

HOUSE BILL 706

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0lr1735
CF 0lr2509

By: **Delegates Hubbard, Costa, Donoghue, Frush, Hammen, Kach, Krebs, Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, Reznik, Tarrant, and V. Turner**

Introduced and read first time: February 4, 2010

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Facilities – Maryland Medical Assistance Program – Rights**

3 FOR the purpose of authorizing certain judicial action against certain individuals who
4 fail to comply with a certain court order to make certain payments; authorizing
5 certain judicial action against certain individuals who fail to comply with a
6 certain court order to seek assistance from the medical assistance program or to
7 cooperate fully in the medical assistance eligibility process; authorizing the
8 Attorney General to enforce and prosecute certain provisions of law; providing
9 that the Act may not be construed to limit certain legal actions by a nursing
10 facility; requiring the Office of the Attorney General, in consultation with the
11 Department of Health and Mental Hygiene and the nursing home industry, to
12 revise certain documents in a certain manner; and generally relating to nursing
13 facilities and the medical assistance program.

14 BY repealing and reenacting, without amendments,
15 Article – Health – General
16 Section 19–344(a)
17 Annotated Code of Maryland
18 (2009 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 19–344(c)
22 Annotated Code of Maryland
23 (2009 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 19–344.

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

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

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

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

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

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

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

26 (iv) If a request for a determination is made under
27 subparagraph (iii) of this paragraph, the medical assistance program shall make the
28 determination.

29 (v) If a resident or agent of a resident who has not paid a
30 current obligation for the resident’s care fails to request a determination under
31 subparagraph (iii) of this paragraph, the facility may, without requesting the
32 appointment of a guardian, petition the appropriate circuit court for an order directing
33 the resident or agent of the resident to request the determination with due diligence.

34 (vi) 1. If a resident or agent of the resident fails to pay for
35 the cost of the resident’s care from funds that the medical assistance program has
36 determined to be available to pay for that care, the facility may, without requesting

1 the appointment of a guardian, petition the appropriate circuit court for an order
2 directing the resident or agent of the resident to pay the facility from the funds
3 determined by the medical assistance program to be available.

4 **2. NOTWITHSTANDING PARAGRAPH (6) OF THIS**
5 **SUBSECTION, IF A RESIDENT OR AGENT OF THE RESIDENT FAILS TO COMPLY**
6 **WITH THE COURT ORDER WITHIN 14 DAYS OF ISSUANCE, THE COURT MAY ISSUE**
7 **A JUDGMENT FINDING THE RESIDENT OR AGENT CIVILLY LIABLE TO THE**
8 **NURSING FACILITY:**

9 **A. IN AN AMOUNT NOT EXCEEDING THE FUNDS**
10 **DETERMINED BY THE MEDICAL ASSISTANCE PROGRAM TO BE AVAILABLE OR**
11 **FOR A CIVIL PENALTY NOT EXCEEDING \$20,000, OR BOTH; AND**

12 **B. FOR THE NURSING FACILITY'S REASONABLE**
13 **ATTORNEY'S FEES AND COURT COSTS.**

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

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

20 (iii) 1. If a resident or the agent of a resident fails to seek
21 assistance from the medical assistance program or to cooperate fully in the eligibility
22 determination process, a facility providing care to the resident may, without
23 requesting the appointment of a guardian, petition the appropriate circuit court for an
24 order requiring the resident or agent of the resident to seek assistance from the
25 medical assistance program or to cooperate in the eligibility determination process
26 with due diligence.

27 **2. NOTWITHSTANDING PARAGRAPH (6) OF THIS**
28 **SUBSECTION, IF A RESIDENT OR AGENT OF THE RESIDENT FAILS TO COMPLY**
29 **WITH THE COURT ORDER WITHIN 14 DAYS OF ISSUANCE, THE COURT MAY ISSUE**
30 **A JUDGMENT FINDING THE RESIDENT OR AGENT CIVILLY LIABLE TO THE**
31 **NURSING FACILITY:**

32 **A. IN AN AMOUNT NOT EXCEEDING THE COST BILLED**
33 **BY THE NURSING FACILITY FOR PROVIDING CARE TO THE RESIDENT OR FOR A**
34 **CIVIL PENALTY NOT EXCEEDING \$20,000, OR BOTH; AND**

35 **B. FOR THE NURSING FACILITY'S REASONABLE**
36 **ATTORNEY'S FEES AND COURT COSTS.**

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

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

9 (iii) The Attorney General [is responsible for the enforcement
10 and prosecution of] **MAY ENFORCE AND PROSECUTE** violations of the provisions of
11 paragraphs (4) and (5) of this subsection.

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall
16 be construed to limit or prohibit any other legal remedies that a nursing facility may
17 pursue to seek payment or other action from a resident or agent of a resident.

18 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the
19 Attorney General, in consultation with the Department of Health and Mental Hygiene
20 and members of the nursing facility industry, shall revise the nursing facility
21 admission agreement and any other documents to clarify the role of a resident and the
22 resident's agent in the medical assistance eligibility determination process.

23 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 July 1, 2010.