

SENATE BILL 532

L6, J1

7lr1938

By: **Senator Benson**

Introduced and read first time: February 1, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Temporary Family Health Care Structures – Permits**

3 FOR the purpose of altering the definition of “assisted living program” to exclude a certain
4 temporary family health care structure; requiring a legislative body to consider a
5 temporary family health care structure a permitted accessory use in a single-family
6 residential zoning district on certain lots if the structure is used by a certain
7 caregiver of a mentally or physically impaired person under certain circumstances;
8 prohibiting a legislative body from requiring a caregiver to obtain a special use
9 permit for a temporary family health care structure and from imposing certain local
10 zoning requirements; prohibiting a caregiver from placing more than one temporary
11 family health care structure on a lot or parcel of land; requiring a temporary family
12 health care structure to comply with certain setback requirements and maximum
13 floor area ratio limitations; specifying the procedures for an individual to apply for a
14 permit to install a temporary family health care structure; prohibiting a local
15 department of planning and zoning from charging certain fees that exceed a certain
16 amount; prohibiting a local department of planning and zoning from denying a
17 certain application under certain circumstances; authorizing a local department of
18 planning and zoning to require a permit holder to provide certain evidence of
19 compliance with a certain provision of law on an annual basis; providing that a
20 permit holder may be required to connect a temporary family health care structure
21 to certain utilities serving the property; requiring a permit holder to comply with
22 certain laws under certain circumstances; requiring the removal of a temporary
23 family health care structure within a certain number of days under certain
24 circumstances; authorizing the continued use or reinstallation of a temporary family
25 health care structure under certain circumstances; authorizing a local planning and
26 zoning department to revoke a permit under certain circumstances and bring an
27 action for an injunction against an individual who violates specified provisions of
28 law; requiring a temporary family health care structure to be treated as tangible
29 personal property; providing for the application of this Act to charter counties and
30 Baltimore City; defining certain terms; and generally relating to permits for
31 temporary family health care structures.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Health – General
Section 19–1801
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY adding to
Article – Land Use
Section 1–401(b)(12), 4–211, and 10–103(b)(14)
Annotated Code of Maryland
(2012 Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Land Use
Section 1–401(b)(12) through (22) and 10–103(b)(14) through (19)
Annotated Code of Maryland
(2012 Volume and 2016 Supplement)

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

Article – Health – General

19–1801.

In this subtitle:

(1) “Assisted living program” means a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination thereof that meets the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living or instrumental activities of daily living in a way that promotes optimum dignity and independence for the individuals.

(2) “Assisted living program” does not include:

- (i) A nursing home, as defined under § 19–1401 of this title;
- (ii) A State facility, as defined under § 10–101 of this article;
- (iii) A program licensed by the Department under Title 7 or Title 10 of this article;
- (iv) A hospice care program regulated by the Department under Subtitle 9 of this title;

(v) Services provided by family members;

(vi) Services provided in an individual's own home; [or]

(vii) A program certified by the Department of Human Resources under Title 6, Subtitle 5, Part II of the Human Services Article as a certified Adult Residential Environment Program; OR

(VIII) SERVICES PROVIDED BY A CAREGIVER IN A TEMPORARY FAMILY HEALTH CARE STRUCTURE, AS DEFINED UNDER § 4–211 OF THE LAND USE ARTICLE, FOR WHICH THE CAREGIVER HAS OBTAINED A PERMIT.

Article – Land Use

1–401.

(b) The following provisions of this division apply to a charter county:

(12) § 4–211 (TEMPORARY FAMILY HEALTH CARE STRUCTURES);

[(12)] (13) § 5–102(d) (Subdivision regulations – Burial sites);

[(13)] (14) § 5–104 (Major subdivision – Review);

[(14)] (15) Title 7, Subtitle 1 (Development Mechanisms);

[(15)] (16) Title 7, Subtitle 2 (Transfer of Development Rights);

[(16)] (17) except in Montgomery County or Prince George's County, Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(17)] (18) Title 7, Subtitle 4 (Inclusionary Zoning);

[(18)] (19) § 8–401 (Conversion of overhead facilities);

[(19)] (20) for Baltimore County only, Title 9, Subtitle 3 (Single–County Provisions – Baltimore County);

[(20)] (21) for Howard County only, Title 9, Subtitle 13 (Single–County Provisions – Howard County);

[(21)] (22) for Talbot County only, Title 9, Subtitle 18 (Single–County Provisions – Talbot County); and

[(22)] (23) Title 11, Subtitle 2 (Civil Penalty).

1 4-211.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "ACTIVITIES OF DAILY LIVING" MEANS:

5 (I) BATHING;

6 (II) DRESSING;

7 (III) PERSONAL HYGIENE;

8 (IV) AMBULATION OR LOCOMOTION;

9 (V) TRANSFERRING;

10 (VI) TOILETING; AND

11 (VII) EATING.

12 (3) "CAREGIVER" MEANS AN INDIVIDUAL WHO IS AT LEAST 18 YEARS
13 OLD WHO:

14 (I) PROVIDES CARE FOR A MENTALLY OR PHYSICALLY
15 IMPAIRED INDIVIDUAL; AND

16 (II) IS A FIRST OR SECOND DEGREE RELATIVE OF THE
17 MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL FOR WHOM THE INDIVIDUAL IS
18 PROVIDING CARE.

19 (4) (I) "FIRST OR SECOND DEGREE RELATIVE" MEANS:

20 1. A SPOUSE;

21 2. A LINEAL ASCENDANT;

22 3. A LINEAL DESCENDANT;

23 4. A SIBLING;

24 5. AN UNCLE;

1 6. AN AUNT;

2 7. A NEPHEW; OR

3 8. A NIECE.

4 (II) “FIRST OR SECOND DEGREE RELATIVE” INCLUDES HALF,
5 STEP, AND IN-LAW RELATIONSHIPS.

6 (5) “MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL” MEANS AN
7 INDIVIDUAL:

8 (I) WHO IS A RESIDENT OF THE STATE; AND

9 (II) WHO REQUIRES ASSISTANCE WITH TWO OR MORE
10 ACTIVITIES OF DAILY LIVING AS CERTIFIED IN WRITING BY A PHYSICIAN LICENSED
11 UNDER THE HEALTH OCCUPATIONS ARTICLE.

12 (6) “PERMIT” MEANS A PERMIT ISSUED BY A LOCAL DEPARTMENT OF
13 PLANNING AND ZONING TO A CAREGIVER OF A MENTALLY OR PHYSICALLY IMPAIRED
14 INDIVIDUAL AUTHORIZING THE CAREGIVER TO INSTALL A TEMPORARY FAMILY
15 HEALTH CARE STRUCTURE ON THE PROPERTY OF THE CAREGIVER.

16 (7) “TEMPORARY FAMILY HEALTH CARE STRUCTURE” MEANS A
17 TRANSPORTABLE RESIDENTIAL STRUCTURE THAT PROVIDES AN ENVIRONMENT
18 FACILITATING A CAREGIVER’S PROVISION OF CARE FOR A MENTALLY OR
19 PHYSICALLY IMPAIRED INDIVIDUAL THAT:

20 (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER THAN ITS
21 SITE OF INSTALLATION;

22 (II) IS LIMITED TO ONE OCCUPANT WHO SHALL BE THE
23 MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL;

24 (III) HAS NO MORE THAN 300 GROSS SQUARE FEET;

25 (IV) COMPLIES WITH APPLICABLE BUILDING CODES; AND

26 (V) IS NOT LOCATED ON A PERMANENT FOUNDATION.

27 (B) (1) A LEGISLATIVE BODY SHALL CONSIDER A TEMPORARY FAMILY
28 HEALTH CARE STRUCTURE A PERMITTED ACCESSORY USE IN A SINGLE-FAMILY

1 RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED
2 DWELLINGS IF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE IS USED BY A
3 CAREGIVER OF A MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL WHO IS:

4 (I) PROVIDING CARE FOR THE MENTALLY OR PHYSICALLY
5 IMPAIRED INDIVIDUAL IN THE TEMPORARY FAMILY HEALTH CARE STRUCTURE THAT
6 IS LOCATED ON THE PROPERTY OWNED OR OCCUPIED BY THE CAREGIVER; OR

7 (II) THE LEGAL GUARDIAN OF A MENTALLY OR PHYSICALLY
8 IMPAIRED INDIVIDUAL WHO IS PROVIDING CARE FOR THE INDIVIDUAL IN THE
9 TEMPORARY FAMILY HEALTH CARE STRUCTURE THAT IS LOCATED ON THE
10 PROPERTY OF THE RESIDENCE OF THE CAREGIVER.

11 (2) A LEGISLATIVE BODY MAY NOT:

12 (I) REQUIRE A CAREGIVER TO OBTAIN A SPECIAL USE PERMIT
13 FOR A TEMPORARY FAMILY HEALTH CARE STRUCTURE; AND

14 (II) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR AS
15 OTHERWISE PROVIDED FOR OTHER TYPES OF ACCESSORY USE STRUCTURES,
16 IMPOSE ANY ZONING LAW FOR A TEMPORARY FAMILY HEALTH CARE STRUCTURE.

17 (C) A CAREGIVER MAY NOT INSTALL MORE THAN ONE TEMPORARY FAMILY
18 HEALTH CARE STRUCTURE ON A LOT OR PARCEL OF LAND.

19 (D) A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL COMPLY
20 WITH:

21 (1) ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY
22 STRUCTURE ON THE PROPERTY; AND

23 (2) ANY MAXIMUM FLOOR AREA RATIO LIMITATIONS THAT MAY APPLY
24 TO THE PRIMARY STRUCTURE ON THE PROPERTY.

25 (E) (1) TO APPLY FOR A PERMIT TO INSTALL A TEMPORARY FAMILY
26 HEALTH CARE STRUCTURE, AN INDIVIDUAL SHALL:

27 (I) SUBMIT AN APPLICATION TO THE LOCAL DEPARTMENT OF
28 PLANNING AND ZONING ON THE FORM THAT THE DEPARTMENT REQUIRES; AND

29 (II) PAY THE APPLICATION FEE SET BY THE DEPARTMENT.

1 **(2) THE LOCAL DEPARTMENT OF PLANNING AND ZONING MAY**
2 **CHARGE:**

3 **(I) A FEE NOT EXCEEDING \$100 FOR THE INITIAL PERMIT; AND**

4 **(II) AN ANNUAL FEE NOT EXCEEDING \$50.**

5 **(3) IF AN APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE**
6 **WITH THIS SECTION, A LOCAL DEPARTMENT OF PLANNING AND ZONING MAY NOT**
7 **DENY AN APPLICATION FOR A PERMIT.**

8 **(4) (I) A LOCAL DEPARTMENT OF PLANNING AND ZONING MAY**
9 **REQUIRE AN APPLICANT TO PROVIDE EVIDENCE OF COMPLIANCE WITH THIS**
10 **SECTION ON AN ANNUAL BASIS AS LONG AS THE TEMPORARY FAMILY HEALTH CARE**
11 **STRUCTURE REMAINS ON THE PROPERTY.**

12 **(II) THE EVIDENCE REQUIRED UNDER SUBPARAGRAPH (I) OF**
13 **THIS PARAGRAPH MAY INCLUDE:**

14 **1. AN ANNUAL INSPECTION OF THE TEMPORARY FAMILY**
15 **HEALTH CARE STRUCTURE BY THE LOCAL DEPARTMENT OF PLANNING AND ZONING;**

16 **2. AN INSPECTION TO DETERMINE COMPLIANCE WITH**
17 **THIS SECTION AT A REASONABLE TIME CONVENIENT TO A PERMIT HOLDER AFTER**
18 **NOTIFYING THE PERMIT HOLDER; AND**

19 **3. ANNUAL SUBMISSION OF A DOCTOR'S CERTIFICATION**
20 **THAT THE MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL REQUIRES**
21 **ASSISTANCE WITH TWO OR MORE ACTIVITIES OF DAILY LIVING.**

22 **(F) A STATE LAW, ZONING LAW, OR OTHER LOCAL LAW THAT APPLIES TO**
23 **THE PROPERTY OF THE CAREGIVER SHALL APPLY TO THE TEMPORARY FAMILY**
24 **HEALTH CARE STRUCTURE.**

25 **(G) A PERMIT HOLDER MAY BE REQUIRED TO CONNECT A TEMPORARY**
26 **FAMILY HEALTH CARE STRUCTURE TO ANY WATER, SEWER, AND ELECTRIC**
27 **UTILITIES SERVING THE PROPERTY.**

28 **(H) A PERMIT HOLDER MAY NOT PLACE ANY SIGNAGE ADVERTISING OR**
29 **OTHERWISE PROMOTING THE EXISTENCE OF THE TEMPORARY FAMILY HEALTH**
30 **CARE STRUCTURE ON THE EXTERIOR OF THE TEMPORARY FAMILY HEALTH CARE**
31 **STRUCTURE OR ELSEWHERE ON THE PROPERTY OF THE PERMIT HOLDER.**

(I) A TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED UNDER THIS SECTION SHALL BE REMOVED WITHIN 60 DAYS AFTER THE DATE WHEN THE MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL IS NO LONGER RECEIVING OR IS NO LONGER IN NEED OF THE ASSISTANCE SPECIFIED IN THIS SECTION.

(J) IF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE IS NEEDED FOR THE CARE OF ANOTHER MENTALLY OR PHYSICALLY IMPAIRED INDIVIDUAL, THE TEMPORARY FAMILY HEALTH CARE STRUCTURE MAY:

(1) CONTINUE TO BE USED; OR

(2) BE REINSTALLED ON THE PROPERTY WITHIN 60 DAYS AFTER ITS REMOVAL.

(K) A LOCAL PLANNING AND ZONING DEPARTMENT MAY:

(1) REVOKE THE PERMIT GRANTED UNDER THIS SECTION IF THE PERMIT HOLDER VIOLATES THIS SECTION; AND

(2) BRING AN ACTION FOR AN INJUNCTION AGAINST AN INDIVIDUAL WHO VIOLATES THIS SECTION.

(L) A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL BE TREATED AS TANGIBLE PERSONAL PROPERTY UNDER THE TAX – PROPERTY ARTICLE.

10–103.

(b) The following provisions of this division apply to Baltimore City:

(14) § 4–211 (TEMPORARY FAMILY HEALTH CARE STRUCTURES);

[(14)] (15) § 5–201(d) (Subdivision regulations – Burial sites);

[(15)] (16) Title 7, Subtitle 1 (Development Mechanisms);

[(16)] (17) Title 7, Subtitle 2 (Transfer of Development Rights);

[(17)] (18) Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(18)] (19) Title 7, Subtitle 4 (Inclusionary Zoning); and

[(19)] (20) Title 11, Subtitle 2 (Civil Penalty).

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2017.