

SENATE BILL 795

J3, J1

5lr2853

By: **Senator Astle**

Introduced and read first time: February 19, 2015

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Cost of Residents’ Care – Determination and Payment of**
3 **Funds**

4 FOR the purpose of authorizing a comprehensive care facility or an extended care facility,
5 under certain circumstances, to petition a certain circuit court for an order
6 permitting the facility to request a certain determination of the funds available to
7 pay for the cost of a resident’s care from the medical assistance program and to obtain
8 certain information; requiring the circuit court to issue a certain order under certain
9 circumstances; requiring the medical assistance program to make a certain
10 determination of the funds available to pay for the cost of a resident’s care within a
11 certain number of days after receipt of the request; providing that if a certain
12 determination is not made within a certain number of days, the medical assistance
13 program shall be deemed to have concluded that there are no funds available to pay
14 for the cost of a resident’s care; authorizing a comprehensive care facility or an
15 extended care facility to petition a certain circuit court for an order directing that
16 certain payments be paid to the facility directly from the funds determined by the
17 medical assistance program to be available; and generally relating to the payment of
18 funds for the cost of care of residents of a comprehensive care facility or an extended
19 care facility.

20 BY repealing and reenacting, without amendments,
21 Article – Health – General
22 Section 19–343(a) and 19–344(a)
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2014 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Health – General
27 Section 19–344(c)
28 Annotated Code of Maryland
29 (2009 Replacement Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Health – General**

4 19–343.

5 (a) In this section and §§ 19–344 and 19–345 of this subtitle, “facility” means a
6 related institution that, under the rules and regulations of the Department, is a
7 comprehensive care facility or an extended care facility.

8 19–344.

9 (a) To carry out the policy set forth in § 19–343 of this subtitle, the following
10 procedures are required for all services provided to a resident of a facility.

11 (c) (1) In this subsection, “agent” means a person who manages, uses, or
12 controls the funds or assets that legally may be used to pay the applicant’s or resident’s
13 share of costs or other charges for the facility’s services.

14 (2) Except as provided by the Department, a facility may not charge an
15 applicant or resident who is a medical assistance beneficiary, or the applicant’s or resident’s
16 agent, any amount in addition to the amounts determined by the medical assistance
17 program for services that are covered by medical assistance.

18 (3) Unless otherwise agreed, the financial obligation of the applicant’s or
19 resident’s agent is limited to the amount of the applicant’s or resident’s funds that are
20 considered available to the agent by the medical assistance program.

21 (4) (i) A facility may require an applicant, a resident, or the agent of an
22 applicant or resident to agree to distribute any funds, including income or assets of the
23 applicant or resident, which the medical assistance program has determined to be available
24 to pay for the cost of the applicant’s or resident’s care, to the facility, promptly when due,
25 for the cost of the applicant’s or resident’s care.

26 (ii) For the purpose of this section, funds of the applicant or resident
27 include funds of the applicant or resident that are under the use, ownership, management,
28 or control of the agent.

29 (iii) 1. A resident or agent of the resident who has not paid a
30 current obligation for the resident’s care may apply to the medical assistance program for
31 a determination of the funds available to pay for the cost of the resident’s care.

32 **2. NOTWITHSTANDING SUBPARAGRAPH (V) OF THIS**
33 **PARAGRAPH, IF A RESIDENT OR AGENT OF A RESIDENT WHO HAS NOT PAID A**
34 **CURRENT OBLIGATION FOR THE RESIDENT’S CARE FAILS TO REQUEST A**

1 DETERMINATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE
2 FACILITY MAY, WITHOUT REQUESTING THE APPOINTMENT OF A GUARDIAN,
3 PETITION THE APPROPRIATE CIRCUIT COURT FOR AN ORDER PERMITTING THE
4 FACILITY TO REQUEST A DETERMINATION AND TO OBTAIN ANY INFORMATION THAT
5 IS REQUESTED BY THE MEDICAL ASSISTANCE PROGRAM TO MAKE THE
6 DETERMINATION.

7 **3. ON RECEIPT OF A PETITION UNDER THIS**
8 **SUBPARAGRAPH, THE CIRCUIT COURT SHALL ISSUE THE ORDER PERMITTING THE**
9 **FACILITY TO REQUEST A DETERMINATION AND TO OBTAIN ANY INFORMATION**
10 **REQUESTED BY THE MEDICAL ASSISTANCE PROGRAM TO MAKE THE**
11 **DETERMINATION ON A FINDING THAT THE RESIDENT OR AGENT OF A RESIDENT HAS**
12 **NOT PAID A CURRENT OBLIGATION FOR THE RESIDENT'S CARE AND HAS FAILED TO**
13 **REQUEST A DETERMINATION UNDER SUBSUBPARAGRAPH 1 OF THIS**
14 **SUBPARAGRAPH.**

15 (iv) **1.** If a request for a determination is made under
16 subparagraph (iii) **OR (V)** of this paragraph, the medical assistance program shall make
17 the determination **WITHIN 14 DAYS AFTER RECEIPT OF THE REQUEST.**

18 **2. IF THE MEDICAL ASSISTANCE PROGRAM DOES NOT**
19 **MAKE THE DETERMINATION WITHIN 14 DAYS AFTER RECEIPT OF THE REQUEST, THE**
20 **MEDICAL ASSISTANCE PROGRAM SHALL BE DEEMED TO HAVE CONCLUDED THAT**
21 **THERE ARE NO FUNDS, INCLUDING INCOME OR ASSETS OF THE RESIDENT,**
22 **AVAILABLE TO PAY FOR THE COST OF THE RESIDENT'S CARE.**

23 (v) If a resident or agent of a resident who has not paid a current
24 obligation for the resident's care fails to request a determination under subparagraph (iii)
25 of this paragraph, the facility may, without requesting the appointment of a guardian,
26 petition the appropriate circuit court for an order directing the resident or agent of the
27 resident to request the determination with due diligence.

28 (vi) If a resident or agent of the resident fails to pay for the cost of
29 the resident's care from funds that the medical assistance program has determined to be
30 available to pay for that care, the facility may, without requesting the appointment of a
31 guardian, petition the appropriate circuit court for an order directing [the]:

32 **1. THE** resident or agent of the resident to pay the facility
33 from the funds determined by the medical assistance program to be available; **OR**

34 **2. THE PAYMENTS TO BE PAID TO THE FACILITY**
35 **DIRECTLY FROM THE FUNDS DETERMINED BY THE MEDICAL ASSISTANCE PROGRAM**
36 **TO BE AVAILABLE.**

1 (5) (i) An applicant, a resident, or the agent of an applicant or resident
2 shall seek, on behalf of the applicant or resident, all assistance from the medical assistance
3 program which may be available to the applicant or resident.

4 (ii) The facility shall cooperate with and assist the agent in seeking
5 assistance from the medical assistance program on behalf of the applicant or resident.

6 (iii) If a resident or the agent of a resident fails to seek assistance
7 from the medical assistance program or to cooperate fully in the eligibility determination
8 process, a facility providing care to the resident may, without requesting the appointment
9 of a guardian, petition the appropriate circuit court for an order requiring the resident or
10 agent of the resident to seek assistance from the medical assistance program or to cooperate
11 in the eligibility determination process with due diligence.

12 (6) (i) Any agent who willfully or with gross negligence violates the
13 requirements of paragraph (4) of this subsection regarding the distribution of the
14 applicant's or resident's funds is subject to a civil penalty not less than the amount of funds
15 subject to the violation.

16 (ii) Any agent who willfully or with gross negligence violates the
17 requirements of paragraph (5) of this subsection regarding an application for medical
18 assistance by or on behalf of an applicant or resident is subject to a civil penalty not
19 exceeding \$10,000.

20 (iii) The Attorney General is responsible for the enforcement and
21 prosecution of violations of the provisions of paragraphs (4) and (5) of this subsection.

22 (7) Nothing in this subsection may be construed to prohibit any person
23 from knowingly and voluntarily agreeing to guarantee payment for the cost of an
24 applicant's care.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2015.