

Chapter 589

(Senate Bill 966)

AN ACT concerning

Health Facilities – Assisted Living Programs – Referrals and Licenses

FOR the purpose of ~~authorizing the Office of the Attorney General to seek certain injunctive or other relief for a certain purpose under certain circumstances~~ providing that a certain violation of a certain provision of law shall be a violation of the Consumer Protection Act; prohibiting a person from knowingly and willfully referring another person to a certain assisted living program; establishing certain penalties for certain violations of this Act; requiring the Secretary of Health to remit certain penalties to the Office of Health Care Quality for a certain purpose; requiring each assisted living referrer to register with the Office of Health Care Quality, make a certain disclosure to a certain client, affirm certain information under certain circumstances, and notify the Office of Health Care Quality of certain information; authorizing each assisted living referrer to refer a certain client only to a certain assisted living program under certain circumstances; prohibiting an assisted living referrer from receiving certain funding under certain circumstances and from making referrals only to certain licensed assisted living programs; authorizing the Office of the Attorney General to investigate a certain matter and seek appropriate relief under certain circumstances; defining a certain term; and generally relating to referrals to, and licenses for, assisted living programs.

BY repealing and reenacting, without amendments,

Article – Health – General
 Section 19–1804.1
 Annotated Code of Maryland
 (2019 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Health – General
 Section 19–1809
 Annotated Code of Maryland
 (2019 Replacement Volume)

BY adding to

Article – Health – General
 Section 19–1813
 Annotated Code of Maryland
 (2019 Replacement Volume)

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

Article – Health – General

19–1804.1.

(a) A person shall be licensed by the Department to conduct, operate, or maintain an assisted living program in the State.

(b) (1) A person shall submit an application for licensure to conduct, operate, or maintain an assisted living program to the Secretary on a form developed by the Secretary.

(2) (i) The Secretary shall develop the application for licensure required under paragraph (1) of this subsection.

(ii) The application shall include the name and address of each officer, manager, alternate manager, and delegating nurse or case manager of the assisted living program.

(3) In addition to the application, an applicant for initial licensure shall submit to the Secretary:

(i) Information concerning any license or certification held by the applicant under the Health Occupations Article or under this article, including the prior or current operation by the applicant of a health care facility, residential facility, or similar health care program;

(ii) Information demonstrating the financial and administrative ability of the applicant to operate an assisted living program in compliance with this subtitle;

(iii) The policies and procedures to be implemented by the assisted living program;

(iv) Identification of the personnel and relief personnel to be employed by the assisted living program; and

(v) Any other information that is relevant to the ability of the applicant to care for the residents of the assisted living program.

(c) (1) The Secretary shall:

(i) Review the application and information received under subsection (b) of this section; and

(ii) Conduct an independent investigation of the assisted living program applying for initial licensure.

(2) Based on the review and investigation conducted under paragraph (1) of this subsection, the Secretary shall:

- (i) Authorize the unconditional approval of the application;
- (ii) Authorize the conditional approval of the application; or
- (iii) Deny the application.

(d) The Secretary may issue a probationary license that is valid for a period of time determined by the Secretary in accordance with regulations adopted by the Secretary.

19-1809.

(a) (1) A person may not knowingly and willfully operate, maintain, or own an assisted living program without a license.

(2) A person who violates paragraph (1) of this subsection is guilty of a felony and on conviction is subject to:

(i) For a first offense, a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both; or

(ii) For a subsequent offense, a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

(3) If the Department finds an assisted living program to be in violation of paragraph (1) of this subsection, the Department shall send written notice to the program 30 days before the State files charges under this section in order to give the program an opportunity to come into compliance with licensure requirements.

(4) A person may not be subject to paragraph (2) of this subsection if the person has:

(i) Applied in good faith to the Department for an assisted living program license;

(ii) Is awaiting a decision from the Department regarding the application; and

(iii) Has not been denied an assisted living program license on a prior occasion.

(5) In recommending the amount of the criminal penalty under paragraph (2) of this subsection, the State shall consider factors including the nature, number, and

seriousness of the violations and the ability of the assisted living program to pay the penalty.

~~(6) IF A PERSON VIOLATES PARAGRAPH (1) OF THIS SUBSECTION FOR THE THIRD TIME, THE OFFICE OF THE ATTORNEY GENERAL MAY SEEK APPROPRIATE INJUNCTIVE OR OTHER RELIEF TO PREVENT THE PERSON FROM CONTINUING TO OPERATE, MAINTAIN, OR OWN AN ASSISTED LIVING PROGRAM WITHOUT A LICENSE, INCLUDING INJUNCTIVE RELIEF THAT:~~

~~(i) REQUIRES THE PERSON TO IMMEDIATELY CEASE OPERATING THE ASSISTED LIVING PROGRAM; AND~~

~~(ii) PROHIBITS THE PERSON FROM OPERATING, MAINTAINING, OR OWNING AN ASSISTED LIVING PROGRAM IN THE FUTURE~~ A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION SHALL BE A VIOLATION OF THE CONSUMER PROTECTION ACT.

(b) (1) (i) A person may not advertise, represent, or imply to the public that an assisted living program is authorized to provide a service that the program is not licensed, certified, or otherwise authorized by the Department to provide when the license, certificate, or authorization is required under this subtitle.

(ii) A person may not advertise an assisted living program in a misleading or fraudulent manner.

(2) (i) A person who violates paragraph (1) of this subsection is subject to a civil money penalty imposed by the Secretary not exceeding \$10,000 for each offense.

(ii) In setting the amount of a civil money penalty on the program under subparagraph (i) of this paragraph, the Secretary shall consider factors including the nature, number, and seriousness of the violations and the ability of the assisted living program to pay the penalty.

(C) (1) A PERSON MAY NOT WILLFULLY AND KNOWINGLY REFER ANOTHER PERSON TO AN ASSISTED LIVING PROGRAM THAT IS OPERATING WITHOUT A LICENSE.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS SUBJECT TO THE FOLLOWING CIVIL PENALTIES:

(I) FOR A FIRST OFFENSE, A CIVIL PENALTY NOT EXCEEDING \$1,000;

(II) FOR A SECOND OFFENSE, A CIVIL PENALTY NOT EXCEEDING \$2,000; OR

(III) FOR A THIRD OR SUBSEQUENT OFFENSE, A CIVIL PENALTY NOT EXCEEDING \$3,000.

(3) THE SECRETARY SHALL REMIT ALL CIVIL PENALTIES COLLECTED UNDER THIS SUBSECTION TO THE OFFICE OF HEALTH CARE QUALITY FOR THE PURPOSES OF CARRYING OUT THE PROVISIONS OF § 19-1813 OF THIS SUBSECTION.

19-1813.

(A) IN THIS SECTION, "ASSISTED LIVING REFERRER" MEANS AN INDIVIDUAL OR AGENCY THAT:

(1) MAKES REFERRALS TO ASSISTED LIVING PROGRAMS WITHOUT COST TO THE PERSON RECEIVING THE REFERRAL; AND

(2) IS COMPENSATED BY AN ASSISTED LIVING PROGRAM OR OTHER THIRD PARTY FOR REFERRING INDIVIDUALS TO A LICENSED ASSISTED LIVING PROGRAM; ~~AND~~

~~(3) MAKES REFERRALS ONLY TO LICENSED ASSISTED LIVING PROGRAMS FOR WHICH THE REFERRER RECEIVES COMPENSATION UNDER ITEM (2) OF THIS SUBSECTION.~~

(B) EACH ASSISTED LIVING REFERRER:

(1) SHALL REGISTER WITH THE OFFICE OF HEALTH CARE QUALITY;

(2) SHALL DISCLOSE TO A CLIENT OR POTENTIAL CLIENT OF THE ASSISTED LIVING REFERRER ALL FINANCIAL RELATIONSHIPS THE ASSISTED LIVING REFERRER HAS WITH ASSISTED LIVING PROGRAMS;

(3) IF REFERRING A CLIENT OR POTENTIAL CLIENT TO AN ASSISTED LIVING PROGRAM, SHALL AFFIRM THAT THE ASSISTED LIVING PROGRAM IS LICENSED;

(4) IF REFERRING A CLIENT OR POTENTIAL CLIENT TO AN ASSISTED LIVING PROGRAM, MAY REFER THE CLIENT OR POTENTIAL CLIENT ONLY TO A LICENSED ASSISTED LIVING PROGRAM; AND

(5) SHALL NOTIFY THE OFFICE OF HEALTH CARE QUALITY IMMEDIATELY ON LEARNING THAT THE ASSISTED LIVING PROGRAM IS OPERATING WITHOUT A LICENSE.

(C) AN ASSISTED LIVING REFERRER MAY NOT ~~RECEIVE~~:

(1) RECEIVE FUNDING FROM THE DEPARTMENT IF THE ASSISTED LIVING REFERRER IS IN VIOLATION OF THIS SUBTITLE; OR

(2) MAKE REFERRALS ONLY TO LICENSED ASSISTED LIVING PROGRAMS FROM WHICH THE ASSISTED LIVING REFERRER RECEIVES COMPENSATION AS DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION.

(D) IF REQUESTED BY ANY PERSON OR ON ITS OWN INITIATIVE, THE OFFICE OF THE ATTORNEY GENERAL MAY INVESTIGATE WHETHER AN ASSISTED LIVING REFERRER VIOLATED THIS SUBTITLE AND MAY SEEK APPROPRIATE RELIEF.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.