

SENATE BILL 769

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2001 Regular Session
1r2252
CF 1r1138

By: **Senator Collins**

Introduced and read first time: February 7, 2001

Assigned to: Rules

A BILL ENTITLED

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 the Office; providing for the procedures for nursing staff agencies
6 registering with the Office; requiring nursing staff agencies to submit certain
7 information to the Office; requiring the Office to conduct periodic site visits and
8 surveys of nursing staff agencies; requiring the Office to investigate certain
9 factors during the survey; requiring the Office to maintain a report of each
10 survey; providing for certain penalties for certain nursing staff agencies;
11 requiring that fines collected by the Office be deposited into a certain account;
12 requiring the Office to ensure that all surveys are unannounced; requiring the
13 Department of Health and Mental Hygiene to make certain reports to the
14 General Assembly on or before certain dates; and generally relating to quality
15 oversight and improvement of nursing staff agencies.

16 BY transferring
17 Article - Health Occupations
18 Section 8-507
19 Annotated Code of Maryland
20 (2000 Replacement Volume)
21 to be
22 Article - Health - General
23 Section 19-2001
24 Annotated Code of Maryland
25 (2000 Replacement Volume)

26 BY repealing and reenacting, with amendments,
27 Article - Health - General
28 Section 19-2001 to be under the new subtitle "Subtitle 20. Nursing Staff
29 Agencies"
30 Annotated Code of Maryland
31 (2000 Replacement Volume)

1 (As enacted by Section 1 of this Act)

2 BY adding to

3 Article - Health - General

4 Section 19-2002

5 Annotated Code of Maryland

6 (2000 Replacement Volume)

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

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

13 **Article - Health - General**

14 **SUBTITLE 20. NURSING STAFF AGENCIES.**

15 19-2001.

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

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

21 [(2)] (3) "Health care facility" means a hospital or related institution as
22 defined in § 19-301 of [the Health - General Article] THIS ARTICLE.

23 [(3)] (4) "Initially providing or referring" means the first time a nursing
24 staff agency provides or refers a particular licensed practical nurse, registered nurse,
25 or [geriatric] CERTIFIED nursing assistant to a health care facility.

26 [(4)] (5) "Nursing personnel" means:

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

28 1. Licensed practical nurse; or

29 2. Registered nurse; or

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

1 [(5)] (6) (i) "Nursing staff agency" means any person, firm,
2 corporation, partnership, or other business entity engaged in the business of
3 providing or referring nursing personnel to render temporary nursing services at a
4 health care facility in the State.

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

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

9 2.] 1. A nursing staff agency operated by a health care
10 facility solely for the purpose of procuring, furnishing, or referring temporary or
11 permanent nursing personnel for employment at that health care facility;

12 [3.] 2. A home health agency regulated under Title 19,
13 Subtitle 4 of [the Health - General Article] THIS ARTICLE; or

14 [4.] 3. Any nursing personnel procuring, furnishing, or
15 referring their own services to a health care facility without the direct or indirect
16 assistance of a nursing staff agency.

17 (7) "OFFICE" MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE
18 DEPARTMENT.

19 [(6)] (8) "Responsible party" means the individual at a nursing staff
20 agency who controls the day to day operation of the nursing staff agency.

21 (b) All nursing staff agencies shall submit to the [Board] OFFICE, the nursing
22 staff agency's:

23 (1) Business name;

24 (2) Business address;

25 (3) Business telephone number; and

26 (4) Responsible party.

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

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

33 (i) The date on which the current registration expires;

1 (ii) The date by which the renewal application must be received by
2 the [Board] OFFICE for the renewal to be issued and mailed before the registration
3 expires; and

4 (iii) The amount of the renewal fee.

5 (3) Before a registration expires, the nursing staff agency periodically
6 may renew it for an additional term, if the nursing staff agency:

7 (i) Otherwise is entitled to be registered; and

8 (ii) Pays to the [Board] OFFICE the renewal fee set by the [Board]
9 OFFICE.

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

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

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

17 (f) (1) Before initially providing or referring a licensed practical nurse or
18 registered nurse to health care facilities to render temporary nursing services the
19 nursing staff agency shall:

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

22 (ii) Verify the licensure status of the licensed practical nurse or
23 registered nurse.

24 (2) At the time a licensed practical nurse or registered nurse who is
25 being referred to health care facilities by a nursing staff agency must renew their
26 license to practice licensed practical nursing or registered nursing, the nursing staff
27 agency shall:

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

30 (ii) Verify the licensure status of the licensed practical nurse or
31 registered nurse.

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

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

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

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

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

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

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

24 (3) A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR
25 REFER A CERTIFIED NURSING ASSISTANT TO PRACTICE CERTIFIED NURSING UNDER
26 TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE TO A HEALTH CARE FACILITY TO
27 RENDER TEMPORARY NURSING SERVICES.

28 [(i)] (H) (1) Except as provided in paragraph (2) of this subsection:

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

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

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

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

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

5 19-2002.

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

8 (B) THE OFFICE SHALL MAKE A SITE VISIT AND CONDUCT A FULL SURVEY OF
9 EACH REGISTERED NURSING STAFF AGENCY PERIODICALLY.

10 (C) WHEN THE OFFICE CONDUCTS A SURVEY, THE OFFICE SHALL VERIFY
11 THAT THE NURSING PERSONNEL REFERRED BY THE NURSING STAFF AGENCY:

12 (1) (I) IF REGISTERED NURSES OR LICENSED PRACTICAL NURSES,
13 ARE LICENSED BY THE BOARD; OR

14 (II) IF CERTIFIED NURSING ASSISTANTS, ARE CERTIFIED BY THE
15 BOARD; AND

16 (2) ARE COMPLETING CONTINUING EDUCATION REQUIREMENTS.

17 (D) WHEN THE OFFICE CONDUCTS A SURVEY, THE OFFICE SHALL VERIFY
18 THAT THE NURSING STAFF AGENCY HAS DEVELOPED, DOCUMENTED, AND
19 IMPLEMENTED PROCEDURES FOR:

20 (1) SELECTING AND CREDENTIALING NURSING PERSONNEL PROVIDED
21 BY THE AGENCY;

22 (2) VALIDATING COMPETENCIES AND PROCEDURES FOR PERFORMANCE
23 EVALUATION;

24 (3) DISCIPLINING NURSING PERSONNEL PROVIDED BY THE AGENCY;

25 (4) VERIFYING THAT NURSING PERSONNEL REFERRED BY THE NURSING
26 STAFF AGENCY ARE OF SATISFACTORY HEALTH STATUS AND CURRENT
27 IMMUNIZATION STATUS;

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

30 (6) PERFORMING PREEMPLOYMENT DRUG SCREENING AS A CONDITION
31 FOR ASSIGNMENT IF THE CLIENT FACILITY HAS A SIMILAR REQUIREMENT FOR
32 EMPLOYEES;

33 (7) PERFORMING DRUG TESTING ON NURSING PERSONNEL REFERRED
34 BY THE NURSING STAFF AGENCY, WHEN THERE IS PROBABLE CAUSE TO PERFORM A
35 DRUG TEST BASED ON THE REQUEST OF A CLIENT;

1 (8) CONDUCTING CRIMINAL BACKGROUND CHECKS IF THE CLIENT
2 FACILITY HAS A SIMILAR REQUIREMENT FOR EMPLOYEES;

3 (9) VERIFYING THE REFERENCES OF NURSING PERSONNEL REFERRED
4 BY THE NURSING STAFF AGENCY;

5 (10) COMMUNICATING SCHEDULING POLICIES AND PROCEDURES TO
6 NURSES AND CLIENT FACILITIES, INCLUDING STATE REQUIREMENTS FOR
7 STANDARDS OF CARE; AND

8 (11) COLLABORATING WITH CLIENT FACILITIES TO ASSURE THAT
9 NURSING PERSONNEL REFERRED BY THE NURSING STAFF AGENCY COMPLETE
10 CLIENT SPECIFIC ORIENTATION AS NEEDED FOR THE INDIVIDUAL PLACEMENT.

11 (E) A NURSING STAFF AGENCY SHALL WARRANT THAT THE NURSING STAFF
12 AGENCY IS IN COMPLIANCE WITH THE:

13 (1) CIVIL RIGHTS ACT OF 1964;

14 (2) REHABILITATION ACT OF 1973;

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

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

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

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

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

24 (I) THE OFFICE MAY SURVEY A NURSING STAFF AGENCY UPON RECEIVING A
25 COMPLAINT.

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

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

32 SECTION 4. AND BE IT FURTHER ENACTED, That the Department of
33 Health and Mental Hygiene, in consultation with the Health Services Cost Review
34 Commission and the Maryland Health Care Commission, shall report to the General
35 Assembly on or before October 1, 2002, in accordance with § 2-1246 of the State

1 Government Article on the trends, utilization rates, and costs of using nursing staff
2 agencies in hospitals and nursing homes.

3 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.