

HOUSE BILL 774

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3lr2573
CF SB 665

By: **The Speaker (By Request – Office of the Attorney General)**

Introduced and read first time: February 8, 2023

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Assisted Living Programs – Unlicensed Programs – Resident Abuse and Neglect**

3 FOR the purpose of requiring the Maryland Department of Health, or a designee of the
4 Department, to investigate whether residents in an assisted living program have
5 been subject to neglect or physical abuse if the assisted living program is operating
6 without a license; subjecting certain assisted living programs operating without a
7 license to immediate prosecution under a certain provision of law under certain
8 circumstances; altering the factors that the State is required to consider when
9 recommending the amount of penalty for violating a certain prohibition against
10 operating an assisted living program without a license; authorizing certain State
11 entities and local health officers to petition for injunctive relief against the operation
12 of an assisted living program operating without a license; and generally relating to
13 assisted living programs operating without a license.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 19–1809
17 Annotated Code of Maryland
18 (2019 Replacement Volume and 2022 Supplement)

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

21 **Article – Health – General**

22 19–1809.

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

25 (2) A person who violates paragraph (1) of this subsection is guilty of a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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], **OR THE DEPARTMENT'S DESIGNEE, SHALL INVESTIGATE WHETHER RESIDENTS IN THE ASSISTED LIVING PROGRAM HAVE BEEN SUBJECTED TO NEGLECT OR PHYSICAL ABUSE.**

(4) (I) ON RECEIPT OF A CREDIBLE ALLEGATION, OR AFTER AN INVESTIGATION THAT RESULTS IN A FINDING THAT RESIDENTS IN AN UNLICENSED ASSISTED LIVING PROGRAM HAVE BEEN SUBJECTED TO NEGLECT OR PHYSICAL ABUSE, THE PERSON OPERATING THE UNLICENSED PROGRAM SHALL BE SUBJECT TO IMMEDIATE PROSECUTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(II) IF THE PERSON OPERATING AN UNLICENSED ASSISTED LIVING PROGRAM FAILS OR REFUSES TO COOPERATE FULLY IN AN INVESTIGATION BY THE DEPARTMENT, OR THE DEPARTMENT'S DESIGNEE, CONDUCTED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE PERSON OPERATING THE UNLICENSED ASSISTED LIVING PROGRAM SHALL BE SUBJECT TO IMMEDIATE PROSECUTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(5) IF THE DEPARTMENT FINDS, AFTER AN INVESTIGATION CONDUCTED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THAT THERE IS NO REASON TO BELIEVE THAT RESIDENTS IN THE ASSISTED LIVING PROGRAM OPERATING WITHOUT A LICENSE HAVE BEEN SUBJECT TO FINANCIAL EXPLOITATION, NEGLECT, OR PHYSICAL ABUSE:

(I) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO THE UNLICENSED ASSISTED LIVING PROGRAM THAT THE PROGRAM SHALL COME INTO COMPLIANCE WITH LICENSURE REQUIREMENTS WITHIN 30 DAYS AFTER RECEIPT OF THE WRITTEN NOTIFICATION; AND

[(4)] (II) [A] THE person OPERATING THE PROGRAM may not be subject to PROSECUTION UNDER paragraph (2) of this subsection if the person has:

1 [(i)] 1. [Applied] **PROMPTLY AND** in good faith **SUBMITTED A**
2 **COMPLETE APPLICATION** to the Department for an assisted living program license;

3 [(ii)] 2. Is awaiting a decision from the Department regarding the
4 application; and

5 [(iii)] 3. Has not been denied an assisted living program license on
6 a prior occasion.

7 [(5)] (6) In recommending the amount of the criminal penalty under
8 paragraph (2) of this subsection, the State shall consider factors including the nature,
9 number, and seriousness of the violations [and the ability of the assisted living program to
10 pay the penalty].

11 (7) **THE DEPARTMENT, THE ATTORNEY GENERAL, A STATE'S**
12 **ATTORNEY, OR A LOCAL HEALTH OFFICER MAY PETITION A CIRCUIT COURT FOR**
13 **INJUNCTIVE RELIEF AGAINST THE OPERATION OF AN ASSISTED LIVING PROGRAM**
14 **OPERATING WITHOUT A LICENSE.**

15 [(6)] (8) A violation of paragraph (1) of this subsection shall be a violation
16 of the Consumer Protection Act.

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

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

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

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

29 (c) (1) A person may not willfully and knowingly refer another person to an
30 assisted living program that is operating without a license.

31 (2) A person who violates paragraph (1) of this subsection is subject to the
32 following civil penalties:

33 (i) For a first offense, a civil penalty not exceeding \$1,000;

1 (ii) For a second offense, a civil penalty not exceeding \$2,000; or

2 (iii) For a third or subsequent offense, a civil penalty not exceeding
3 \$3,000.

4 (3) The Secretary shall remit all civil penalties collected under this
5 subsection to the Office of Health Care Quality for the purposes of carrying out the
6 provisions of § 19–1813 of this subsection.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023.