

Chapter 711

(House Bill 899)

AN ACT concerning

Nursing Facility Residents – Home–Based and Community Services – Access Assistance

FOR the purpose of requiring social workers to provide certain nursing facility residents with certain information about certain services under the home– and community–based waiver programs on admission and discharge from the nursing facility; ~~requiring the Department of Health and Mental Hygiene or the Department’s designee to provide certain information to certain nursing facility residents within a certain number of days; requiring the Department to provide certain assistance to certain residents within certain time frames;~~ requiring certain employees or representatives of certain designated protection and advocacy systems agencies to have certain access to certain residents; providing for the confidentiality of certain information provided by a nursing facility resident to employees or representatives of designated protection and advocacy systems agencies; ~~prohibiting a nursing facility from denying certain employees or representatives access to certain nursing facility residents; providing for a certain penalty and appeal procedures;~~ defining a certain term; and generally relating to providing nursing facility residents access assistance to home–based and community services.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–135
Annotated Code of Maryland
(2009 Replacement Volume)

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

Article – Health – General

15–135.

(a) (1) In this section the following words have the meanings indicated.

(2) **“DESIGNATED PROTECTION AND ADVOCACY SYSTEMS AGENCY” MEANS A PROTECTION AND ADVOCACY SYSTEMS AGENCY THAT IS DESIGNATED AS AN INDEPENDENT ADVOCATE FOR INDIVIDUALS WITH DISABILITIES UNDER THE FEDERAL DEVELOPMENTAL DISABILITIES ACT.**

[(2)] (3) “Nursing facility” has the meaning stated in § 15–132(a)(11) of this subtitle.

[(3)] (4) “Resident” means an individual receiving long-term care in a nursing facility.

(b) (1) A social worker shall provide to each resident information that:

(i) Explains the availability of services under home- or community-based waiver programs in the State that could enable the resident to live in the community;

(ii) Explains that if the resident’s care is partially or fully reimbursed by the Program, the resident may be able to receive long-term care services in the community instead of in the nursing facility;

(iii) Provides information regarding how to obtain case management services or evaluation services related to home- and community-based waiver programs or other options for receiving long-term care services in the community;

(iv) If written, is in large, easily legible type and in formats accessible to the resident; and

(v) Includes a list of legal, advocacy, and government agency resources.

(2) The Department, in consultation with the State agencies that implement the home- and community-based services programs, shall prepare, distribute, and update as necessary the information required under paragraph (1) of this subsection.

(3) The information required under paragraph (1) of this subsection shall be made available to the resident:

(i) Upon admission **[or] AND** discharge of the resident; and

(ii) When the resident indicates a preference to live in the community, either during the resident’s quarterly assessment or at any other time.

(4) The social worker shall request that the resident sign an acknowledgment of receipt of the information provided by the social worker that shall be kept in the resident’s medical record.

(c) If a resident indicates an interest in or a preference for living in the community, the nursing facility shall refer the resident to the Department, or the Department's designee, for further assistance.

(d) The Department, or the Department's designee, shall review the quarterly assessments submitted to the Center for Medicare and Medicaid Services of the U.S. Department of Health and Human Services by each nursing facility that participates in the Program to identify individuals indicating a preference to live in the community.

(e) If a resident who would qualify for home- and community-based waiver services under § 15-137 of this subtitle indicates an interest or preference for living in the community, the Department, or the Department's designee, shall provide the resident with:

(1) Additional information regarding home- and community-based services, including services available under a medical assistance waiver and their right to access services under § 15-137 of this subtitle, ~~WITHIN 10 DAYS OF THE RESIDENT'S INITIAL INQUIRY~~; and

(2) Assistance in:

(i) Completing any application forms or process, as needed, ~~WITHIN 10 DAYS OF THE RESIDENT'S INITIAL INQUIRY~~; and

(ii) Moving from a nursing facility to a community-based setting appropriate to the residents' needs and expressed wishes ~~WITHIN 25 DAYS OF THE RESIDENT'S INITIAL INQUIRY OR WITH REASONABLE PROMPTNESS~~.

(f) (1) Subject to paragraph (3) of this subsection, employees or representatives of **DESIGNATED** protection and advocacy **SYSTEMS** agencies and of **CERTIFIED** centers for independent living shall have reasonable and unaccompanied access to residents of public or private nursing facilities in the State that receive reimbursement under the Program for the purpose of providing information, training, and referral to programs and services addressing the needs of people with disabilities, including participation in programs that would enable individuals with disabilities to live outside the nursing facility.

(2) Employees or representatives of **DESIGNATED** protection and advocacy **SYSTEMS** agencies and of **CERTIFIED** centers for independent living shall maintain the confidentiality of the residents and may not disclose the information provided to **OR BY** a resident, except with the express consent of the resident or the resident's legal guardian or health care representative.

(3) Public or private nursing facilities may require the employees or representatives of DESIGNATED protection and advocacy SYSTEMS agencies and of CERTIFIED centers for independent living to provide proof of their employment before authorizing the access required under paragraph (1) of this subsection.

~~(G) (1) A NURSING FACILITY MAY NOT DENY REPRESENTATIVES OF A DESIGNATED PROTECTION AND ADVOCACY SYSTEMS AGENCY ACCESS TO RESIDENTS OF A NURSING FACILITY.~~

~~(2) (I) THE SECRETARY MAY IMPOSE A CIVIL MONEY PENALTY SET BY THE SECRETARY FOR A VIOLATION OF THIS SUBSECTION.~~

~~(II) IF A CIVIL MONEY PENALTY IS IMPOSED UNDER THIS SECTION, THE NURSING FACILITY SHALL HAVE THE RIGHT TO APPEAL FROM AN ORDER IMPOSING THE CIVIL MONEY PENALTY IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.~~

~~{(g)}~~ (H) On or before January 1 of each year, the Department, and the Department's designee, shall report to the Governor and the General Assembly, in accordance with § 2-1246 of the State Government Article, on:

- (1) The Department's efforts to promote home- and community-based services;
- (2) The number of nursing facility residents referred or identified under subsections (c) and (d) of this section in the previous year;
- (3) The number of nursing facility residents who transitioned from nursing facilities to home- and community-based waiver services;
- (4) Any obstacles the Department confronted in assisting nursing home residents to make the transition from a nursing facility to a community-based residence; and
- (5) The Department's recommendations for removing the obstacles.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.