

SENATE BILL 1057

J3, J2

EMERGENCY BILL

3lr3373
CF HB 1529

By: ~~Senator Middleton~~ **Senators Middleton, Garagiola, Glassman, Kelley, Kittleman, Klausmeier, Mathias, Pugh, and Ramirez**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 7, 2013

Assigned to: Rules

Re-referred to: Finance, March 14, 2013

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2013

CHAPTER _____

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Health Care Staff Agencies –**
3 **Regulation**

4 FOR the purpose of altering certain provisions of law that apply to nursing staff
5 agencies and nursing personnel to apply more broadly to health care staff
6 agencies and health care practitioners licensed or certified by certain health
7 occupation boards; requiring a health care staff agency to be licensed by the
8 Office of Health Care Quality in the Department of Health and Mental Hygiene
9 before referring health care practitioners to a health care facility to render
10 temporary health care services at a health care facility in this State; making
11 provisions of law that apply to deemed status of accredited health care facilities
12 for purposes of State licensure also apply to health care staff agencies; defining
13 certain terms; altering certain definitions; repealing a certain definition;
14 making conforming and stylistic changes; making this Act an emergency
15 measure; and generally relating to licensure and accreditation of health care
16 staff agencies.

17 BY repealing and reenacting, with amendments,

18 Article – Health – General

19 Section 19–2001 and 19–2002 to be under the amended subtitle “Subtitle 20.

20 Health Care Staff Agencies”; and 19–2301 and 19–2302 to be under the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 amended subtitle “Subtitle 23. Accreditation of Health Care Facilities
 2 and Health Care Staff Agencies”
 3 Annotated Code of Maryland
 4 (2009 Replacement Volume and 2012 Supplement)

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

7 **Article – Health – General**

8 Subtitle 20. [Nursing] **HEALTH CARE** Staff Agencies.

9 19–2001.

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

11 (2) “Client facility” means a health care facility that contracts with a
 12 [nursing] **HEALTH CARE** staff agency for the referral of [nursing personnel] **HEALTH**
 13 **CARE PRACTITIONERS**.

14 (3) “Health care facility” means a hospital or related institution as
 15 defined in § 19–301 of this title.

16 [(4) “Initially providing or referring” means the first time a nursing
 17 staff agency provides or refers a particular licensed practical nurse, registered nurse,
 18 or certified nursing assistant to a health care facility.

19 (5) “Nursing personnel” means:

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

21 1. Licensed practical nurse; or

22 2. Registered nurse; or

23 (ii) A certified nursing assistant.]

24 (4) **“HEALTH CARE PRACTITIONER” MEANS ANY INDIVIDUAL**
 25 **LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE.**

26 [(6) (5) (i) [“Nursing] **“HEALTH CARE** staff agency” means any
 27 person, firm, corporation, partnership, or other business entity engaged in the
 28 business of referring [nursing personnel] **HEALTH CARE PRACTITIONERS** as
 29 employees or independent contractors to render temporary [nursing] **HEALTH CARE**
 30 services at a health care facility in the State.

1 (ii) ["Nursing] "HEALTH CARE staff agency" does not include:

2 1. A [nursing] HEALTH CARE staff agency operated by a
3 health care facility solely for the purpose of procuring, furnishing, or referring
4 temporary or permanent [nursing] HEALTH CARE personnel for employment at that
5 health care facility;

6 2. A home health agency regulated under Subtitle 4 of
7 this title; or

8 3. Any [nursing personnel] HEALTH CARE
9 PRACTITIONERS procuring, furnishing, or referring their own services to a health
10 care facility without the direct or indirect assistance of a [nursing] HEALTH CARE
11 staff agency.

12 (6) "INITIALLY PROVIDING OR REFERRING" MEANS THE FIRST
13 TIME A HEALTH CARE STAFF AGENCY PROVIDES OR REFERS A PARTICULAR
14 HEALTH CARE PRACTITIONER TO A HEALTH CARE FACILITY.

15 (7) "Office" means the Office of Health Care Quality in the
16 Department.

17 (8) "Responsible party" means the individual at a [nursing] HEALTH
18 CARE staff agency who controls the day to day operation of the [nursing] HEALTH
19 CARE staff agency.

20 (b) (1) A [nursing] HEALTH CARE staff agency shall be licensed by the
21 Office before referring [nursing personnel] HEALTH CARE PRACTITIONERS to a
22 health care facility to render temporary [nursing] HEALTH CARE services at a health
23 care facility in this State.

24 (2) All [nursing] HEALTH CARE staff agencies shall submit to the
25 Office:

26 (i) The [nursing] HEALTH CARE staff agency's:

27 1. Business name;

28 2. Business address;

29 3. Business telephone number; and

30 4. Responsible party; and

31 (ii) Any other information the Office requires by regulation to
32 ensure compliance with the provisions of this subtitle.

1 (c) (1) A [nursing] **HEALTH CARE** staff agency license expires on the 28th
2 day of the month in which the agency was originally licensed unless the license is
3 renewed for a 1-year term as provided in this section.

4 (2) At least 1 month before the license expires, the Office shall send to
5 the [nursing] **HEALTH CARE** staff agency, by first-class mail to the last known
6 address of the [nursing] **HEALTH CARE** staff agency, a renewal notice that states:

7 (i) The date on which the current license expires;

8 (ii) The date by which the renewal application must be received
9 by the Office for the renewal to be issued and mailed before the license expires; and

10 (iii) The amount of the renewal fee.

11 (3) Before a license expires, the [nursing] **HEALTH CARE** staff agency
12 periodically may renew it for an additional term, if the [nursing] **HEALTH CARE** staff
13 agency:

14 (i) Otherwise is entitled to be licensed; and

15 (ii) Pays to the Office the renewal fee set by the Office.

16 (d) If a [nursing] **HEALTH CARE** staff agency fails to renew, the [nursing]
17 **HEALTH CARE** staff agency must immediately stop referring [personnel] **HEALTH**
18 **CARE PRACTITIONERS** to health care facilities.

19 (e) (1) A [nursing] **HEALTH CARE** staff agency shall notify the Office of
20 any change in ownership, agency name, or address within 30 days of the change.

21 (2) Notwithstanding the provisions of subsection (i)(1) of this section,
22 if a [nursing] **HEALTH CARE** staff agency fails to notify the Office within the time
23 required under this subsection, the Office may impose a fine of \$100.

24 (f) (1) Before initially providing or referring a [licensed practical nurse,
25 registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER** to
26 health care facilities to render temporary [nursing] **HEALTH CARE** services, the
27 [nursing] **HEALTH CARE** staff agency shall verify the licensure **OR CERTIFICATION**
28 status of the [licensed practical nurse, registered nurse, or certified nursing assistant]
29 **HEALTH CARE PRACTITIONER**.

30 (2) At the time a [licensed practical nurse, registered nurse, or
31 certified nursing assistant] **HEALTH CARE PRACTITIONER** who is being referred to
32 health care facilities by a [nursing] **HEALTH CARE** staff agency must renew [their

1 license to practice licensed practical nursing, registered nursing, or certified nursing
2 assistance] **THE HEALTH CARE PRACTITIONER'S LICENSE OR CERTIFICATE**, the
3 [nursing] **HEALTH CARE** staff agency shall:

4 (i) Submit the name and license **OR CERTIFICATE** number of
5 the [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH**
6 **CARE PRACTITIONER** to the Office; and

7 (ii) Verify the licensure **OR CERTIFICATION** status of the
8 [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH**
9 **CARE PRACTITIONER**.

10 (g) [(1)] A [nursing] **HEALTH CARE** staff agency may not knowingly
11 provide or refer [a licensed practical nurse who is not authorized to practice licensed
12 practical nursing under Title 8 of the Health Occupations Article to a health care
13 facility to render temporary nursing services.

14 (2) A nursing staff agency may not knowingly provide or refer a
15 registered nurse who is not authorized to practice registered nursing under Title 8 of
16 the Health Occupations Article to a health care facility to render temporary nursing
17 services.

18 (3) A nursing staff agency may not knowingly provide or refer a
19 certified nursing assistant who is not authorized to practice as a certified nursing
20 assistant under Title 8, Subtitle 6A of] **AN INDIVIDUAL WHO IS NOT LICENSED OR**
21 **CERTIFIED UNDER** the Health Occupations Article to a health care facility to render
22 [delegated nursing] **HEALTH CARE** services.

23 (h) (1) Except as provided in paragraph (2) of this subsection:

24 (i) If a [nursing] **HEALTH CARE** staff agency knows of an
25 action or condition performed by a [licensed practical nurse, registered nurse, or
26 certified nursing assistant] **HEALTH CARE PRACTITIONER** provided or referred by
27 that [nursing] **HEALTH CARE** staff agency that might be grounds for action
28 **RELATING TO A LICENSE OR CERTIFICATE ISSUED** under [§ 8–316 of] the Health
29 Occupations Article, the [nursing] **HEALTH CARE** staff agency shall report the action
30 or condition to the [Board] **APPROPRIATE HEALTH OCCUPATION BOARD**; and

31 (ii) An individual shall have immunity from liability described
32 under § 5–709 of the Courts and Judicial Proceedings Article for making a report as
33 required under this paragraph.

34 (2) A [nursing] **HEALTH CARE** staff agency is not required under this
35 subsection to make any report that would be in violation of any federal or State law,

1 rule, or regulation concerning the confidentiality of alcohol and drug abuse patient
2 records.

3 (i) (1) Subject to the provisions of Title 10, Subtitle 2 of the State
4 Government Article, the Office may impose a penalty for a violation of any provision of
5 this section:

6 (i) For a first offense, up to \$2,500 per violation or up to \$2,500
7 per day until the [nursing] HEALTH CARE staff agency complies with the
8 requirements of this subtitle;

9 (ii) For a second offense, up to \$5,000 per violation or up to
10 \$5,000 per day until the [nursing] HEALTH CARE staff agency complies with the
11 requirements of this subtitle; and

12 (iii) For a third or subsequent offense, up to \$10,000 per
13 violation or up to \$10,000 per day until the [nursing] HEALTH CARE staff agency
14 complies with the requirements of this subtitle.

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

16 (j) A [nursing] HEALTH CARE staff agency is not a health care provider.

17 19–2002.

18 (a) In this section, “Office” means the Office of Health Care Quality in the
19 Department [of Health and Mental Hygiene].

20 (b) The Office may inspect a [nursing] HEALTH CARE staff agency to verify
21 compliance with this subtitle.

22 (c) When the Office conducts an inspection, the Office shall verify that the
23 [nursing personnel] HEALTH CARE PRACTITIONERS referred by the [nursing]
24 HEALTH CARE staff agency[:

25 (1) If registered nurses or licensed practical nurses, are licensed by the
26 Board; or

27 (2) If certified nursing assistants, are certified by the Board] **ARE**
28 **LICENSED OR CERTIFIED BY THE APPROPRIATE HEALTH OCCUPATION BOARD.**

29 (d) When the Office conducts an inspection, the Office shall verify that the
30 [nursing] HEALTH CARE staff agency has developed, documented, and implemented
31 procedures for:

1 (1) Selecting and verifying the credentials of [nursing personnel]
2 **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency;

3 (2) Validating experience of [nursing personnel] **HEALTH CARE**
4 **PRACTITIONERS** prior to referral by the **HEALTH CARE STAFF** agency;

5 (3) Tracking and acting on serious or life-threatening complaints
6 received by a client facility or the client facility's agent;

7 (4) Reporting of an action or condition under § 19-2001(h) of this
8 subtitle;

9 (5) Verifying that [nursing personnel] **HEALTH CARE**
10 **PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency are of satisfactory
11 health status and have received the necessary testing and immunization as required
12 or requested by the client facility;

13 (6) Verifying I-9 status;

14 (7) Verifying, prior to initial referral of [nursing personnel] **HEALTH**
15 **CARE PRACTITIONERS** to a client facility by the **HEALTH CARE STAFF** agency, drug
16 screening of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the
17 **HEALTH CARE STAFF** agency if the client facility requires drug screening for facility
18 employees;

19 (8) Verifying, when there is probable cause to perform a drug test or
20 when a client facility requests a drug test, drug testing of [nursing personnel]
21 **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency;

22 (9) Verifying, prior to initial referral of [nursing personnel] **HEALTH**
23 **CARE PRACTITIONERS** to a client facility by the **HEALTH CARE STAFF** agency,
24 criminal background checks of [nursing personnel] **HEALTH CARE PRACTITIONERS**
25 referred by the **HEALTH CARE STAFF** agency if the client facility requires criminal
26 background checks for facility employees; and

27 (10) Verifying the references of [nursing personnel] **HEALTH CARE**
28 **PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency.

29 (e) A [nursing] **HEALTH CARE** staff agency shall attest that the [nursing]
30 **HEALTH CARE** staff agency is in compliance with the:

31 (1) Civil Rights Act of 1964;

32 (2) Rehabilitation Act of 1973;

1 (3) Americans with Disabilities Act of 1990; and

2 (4) Drug Free Workplace Act of 1988, if applicable.

3 (f) The Office may inspect a [nursing] **HEALTH CARE** staff agency upon
4 receiving a complaint, and may give notice of the inspection to the [nursing] **HEALTH**
5 **CARE** staff agency.

6 Subtitle 23. Accreditation of Health Care Facilities **AND HEALTH CARE STAFF**
7 **AGENCIES.**

8 19–2301.

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

10 (b) “Accreditation organization” means a private entity that conducts
11 inspections and surveys of health care facilities **OR HEALTH CARE STAFF AGENCIES**
12 based on nationally recognized and developed standards.

13 (c) “Deemed status” means a status under which a health care facility **OR A**
14 **HEALTH CARE STAFF AGENCY** may be exempt from routine surveys conducted by the
15 Department.

16 (d) “Health care facility” means:

17 (1) A hospital as defined in § 19–301 of this title;

18 (2) A health maintenance organization as defined in § 19–701(g) of
19 this title;

20 (3) A freestanding ambulatory care facility as defined in § 19–3B–01 of
21 this title;

22 (4) An assisted living facility as defined in § 19–1801 of this title;

23 (5) A laboratory as defined in § 17–201 of this article;

24 (6) A home health agency as defined in § 19–401 of this title;

25 (7) A residential treatment center as defined in § 19–301 of this title;

26 (8) A comprehensive rehabilitation facility as defined in § 19–1201 of
27 this title; and

28 (9) A forensic laboratory as defined in § 17–2A–01 of this article.

1 **(E) “HEALTH CARE STAFF AGENCY” HAS THE MEANING STATED IN §**
2 **19–2001 OF THIS TITLE.**

3 19–2302.

4 (a) An accreditation organization shall apply to the Secretary for approval.

5 (b) Prior to approval of an accreditation organization, the Secretary shall:

6 (1) Determine that the standards of the accreditation organization are
7 equal to or more stringent than existing State requirements;

8 (2) Evaluate the survey or inspection process of the accreditation
9 organization to ensure the integrity of the survey or inspection process; and

10 (3) Enter into a formal written agreement with the accreditation
11 organization that includes requirements for:

12 (i) Notice of all surveys and inspections;

13 (ii) Sharing of complaints and other relevant information;

14 (iii) Participation of the Department in accreditation
15 organization activities; and

16 (iv) Any other provision necessary to ensure the integrity of the
17 accreditation and licensure process.

18 (c) (1) When an approved accreditation organization has issued a final
19 report finding a health care facility **OR A HEALTH CARE STAFF AGENCY** to be in
20 substantial compliance with the accreditation organization’s standards, the
21 Department shall accept the report as evidence that the health care facility **OR**
22 **HEALTH CARE STAFF AGENCY** has met State licensure requirements and shall grant
23 the health care facility **OR HEALTH CARE STAFF AGENCY** deemed status.

24 (2) A health care facility **OR A HEALTH CARE STAFF AGENCY** that
25 fails to achieve substantial compliance with the standards of an approved
26 accreditation organization may be subject to the provisions of § 19–360 of this title.

27 (d) (1) An approved accreditation organization shall send the Department
28 any preliminary and final report of each inspection and survey at the time it is sent to
29 the health care facility **OR HEALTH CARE STAFF AGENCY**.

30 (2) A final report of an approved accreditation organization shall be
31 made immediately available to the public on request.

1 (3) A preliminary or final report of an approved accreditation
2 organization is not admissible in evidence in any civil action or proceeding.

3 (e) The Department may inspect an accredited health care facility **OR A**
4 **HEALTH CARE STAFF AGENCY** to:

5 (1) Determine compliance with any quality requirement;

6 (2) Follow up on any serious problem identified by an approved
7 accreditation organization;

8 (3) Investigate a complaint; or

9 (4) Validate the findings of an approved accreditation organization.

10 (f) The Department may participate in or observe a survey or inspection of a
11 health care facility **OR A HEALTH CARE STAFF AGENCY** conducted by an approved
12 accreditation organization.

13 (g) On a determination by the Secretary that an approved accreditation
14 organization has failed to meet its obligations under this section, the Secretary may
15 withdraw:

16 (1) The approval from the accreditation organization; and

17 (2) The deemed status given to a health care facility **OR A HEALTH**
18 **CARE STAFF AGENCY** by the accreditation organization.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect~~
20 ~~October 1, 2013~~ is an emergency measure, is necessary for the immediate preservation
21 of the public health or safety, has been passed by a yea and nay vote supported by
22 three-fifths of all the members elected to each of the two Houses of the General
23 Assembly, and shall take effect from the date it is enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.