain penalties for certain deficiencies and ongoing patterns and does not limit the amount of civil money penalties that may be imposed. The bill also allows DHMH to impose a directed plan of correction on a nursing home. This provision gives DHMH more control over the corrective actions a nursing home must take to rectify deficiencies. Currently, DHMH relies on the plan of correction a nursing home submits for approval.

State Effect: DHMH special fund revenues could increase by \$75,000 in fiscal 2001 as a result of the penalty provisions. Because DHMH must use the collected fines for training, grant awards, demonstration projects, and other programs designed to improve quality of care, it is expected that special fund expenditures would also increase by \$75,000 in fiscal 2001. Future year expenditures and revenues reflect annualization and assumes that the number and amount of fines imposed remains constant. This estimate is based on the

following facts and assumptions:

- The Office of Health Care Quality will impose 20 fines on nursing homes in fiscal 2001.
- Seven fines will be imposed for potential harm deficiencies, seven for actual harm deficiencies, and six for serious and immediate threat deficiencies.
- For actual and potential harm deficiencies, nursing homes will be fined at half the allowable amount per instance ($\$10,000 \times .50 = \$5,000$ per instance).
- For serious and immediate threat deficiencies, nursing homes will be fined the full allowable amount per instance, or \$10,000.
- Five of the 20 fines will be eligible for the 40% reduction because nursing homes will waive their hearings within 30 days.

Legislative Services advises that any additional hearings could be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 689 (Senator Collins, *et al.*) - Finance.

Information Source(s): *Report of the Task Force on Quality of Care in Maryland Nursing Facilities* (December 1999), Department of Legislative Services

Fiscal Note History: First Reader - February 29, 2000
drg/jr Revised - House Third Reader - March 27, 2000

Analysis by: Susan D. John

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510