

SENATE BILL 413

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2003 Regular Session
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By: **Senators Kelley, Della, Exum, Gladden, Hollinger, Hooper, Klausmeier,
Middleton, Pinsky, and Stone**

Introduced and read first time: January 31, 2003

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Division of Licensing and Monitoring of Residential Child Care Programs**

3 FOR the purpose of requiring a person providing residential services to certain
4 children to have a certain license; providing for a certain scope; establishing the
5 Division of Licensing and Monitoring of Residential Child Care Programs in the
6 Office of Health Care Quality in the Department of Health and Mental Hygiene;
7 requiring the Division to license and monitor certain programs; authorizing the
8 Division to impose certain sanctions; requiring the Subcabinet for Children,
9 Youth, and Families to have oversight authority over the Division; requiring the
10 Subcabinet to establish a certain database and adopt certain regulations;
11 requiring a person to be licensed by the Division before the person may operate
12 a residential child care program; requiring an applicant to meet certain
13 qualifications and submit a certain application; requiring the Division to take
14 certain actions upon receipt of a complete application; requiring the Division to
15 serve as a single point of entry for an applicant and a certain current provider;
16 requiring the Division to provide certain information and coordinate between
17 certain entities; establishing certain penalties; prohibiting a person from
18 operating, attempting to operate, or holding one's self out as operating as a
19 residential child care program unless licensed by the Division; requiring a
20 person to be licensed by the Division before a person may operate as a child care
21 home; requiring a person to be licensed by the Division before the person may
22 operate as a child care institution; defining certain terms; altering certain
23 definitions; and generally relating to licensing and monitoring of residential
24 child care programs.

25 BY repealing and reenacting, without amendments,
26 Article - Health - General
27 Section 1-101(a) and (c)
28 Annotated Code of Maryland
29 (2000 Replacement Volume and 2002 Supplement)

30 BY repealing and reenacting, with amendments,
31 Article - Health - General

1 Section 10-501, 10-514, and 7-903(a)
2 Annotated Code of Maryland
3 (2000 Replacement Volume and 2002 Supplement)

4 BY adding to
5 Article - Health - General
6 Section 24-1101 through 24-1108, inclusive, to be under the new subtitle
7 "Subtitle 11. Division of Licensing and Monitoring of Residential Child
8 Care Programs"
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2002 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article 83C - Juvenile Justice
13 Section 2-123 and 2-124
14 Annotated Code of Maryland
15 (1998 Replacement Volume and 2002 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - Family Law
18 Section 5-508, 5-509, 5-509.1, and 5-526
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2002 Supplement)

21 Preamble

22 WHEREAS, The Task Force to Study Licensing and Monitoring of
23 Community-Based Homes for Children reported among its findings the uneven
24 application of standards and different interpretations of regulations by the three
25 agencies which license and monitor group homes for children (the Department of
26 Human Resources, the Department of Juvenile Justice, and the Department of
27 Health and Mental Hygiene); and

28 WHEREAS, There is no formal, systematic method of interagency
29 communication on issues affecting the licensing of residential child care programs;
30 and

31 WHEREAS, There is no centralized database for collecting, profiling, analyzing,
32 and evaluating licensed and certified residential child care programs for children on a
33 24-hour, 7 day-a-week basis; and

34 WHEREAS, There is no single point for inquiries or for the registration of
35 complaints; and

36 WHEREAS, Provider rates for residential child care programs for children
37 should continue to be set by the Maryland State Department of Education, and should

1 be based on a system of measurable outcomes, as well as the amount and type of
2 services offered to children in the care of a residential provider; now, therefore,

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

5 **Article - Health - General**

6 1-101.

7 (a) In this article the following words have the meanings indicated.

8 (c) "Department" means the Department of Health and Mental Hygiene.

9 10-501.

10 In Part I of this subtitle, "license" means a license issued by the Department to
11 operate a private, inpatient facility THAT IS NOT LICENSED UNDER TITLE 24,
12 SUBTITLE 11 OF THIS ARTICLE.

13 10-514.

14 (a) In Part II of this subtitle the following words have the meanings indicated.

15 (b) "Large private group home" means a private group home that admits at
16 least 9 but not more than 16 individuals.

17 (c) "License" means a license issued by the Secretary to operate a private
18 group home THAT IS NOT LICENSED UNDER TITLE 24, SUBTITLE 11 OF THIS ARTICLE.

19 (d) (1) "Private group home" means a residence in which individuals who
20 have been or are under treatment for a mental disorder may be provided care or
21 treatment in a homelike environment.

22 (2) "Private group home" does not include:

23 (i) Any facility that is owned by or leased to this State or any
24 public agency;

25 (ii) Any facility that is regulated by the Department of Juvenile
26 Justice;

27 (iii) Any facility that is regulated by the Mental Retardation and
28 Developmental Disabilities Administration;

29 (iv) Any facility that is organized wholly or partly to make a profit;
30 or

31 (v) A foster home that is the domicile of the foster parent.

1 (e) "Small private group home" means a private group home that admits at
 2 least 4 but not more than 8 individuals.

3 7-903.

4 (a) (1) In addition to any other license required by law, a person shall be
 5 licensed by the Administration before the person may provide the following services to
 6 an individual with developmental disability or a recipient of individual support
 7 services:

8 [(1)] (I) Day habilitation services;

9 [(2)] (II) Residential services TO ADULTS;

10 [(3)] (III) Services coordination;

11 [(4)] (IV) Vocational services;

12 [(5)] (V) More than 1 family support service, as defined under § 7-701 of
 13 this title;

14 [(6)] (VI) More than 1 individual support service; and

15 [(7)] (VII) More than 1 community supported living arrangements service.

16 (2) A PERSON SHALL BE LICENSED UNDER TITLE 24, SUBTITLE 11 OF
 17 THIS ARTICLE BEFORE THE PERSON MAY PROVIDE RESIDENTIAL SERVICES TO A
 18 CHILD WITH DEVELOPMENTAL DISABILITIES OR A RECIPIENT OF INDIVIDUAL
 19 SUPPORT SERVICES THAT ARE PROVIDED IN A GROUP HOME.

20 SUBTITLE 11. DIVISION OF LICENSING AND MONITORING OF RESIDENTIAL CHILD
 21 CARE PROGRAMS.

22 24-1101.

23 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 24 INDICATED.

25 (B) "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 21 YEARS, UNLESS
 26 OTHERWISE DEFINED IN REGULATIONS OF AN AGENCY THAT SERVES CHILDREN IN
 27 NEED OF PLACEMENT IN A RESIDENTIAL CHILD CARE PROGRAM.

28 (C) "RESIDENTIAL CHILD CARE PROGRAM" MEANS A PROGRAM THAT
 29 PROVIDES 24-HOUR CARE FOR CHILDREN WITHIN A STRUCTURED SET OF SERVICES
 30 AND ACTIVITIES THAT ARE DESIGNED TO ACHIEVE SPECIFIC OBJECTIVES RELATIVE
 31 TO THE NEEDS OF THE CHILDREN SERVED, INCLUDING:

32 (I) FOOD;

33 (II) SHELTER;

- 1 (III) EDUCATION;
- 2 (IV) SOCIAL SERVICES;
- 3 (V) HEALTH;
- 4 (VI) MENTAL HEALTH; OR
- 5 (VII) RECREATION.

6 (D) "DIVISION" MEANS THE DIVISION OF LICENSING AND MONITORING OF
7 RESIDENTIAL CHILD CARE PROGRAMS ESTABLISHED UNDER THIS SUBTITLE.

8 (E) "PROVIDER" MEANS AN OPERATOR OF A RESIDENTIAL CHILD CARE
9 PROGRAM.

10 (F) "SUBCABINET" MEANS THE SUBCABINET FOR CHILDREN, YOUTH, AND
11 FAMILIES.

12 24-1102.

13 THIS SUBTITLE DOES NOT APPLY TO THE CARE OF CHILDREN BY:

- 14 (1) A PARENT OR GUARDIAN OF THE CHILD;
- 15 (2) AN INDIVIDUAL RELATED TO THE CHILD BY BLOOD OR MARRIAGE
16 WITHIN FOUR DEGREES OF CONSANGUINITY OR AFFINITY UNDER THE CIVIL LAW
17 RULE;
- 18 (3) A PERSON WHO:
- 19 (I) EXERCISES TEMPORARY CARE, CUSTODY, OR CONTROL OVER
20 THE CHILD AT THE REQUEST OF A PARENT OR GUARDIAN OF THE CHILD; AND
- 21 (II) IS NOT OTHERWISE REQUIRED TO BE LICENSED;
- 22 (4) A PERSON:
- 23 (I) WITH WHOM THE CHILD IS PLACED IN INDIVIDUAL FAMILY
24 CARE OR FOSTER CARE BY A LICENSED CHILD PLACEMENT AGENCY, A COURT OF
25 COMPETENT JURISDICTION, THE DEPARTMENT, THE DEPARTMENT OF HUMAN
26 RESOURCES, OR THE DEPARTMENT OF JUVENILE JUSTICE; AND
- 27 (II) WHO IS OTHERWISE REQUIRED TO BE LICENSED;
- 28 (5) AN INSTITUTION THAT IS OPERATED BY THE DEPARTMENT, THE
29 DEPARTMENT OF HUMAN RESOURCES, THE DEPARTMENT OF JUVENILE JUSTICE, OR
30 A POLITICAL SUBDIVISION OF THE STATE;
- 31 (6) A YOUTH CAMP SUBJECT TO CERTIFICATION BY THE DEPARTMENT;
32 OR

1 (7) A FACILITY SUBJECT TO THE CERTIFICATE OF NEED PROCESS
2 UNDER STATE LAW.

3 24-1103.

4 (A) THERE IS A DIVISION OF LICENSING AND MONITORING OF RESIDENTIAL
5 CHILD CARE PROGRAMS IN THE OFFICE OF HEALTH CARE QUALITY IN THE
6 DEPARTMENT.

7 (B) THE DIVISION:

8 (1) SHALL LICENSE AND MONITOR RESIDENTIAL CHILD CARE
9 PROGRAMS IN THE STATE; AND

10 (2) MAY IMPOSE A SANCTION FOR A VIOLATION OF A LICENSING OR
11 MONITORING REQUIREMENT ESTABLISHED BY THE SUBCABINET THROUGH
12 REGULATIONS.

13 (C) THE SUBCABINET SHALL:

14 (1) HAVE OVERSIGHT AUTHORITY OVER THE DIVISION;

15 (2) ESTABLISH A CENTRAL DATABASE OF INFORMATION ABOUT
16 RESIDENTIAL CHILD CARE PROGRAMS IN THE STATE THAT INCLUDES INFORMATION
17 ABOUT:

18 (I) LICENSING;

19 (II) MONITORING ACTIVITIES;

20 (III) CORRECTIVE ACTIONS TAKEN BY A RESIDENTIAL CHILD CARE
21 PROGRAM; AND

22 (IV) SANCTIONS IMPOSED ON A RESIDENTIAL CHILD CARE
23 PROGRAM.

24 (D) THE DATABASE ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION
25 SHALL BE:

26 (1) MAINTAINED BY THE DIVISION;

27 (2) MADE ACCESSIBLE TO:

28 (I) THE SUBCABINET;

29 (II) THE DEPARTMENT;

30 (III) THE DEPARTMENT OF HUMAN RESOURCES; AND

31 (IV) THE DEPARTMENT OF JUVENILE JUSTICE.

1 (E) THE SUBCABINET SHALL ADOPT REGULATIONS TO CARRY OUT THE
2 PROVISIONS OF THIS SUBTITLE.

3 24-1104.

4 A PERSON SHALL BE LICENSED BY THE DIVISION BEFORE THE PERSON MAY
5 OPERATE A RESIDENTIAL CHILD CARE PROGRAM FOR CHILDREN IN THE STATE.

6 24-1105.

7 (A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL:

8 (1) BE INCORPORATED; AND

9 (2) MEET THE REQUIREMENTS OF:

10 (I) SUBCABINET REGULATIONS REGARDING RESIDENTIAL CHILD
11 CARE PROGRAMS; AND

12 (II) ANY OTHER REGULATIONS ADOPTED UNDER THIS SUBTITLE.

13 (B) AN APPLICANT FOR A LICENSE SHALL SUBMIT AN APPLICATION TO THE
14 DIVISION ON A FORM THE DIVISION REQUIRES.

15 (C) UPON RECEIPT OF A COMPLETED APPLICATION, THE DIVISION SHALL:

16 (1) EVALUATE THE APPLICATION;

17 (2) INSPECT THE PROPOSED PHYSICAL PLANT FOR THE RESIDENTIAL
18 CHILD CARE PROGRAM; AND

19 (3) ISSUE OR DENY THE LICENSE.

20 24-1106.

21 (A) THE DIVISION SHALL SERVE AS A SINGLE POINT OF ENTRY FOR:

22 (1) AN APPLICANT; AND

23 (2) A CURRENT PROVIDER THAT WISHES TO EXPAND AN EXISTING
24 RESIDENTIAL CHILD CARE PROGRAM.

25 (B) AS THE SINGLE POINT OF ENTRY, THE DIVISION SHALL:

26 (1) PROVIDE INFORMATION TO PERSONS INTERESTED IN OPERATING A
27 RESIDENTIAL CHILD CARE PROGRAM; AND

28 (2) COORDINATE LICENSING AND MONITORING REQUIREMENTS FOR
29 RESIDENTIAL CHILD CARE PROGRAMS AMONG COMMUNITY ADVOCATES,
30 PROVIDERS, THE DEPARTMENT, THE DEPARTMENT OF HUMAN RESOURCES, AND THE
31 DEPARTMENT OF JUVENILE JUSTICE.

1 24-1107.

2 (A) A PERSON MAY NOT OPERATE, ATTEMPT TO OPERATE, OR HOLD ONE'S
3 SELF OUT AS OPERATING A RESIDENTIAL CHILD CARE PROGRAM UNLESS LICENSED
4 UNDER THIS SUBTITLE.

5 (B) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBTITLE IS GUILTY
6 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
7 \$1,000 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR EACH
8 SUBSEQUENT OFFENSE.

9 24-1108.

10 ANY PERSON AGGRIEVED BY A SANCTION OR FINE IMPOSED BY THE DIVISION
11 MAY:

12 (1) APPEAL THAT DECISION TO THE BOARD OF REVIEW OF THE
13 DEPARTMENT; AND

14 (2) TAKE ANY FURTHER APPEAL ALLOWED BY THE ADMINISTRATIVE
15 PROCEDURE ACT.

16

Article 83C - Juvenile Justice

17 2-123.

18 (a) Except as otherwise provided in this section, a person shall be licensed [by
19 the Department] UNDER TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL ARTICLE
20 as a child care home before the person may exercise care, custody, or control over a
21 child who is alleged or adjudicated as delinquent or in need of supervision.

22 (b) This section does not apply:

23 (1) To a parent of the child;

24 (2) To an individual related to the child by blood or marriage within 4
25 degrees of consanguinity under the civil law rule;

26 (3) To a guardian of the child;

27 (4) To a person who exercises temporary custody or control over the child
28 at the request of a parent or guardian of the child and who is not required otherwise
29 to be licensed;

30 (5) To an individual with whom the child is placed in foster care by:

31 (i) A licensed placement agency;

32 (ii) A local department of social services;

33 (iii) The Secretary of Health and Mental Hygiene;

- 1 (iv) The Department; or
- 2 (v) A court of competent jurisdiction;
- 3 (6) To a person who has the care, custody, or control of the child through
4 placement by a parent or grandparent of the child in contemplation of adoption, if the
5 requirements of § 5-507(b)(2) and (c) of the Family Law Article are met;
- 6 (7) To an institution that has a child care institution license under [this
7 title or § 5-509 of the Family Law] TITLE 24, SUBTITLE 11 OF THE HEALTH -
8 GENERAL Article; or
- 9 (8) To an institution operated by an agency of this State or any political
10 subdivision.

11 2-124.

12 (a) Except as otherwise provided in this section, a person shall be licensed [by
13 the Department] UNDER TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL ARTICLE
14 as a child care institution before the person may operate an institution for the care,
15 custody, or control of a child alleged or adjudicated as delinquent or in need of
16 supervision.

17 (b) This section does not apply:

18 (1) To an institution or facility operated by an agency of this State or any
19 political subdivision; or

20 (2) To a child care home that has a license under [this title or § 5-508 of
21 the Family Law] TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL Article.

22 **Article - Family Law**

23 5-508.

24 (a) Except as otherwise provided in this section, a person shall be licensed [by
25 the Administration] UNDER TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
26 ARTICLE as a child care home before the person may exercise care, custody, or control
27 of a minor child.

28 (b) This section does not apply:

29 (1) to a parent of the child;

30 (2) to an individual related to the child by blood or marriage within five
31 degrees of consanguinity or affinity under the civil law rule;

32 (3) to a guardian of the child;

1 (4) to a person who exercises temporary care, custody, or control over the
2 child at the request of a parent or guardian of the child and who is not required
3 otherwise to be licensed;

4 (5) to an individual with whom the child is placed in foster care by:

5 (i) a child placement agency that is licensed under § 5-507 of this
6 subtitle;

7 (ii) a local department;

8 (iii) the Department of Juvenile Justice;

9 (iv) the Secretary of Health and Mental Hygiene; or

10 (v) a court of competent jurisdiction;

11 (6) to a person who has the care, custody, or control of the child through
12 placement for adoption by a parent or grandparent of the child, if the requirements of
13 § 5-507(c) of this subtitle are met;

14 (7) to an institution that has a child care institution license under [this
15 subtitle or under] TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL Article [83C,
16 § 2-124]; or

17 (8) to an institution that is operated by an agency of this State or any
18 political subdivision of this State.

19 5-509.

20 (a) Except as otherwise provided in this section, a person shall be licensed [by
21 the Administration] UNDER TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
22 ARTICLE as a child care institution before the person may operate an institution for
23 the care, custody, or control of a minor child.

24 (b) This section does not apply:

25 (1) to an institution or facility that is operated by an agency of this State
26 or any political subdivision of this State;

27 (2) to a child care home that has a license under [this subtitle or under
28 Article 83C, § 2-123] TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL ARTICLE; or

29 (3) to an institution that accepts only children placed by the Department
30 of Health and Mental Hygiene or the Department of Juvenile Justice.

31 5-509.1.

32 (a) Except as otherwise provided in subsection (b) of this section and subject to
33 subsection (c) of this section, on or after January 1, 2000, a person shall be licensed

1 [by the Administration] UNDER TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
2 ARTICLE before the person may operate a residential educational facility.

3 (b) This section does not apply:

4 (1) to a child care home that has a license under [this subtitle or under
5 Article 83C, § 2-123 of the Code] TITLE 24, SUBTITLE 11 OF THE HEALTH - GENERAL
6 ARTICLE;

7 (2) to a child care institution that has a license under [this subtitle or
8 under Article 83C, § 2-123 of the Code] TITLE 24, SUBTITLE 11 OF THE HEALTH -
9 GENERAL ARTICLE; or

10 (3) to an institution that accepts only children placed by the Department
11 of Health and Mental Hygiene or the Department of Juvenile Justice.

12 (c) This section does not affect any requirement that a residential educational
13 facility obtain a certificate of approval from the State Board of Education for its
14 educational program.

15 5-526.

16 (a) (1) The Department shall provide for the care, diagnosis, training,
17 education, and rehabilitation of children by placing them in group homes and
18 institutions that are operated by for-profit or nonprofit charitable corporations.

19 (2) Any group home utilized under the provisions of this section shall
20 comply with the provisions of [§§ 5-507 through 5-509 of this subtitle] TITLE 24,
21 SUBTITLE 11 OF THE HEALTH - GENERAL ARTICLE.

22 (b) (1) The Department shall reimburse these corporations for the cost of
23 these services at appropriate monthly rates that the Department determines, as
24 provided in the State budget.

25 (2) The reimbursement rate may differ between homes and institutions
26 that provide intermediate services, as defined by the Department, and homes and
27 institutions that provide full services.

28 (c) The Department, or the Department's designee, may not place a child in a
29 residential group home or other facility that is not operating in compliance with
30 applicable State licensing laws.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2003.