

SENATE BILL 669

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9lr2082
CF HB 592

By: **The President (By Request – Office of the Attorney General) and Senators
Augustine, Guzzone, Kelley, King, Lee, Peters, Rosapepe, and Zucker**

Introduced and read first time: February 4, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Comprehensive and Extended Care Facilities –**
3 **Discharges and Transfers**

4 FOR the purpose of altering the basic rights afforded to each resident of a comprehensive
5 care facility and an extended care facility; altering the contents of a certain form
6 required to be provided to certain facilities by the Maryland Department of Health;
7 requiring that a certain written notice be provided to certain residents; requiring a
8 facility to provide a certain written notice as soon as practicable before discharge or
9 transfer under certain circumstances; requiring the facility to provide any changes
10 to a certain notice to recipients of the notice as soon as practicable if the information
11 in the notice changes prior to the discharge or transfer; requiring a facility to develop
12 a certain post discharge plan of care for a certain resident; requiring a facility to
13 designate certain staff to coordinate the development of a certain plan; requiring the
14 facility to meet, if possible, with certain individuals for a certain purpose within a
15 certain period of time; requiring that a certain plan be developed with the
16 participation of certain individuals; requiring the facility to include in a resident's
17 medical record a certain explanation under certain circumstances; requiring that a
18 certain plan be developed in consultation with certain individuals; altering the time
19 at which a facility is required to provide certain information to certain individuals;
20 altering the information required to be provided to certain individuals by certain
21 facilities before discharge or transfer; altering the authority of a facility to discharge
22 or transfer a resident without obtaining the written consent of the resident;
23 authorizing the Attorney General to request that the court in a certain action impose
24 a certain civil penalty for certain violations under certain circumstances; making
25 conforming changes; and generally relating to discharges and transfers from
26 comprehensive care facilities and extended care facilities.

27 BY repealing and reenacting, with amendments,
28 Article – Health – General
29 Section 19–343, 19–345.1, 19–345.2, and 19–345.3

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2018 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Health – General
5 Section 19–345(a)
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2018 Supplement)

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

10 **Article – Health – General**

11 19–343.

12 (a) In this section and §§ 19–344 [and], 19–345, **19–345.1, 19–345.2, AND**
13 **19–345.3** of this subtitle, “facility” means a related institution that, under the rules and
14 regulations of the Department, is a comprehensive care facility or an extended care facility.

15 (b) (1) The General Assembly intends to promote the interests and well–being
16 of each resident of a facility.

17 (2) It is the policy of this State that, in addition to any other rights, each
18 resident of a facility has the following basic rights:

19 (i) The right to be treated with consideration, respect, and full
20 recognition of human dignity and individuality;

21 (ii) The right to receive treatment, care, and services that are
22 adequate, appropriate, and in compliance with relevant State and federal laws, rules, and
23 regulations;

24 (iii) The right to privacy;

25 (iv) The right to be free from mental and physical abuse;

26 **(v) THE RIGHT TO NOTICE, PROCEDURAL FAIRNESS, AND**
27 **HUMANE TREATMENT WHEN BEING TRANSFERRED OR DISCHARGED FROM A**
28 **FACILITY;**

29 **(vi) THE RIGHT TO PARTICIPATE IN DECISION MAKING**
30 **REGARDING TRANSITIONS IN CARE, INCLUDING A TRANSFER OR DISCHARGE FROM**
31 **A FACILITY;**

32 **[(v)] (vii) The right to expect and receive appropriate assessment,**

1 management, and treatment of pain as an integral component of the patient's care;

2 ~~[(vi)] (VIII)~~ The right to be free from physical and chemical restraints,
3 except for restraints that a physician authorizes for a clearly indicated medical need;

4 ~~[(vii)] (IX)~~ The right to receive respect and privacy in a medical care
5 program; and

6 ~~[(viii)] (X)~~ The right to manage personal financial affairs.

7 (c) Each facility shall:

8 (1) Post, conspicuously in a public place, the policy set forth in subsection
9 (b) of this section and the provisions in §§ 19-344(b) through (m), 19-345, and 19-346(i)(2)
10 of this subtitle;

11 (2) Give a copy of the policy and those provisions:

12 (i) On admission, to the resident;

13 (ii) To the guardian, next of kin, or sponsoring agency of the resident;
14 and

15 (iii) To a representative payee of the resident;

16 (3) Keep a receipt for the copy that is signed by the person who received
17 the copy; and

18 (4) Provide appropriate staff training to carry out the policy and those
19 provisions.

20 19-345.

21 (a) A resident of a facility may not be transferred or discharged from the facility
22 involuntarily except for the following reasons:

23 (1) The transfer or discharge is necessary for the resident's welfare and the
24 resident's needs cannot be met in the facility;

25 (2) The transfer or discharge is appropriate because the resident's health
26 has improved sufficiently so that the resident no longer needs the services provided by the
27 facility;

28 (3) The health or safety of an individual in a facility is endangered;

29 (4) The resident has failed, after reasonable and appropriate notice, to pay
30 for, or under Medicare or Medicaid or otherwise, to have paid for a stay at the facility; or

1 (5) The facility ceases to operate.

2 19-345.1.

3 (a) [Except as provided in subsection (e) of this section, a] A facility shall provide
4 the resident with written notice of:

5 (1) Any proposed discharge or transfer; and

6 (2) The opportunity for a hearing in accordance with the provisions of this
7 section before the discharge or transfer.

8 (b) The Department shall prepare and provide each facility with a standardized
9 form that provides, in clear and simple language, at least the following information:

10 (1) Notice of the intended discharge or transfer of the resident,
11 **INCLUDING THE DATE OF THE INTENDED DISCHARGE OR TRANSFER;**

12 (2) Each reason for the discharge or transfer;

13 **(3) THE LOCATION TO WHICH THE RESIDENT WILL BE DISCHARGED**
14 **OR TRANSFERRED;**

15 **(4) THE NAMES OF THE FACILITY STAFF WHO:**

16 **(I) ARE DESIGNATED TO PROVIDE SOCIAL WORK AND**
17 **DISCHARGE PLANNING SERVICES TO THE RESIDENT IN CONNECTION WITH THE**
18 **DISCHARGE OR TRANSFER; AND**

19 **(II) WILL BE RESPONSIBLE FOR THE DEVELOPMENT OF THE**
20 **POST DISCHARGE PLAN OF CARE UNDER SUBSECTION (G) OF THIS SECTION;**

21 **(5) A PROPOSED DATE WITHIN 10 DAYS AFTER THE DATE OF THE**
22 **NOTICE FOR A MEETING BETWEEN THE RESIDENT AND FACILITY STAFF TO DEVELOP**
23 **THE POST DISCHARGE PLAN OF CARE UNDER SUBSECTION (G) OF THIS SECTION;**

24 ~~[(3)]~~ **(6)** The right of the resident to request a hearing;

25 ~~[(4)]~~ **(7)** The right of the resident to consult with any lawyer the resident
26 chooses;

27 ~~[(5)]~~ **(8)** The availability of the services of the Legal Aid Bureau, the Older
28 American Act Senior Legal Assistance Programs, and other agencies that may provide
29 assistance to individuals who need legal counsel;

1 ~~[(6)] (9)~~ The availability of the [Department of Aging and local Office on
2 Aging] Long-Term Care Ombudsman **PROGRAM** to assist the resident; and

3 ~~[(7)] (10)~~ The provisions of this section.

4 (c) Except as otherwise provided in this section, at least 30 days before the facility
5 involuntarily transfers or discharges a resident, the facility shall:

6 (1) Provide to the resident the written notice required under subsection (a)
7 of this section; and

8 (2) Provide the written notice required under subsection (a) of this section
9 to:

10 **(I) THE RESIDENT;**

11 ~~[(i)] (II)~~ The next of kin, guardian, or any other individual known
12 to have acted as the [individual's] **RESIDENT'S** representative, if any;

13 ~~[(ii)] (III)~~ The Long-Term Care Ombudsman; and

14 ~~[(iii)] (IV)~~ The Department.

15 (d) (1) (i) In accordance with regulations adopted by the Secretary, the
16 facility shall provide the resident with an opportunity for a hearing on the proposed
17 transfer or discharge.

18 (ii) The regulations adopted by the Secretary may provide for the
19 establishment of an escrow account when:

20 1. The basis for the discharge is nonpayment; and

21 2. The resident continues to reside in the facility while the
22 appeal is pending.

23 (2) Except as otherwise provided in this subsection, hearings on proposed
24 transfers or discharges shall be conducted in accordance with the provisions of Title 10,
25 Subtitle 2 of the State Government Article and the Medicaid Fair Hearing Procedures.

26 (3) Any hearing on a proposed discharge or transfer of a resident:

27 (i) Is not a contested case as defined in § 10-202 of the State
28 Government Article; and

29 (ii) May not include the Secretary as a party.

1 (4) A decision by an administrative law judge on a proposed discharge or
2 transfer of a resident:

3 (i) Is not a decision of the Secretary;

4 (ii) Unless appealed, is final and binding on the parties; and

5 (iii) May be appealed in accordance with § 10–222 of the State
6 Government Article as if it were a contested case but the appeal does not automatically
7 stay the decision of the administrative law judge.

8 (e) [(1) The provisions of this section requiring 30 days' notice and an
9 opportunity for a hearing before discharge or transfer of a resident do not apply if:] **THE**
10 **FACILITY SHALL PROVIDE THE WRITTEN NOTICE REQUIRED IN SUBSECTION (A) OF**
11 **THIS SECTION AS SOON AS PRACTICABLE BEFORE DISCHARGE OR TRANSFER IF:**

12 [(i)] **(1)** An emergency exists and health or safety of the resident
13 or other residents would be placed in imminent and serious jeopardy if the resident were
14 not transferred or discharged from the facility as soon as possible; or

15 [(ii)] **(2)** The resident has not resided in the facility for 30 days.

16 [(2) If a facility discharges or transfers a resident under the provisions of
17 this subsection, the facility shall provide reasonable notice of the proposed discharge or
18 transfer.]

19 **(F) IF THE INFORMATION IN THE NOTICE PROVIDED UNDER SUBSECTION**
20 **(C) OF THIS SECTION CHANGES BEFORE THE DISCHARGE OR TRANSFER, THE**
21 **FACILITY SHALL PROVIDE THE CHANGES TO THE RECIPIENTS OF THE NOTICE AS**
22 **SOON AS PRACTICABLE AFTER THE NEW INFORMATION BECOMES AVAILABLE.**

23 **(G) (1) BEFORE ANY DISCHARGE OR TRANSFER AND SUBJECT TO**
24 **PARAGRAPHS (4) AND (5) OF THIS SUBSECTION, A FACILITY SHALL DEVELOP A POST**
25 **DISCHARGE PLAN OF CARE FOR THE RESIDENT THAT:**

26 **(I) ADDRESSES THE RESIDENT'S POST DISCHARGE GOALS OF**
27 **CARE AND TREATMENT PREFERENCES;**

28 **(II) IDENTIFIES EACH OF THE RESIDENT'S REASONABLY**
29 **ANTICIPATED MEDICAL AND BASIC NEEDS AFTER DISCHARGE OR TRANSFER AND**
30 **ESTABLISHES A PLAN FOR MEETING THOSE NEEDS; AND**

31 **(III) ASSISTS THE RESIDENT WITH ADJUSTING TO THE**
32 **RESIDENT'S NEW LIVING ENVIRONMENT.**

1 **(2) THE FACILITY SHALL DESIGNATE A SOCIAL WORKER OR OTHER**
2 **PROFESSIONALLY QUALIFIED STAFF MEMBER TO COORDINATE THE DEVELOPMENT**
3 **OF THE RESIDENT'S POST DISCHARGE PLAN OF CARE.**

4 **(3) THE FACILITY SHALL, IF POSSIBLE, MEET WITH THE RESIDENT**
5 **AND, WITH THE RESIDENT'S CONSENT, THE RESIDENT'S REPRESENTATIVE WITHIN**
6 **10 DAYS AFTER PROVIDING THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS**
7 **SECTION TO DISCUSS THE POST DISCHARGE PLAN OF CARE FOR THE RESIDENT.**

8 **(4) (I) THE RESIDENT'S POST DISCHARGE PLAN OF CARE SHALL BE**
9 **DEVELOPED WITH THE PARTICIPATION OF THE RESIDENT AND, WITH THE**
10 **RESIDENT'S CONSENT, THE RESIDENT'S REPRESENTATIVE.**

11 **(II) IF THE POST DISCHARGE PLAN OF CARE WAS DEVELOPED**
12 **WITHOUT THE PARTICIPATION OF THE RESIDENT OR THE RESIDENT'S**
13 **REPRESENTATIVE, THE FACILITY SHALL INCLUDE IN THE RESIDENT'S MEDICAL**
14 **RECORD AN EXPLANATION OF WHY THE RESIDENT OR THE RESIDENT'S**
15 **REPRESENTATIVE DID NOT PARTICIPATE.**

16 **(5) THE RESIDENT'S POST DISCHARGE PLAN OF CARE SHALL BE**
17 **DEVELOPED IN CONSULTATION WITH:**

18 **(I) THE RESIDENT'S ATTENDING PHYSICIAN;**

19 **(II) A REGISTERED NURSE RESPONSIBLE FOR THE CARE OF THE**
20 **RESIDENT; AND**

21 **(III) ANY OTHER APPROPRIATE STAFF OR PROFESSIONAL**
22 **INVOLVED WITH MEETING THE RESIDENT'S MEDICAL NEEDS.**

23 19-345.2.

24 (a) In addition to the provisions of §§ 19-345 and 19-345.1 of this subtitle, a
25 facility may not involuntarily discharge or transfer a resident unless, within 48 hours
26 before the discharge or transfer, the facility has:

27 (1) Provided or obtained:

28 (i) A comprehensive medical assessment and evaluation of the
29 resident, including a physical examination, that is documented in the resident's medical
30 record;

31 (ii) A post discharge plan of care for the resident that is developed,

1 if possible, with the participation of the resident's next of kin, guardian, or legal
2 representative **IN ACCORDANCE WITH § 19-345.1 OF THIS SUBTITLE**; and

3 (iii) Written documentation from the resident's attending physician
4 indicating that the transfer or discharge is in accordance with the post discharge plan of
5 care and is not contraindicated by the resident's medical condition; and

6 (2) Provided information to the resident concerning the resident's rights to
7 make decisions concerning health care, including:

8 (i) The right to accept or refuse medical treatment;

9 (ii) The right to make an advance directive, including the right to
10 make a living will and the right to appoint an agent to make health care decisions; and

11 (iii) The right to revoke an advance directive.

12 (b) Except as provided in subsection (c)(3) of this section, [at the time of transfer
13 or discharge] **AT LEAST 24 HOURS BEFORE DISCHARGE OR TRANSFER**, the facility shall
14 provide the resident [or] **AND** the resident's next of kin, guardian, or legal representative
15 with:

16 (1) **[A] THE** written statement of the medical assessment and evaluation
17 and [post discharge plan of care] **WRITTEN DOCUMENTATION FROM THE RESIDENT'S**
18 **ATTENDING PHYSICIAN** required under subsection (a) of this section;

19 (2) **THE POST DISCHARGE PLAN OF CARE DEVELOPED UNDER §**
20 **19-345.1 OF THIS SUBTITLE**;

21 **[(2)] (3)** A written statement itemizing the medications currently being
22 taken by the resident;

23 **[(3)] (4)** To the extent permitted under State and federal law, at least a
24 3-day supply of the medications currently being taken by the resident;

25 **[(4)] (5)** The information necessary to assist the resident[,]
26 resident's next of kin, **GUARDIAN**, or legal representative in obtaining additional
27 prescriptions for necessary medication through consultation with the resident's treating
28 physician; and

29 **[(5)] (6)** A written statement containing the date, time, method, mode,
30 and destination of discharge.

31 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a facility
32 may not discharge or transfer a resident unless the resident is capable of and has consented
33 in writing to the discharge or transfer.

1 (2) A facility may discharge or transfer a resident without obtaining the
2 written consent of the resident **FOR ONE OF THE REASONS LISTED IN § 19-345(A) OF**
3 **THIS SUBTITLE** if the discharge or transfer:

4 (i) Is in accordance with a post discharge plan of care developed
5 under [subsection (a) of this section] **§ 19-345.1 OF THIS SUBTITLE**; [and]

6 **(II) IS TO THE COMMUNITY IN WHICH THE RESIDENT RESIDED**
7 **BEFORE BECOMING A RESIDENT OF THE FACILITY;**

8 **(III) IS TO ANOTHER LICENSED PROVIDER, UNLESS:**

9 1. **THE RESIDENT IS BEING DISCHARGED OR**
10 **TRANSFERRED BECAUSE THE RESIDENT'S HEALTH HAS IMPROVED SUFFICIENTLY**
11 **AND THE RESIDENT NO LONGER NEEDS THE SERVICES PROVIDED BY THE FACILITY;**

12 2. **THE RESIDENT HAS NO PENDING APPLICATION FOR**
13 **THE MARYLAND MEDICAL ASSISTANCE PROGRAM, IS INELIGIBLE FOR THE**
14 **MARYLAND MEDICAL ASSISTANCE PROGRAM, AND IS BEING DISCHARGED OR**
15 **TRANSFERRED FOR NONPAYMENT UNDER § 19-345(A)(4) OF THIS SUBTITLE; OR**

16 3. **A. THE RESIDENT IS ELIGIBLE FOR THE**
17 **MARYLAND MEDICAL ASSISTANCE PROGRAM;**

18 **B. THE FACILITY HAS FULFILLED ITS OBLIGATION**
19 **UNDER § 19-334(C) OF THIS SUBTITLE TO COOPERATE WITH AND ASSIST THE**
20 **RESIDENT OR THE RESIDENT'S REPRESENTATIVE IN SEEKING ASSISTANCE FROM**
21 **THE MARYLAND MEDICAL ASSISTANCE PROGRAM;**

22 **C. THE FACILITY HAS DOCUMENTED THE COOPERATION**
23 **AND ASSISTANCE PROVIDED UNDER ITEM B OF THIS ITEM;**

24 **D. THE RESIDENT OR RESIDENT'S REPRESENTATIVE HAS**
25 **REFUSED TO APPLY FOR OR SEEK ASSISTANCE FROM THE MARYLAND MEDICAL**
26 **ASSISTANCE PROGRAM; AND**

27 **E. THE RESIDENT IS BEING DISCHARGED FOR**
28 **NONPAYMENT UNDER § 19-345(A)(4) OF THIS SUBTITLE; AND**

29 [(ii)] **(IV) Is to a safe and secure environment [where the resident**
30 **will be under the care of:**

31 1. Another licensed, certified, or registered care provider; or

1 2. Another person who has agreed in writing to provide a safe
2 and secure environment].

3 (3) A facility that is certified as a continuing care provider under Title 10,
4 Subtitle 4 of the Human Services Article is not subject to the provisions of subsection (b) of
5 this section if:

6 (i) The facility transfers a resident to a lesser level of care within
7 the same facility in accordance with a contractual agreement between the facility and the
8 resident; and

9 (ii) The transfer is approved by the attending physician.

10 (d) If the requirements of §§ 19–345 and 19–345.1 of this subtitle and subsections
11 (a) and (b) of this section have been met, the resident’s next of kin or legal representative
12 shall cooperate and assist in the discharge planning process, including:

13 (1) Contacting, cooperating with, and assisting other facilities considering
14 admitting the resident; and

15 (2) Cooperating with governmental agencies, including applying for
16 medical assistance for the resident.

17 (e) If requested by any person during the process of transferring or discharging a
18 resident or on its own initiative, the Office of the Attorney General may investigate whether
19 an abuse of funds under § 19–346 of this subtitle contributed to the decision to transfer or
20 discharge the resident and may make appropriate referrals of the matter to other
21 government agencies.

22 19–345.3.

23 (a) The Secretary may impose a civil money penalty not to exceed \$10,000 for:

24 (1) Each violation by a facility of § 19–345, § 19–345.1, or § 19–345.2 of this
25 subtitle; or

26 (2) Each willful or grossly negligent violation by a resident’s agent or legal
27 representative of § 19–345, § 19–345.1, or § 19–345.2 of this subtitle.

28 (b) If a civil money penalty is imposed under this section, the facility or agent or
29 legal representative of the resident shall have the right to appeal from an order imposing
30 the civil money penalty in accordance with Title 10, Subtitle 2 of the State Government
31 Article.

32 (c) **(1)** A resident, resident’s agent, or resident’s attorney, or the Attorney
33 General on behalf of the resident, who believes that an involuntary discharge or transfer

1 that violates the requirements of § 19–345, § 19–345.1, or § 19–345.2 of this subtitle is
2 imminent or has taken place may request injunctive relief from a circuit court.

3 **(2) IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER**
4 **THIS SUBSECTION, THE ATTORNEY GENERAL MAY REQUEST THAT THE COURT**
5 **IMPOSE A CIVIL PENALTY NOT TO EXCEED \$100,000 FOR EACH VIOLATION BY A**
6 **FACILITY OF § 19–345, § 19–345.1, OR § 19–345.2 OF THIS SUBTITLE.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2019.