

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 592

(The Speaker, *et al.*) (By Request - Office of the Attorney General)

Health and Government Operations

Finance

**Health Care Facilities - Comprehensive and Extended Care Facilities -
Discharges and Transfers**

This bill alters specified requirements related to the discharge or transfer of a resident from a comprehensive or extended care facility. The bill (1) specifies additional resident rights; (2) expands the required contents of a discharge or transfer form; (3) requires the development of a specified post discharge plan; and (4) places additional restrictions on the discharge of a resident without informed consent. The bill authorizes the Attorney General to request that a court impose a civil penalty of up to \$100,000 for each violation of specified provisions related to the transfer or discharge of a resident, the required notice of discharge or transfer, or an involuntary discharge. The bill also expands the available relief following nonpayment by a resident to include a circuit court injunction compelling a resident to pursue with due diligence a Medicaid application, and makes other conforming, technical, stylistic, and clarifying changes.

Fiscal Summary

State Effect: The Office of Health Care Quality and the Office of the Attorney General (OAG) can meet the bill’s requirements with existing resources. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Generally, under current law, “facility” means a related institution that, under the rules and regulations of the Maryland Department of Health (MDH), is a comprehensive care facility or an extended care facility. Maryland regulations define “comprehensive care facility” as a facility that admits patients suffering from disease or disabilities or advanced age, requiring medical service and nursing service rendered by or under the supervision of a registered nurse. “Extended care facility” means a facility that offers subacute care, providing treatment services for patients requiring inpatient care but who do not currently require continuous hospital services.

Rights of a Resident of a Facility

The bill specifies that it is the policy of this State that, in addition to any other rights, each resident of a facility has the right (1) to notice, procedural fairness, and humane treatment when being transferred or discharged from a facility and (2) to participate in decision making regarding transitions in care, including a transfer or discharge from a facility.

Under current law, the basic rights of a resident of a facility include the right to:

- be treated with consideration, respect, and full recognition of human dignity and individuality;
- receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State and federal laws, rules, and regulations;
- privacy;
- be free from mental and physical abuse;
- expect and receive appropriate assessment, management, and treatment of pain as an integral component of the patient’s care;
- be free from physical and chemical restraints, except for restraints that a physician authorizes for a clearly indicated medical need;
- receive respect and privacy in a medical care program; and
- manage personal financial affairs.

Required Notice of Discharge or Transfer

Under current law, a facility must provide a resident with written notice of (1) any proposed discharge or transfer and (2) the opportunity for a hearing before the discharge or transfer. MDH must prepare and provide each facility with a standardized form that provides, in clear and simple language, at least the following information:

- notice of the intended discharge or transfer of the resident;
- each reason for the discharge or transfer;
- the right of the resident to request a hearing;
- the right of the resident to consult with any lawyer the resident chooses;
- the availability of the services of the Legal Aid Bureau, the Older Americans Act Senior Legal Assistance Programs, and other agencies that may provide assistance to individuals who need legal counsel;
- the availability of the Department of Aging and local Office on Aging Long-Term Care Ombudsman Program to assist the resident; and
- specified provisions of current law related to notice of discharge or transfer.

The bill requires the form prepared by MDH to also include:

- the proposed date of the intended discharge or transfer, which may change as a result of an appeal or the discharge planning process;
- the location to which the resident will be discharged or transferred, which may change as a result of an appeal or the discharge planning process;
- the name of the social worker or other professionally qualified staff, which may change during the discharge planning process, who (1) is designated to provide social services and discharge planning services to the resident in connection with the discharge or transfer and (2) will be responsible for the development of the post discharge plan of care; and
- a proposed date within 10 days after the date of the notice for a meeting between the resident, the resident's representative, and facility staff to develop the post discharge plan of care.

The bill clarifies that a facility must provide the required written notice as soon as practicable before discharge or transfer if (1) an emergency exists and the health or safety of the resident or other residents would be placed in imminent and serious jeopardy if the resident were not transferred or discharged from the facility as soon as possible or (2) the resident has not resided in the facility for 30 days.

The bill specifies that, if the information in the notice changes before the discharge or transfer, the facility must provide the changes to the recipients of the notice as soon as practicable after the new information becomes available.

Required Post Discharge Plan of Care

The bill specifies that, before any discharge or transfer, a facility must develop a post discharge plan of care for the resident to assist the resident with adjusting to the resident's

new living environment. That plan of care must also (1) address the resident's post discharge goals of care and treatment preferences and (2) identify each of the resident's reasonably anticipated medical and basic needs after discharge or transfer and establish a plan for meeting those needs.

The facility must designate a social worker or other professionally qualified staff member to coordinate the development of the post discharge plan of care. If possible, the facility must meet with the resident and any representative within 10 days after providing the required written notice of discharge or transfer to discuss the plan of care.

The resident's post discharge plan of care must be developed with the participation of the resident and, with the resident's consent, the resident's representative. If the plan of care was developed without the participation of the resident or the resident's representative, the facility must include in the resident's medical record an explanation of why the resident or the resident's representative did not participate. In addition, the resident's post discharge plan of care must be developed in consultation with the resident's attending physician, a registered nurse responsible for the care of the resident, and any other appropriate staff or professional involved with meeting the resident's medical needs.

Involuntary Discharge or Transfer

The bill specifies that, at least 24 hours before discharge or transfer, the facility must provide the resident *and* the resident's next of kin, guardian, or legal representative with the required written statement of the medical assessment and evaluation and required written documentation from the resident's attending physician as well as the required post discharge plan of care. These items must be provided in addition to the other information required under current law, with one exception as noted below.

Under current law, at the time of transfer or discharge, the facility must provide the resident *or* the resident's next of kin, guardian, or legal representative with:

- a written statement of the medical assessment and evaluation and post discharge plan of care;
- a written statement itemizing the medications currently being taken by the resident (no longer required under the bill);
- to the extent permitted under State and federal law, at least a three-day supply of the medications;
- the information necessary to assist the resident, the resident's next of kin, or legal representative in obtaining additional prescriptions for necessary medication through consultation with the resident's treating physician; and

- a written statement containing the date, time, method, mode, and destination of discharge.

The bill clarifies that the facility must, to the extent *authorized* under State and federal law, provide at least a three-day supply of medications currently being taken by the resident *at the time of discharge or transfer*. The bill also clarifies that a facility *may* discharge or transfer a resident without obtaining the written consent of the resident for one of the reasons specified in current law if the discharge or transfer meets certain requirements.

Under current law, the discharge or transfer may occur without obtaining the informed consent of the resident if the discharge or transfer is (1) in accordance with a post discharge plan of care and (2) to a safe and secure environment where the resident will be under the care of another licensed, certified, or registered care provider, or another person who has agreed in writing to provide a safe and secure environment.

The bill expands the required conditions that must be met before the discharge or transfer of a resident without obtaining the informed consent. Accordingly, a facility may discharge or transfer a resident without obtaining the written consent of the resident, for one of the reasons specified in current law, if the discharge or transfer is (1) in accordance with a post discharge plan of care; (2) to the community in which the resident resided before becoming a resident of the facility, unless the facility documents why it is in the best interest of the resident to be discharged to another location; (3) to another licensed provider, as specified; and (4) to a safe and secure environment. However, a resident may not be transferred to another provider if (1) the resident is being discharged or transferred because the resident's health has improved sufficiently and the resident no longer needs the services provided by the facility; (2) the resident has no pending application to Medicaid or is ineligible for the program and is being discharged or transferred for nonpayment; or (3) the resident is or may be eligible for Medicaid; the facility has attempted to assist the resident to apply for Medicaid, but the resident or resident's representative has not complied or has repeatedly failed, despite the facility's documented assistance, to make good-faith efforts to supply information or materials necessary for Medicaid to enroll the resident; and the resident is being discharged for nonpayment.

Application for Medicaid

Under current law, a facility may require an applicant, a resident, or the agent of an applicant or resident to agree to distribute any funds, including the income or assets of the applicant or resident, which Medicaid has determined to be available to pay for the cost of the applicant's or resident's care to the facility promptly when due. A resident or agent who has not paid a current obligation may apply to Medicaid for a determination of the funds available to pay for the cost of the resident's care. If a resident or the agent of a resident fails to request a determination, the facility may, without requesting the

appointment of a guardian, petition the appropriate circuit court for an order directing the resident or the agent of the resident to request the determination with due diligence.

The bill authorizes a facility to petition the appropriate circuit court for an *injunction* directing the resident or agent of the resident to request the determination; the bill also establishes that the court may, with either an order or an injunction, be petitioned to direct that the determination be *pursued* with due diligence. A facility may also petition the court to grant other appropriate relief to enforce the obligations.

Background: In October 2018, OAG announced a settlement with Neiswanger Management Services, LLC (NMS), formerly an operator of five nursing facilities in Maryland, and its owner, Matthew Neiswanger. In a civil case filed in the circuit court for Montgomery County in December 2016, the State alleged that NMS had engaged in unfair, unsafe, and unlawful discharge practices affecting hundreds of residents and had submitted false claims to the Medicaid program. Under the settlement, Neiswanger and NMS, which discontinued its operation of nursing facilities in February 2018, were permanently precluded from engaging in the management or operation of nursing facilities in Maryland, and from participating as providers in the Medicaid program; agreed to pay \$2.2 million to the State; and agreed to drop a federal lawsuit that NMS filed against MDH in March 2017.

The State alleged that NMS engaged in systemic violations of the discharge provisions of the Patient's Bill of Rights, the Maryland law that protects nursing home residents. The State alleged that, among other things, NMS issued hundreds of eviction notices for asserted nonpayment to residents who had not failed to pay, and dumped numerous vulnerable residents in homeless shelters and predatory unlicensed assisted living facilities where they faced financial exploitation and abuse.

Small Business Effect: Comprehensive or extended care facilities that qualify as small businesses may incur additional costs as a result of the bill's enhanced notice and procedural requirements and may be required to pay additional fines for any violations.

Additional Information

Prior Introductions: None.

Cross File: SB 669 (The President, *et al.*) (By Request - Office of the Attorney General) - Finance.

Information Source(s): Maryland Department of Aging; Montgomery County; Maryland Association of Counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

Fiscal Note History:
an/jc

First Reader - March 4, 2019
Revised - Correction - March 5, 2019
Third Reader - March 28, 2019
Revised - Amendment(s) - March 28, 2019
Revised - Clarification - March 28, 2019
Enrolled - May 10, 2019
Revised - Amendment(s) - May 10, 2019

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510