

(PRE-FILED)

By: **Chairman, Environmental Matters Committee (Departmental - Health and Mental Hygiene)**

Requested: October 19, 2001

Introduced and read first time: January 9, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health - Day Care Centers for Adults - Sanctions and Penalties**

3 FOR the purpose of authorizing the Department of Health and Mental Hygiene to
4 impose certain sanctions for certain deficiencies found in day care centers for
5 adults; establishing certain monetary penalties; specifying that the penalties
6 are to be deposited in a certain fund; defining certain terms; and generally
7 relating to sanctions and penalties for certain deficiencies in day care centers for
8 adults.

9 BY repealing and reenacting, with amendments,
10 Article - Health - General
11 Section 14-301
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2001 Supplement)

14 BY adding to
15 Article - Health - General
16 Section 14-305 through 14-309
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2001 Supplement)

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

21 **Article - Health - General**

22 14-301.

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

24 (B) "ACTUAL HARM DEFICIENCY" MEANS A CONDITION EXISTING IN A DAY
25 CARE CENTER FOR ADULTS OR AN ACTION OR INACTION BY THE DAY CARE CENTER

1 STAFF THAT HAS CAUSED PHYSICAL OR EMOTIONAL INJURY OR IMPAIRMENT TO A
2 PARTICIPANT.

3 [(b)] (C) "Day care center for adults" means a place that:

4 (1) Is operated to provide, with or without charge, care for medically
5 handicapped adults; and

6 (2) Either is:

7 (i) Designated for group day care for 4 or more medically
8 handicapped adults; or

9 (ii) A family home that provides day care for 2 or 3 medically
10 handicapped adults.

11 (D) "DEFICIENCY" MEANS A CONDITION EXISTING IN A DAY CARE CENTER FOR
12 ADULTS OR AN ACTION OR INACTION BY THE DAY CARE CENTER STAFF THAT
13 RESULTS IN POTENTIAL FOR MORE THAN MINIMAL HARM, ACTUAL HARM, OR
14 SERIOUS AND IMMEDIATE THREAT TO ONE OR MORE PARTICIPANTS.

15 [(c)] (E) "Medically handicapped adult" means an individual who:

16 (1) Is 16 years old or older;

17 (2) Lives alone or with a spouse, relative, or friend; and

18 (3) Has a disability that is:

19 (i) A reasonably static physical impairment that prevents gainful
20 employment or the accomplishment of the routine of normal daily activities outside of
21 an institutional or sheltered environment; or

22 (ii) A permanent or recurrent mental impairment that requires
23 domiciliary or institutional care in a sheltered environment.

24 (F) "ONGOING PATTERN" MEANS THE OCCURRENCE OF ANY POTENTIAL FOR
25 MORE THAN MINIMAL HARM OR GREATER DEFICIENCY ON TWO CONSECUTIVE
26 ON-SITE VISITS AS A RESULT OF ANNUAL SURVEYS, FOLLOW-UP VISITS, ANY
27 UNSCHEDULED VISITS, OR COMPLAINT INVESTIGATIONS.

28 (G) "PARTICIPANT" MEANS A HEALTH-IMPAIRED ADULT WHOSE:

29 (1) ILLNESS OR DISABILITY DOES NOT REQUIRE 24-HOUR INPATIENT
30 CARE; AND

31 (2) NEEDS CANNOT BE SATISFACTORILY MET IN AN EPISODIC
32 AMBULATORY CARE SETTING BUT REQUIRE AT LEAST 1 DAY OF CARE A WEEK IN A
33 DAY CARE PROGRAM.

1 (H) "POTENTIAL FOR MORE THAN MINIMAL HARM DEFICIENCY" MEANS A
2 CONDITION EXISTING IN A DAY CARE CENTER FOR ADULTS OR AN ACTION OR
3 INACTION BY THE DAY CARE CENTER STAFF THAT HAS THE POTENTIAL TO CAUSE
4 ACTUAL HARM TO A PARTICIPANT.

5 (I) "SERIOUS AND IMMEDIATE THREAT" MEANS A SITUATION IN WHICH
6 IMMEDIATE CORRECTIVE ACTION IS NECESSARY BECAUSE A CENTER'S
7 NONCOMPLIANCE WITH ONE OR MORE STATE REGULATIONS HAS CAUSED OR IS
8 LIKELY TO CAUSE SERIOUS INJURY, HARM, IMPAIRMENT TO, OR DEATH OF A
9 PARTICIPANT RECEIVING CARE IN THE DAY CARE CENTER FOR ADULTS.

10 (J) "SUSTAINED COMPLIANCE" MEANS A PERIOD OF 30 DAYS FOLLOWING THE
11 DATE OF NOTICE OF CORRECTIVE ACTION WITH NO DEFICIENCIES.

12 14-305.

13 (A) IF A DEFICIENCY EXISTS, THE SECRETARY MAY IMPOSE SANCTIONS THAT
14 INCLUDE:

15 (1) A DIRECTED PLAN OF CORRECTION WITH CORRECTIVE MEASURES
16 NECESSARY TO PROTECT PARTICIPANTS;

17 (2) IMPOSING ADEQUATE STAFFING LEVELS IN A DAY CARE CENTER
18 FOR ADULTS;

19 (3) APPOINTING A STATE MONITOR SUBJECT TO § 14-309 OF THIS
20 SUBTITLE;

21 (4) IMPOSING A CIVIL MONEY PENALTY; AND

22 (5) SUSPENDING OR REVOKING A LICENSE.

23 (B) A CIVIL MONEY PENALTY MAY BE IMPOSED WHEN A DEFICIENCY EXISTS
24 OR AN ONGOING PATTERN OF DEFICIENCIES EXISTS IN A DAY CARE CENTER FOR
25 ADULTS.

26 (C) IN DETERMINING WHETHER A CIVIL MONEY PENALTY IS TO BE IMPOSED,
27 THE SECRETARY SHALL CONSIDER, PURSUANT TO GUIDELINES SET FORTH IN
28 REGULATIONS ADOPTED BY THE SECRETARY, THE FOLLOWING FACTORS:

29 (1) THE NUMBER, NATURE, AND SERIOUSNESS OF THE DEFICIENCIES;

30 (2) THE EXTENT TO WHICH THE DEFICIENCY OR DEFICIENCIES ARE
31 PART OF AN ONGOING PATTERN DURING THE PRECEDING 24 MONTHS;

32 (3) THE DEGREE OF RISK TO THE HEALTH, LIFE, OR SAFETY OF THE
33 PARTICIPANTS OF THE DAY CARE CENTER FOR ADULTS THAT IS CAUSED BY THE
34 DEFICIENCY OR DEFICIENCIES;

35 (4) THE EFFORTS MADE BY, AND THE ABILITY OF, THE DAY CARE
36 CENTER FOR ADULTS TO CORRECT THE DEFICIENCY OR DEFICIENCIES; AND

1 (5) A CENTER'S PRIOR HISTORY OF COMPLIANCE.

2 (D) UPON DETERMINATION BY THE DEPARTMENT THAT A DEFICIENCY OR
3 DEFICIENCIES EXIST, THE DEPARTMENT SHALL NOTIFY THE DAY CARE CENTER FOR
4 ADULTS THAT:

5 (1) UNLESS CORRECTIVE ACTION TAKEN PURSUANT TO THIS SECTION
6 IS SUBSTANTIALLY COMPLETED, A CIVIL MONEY PENALTY WILL BE IMPOSED; OR

7 (2) AN ORDER IMPOSING A CIVIL MONEY PENALTY WILL BE ISSUED,
8 PURSUANT TO § 14-307 OF THIS SUBTITLE WHICH SHALL INCLUDE A LIST OF ALL
9 DEFICIENCIES AND NOTICE THAT A CIVIL MONEY PENALTY MAY BE IMPOSED UNTIL
10 THE TIME THAT THE CITED DEFICIENCIES HAVE BEEN RECTIFIED.

11 14-306.

12 (A) IF A CIVIL MONEY PENALTY IS PROPOSED, THE SECRETARY SHALL ISSUE
13 AN ORDER WHICH SHALL STATE THE BASIS ON WHICH THE ORDER IS MADE, THE
14 DEFICIENCY OR DEFICIENCIES ON WHICH THE ORDER IS BASED, THE AMOUNT OF
15 CIVIL MONEY PENALTIES TO BE IMPOSED, AND THE MANNER IN WHICH THE
16 AMOUNT OF CIVIL MONEY PENALTIES IMPOSED WAS CALCULATED.

17 (B) AN ORDER ISSUED PURSUANT TO SUBSECTION (A) OF THIS SECTION
18 SHALL BE VOID UNLESS ISSUED WITHIN 60 DAYS OF THE INSPECTION OR
19 REINSPECTION AT WHICH THE DEFICIENCY IS IDENTIFIED.

20 14-307.

21 (A) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR POTENTIAL
22 FOR MORE THAN MINIMAL HARM DEFICIENCIES:

23 (1) MAY NOT EXCEED \$5,000 PER INSTANCE; OR

24 (2) MAY NOT EXCEED \$500 PER DAY FOR AN ONGOING PATTERN OF
25 DEFICIENCIES UNTIL THE DAY CARE CENTER FOR ADULTS IS IN COMPLIANCE.

26 (B) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR ACTUAL
27 HARM DEFICIENCIES:

28 (1) MAY NOT EXCEED \$5,000 PER INSTANCE; OR

29 (2) MAY NOT EXCEED \$2,500 PER DAY FOR AN ONGOING PATTERN OF
30 DEFICIENCIES UNTIL THE DAY CARE CENTER FOR ADULTS IS IN COMPLIANCE.

31 (C) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION FOR A SERIOUS
32 AND IMMEDIATE THREAT:

33 (1) MAY NOT EXCEED \$10,000 PER INSTANCE; OR

34 (2) MAY NOT EXCEED \$5,000 PER DAY FOR AN ONGOING PATTERN OF
35 DEFICIENCIES UNTIL THE DAY CARE CENTER FOR ADULTS IS IN COMPLIANCE.

1 (D) IN SETTING THE AMOUNT OF A CIVIL MONEY PENALTY UNDER THIS
2 SECTION, THE SECRETARY SHALL CONSIDER, PURSUANT TO GUIDELINES SET FORTH
3 IN REGULATIONS ADOPTED BY THE SECRETARY, THE FOLLOWING FACTORS:

4 (1) THE NUMBER, NATURE, AND SERIOUSNESS OF THE DEFICIENCIES;

5 (2) THE DEGREE OF RISK TO THE HEALTH, LIFE, OR SAFETY OF THE
6 PARTICIPANTS OF THE DAY CARE CENTER FOR ADULTS CAUSED BY THE DEFICIENCY
7 OR DEFICIENCIES;

8 (3) THE EFFORTS MADE BY THE DAY CARE CENTER FOR ADULTS TO
9 CORRECT THE DEFICIENCY OR DEFICIENCIES;

10 (4) WHETHER THE AMOUNT OF THE PROPOSED CIVIL MONEY PENALTY
11 WILL JEOPARDIZE THE FINANCIAL ABILITY OF THE DAY CARE CENTER FOR ADULTS
12 TO CONTINUE OPERATING AS A DAY CARE CENTER FOR ADULTS; AND

13 (5) SUCH OTHER FACTORS AS JUSTICE MAY REQUIRE.

14 (E) ALL CIVIL MONEY PENALTIES COLLECTED UNDER THIS SUBSECTION
15 SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.

16 14-308.

17 (A) WHEN THE DEPARTMENT DETERMINES THAT THERE IS A DEFICIENCY IN
18 A DAY CARE CENTER FOR ADULTS, THE DEPARTMENT MAY APPOINT AN
19 INDEPENDENT MONITOR TO OVERSEE EFFORTS MADE BY THE DAY CARE CENTER
20 FOR ADULTS TO ACHIEVE COMPLIANCE WITH THE STATE REGULATIONS GOVERNING
21 DAY CARE CENTERS FOR ADULTS.

22 (B) THE APPOINTMENT OF A STATE MONITOR IS AN INTERMEDIATE
23 SANCTION THAT MAY BE IN ADDITION TO OR IN LIEU OF OTHER SANCTIONS.

24 (C) THE STATE MONITOR'S DUTIES MAY INCLUDE:

25 (1) PERIODIC INSPECTIONS OF A DAY CARE CENTER FOR ADULTS FOR
26 THE PURPOSE OF ASSESSING THE CENTER'S COMPLIANCE WITH STATE
27 REGULATIONS; AND

28 (2) REPORTING TO THE DEPARTMENT AND THE DAY CARE CENTER FOR
29 ADULTS ITS FINDINGS.

30 (D) THE STATE MONITOR MAY NOT BE AN EMPLOYEE OF THE DEPARTMENT.

31 (E) THE DAY CARE CENTER FOR ADULTS SHALL BE RESPONSIBLE FOR THE
32 COSTS ASSOCIATED WITH THE APPOINTMENT OF A STATE MONITOR TO THE DAY
33 CARE CENTER FOR ADULTS.

1 14-309.

2 (A) WITHIN 15 DAYS OF THE REQUEST FOR AN APPEAL BY A DAY CARE
3 CENTER FOR ADULTS, THE DAY CARE CENTER FOR ADULTS SHALL DEPOSIT THE
4 AMOUNT OF THE CIVIL MONEY PENALTY IN AN INTEREST BEARING ESCROW
5 ACCOUNT, THE DAY CARE CENTER FOR ADULTS SHALL BEAR ANY COST ASSOCIATED
6 WITH ESTABLISHING THE ESCROW ACCOUNT, AND THE ACCOUNT SHALL BE TITLED
7 IN THE NAME OF THE DAY CARE CENTER FOR ADULTS AND THE DEPARTMENT OF
8 HEALTH AND MENTAL HYGIENE AS JOINT OWNERS.

9 (B) WHEN THE SECRETARY ISSUES THE FINAL DECISION OF THE
10 DEPARTMENT:

11 (1) IF THE DECISION UPHOLDS THE IMPOSITION OF THE FULL CIVIL
12 MONEY PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE DEPARTMENT
13 WITH ACCRUED INTEREST WITHIN 15 DAYS FROM THE DATE OF THE DECISION;

14 (2) IF THE DECISION UPHOLDS THE IMPOSITION OF A CIVIL PENALTY,
15 BUT REDUCES THE AMOUNT OF THE CIVIL PENALTY, THE AMOUNT DUE THE
16 DEPARTMENT WILL BE RELEASED TO THE DEPARTMENT WITH ACCRUED INTEREST
17 WITHIN 15 DAYS OF THE DATE OF THE DECISION AND THE BALANCE WILL BE
18 RELEASED TO THE DAY CARE CENTER FOR ADULTS WITHIN 15 DAYS OF THE DATE OF
19 THE DECISION; OR

20 (3) IF THE DECISION REVERSES THE IMPOSITION OF THE CIVIL
21 PENALTY, THE ESCROW FUNDS WILL BE RELEASED TO THE DAY CARE CENTER FOR
22 ADULTS WITHIN 15 DAYS OF THE DECISION.

23 (C) (1) A HEARING ON THE APPEAL SHALL BE HELD IN ACCORDANCE WITH
24 THE ADMINISTRATIVE PROCEDURE ACT, UNDER TITLE 10, SUBTITLE 2 OF THE STATE
25 GOVERNMENT ARTICLE.

26 (2) THE SECRETARY SHALL HAVE THE BURDEN OF PROOF WITH
27 RESPECT TO THE IMPOSITION OF THE CIVIL MONEY PENALTIES UNDER § 14-308 OF
28 THIS SUBTITLE.

29 (3) A DECISION SHALL BE RENDERED BY THE OFFICE OF
30 ADMINISTRATIVE HEARINGS WITHIN 10 WORKING DAYS OF THE HEARING.

31 (D) A DAY CARE CENTER FOR ADULTS IS ENTITLED TO A 40% REDUCTION IN
32 THE AMOUNT OF THE CIVIL MONEY PENALTY IF IT WAIVES ITS RIGHT TO A HEARING
33 WITHIN 30 DAYS OF THE DEPARTMENT'S ORDER.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2002.