

# SENATE BILL 966

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CF HB 1615

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By: **Senator Hettleman**

Introduced and read first time: February 3, 2020

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Facilities – Assisted Living Programs – Referrals and Licenses**

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

20 BY repealing and reenacting, without amendments,  
21 Article – Health – General  
22 Section 19–1804.1  
23 Annotated Code of Maryland  
24 (2019 Replacement Volume)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
2 Article – Health – General  
3 Section 19–1809  
4 Annotated Code of Maryland  
5 (2019 Replacement Volume)

6 BY adding to  
7 Article – Health – General  
8 Section 19–1813  
9 Annotated Code of Maryland  
10 (2019 Replacement Volume)

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

13 **Article – Health – General**

14 19–1804.1.

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

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

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

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

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

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

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

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

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

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

7 (c) (1) The Secretary shall:

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

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

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

14 (i) Authorize the unconditional approval of the application;

15 (ii) Authorize the conditional approval of the application; or

16 (iii) Deny the application.

17 (d) The Secretary may issue a probationary license that is valid for a period of  
18 time determined by the Secretary in accordance with regulations adopted by the Secretary.  
19 19–1809.

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

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

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

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

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

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

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

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

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

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

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

18 ~~(I) REQUIRES THE PERSON TO IMMEDIATELY CEASE~~  
19 ~~OPERATING THE ASSISTED LIVING PROGRAM; AND~~

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

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

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

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

32 (ii) In setting the amount of a civil money penalty on the program  
33 under subparagraph (i) of this paragraph, the Secretary shall consider factors including the

1 nature, number, and seriousness of the violations and the ability of the assisted living  
2 program to pay the penalty.

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

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

8 (I) FOR A FIRST OFFENSE, A CIVIL PENALTY NOT EXCEEDING  
9 \$1,000;

10 (II) FOR A SECOND OFFENSE, A CIVIL PENALTY NOT EXCEEDING  
11 \$2,000; OR

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

14 (3) THE SECRETARY SHALL REMIT ALL CIVIL PENALTIES COLLECTED  
15 UNDER THIS SUBSECTION TO THE OFFICE OF HEALTH CARE QUALITY FOR THE  
16 PURPOSES OF CARRYING OUT THE PROVISIONS OF § 19-1813 OF THIS SUBSECTION.  
17 19-1813.

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

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

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

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

28 (B) EACH ASSISTED LIVING REFERRER:

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

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

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

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

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

13 (C) AN ASSISTED LIVING REFERRER MAY NOT ~~RECEIVE~~;

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.