

## Chapter 340

(Senate Bill 1057)

AN ACT concerning

### Department of Health and Mental Hygiene – Health Care Staff Agencies – Regulation

FOR the purpose of altering certain provisions of law that apply to nursing staff agencies and nursing personnel to apply more broadly to health care staff agencies and *certain* health care practitioners licensed or certified by certain health occupation boards; requiring a health care staff agency to be licensed by the Office of Health Care Quality in the Department of Health and Mental Hygiene before referring *certain* health care practitioners to a health care facility to render temporary health care services at a health care facility in this State; making provisions of law that apply to deemed status of accredited health care facilities for purposes of State licensure also apply to health care staff agencies; defining certain terms; altering certain definitions; repealing a certain definition; making conforming and stylistic changes; ~~making this Act an emergency measure;~~ and generally relating to licensure and accreditation of health care staff agencies.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 19–2001 and 19–2002 to be under the amended subtitle “Subtitle 20. Health Care Staff Agencies”; and 19–2301 and 19–2302 to be under the amended subtitle “Subtitle 23. Accreditation of Health Care Facilities and Health Care Staff Agencies”

Annotated Code of Maryland

(2009 Replacement Volume and 2012 Supplement)

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

#### Article – Health – General

Subtitle 20. [Nursing] HEALTH CARE Staff Agencies.

19–2001.

(a) (1) In this subtitle the following words have the meanings indicated.

(2) “Client facility” means a health care facility that contracts with a [nursing] HEALTH CARE staff agency for the referral of [nursing personnel] HEALTH CARE PRACTITIONERS.

(3) “Health care facility” means a hospital or related institution as defined in § 19–301 of this title.

[(4) “Initially providing or referring” means the first time a nursing staff agency provides or refers a particular licensed practical nurse, registered nurse, or certified nursing assistant to a health care facility.

(5) “Nursing personnel” means:

(i) Any individual licensed by the State Board of Nursing as a:

1. Licensed practical nurse; or
2. Registered nurse; or

(ii) A certified nursing assistant.]

(4) **(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, “HEALTH HEALTH CARE PRACTITIONER” MEANS ANY INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE WHO:**

**1. IS A LICENSED PRACTICAL NURSE, REGISTERED NURSE, OR CERTIFIED NURSING ASSISTANT; OR**

**2. PRACTICES IN AN ALLIED HEALTH CARE FIELD, AS DEFINED BY THE OFFICE IN REGULATION.**

**(II) “HEALTH CARE PRACTITIONER” DOES NOT INCLUDE:**

**1. AN ACUPUNCTURIST;**

**2. A DENTIST;**

**3. A NURSE ANESTHETIST;**

**4. A NURSE MIDWIFE;**

**5. A NURSE PRACTITIONER;**

**6. A PHARMACIST;**

**7. A PHYSICIAN; OR**

**8. A PODIATRIST.**

**[(6)] (5)** (i) ["Nursing] "HEALTH CARE staff agency" means any person, firm, corporation, partnership, or other business entity engaged in the business of referring [nursing personnel] HEALTH CARE PRACTITIONERS as employees or independent contractors to render temporary [nursing] HEALTH CARE services at a health care facility in the State.

(ii) ["Nursing] "HEALTH CARE staff agency" does not include:

1. A [nursing] HEALTH CARE staff agency operated by a health care facility OR ITS AFFILIATES solely for the purpose of procuring, furnishing, or referring temporary or permanent [nursing] HEALTH CARE personnel for employment at that health care facility OR ITS AFFILIATES;

2. A home health agency regulated under Subtitle 4 of this title; or

3. Any [nursing personnel] HEALTH CARE PRACTITIONERS procuring, furnishing, or referring their own services to a health care facility without the direct or indirect assistance of a [nursing] HEALTH CARE staff agency.

**(6) "INITIALLY PROVIDING OR REFERRING" MEANS THE FIRST TIME A HEALTH CARE STAFF AGENCY PROVIDES OR REFERS A PARTICULAR HEALTH CARE PRACTITIONER TO A HEALTH CARE FACILITY.**

(7) "Office" means the Office of Health Care Quality in the Department.

(8) "Responsible party" means the individual at a [nursing] HEALTH CARE staff agency who controls the day to day operation of the [nursing] HEALTH CARE staff agency.

(b) (1) A [nursing] HEALTH CARE staff agency shall be licensed by the Office before referring [nursing personnel] HEALTH CARE PRACTITIONERS to a health care facility to render temporary [nursing] HEALTH CARE services at a health care facility in this State.

(2) All [nursing] HEALTH CARE staff agencies shall submit to the Office:

(i) The [nursing] **HEALTH CARE** staff agency's:

1. Business name;
2. Business address;
3. Business telephone number; and
4. Responsible party; and

(ii) Any other information the Office requires by regulation to ensure compliance with the provisions of this subtitle.

(c) (1) A [nursing] **HEALTH CARE** staff agency license expires on the 28th day of the month in which the agency was originally licensed unless the license is renewed for a 1-year term as provided in this section.

(2) At least 1 month before the license expires, the Office shall send to the [nursing] **HEALTH CARE** staff agency, by first-class mail to the last known address of the [nursing] **HEALTH CARE** staff agency, a renewal notice that states:

(i) The date on which the current license expires;

(ii) The date by which the renewal application must be received by the Office for the renewal to be issued and mailed before the license expires; and

(iii) The amount of the renewal fee.

(3) Before a license expires, the [nursing] **HEALTH CARE** staff agency periodically may renew it for an additional term, if the [nursing] **HEALTH CARE** staff agency:

(i) Otherwise is entitled to be licensed; and

(ii) Pays to the Office the renewal fee set by the Office.

(d) If a [nursing] **HEALTH CARE** staff agency fails to renew, the [nursing] **HEALTH CARE** staff agency must immediately stop referring [personnel] **HEALTH CARE PRACTITIONERS** to health care facilities.

(e) (1) A [nursing] **HEALTH CARE** staff agency shall notify the Office of any change in ownership, agency name, or address within 30 days of the change.

(2) Notwithstanding the provisions of subsection (i)(1) of this section, if a [nursing] **HEALTH CARE** staff agency fails to notify the Office within the time required under this subsection, the Office may impose a fine of \$100.

(f) (1) Before initially providing or referring a [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER** to health care facilities to render temporary [nursing] **HEALTH CARE** services, the [nursing] **HEALTH CARE** staff agency shall verify the licensure **OR CERTIFICATION** status of the [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER**.

(2) At the time a [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER** who is being referred to health care facilities by a [nursing] **HEALTH CARE** staff agency must renew [their license to practice licensed practical nursing, registered nursing, or certified nursing assistance] **THE HEALTH CARE PRACTITIONER'S LICENSE OR CERTIFICATE**, the [nursing] **HEALTH CARE** staff agency shall:

(i) Submit the name and license **OR CERTIFICATE** number of the [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER** to the Office; and

(ii) Verify the licensure **OR CERTIFICATION** status of the [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER**.

(g) [(1)] A [nursing] **HEALTH CARE** staff agency may not knowingly provide or refer [a licensed practical nurse who is not authorized to practice licensed practical nursing under Title 8 of the Health Occupations Article to a health care facility to render temporary nursing services.

(2) A nursing staff agency may not knowingly provide or refer a registered nurse who is not authorized to practice registered nursing under Title 8 of the Health Occupations Article to a health care facility to render temporary nursing services.

(3) A nursing staff agency may not knowingly provide or refer a certified nursing assistant who is not authorized to practice as a certified nursing assistant under Title 8, Subtitle 6A of] **AN INDIVIDUAL WHO IS NOT LICENSED OR CERTIFIED UNDER** the Health Occupations Article to a health care facility to render [delegated nursing] **HEALTH CARE** services.

(h) (1) Except as provided in paragraph (2) of this subsection:

(i) If a [nursing] **HEALTH CARE** staff agency knows of an action or condition performed by a [licensed practical nurse, registered nurse, or certified nursing assistant] **HEALTH CARE PRACTITIONER** provided or referred by that [nursing] **HEALTH CARE** staff agency that might be grounds for action **RELATING TO A LICENSE OR CERTIFICATE ISSUED** under [§ 8–316 of] the Health Occupations Article, the [nursing] **HEALTH CARE** staff agency shall report the action or condition to the [Board] **APPROPRIATE HEALTH OCCUPATION BOARD**; and

(ii) An individual shall have immunity from liability described under § 5–709 of the Courts and Judicial Proceedings Article for making a report as required under this paragraph.

(2) A [nursing] **HEALTH CARE** staff agency is not required under this subsection to make any report that would be in violation of any federal or State law, rule, or regulation concerning the confidentiality of alcohol and drug abuse patient records.

(i) (1) Subject to the provisions of Title 10, Subtitle 2 of the State Government Article, the Office may impose a penalty for a violation of any provision of this section:

(i) For a first offense, up to \$2,500 per violation or up to \$2,500 per day until the [nursing] **HEALTH CARE** staff agency complies with the requirements of this subtitle;

(ii) For a second offense, up to \$5,000 per violation or up to \$5,000 per day until the [nursing] **HEALTH CARE** staff agency complies with the requirements of this subtitle; and

(iii) For a third or subsequent offense, up to \$10,000 per violation or up to \$10,000 per day until the [nursing] **HEALTH CARE** staff agency complies with the requirements of this subtitle.

(2) Each day a violation continues is a separate violation.

(j) A [nursing] **HEALTH CARE** staff agency is not a health care provider.

19–2002.

(a) In this section, “Office” means the Office of Health Care Quality in the Department [of Health and Mental Hygiene].

(b) The Office may inspect a [nursing] **HEALTH CARE** staff agency to verify compliance with this subtitle.

(c) When the Office conducts an inspection, the Office shall verify that the [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the [nursing] **HEALTH CARE** staff agency[:

(1) If registered nurses or licensed practical nurses, are licensed by the Board; or

(2) If certified nursing assistants, are certified by the Board] **ARE LICENSED OR CERTIFIED BY THE APPROPRIATE HEALTH OCCUPATION BOARD.**

(d) When the Office conducts an inspection, the Office shall verify that the [nursing] **HEALTH CARE** staff agency has developed, documented, and implemented procedures for:

(1) Selecting and verifying the credentials of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency;

(2) Validating experience of [nursing personnel] **HEALTH CARE PRACTITIONERS** prior to referral by the **HEALTH CARE STAFF** agency;

(3) Tracking and acting on serious or life-threatening complaints received by a client facility or the client facility's agent;

(4) Reporting of an action or condition under § 19-2001(h) of this subtitle;

(5) Verifying that [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency are of satisfactory health status and have received the necessary testing and immunization as required or requested by the client facility;

(6) Verifying I-9 status;

(7) Verifying, prior to initial referral of [nursing personnel] **HEALTH CARE PRACTITIONERS** to a client facility by the **HEALTH CARE STAFF** agency, drug screening of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency if the client facility requires drug screening for facility employees;

(8) Verifying, when there is probable cause to perform a drug test or when a client facility requests a drug test, drug testing of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency;

(9) Verifying, prior to initial referral of [nursing personnel] **HEALTH CARE PRACTITIONERS** to a client facility by the **HEALTH CARE STAFF** agency,

criminal background checks of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency if the client facility requires criminal background checks for facility employees; and

(10) Verifying the references of [nursing personnel] **HEALTH CARE PRACTITIONERS** referred by the **HEALTH CARE STAFF** agency.

(e) A [nursing] **HEALTH CARE** staff agency shall attest that the [nursing] **HEALTH CARE** staff agency is in compliance with the:

- (1) Civil Rights Act of 1964;
- (2) Rehabilitation Act of 1973;
- (3) Americans with Disabilities Act of 1990; and
- (4) Drug Free Workplace Act of 1988, if applicable.

(f) The Office may inspect a [nursing] **HEALTH CARE** staff agency upon receiving a complaint, and may give notice of the inspection to the [nursing] **HEALTH CARE** staff agency.

Subtitle 23. Accreditation of Health Care Facilities **AND HEALTH CARE STAFF AGENCIES.**

19–2301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Accreditation organization” means a private entity that conducts inspections and surveys of health care facilities **OR HEALTH CARE STAFF AGENCIES** based on nationally recognized and developed standards.

(c) “Deemed status” means a status under which a health care facility **OR A HEALTH CARE STAFF AGENCY** may be exempt from routine surveys conducted by the Department.

(d) “Health care facility” means:

- (1) A hospital as defined in § 19–301 of this title;
- (2) A health maintenance organization as defined in § 19–701(g) of this title;



- (3) A freestanding ambulatory care facility as defined in § 19–3B–01 of this title;
- (4) An assisted living facility as defined in § 19–1801 of this title;
- (5) A laboratory as defined in § 17–201 of this article;
- (6) A home health agency as defined in § 19–401 of this title;
- (7) A residential treatment center as defined in § 19–301 of this title;
- (8) A comprehensive rehabilitation facility as defined in § 19–1201 of this title; and
- (9) A forensic laboratory as defined in § 17–2A–01 of this article.

**(E) “HEALTH CARE STAFF AGENCY” HAS THE MEANING STATED IN § 19–2001 OF THIS TITLE.**

19–2302.

- (a) An accreditation organization shall apply to the Secretary for approval.
- (b) Prior to approval of an accreditation organization, the Secretary shall:
- (1) Determine that the standards of the accreditation organization are equal to or more stringent than existing State requirements;
  - (2) Evaluate the survey or inspection process of the accreditation organization to ensure the integrity of the survey or inspection process; and
  - (3) Enter into a formal written agreement with the accreditation organization that includes requirements for:
    - (i) Notice of all surveys and inspections;
    - (ii) Sharing of complaints and other relevant information;
    - (iii) Participation of the Department in accreditation organization activities; and
    - (iv) Any other provision necessary to ensure the integrity of the accreditation and licensure process.
- (c) (1) When an approved accreditation organization has issued a final report finding a health care facility **OR A HEALTH CARE STAFF AGENCY** to be in

substantial compliance with the accreditation organization's standards, the Department shall accept the report as evidence that the health care facility **OR HEALTH CARE STAFF AGENCY** has met State licensure requirements and shall grant the health care facility **OR HEALTH CARE STAFF AGENCY** deemed status.

(2) A health care facility **OR A HEALTH CARE STAFF AGENCY** that fails to achieve substantial compliance with the standards of an approved accreditation organization may be subject to the provisions of § 19-360 of this title.

(d) (1) An approved accreditation organization shall send the Department any preliminary and final report of each inspection and survey at the time it is sent to the health care facility **OR HEALTH CARE STAFF AGENCY**.

(2) A final report of an approved accreditation organization shall be made immediately available to the public on request.

(3) A preliminary or final report of an approved accreditation organization is not admissible in evidence in any civil action or proceeding.

(e) The Department may inspect an accredited health care facility **OR A HEALTH CARE STAFF AGENCY** to:

(1) Determine compliance with any quality requirement;

(2) Follow up on any serious problem identified by an approved accreditation organization;

(3) Investigate a complaint; or

(4) Validate the findings of an approved accreditation organization.

(f) The Department may participate in or observe a survey or inspection of a health care facility **OR A HEALTH CARE STAFF AGENCY** conducted by an approved accreditation organization.

(g) On a determination by the Secretary that an approved accreditation organization has failed to meet its obligations under this section, the Secretary may withdraw:

(1) The approval from the accreditation organization; and

(2) The deemed status given to a health care facility **OR A HEALTH CARE STAFF AGENCY** by the accreditation organization.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2013 is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted~~ *shall take effect October 1, 2013.*

**Approved by the Governor, May 2, 2013.**