

SENATE BILL 769

Unofficial Copy  
J3

2001 Regular Session  
(11r2252)

ENROLLED BILL

-- Economic and Environmental Affairs/Environmental Matters --

Introduced by **Senator Collins**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Nursing Staff Agencies - Quality Oversight and Improvement**

3 FOR the purpose of transferring oversight of nursing staff agencies from the Board of  
4 Nursing to the Office of Health Care Quality; requiring nursing staff agencies to  
5 ~~register with~~ be licensed by the Office; providing for the procedures and  
6 requirements for licensing nursing staff agencies ~~registering with~~ by the Office;  
7 requiring nursing staff agencies to submit certain information to the Office;  
8 ~~requiring the Office to conduct periodic site visits and surveys of nursing staff~~  
9 ~~agencies; requiring the Office to investigate certain factors during the survey;~~  
10 ~~requiring the Office to maintain a report of each survey; authorizing the Office~~  
11 ~~to adopt certain regulations and conduct certain inspections; requiring a nursing~~  
12 ~~staff agency to perform certain personnel duties and verify certain conditions;~~  
13 ~~providing for certain penalties for certain nursing staff agencies; providing~~  
14 ~~certain penalties for certain violations; requiring a nursing staff agency to attest~~  
15 ~~to compliance with certain federal laws; requiring that fines collected by the~~  
16 ~~Office be deposited into a certain account; requiring the Office to ensure that all~~  
17 ~~surveys are unannounced; requiring the Department of Health and Mental~~

1 ~~Hygiene to make certain reports to the General Assembly on or before certain~~  
 2 ~~dates; providing for a delayed effective date;~~ and generally relating to quality  
 3 oversight and improvement of nursing staff agencies.

4 BY transferring

5 Article - Health Occupations  
 6 Section 8-507  
 7 Annotated Code of Maryland  
 8 (2000 Replacement Volume)

9 to be

10 Article - Health - General  
 11 Section 19-2001  
 12 Annotated Code of Maryland  
 13 (2000 Replacement Volume)

14 BY repealing and reenacting, with amendments,

15 Article - Health - General  
 16 Section 19-2001 to be under the new subtitle "Subtitle 20. Nursing Staff  
 17 Agencies"  
 18 Annotated Code of Maryland  
 19 (2000 Replacement Volume)  
 20 (As enacted by Section 1 of this Act)

21 BY adding to

22 Article - Health - General  
 23 Section 19-2002  
 24 Annotated Code of Maryland  
 25 (2000 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 27 MARYLAND, That Section(s) 8-507 of Article - Health Occupations of the Annotated  
 28 Code of Maryland be transferred to be Section(s) 19-2001 of Article - Health -  
 29 General of the Annotated Code of Maryland.

30 SECTION 2. BE IT FURTHER ENACTED, That the Laws of Maryland read as  
 31 follows:

32 **Article - Health - General**

33 **SUBTITLE 20. NURSING STAFF AGENCIES.**

34 19-2001.

35 (a) (1) In this [section] SUBTITLE the following words have the meanings  
 36 indicated.

1 (2) "CLIENT FACILITY" MEANS A HEALTH CARE FACILITY THAT  
 2 CONTRACTS WITH A NURSING STAFF AGENCY FOR THE REFERRAL OF NURSING  
 3 PERSONNEL.

4 [(2)] (3) "Health care facility" means a hospital or related institution as  
 5 defined in § 19-301 of [the Health - General Article] THIS ARTICLE.

6 [(3)] (4) "Initially providing or referring" means the first time a nursing  
 7 staff agency provides or refers a particular licensed practical nurse, registered nurse,  
 8 or [geriatric] CERTIFIED nursing assistant to a health care facility.

9 [(4)] (5) "Nursing personnel" means:

10 (i) Any individual licensed by the State Board of Nursing as a:

11 1. Licensed practical nurse; or

12 2. Registered nurse; or

13 (ii) A [geriatric] CERTIFIED nursing assistant [who complies with  
 14 the provisions of § 19-308.1 of the Health - General Article for patient care  
 15 personnel].

16 [(5)] (6) (i) "Nursing staff agency" means any person, firm,  
 17 corporation, partnership, or other business entity engaged in the business of  
 18 ~~providing or~~ referring nursing personnel AS EMPLOYEES OR INDEPENDENT  
 19 CONTRACTORS to render temporary nursing services at a health care facility in the  
 20 State.

21 (ii) "Nursing staff agency" does not include:

22 [1. Any person, firm, corporation, partnership, or other  
 23 business entity engaged solely in the business of providing or referring nursing  
 24 personnel to render private duty nursing care at a health care facility;

25 2.] 1. A nursing staff agency operated by a health care  
 26 facility solely for the purpose of procuring, furnishing, or referring temporary or  
 27 permanent nursing personnel for employment at that health care facility;

28 [3.] 2. A home health agency regulated under Title 19,  
 29 Subtitle 4 of [the Health - General Article] THIS ARTICLE; or

30 [4.] 3. Any nursing personnel procuring, furnishing, or  
 31 referring their own services to a health care facility without the direct or indirect  
 32 assistance of a nursing staff agency.

33 (7) "OFFICE" MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE  
 34 DEPARTMENT.

35 [(6)] (8) "Responsible party" means the individual at a nursing staff  
 36 agency who controls the day to day operation of the nursing staff agency.

1 (b) (1) A NURSING STAFF AGENCY SHALL BE LICENSED BY THE OFFICE  
 2 BEFORE REFERRING NURSING PERSONNEL TO A HEALTH CARE FACILITY TO RENDER  
 3 TEMPORARY NURSING SERVICES AT A HEALTH CARE FACILITY IN THIS STATE.

4 (2) All nursing staff agencies shall submit to the [Board] OFFICE, ~~the~~:

5 (I) THE nursing staff agency's:

6 (1) 1. Business name;

7 (2) 2. Business address;

8 (3) 3. Business telephone number; and

9 (4) 4. Responsible party; AND

10 (II) ANY OTHER INFORMATION THE OFFICE REQUIRES BY  
 11 REGULATION TO ASSURE ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS  
 12 SUBTITLE.

13 (c) (1) A nursing staff agency ~~registration~~ LICENSE expires on the 28th day  
 14 of the month in which the agency was originally ~~registered~~ LICENSED unless the  
 15 license is renewed for a 1-year term as provided in this section.

16 (2) At least 1 month before the ~~registration~~ LICENSE expires, the  
 17 [Board] OFFICE shall send to the nursing staff agency, by first-class mail to the last  
 18 known address of the nursing staff agency, a renewal notice that states:

19 (i) The date on which the current ~~registration~~ LICENSE expires;

20 (ii) The date by which the renewal application must be received by  
 21 the [Board] OFFICE for the renewal to be issued and mailed before the ~~registration~~  
 22 LICENSE expires; and

23 (iii) The amount of the renewal fee.

24 (3) Before a ~~registration~~ LICENSE expires, the nursing staff agency  
 25 periodically may renew it for an additional term, if the nursing staff agency:

26 (i) Otherwise is entitled to be ~~registered~~ LICENSED; and

27 (ii) Pays to the [Board] OFFICE the renewal fee set by the [Board]  
 28 OFFICE.

29 (d) If a nursing staff agency fails to renew, the nursing staff agency must  
 30 immediately stop referring personnel to health care facilities.

31 (e) (1) A nursing staff agency shall notify the [Board] OFFICE of any change  
 32 in ownership, agency name, or address within 30 days of the change.

1 (2) Notwithstanding the provisions of subsection ~~(j)(4)~~ (I)(1) of this  
 2 section, if a nursing staff agency fails to notify the [Board] OFFICE within the time  
 3 required under this subsection, the [Board] OFFICE may impose a fine of \$100.

4 (f) (1) Before initially providing or referring a licensed practical nurse ~~or,~~  
 5 registered nurse, OR CERTIFIED NURSING ASSISTANT to health care facilities to  
 6 render temporary nursing services the nursing staff agency shall:

7 ~~(i) Submit the name and license number of the licensed practical~~  
 8 ~~nurse or registered nurse to the [Board] OFFICE; and~~

9 ~~(ii) Verify~~ VERIFY the licensure status of the licensed practical  
 10 nurse ~~or,~~ registered nurse, OR CERTIFIED NURSING ASSISTANT.

11 (2) At the time a licensed practical nurse ~~or,~~ registered nurse, OR  
 12 CERTIFIED NURSING ASSISTANT who is being referred to health care facilities by a  
 13 nursing staff agency must renew their license to practice licensed practical nursing  
 14 ~~or,~~ registered nursing, OR CERTIFIED NURSING ASSISTANT ASSISTANCE, the nursing  
 15 staff agency shall:

16 (i) Submit the name and license number of the licensed practical  
 17 nurse ~~or,~~ registered nurse, OR CERTIFIED NURSING ASSISTANT to the [Board]  
 18 OFFICE; and

19 (ii) Verify the licensure status of the licensed practical nurse ~~or,~~  
 20 registered nurse, OR CERTIFIED NURSING ASSISTANT.

21 [(3) (i) On the request of a nursing staff agency, the Board shall verify  
 22 by telephone or other electronic means the licensure status of any licensed practical  
 23 nurse or registered nurse that the nursing staff agency plans to refer to health care  
 24 facilities within 24 hours of the request.

25 (ii) The Board shall provide written confirmation of the information  
 26 provided in accordance with the provisions of item (i) of this paragraph to the nursing  
 27 staff agency within 10 working days of the request.

28 (4) (i) At least quarterly, the Board shall report by telephone or other  
 29 electronic means to a nursing staff agency any disciplinary action taken against a  
 30 licensed practical nurse or registered nurse who is being referred to health care  
 31 facilities by that nursing staff agency within the previous quarter.

32 (ii) The Board shall provide written confirmation of the information  
 33 provided in accordance with the provisions of item (i) of this paragraph to the nursing  
 34 staff agency within 10 working days of the disciplinary action being taken.

35 (g) Before initially providing or referring a geriatric nursing assistant to  
 36 related institutions to render temporary services, the nursing staff agency shall verify  
 37 with the Office of Licensing and Certification Programs of the Department that the  
 38 geriatric nursing assistant complies with the applicable standards under the  
 39 regulations adopted under § 19-308.1 of the Health - General Article.]

1        (h)     (G)     (1)     A nursing staff agency may not knowingly provide or refer a  
2 licensed practical nurse who is not authorized to practice licensed practical nursing  
3 under [this title] TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE to a health care  
4 facility to render temporary nursing services.

5               (2)     A nursing staff agency may not knowingly provide or refer a  
6 registered nurse who is not authorized to practice registered nursing under [this  
7 title] TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE to a health care facility to  
8 render temporary nursing services.

9               (3)     ~~A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR ONLY  
10 REFER A CERTIFIED NURSING ASSISTANT WHO IS CERTIFIED UNDER TITLE 8,  
11 SUBTITLE 6 6A OF THE HEALTH OCCUPATIONS ARTICLE TO PERFORM DELEGATED  
12 NURSING FUNCTIONS TO PRACTICE CERTIFIED NURSING UNDER TITLE 8 OF THE  
13 HEALTH OCCUPATIONS ARTICLE TO A HEALTH CARE FACILITY TO RENDER  
14 TEMPORARY DELEGATED NURSING SERVICES A NURSING STAFF AGENCY MAY NOT  
15 KNOWINGLY PROVIDE OR REFER A CERTIFIED NURSING ASSISTANT WHO IS NOT  
16 AUTHORIZED TO PRACTICE AS A CERTIFIED NURSING ASSISTANT UNDER TITLE 8,  
17 SUBTITLE 6A OF THE HEALTH OCCUPATIONS ARTICLE TO A HEALTH CARE FACILITY  
18 TO RENDER DELEGATED NURSING SERVICES.~~

19        (i)     (H)     (1)     Except as provided in paragraph (2) of this subsection:

20               (i)     If a nursing staff agency knows of an action or condition  
21 performed by a licensed practical nurse [or], registered nurse, OR CERTIFIED  
22 NURSING ASSISTANT provided or referred by that nursing staff agency that might be  
23 grounds for action under § 8-316 of [this title] THE HEALTH OCCUPATIONS ARTICLE,  
24 the nursing staff agency shall report the action or condition to the Board; and

25               (ii)    An individual shall have immunity from liability described  
26 under § 5-709 of the Courts and Judicial Proceedings Article for making a report as  
27 required under this paragraph.

28               (2)     A nursing staff agency is not required under this subsection to make  
29 any report that would be in violation of any federal or State law, rule, or regulation  
30 concerning the confidentiality of alcohol and drug abuse patient records.

31        (j)     (I)     (1)     Subject to the provisions of Title 10, Subtitle 2 of the State  
32 Government Article, the [Board] OFFICE may impose a penalty of up to \$2,000 for a  
33 violation of any provision of this section;

34               (I)     ~~FOR A FIRST OFFENSE, UP TO \$2,500 PER VIOLATION OR UP TO  
35 \$2,500 PER DAY IN VIOLATION UNTIL THE NURSING STAFF AGENCY COMPLIES WITH  
36 THE REQUIREMENTS OF THIS SUBTITLE;~~

37               (II)    ~~FOR A SECOND OFFENSE, UP TO \$5,000 PER VIOLATION OR UP  
38 TO \$5,000 PER DAY IN VIOLATION UNTIL THE NURSING STAFF AGENCY COMPLIES  
39 WITH THE REQUIREMENTS OF THIS SUBTITLE; AND~~

1 (III) FOR A THIRD OR SUBSEQUENT OFFENSE, UP TO \$10,000 PER  
 2 VIOLATION OR UP TO \$10,000 PER DAY IN VIOLATION UNTIL THE NURSING STAFF  
 3 AGENCY COMPLIES WITH THE REQUIREMENTS OF THIS SUBTITLE.

4 (2) Each day a violation continues is a separate violation.

5 (J) A NURSING STAFF AGENCY IS NOT A PROVIDER OF HEALTH CARE  
 6 PROVIDER.

7 19-2002.

8 (A) IN THIS SECTION, "OFFICE" MEANS THE OFFICE OF HEALTH CARE  
 9 QUALITY IN THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

10 (B) ~~THE OFFICE SHALL MAKE A SITE VISIT AND CONDUCT A FULL SURVEY OF~~  
 11 ~~EACH REGISTERED NURSING STAFF AGENCY PERIODICALLY MAY INSPECT A~~  
 12 NURSING STAFF AGENCY TO VERIFY COMPLIANCE WITH THIS SUBTITLE.

13 (C) ~~WHEN THE OFFICE CONDUCTS A SURVEY AN INSPECTION,~~ THE OFFICE  
 14 SHALL VERIFY THAT THE NURSING PERSONNEL REFERRED BY THE NURSING STAFF  
 15 AGENCY:

16 (1) ~~(H)~~ IF REGISTERED NURSES OR LICENSED PRACTICAL NURSES,  
 17 ARE LICENSED BY THE BOARD; OR

18 ~~(H)~~ (2) IF CERTIFIED NURSING ASSISTANTS, ARE CERTIFIED BY  
 19 ~~THE BOARD; AND~~ BOARD.

20 ~~(2) ARE COMPLETING HAVE COMPLETED CONTINUING EDUCATION~~  
 21 ~~REQUIREMENTS.~~

22 (D) ~~WHEN THE OFFICE CONDUCTS A SURVEY AN INSPECTION,~~ THE OFFICE  
 23 SHALL VERIFY THAT THE NURSING STAFF AGENCY HAS DEVELOPED, DOCUMENTED,  
 24 AND IMPLEMENTED PROCEDURES FOR:

25 (1) ~~SELECTING AND CREDENTIALING~~ VERIFYING THE CREDENTIALS OF  
 26 ~~NURSING PERSONNEL PROVIDED~~ REFERRED BY THE AGENCY;

27 (2) ~~VALIDATING COMPETENCIES AND PROCEDURES FOR PERFORMANCE~~  
 28 ~~EVALUATION~~ SKILLS EXPERIENCE OF NURSING PERSONNEL PRIOR TO REFERRAL BY  
 29 THE AGENCY;

30 ~~(3) DISCIPLINING NURSING PERSONNEL PROVIDED BY THE AGENCY;~~

31 (3) TRACKING AND ACTING ON SERIOUS OR LIFE-THREATENING  
 32 COMPLAINTS RECEIVED BY A CLIENT OR THEIR AGENT FACILITY OR THE CLIENT  
 33 FACILITY'S AGENT;

34 (4) REFERRAL REPORTING OF AN ACTION OR CONDITION UNDER §  
 35 19-2001(H) OF THIS SUBTITLE;

1           ~~(4)~~    (5)     VERIFYING THAT NURSING PERSONNEL REFERRED BY THE  
 2 ~~NURSING STAFF AGENCY ARE OF SATISFACTORY HEALTH STATUS AND CURRENT~~  
 3 ~~IMMUNIZATION STATUS HAVE RECEIVED THE NECESSARY TESTING AND~~  
 4 ~~IMMUNIZATION AS REQUIRED OR REQUESTED BY THE CLIENT FACILITY;~~

5           ~~(5)~~    ~~(6)~~     ~~VERIFYING THAT NON UNITED STATES CITIZENS NURSING~~  
 6 ~~PERSONNEL REFERRED BY THE NURSING STAFF AGENCY HAVE I-9 STATUS;~~

7           ~~(6)~~    (7)     ~~PERFORMING PREEMPLOYMENT VERIFYING PRIOR TO HIRING~~  
 8 ~~OR INITIAL REFERRAL DRUG SCREENING AS A CONDITION FOR ASSIGNMENT IF THE~~  
 9 ~~CLIENT FACILITY HAS A SIMILAR REQUIREMENT FOR FACILITY EMPLOYEES~~  
 10 ~~VERIFYING, PRIOR TO INITIAL REFERRAL OF NURSING PERSONNEL TO A CLIENT~~  
 11 ~~FACILITY BY THE AGENCY, DRUG SCREENING OF NURSING PERSONNEL REFERRED~~  
 12 ~~BY THE AGENCY IF THE CLIENT FACILITY REQUIRES DRUG SCREENING FOR~~  
 13 ~~FACILITY EMPLOYEES;~~

14          ~~(7)~~    (8)     ~~PERFORMING VERIFYING, WHEN THERE IS PROBABLE CAUSE~~  
 15 ~~TO PERFORM A DRUG TEST OR WHEN A CLIENT FACILITY REQUESTS A DRUG TEST,~~  
 16 ~~DRUG TESTING ON OF NURSING PERSONNEL REFERRED BY THE NURSING STAFF~~  
 17 ~~AGENCY, WHEN THERE IS PROBABLE CAUSE TO PERFORM A DRUG TEST BASED ON~~  
 18 ~~THE REQUEST OF A CLIENT;~~

19          ~~(8)~~    (9)     ~~CONDUCTING VERIFYING, PRIOR TO HIRING OR INITIAL~~  
 20 ~~REFERRAL OF NURSING PERSONNEL TO A CLIENT FACILITY BY THE AGENCY,~~  
 21 ~~CRIMINAL BACKGROUND CHECKS OF NURSING PERSONNEL REFERRED BY THE~~  
 22 ~~AGENCY IF THE CLIENT FACILITY REQUIRES CRIMINAL BACKGROUND CHECKS FOR~~  
 23 ~~FACILITY EMPLOYEES IF THE CLIENT FACILITY HAS A SIMILAR REQUIREMENT FOR~~  
 24 ~~FACILITY EMPLOYEES; AND~~

25          ~~(9)~~    (10)    ~~VERIFYING THE REFERENCES OF NURSING PERSONNEL~~  
 26 ~~REFERRED BY THE NURSING STAFF AGENCY;~~

27          ~~(10)~~   ~~COMMUNICATING SCHEDULING POLICIES AND PROCEDURES TO~~  
 28 ~~NURSES AND CLIENT FACILITIES, INCLUDING STATE REQUIREMENTS FOR~~  
 29 ~~STANDARDS OF CARE; AND~~

30          ~~(11)~~   ~~COLLABORATING WITH CLIENT FACILITIES TO ASSURE THAT~~  
 31 ~~NURSING PERSONNEL REFERRED BY THE NURSING STAFF AGENCY COMPLETE~~  
 32 ~~CLIENT SPECIFIC ORIENTATION AS NEEDED FOR THE INDIVIDUAL PLACEMENT.~~

33        (E)     A NURSING STAFF AGENCY SHALL ~~WARRANT~~ ATTEST THAT THE NURSING  
 34 STAFF AGENCY IS IN COMPLIANCE WITH THE:

35           (1)     CIVIL RIGHTS ACT OF 1964;

36           (2)     REHABILITATION ACT OF 1973;

37           (3)     AMERICANS WITH DISABILITIES ACT OF 1990; AND

38           (4)     DRUG FREE WORKPLACE ACT OF 1988, IF APPLICABLE.

1     ~~(F)     THE OFFICE SHALL KEEP A REPORT OF EACH INSPECTION.~~

2     ~~(G)     A NURSING STAFF AGENCY THAT EMPLOYS NURSING PERSONNEL WHO~~  
3 ~~ARE IN VIOLATION OF THE REQUIREMENTS OF THIS TITLE IS SUBJECT TO A PENALTY~~  
4 ~~OF \$10,000 PER INCIDENT OR UP TO \$10,000 PER DAY PER VIOLATION UNTIL THE~~  
5 ~~NURSING STAFF AGENCY COMPLIES WITH THE REQUIREMENTS OF THIS TITLE.~~

6     ~~(H)     FINES COLLECTED UNDER SUBSECTION (G) OF THIS SECTION SHALL BE~~  
7 ~~DEPOSITED INTO THE HEALTH CARE QUALITY ACCOUNT.~~

8     ~~(I)     (F)     THE OFFICE MAY SURVEY INSPECT A NURSING STAFF AGENCY UPON~~  
9 ~~RECEIVING A COMPLAINT, AND MAY GIVE NOTICE OF THE INSPECTION TO THE~~  
10 ~~NURSING STAFF AGENCY.~~

11    ~~(J)     THE OFFICE SHALL ENSURE THAT ALL SURVEYS ARE UNANNOUNCED.~~

12    ~~SECTION 3. AND BE IT FURTHER ENACTED, That the Department of~~  
13 ~~Health and Mental Hygiene, in consultation with the Health Services Cost Review~~  
14 ~~Commission and the Maryland Health Care Commission, shall report to the General~~  
15 ~~Assembly on or before October 1, 2002, in accordance with § 2-1246 of the State~~  
16 ~~Government Article on the prospect of setting rates for nursing staff agencies.~~

17    ~~SECTION 4. AND BE IT FURTHER ENACTED, That the Department of~~  
18 ~~Health and Mental Hygiene, in consultation with the Health Services Cost Review~~  
19 ~~Commission and the Maryland Health Care Commission, shall report to the General~~  
20 ~~Assembly on or before October 1, 2002, in accordance with § 2-1246 of the State~~  
21 ~~Government Article on the trends, utilization rates, and costs of using nursing staff~~  
22 ~~agencies in hospitals and nursing homes.~~

23    ~~SECTION 5. 3. AND BE IT FURTHER ENACTED, That this Act shall take~~  
24 ~~effect October 1, 2001 January 1, 2002.~~