

Chapter 7

(House Bill 774)

AN ACT concerning

**Assisted Living Programs – Unlicensed Programs – Resident Abuse,
Exploitation, and Neglect
(The Senator Delores Kelley Residents of Unlicensed Programs Protection Act)**

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

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

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

Article – Health – General

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 A CREDIBLE ALLEGATION THAT an assisted living program ~~to be in violation of paragraph (1) of this subsection~~ IS OPERATING WITHOUT A LICENSE, 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 OFFICE OF HEALTH CARE QUALITY, SHALL INVESTIGATE WHETHER RESIDENTS IN THE ASSISTED LIVING PROGRAM HAVE BEEN SUBJECTED TO NEGLECT, EXPLOITATION, 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, EXPLOITATION, 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~~ OFFICE OF HEALTH CARE QUALITY, 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:

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

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

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

~~[(5)]~~ **(6)** 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].

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

~~[(6)]~~ **(8)** 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.

(D) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

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

Approved by the Governor, April 11, 2023.