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By: **Delegates Mandel, Bobo, Bronrott, Conroy, DeBoy, Doory, Frush,  
Gilleland, Goldwater, Lee, Madaleno, McComas, Montgomery, Parker,  
Parrott, and Pendergrass**

Introduced and read first time: February 9, 2006

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2006

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Assisted Living Programs - Prohibited Acts, Penalties, and Quality Account**

3 FOR the purpose of prohibiting a person from knowingly and willfully operating,  
4 maintaining, or owning an assisted living program without a license; requiring  
5 the Department of Health and Mental Hygiene to send a certain written notice  
6 to certain assisted living programs under certain circumstances; exempting a  
7 person from certain penalties under certain circumstances; requiring the State  
8 to consider certain factors in recommending the amount of a certain criminal  
9 penalty; prohibiting a person from advertising, representing, or implying to the  
10 public that an assisted living program is authorized to provide certain services  
11 that the program is not licensed, certified, or otherwise authorized to provide;  
12 prohibiting a person from advertising an assisted living program in a  
13 misleading or fraudulent manner; providing for certain penalties; requiring the  
14 Secretary to consider certain factors in setting the amount of a certain civil  
15 money penalty; authorizing an assisted living program to request a certain  
16 appeal of a certain civil money penalty; establishing a Health Care Quality  
17 Account for Assisted Living Programs in the Department of Health and Mental  
18 Hygiene; providing for the funding of the Account; requiring the Department to  
19 pay certain collected penalties to the State Comptroller; requiring the  
20 Comptroller to distribute certain collected funds to the Account; providing that  
21 the Account is a continuing nonlapsing fund; providing that any unspent  
22 portions of the Account shall remain in the Account; providing that the Account  
23 shall be used for certain purposes designed to improve the quality of care;  
24 requiring the Department to adopt certain regulations; and generally relating to  
25 assisted living programs.

1 BY adding to  
2 Article - Health - General  
3 Section 19-1808 through 19-1810  
4 Annotated Code of Maryland  
5 (2005 Replacement Volume and 2005 Supplement)

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

8 **Article - Health - General**

9 19-1808.

10 (A) (1) A PERSON MAY NOT KNOWINGLY AND WILLFULLY OPERATE,  
11 MAINTAIN, OR OWN AN ASSISTED LIVING PROGRAM WITHOUT A LICENSE.

12 (2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS  
13 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

14 (I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$10,000 OR  
15 IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH; OR

16 (II) FOR A SUBSEQUENT OFFENSE, A FINE NOT EXCEEDING \$20,000  
17 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

18 (3) IF THE DEPARTMENT FINDS AN ASSISTED LIVING PROGRAM TO BE IN  
19 VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL SEND  
20 WRITTEN NOTICE TO THE PROGRAM 30 DAYS BEFORE THE STATE FILES CHARGES  
21 UNDER THIS SECTION IN ORDER TO GIVE THE PROGRAM AN OPPORTUNITY TO COME  
22 INTO COMPLIANCE WITH LICENSURE REQUIREMENTS.

23 (4) A PERSON MAY NOT BE SUBJECT TO PARAGRAPH (2) OF THIS  
24 SUBSECTION IF THE PERSON HAS:

25 (I) APPLIED IN GOOD FAITH TO THE DEPARTMENT FOR AN  
26 ASSISTED LIVING PROGRAM LICENSE;

27 (II) IS AWAITING A DECISION FROM THE DEPARTMENT REGARDING  
28 THE APPLICATION; AND

29 (III) HAS NOT BEEN DENIED AN ASSISTED LIVING PROGRAM  
30 LICENSE ON A PRIOR OCCASION.

31 (5) IN RECOMMENDING THE AMOUNT OF THE CRIMINAL PENALTY  
32 UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE STATE SHALL CONSIDER FACTORS  
33 INCLUDING THE NATURE, NUMBER, AND SERIOUSNESS OF THE VIOLATIONS AND  
34 THE ABILITY OF THE ASSISTED LIVING PROGRAM TO PAY THE PENALTY.

1 (B) (1) (I) A PERSON MAY NOT ADVERTISE, REPRESENT, OR IMPLY TO THE  
2 PUBLIC THAT AN ASSISTED LIVING PROGRAM IS AUTHORIZED TO PROVIDE A  
3 SERVICE THAT THE PROGRAM IS NOT LICENSED, CERTIFIED, OR OTHERWISE  
4 AUTHORIZED BY THE DEPARTMENT TO PROVIDE WHEN THE LICENSE, CERTIFICATE,  
5 OR AUTHORIZATION IS REQUIRED UNDER THIS SUBTITLE.

6 (II) A PERSON MAY NOT ADVERTISE AN ASSISTED LIVING PROGRAM  
7 IN A MISLEADING OR FRAUDULENT MANNER.

8 (2) (I) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION  
9 IS SUBJECT TO A CIVIL MONEY PENALTY IMPOSED BY THE SECRETARY NOT  
10 EXCEEDING \$10,000 FOR EACH OFFENSE.

11 (II) IN SETTING THE AMOUNT OF A CIVIL MONEY PENALTY ON THE  
12 PROGRAM UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SECRETARY SHALL  
13 CONSIDER FACTORS INCLUDING THE NATURE, NUMBER, AND SERIOUSNESS OF THE  
14 VIOLATIONS AND THE ABILITY OF THE ASSISTED LIVING PROGRAM TO PAY THE  
15 PENALTY.

16 19-1809.

17 (A) AN ASSISTED LIVING PROGRAM MAY REQUEST AN APPEAL OF A CIVIL  
18 MONEY PENALTY IMPOSED UNDER THIS SUBTITLE.

19 (B) A HEARING ON THE APPEAL SHALL BE HELD IN ACCORDANCE WITH:

20 (1) THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2  
21 OF THE STATE GOVERNMENT ARTICLE; AND

22 (2) REGULATIONS ADOPTED BY THE SECRETARY.

23 19-1810.

24 (A) (1) THERE IS A HEALTH CARE QUALITY ACCOUNT FOR ASSISTED LIVING  
25 PROGRAMS ESTABLISHED IN THE DEPARTMENT.

26 (2) THE ACCOUNT SHALL BE FUNDED BY CIVIL MONEY PENALTIES PAID  
27 BY ASSISTED LIVING PROGRAMS AND OTHER PENALTIES THAT THE OFFICE OF  
28 HEALTH CARE QUALITY MAY ASSESS.

29 (3) THE DEPARTMENT SHALL PAY ALL PENALTIES COLLECTED UNDER  
30 THIS TITLE TO THE COMPTROLLER.

31 (4) THE COMPTROLLER SHALL DISTRIBUTE FUNDS COLLECTED UNDER  
32 THIS TITLE TO THE HEALTH CARE QUALITY ACCOUNT FOR ASSISTED LIVING  
33 PROGRAMS.

34 (5) THE ACCOUNT IS A CONTINUING, NONLAPSING FUND, NOT SUBJECT  
35 TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1           (6)     ANY UNSPENT PORTIONS OF THE ACCOUNT MAY NOT BE  
2 TRANSFERRED OR REVERTED TO THE GENERAL FUND OF THE STATE, BUT SHALL  
3 REMAIN IN THE ACCOUNT TO BE USED FOR THE PURPOSES SPECIFIED IN THIS  
4 SECTION.

5     (B)     THE HEALTH CARE QUALITY ACCOUNT FOR ASSISTED LIVING SHALL BE  
6 USED FOR TRAINING, GRANT AWARDS, DEMONSTRATION PROJECTS, OR OTHER  
7 PURPOSES DESIGNED TO IMPROVE THE QUALITY OF CARE.

8     (C)     THE DEPARTMENT SHALL ADOPT REGULATIONS FOR THE DISTRIBUTION  
9 OF FUNDS FROM THE HEALTH CARE QUALITY ACCOUNT FOR ASSISTED LIVING.

10    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2006.