

SENATE BILL 769

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2001 Regular Session
11r2252
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By: **Senator Collins**
Introduced and read first time: February 7, 2001
Assigned to: Rules
Re-referred to: Economic and Environmental Affairs, February 14, 2001

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 20, 2001

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; providing for~~
12 ~~certain penalties for certain nursing staff agencies; requiring that fines collected~~
13 ~~by the Office be deposited into a certain account; requiring the Office to ensure~~
14 ~~that all surveys are unannounced; requiring the Department of Health and~~
15 ~~Mental Hygiene to make certain reports to the General Assembly on or before~~
16 ~~certain dates; providing for a delayed effective date; and generally relating to~~
17 quality oversight and improvement of nursing staff agencies.

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

1 Annotated Code of Maryland
2 (2000 Replacement Volume)

3 BY repealing and reenacting, with amendments,
4 Article - Health - General
5 Section 19-2001 to be under the new subtitle "Subtitle 20. Nursing Staff
6 Agencies"
7 Annotated Code of Maryland
8 (2000 Replacement Volume)
9 (As enacted by Section 1 of this Act)

10 BY adding to
11 Article - Health - General
12 Section 19-2002
13 Annotated Code of Maryland
14 (2000 Replacement Volume)

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

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

21 **Article - Health - General**

22 **SUBTITLE 20. NURSING STAFF AGENCIES.**

23 19-2001.

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

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

29 [(2)] (3) "Health care facility" means a hospital or related institution as
30 defined in § 19-301 of [the Health - General Article] THIS ARTICLE.

31 [(3)] (4) "Initially providing or referring" means the first time a nursing
32 staff agency provides or refers a particular licensed practical nurse, registered nurse,
33 or [geriatric] CERTIFIED nursing assistant to a health care facility.

34 [(4)] (5) "Nursing personnel" means:

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

1 1. Licensed practical nurse; or

2 2. Registered nurse; or

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

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

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

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

15 2.] 1. A nursing staff agency operated by a health care
16 facility solely for the purpose of procuring, furnishing, or referring temporary or
17 permanent nursing personnel for employment at that health care facility;

18 [3.] 2. A home health agency regulated under Title 19,
19 Subtitle 4 of [the Health - General Article] THIS ARTICLE; or

20 [4.] 3. Any nursing personnel procuring, furnishing, or
21 referring their own services to a health care facility without the direct or indirect
22 assistance of a nursing staff agency.

23 (7) "OFFICE" MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE
24 DEPARTMENT.

25 [(6)] (8) "Responsible party" means the individual at a nursing staff
26 agency who controls the day to day operation of the nursing staff agency.

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

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

31 (I) THE nursing staff agency's:

32 (⊕) 1. Business name;

33 (⊖) 2. Business address;

34 (⊗) 3. Business telephone number; and

1 (4) 4. Responsible party; AND

2 (II) ANY OTHER INFORMATION THE OFFICE REQUIRES BY
3 REGULATION TO ASSURE COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

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

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

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

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

14 (iii) The amount of the renewal fee.

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

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

18 (ii) Pays to the [Board] OFFICE the renewal fee set by the [Board]
19 OFFICE.

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

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

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

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

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

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

34 (2) At the time a licensed practical nurse ~~or,~~ registered nurse, OR
35 CERTIFIED NURSING ASSISTANT who is being referred to health care facilities by a

1 nursing staff agency must renew their license to practice licensed practical nursing
2 ~~or~~, registered nursing, OR CERTIFIED NURSING ASSISTANT, the nursing staff agency
3 shall:

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

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

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

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

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

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

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

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

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

36 (3) A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR ONLY
37 REFER A ~~CERTIFIED~~ NURSING ASSISTANT WHO IS CERTIFIED UNDER TITLE 8,
38 SUBTITLE 6 OF THE HEALTH OCCUPATIONS ARTICLE TO PERFORM DELEGATED
39 NURSING FUNCTIONS TO PRACTICE CERTIFIED NURSING UNDER TITLE 8 OF THE

1 ~~HEALTH OCCUPATIONS ARTICLE~~ TO A HEALTH CARE FACILITY TO RENDER
2 TEMPORARY DELEGATED NURSING SERVICES.

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

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

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

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

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

18 (I) FOR A FIRST OFFENSE, UP TO \$2,500 PER VIOLATION OR UP TO
19 \$2,500 PER DAY IN VIOLATION UNTIL THE NURSING STAFF AGENCY COMPLIES WITH
20 THE REQUIREMENTS OF THIS SUBTITLE;

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

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

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

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

29 19-2002.

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

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

1 (C) WHEN THE OFFICE CONDUCTS ~~A SURVEY~~ AN INSPECTION, THE OFFICE
2 SHALL VERIFY THAT THE NURSING PERSONNEL REFERRED BY THE NURSING STAFF
3 AGENCY:

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

6 (II) IF CERTIFIED NURSING ASSISTANTS, ARE CERTIFIED BY THE
7 BOARD; AND

8 (2) ~~ARE COMPLETING~~ HAVE COMPLETED CONTINUING EDUCATION
9 REQUIREMENTS.

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

13 (1) SELECTING AND CREDENTIALING NURSING PERSONNEL PROVIDED
14 BY THE AGENCY;

15 (2) ~~VALIDATING COMPETENCIES AND PROCEDURES FOR PERFORMANCE~~
16 EVALUATION SKILLS PRIOR TO REFERRAL;

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

18 (3) TRACKING AND ACTING ON SERIOUS OR LIFE-THREATENING
19 COMPLAINTS RECEIVED BY A CLIENT OR THEIR AGENT;

20 (4) REFERRAL OF AN ACTION OR CONDITION UNDER § 19-2001(H) OF
21 THIS SUBTITLE;

22 (4) (5) ~~VERIFYING THAT NURSING PERSONNEL REFERRED BY THE~~
23 ~~NURSING STAFF AGENCY ARE OF SATISFACTORY HEALTH STATUS AND CURRENT~~
24 ~~IMMUNIZATION STATUS~~ HAVE RECEIVED THE NECESSARY TESTING AND
25 IMMUNIZATION AS REQUIRED OR REQUESTED BY THE CLIENT;

26 (5) (6) ~~VERIFYING THAT NON UNITED STATES CITIZENS NURSING~~
27 ~~PERSONNEL REFERRED BY THE NURSING STAFF AGENCY HAVE I-9 STATUS;~~

28 (6) (7) ~~PERFORMING PREEMPLOYMENT VERIFYING PRIOR TO HIRING~~
29 OR INITIAL REFERRAL DRUG SCREENING AS A CONDITION FOR ASSIGNMENT IF THE
30 CLIENT FACILITY HAS A SIMILAR REQUIREMENT FOR FACILITY EMPLOYEES;

31 (7) (8) ~~PERFORMING VERIFYING~~ DRUG TESTING ON NURSING
32 PERSONNEL REFERRED BY THE NURSING STAFF AGENCY, WHEN THERE IS
33 PROBABLE CAUSE TO PERFORM A DRUG TEST BASED ON THE REQUEST OF A CLIENT;

34 (8) (9) ~~CONDUCTING VERIFYING PRIOR TO HIRING OR INITIAL~~
35 REFERRAL CRIMINAL BACKGROUND CHECKS IF THE CLIENT FACILITY HAS A
36 SIMILAR REQUIREMENT FOR FACILITY EMPLOYEES; AND

1 ~~(9)~~ (10) VERIFYING THE REFERENCES OF NURSING PERSONNEL
2 REFERRED BY THE NURSING STAFF AGENCY;

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

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

9 (E) A NURSING STAFF AGENCY SHALL WARRANT ATTEST THAT THE NURSING
10 STAFF AGENCY IS IN COMPLIANCE WITH THE:

11 (1) CIVIL RIGHTS ACT OF 1964;

12 (2) REHABILITATION ACT OF 1973;

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

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

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

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

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

22 ~~(I)~~ (F) THE OFFICE MAY ~~SURVEY~~ INSPECT A NURSING STAFF AGENCY UPON
23 RECEIVING A COMPLAINT.

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

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

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

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