



Senate

General Assembly

File No. 536

February Session, 2012

Senate Bill No. 419

Senate, April 19, 2012

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-539 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) Each nursing home facility shall disclose in writing to all
4 prospective patients a complete and accurate list of all additional costs
5 which may be incurred by [them] such prospective patients and such
6 nursing home facility shall display or cause to be displayed copies of
7 such list in conspicuous places therein.

8 (b) [Nursing home facilities, as defined in section 19a-521, shall be
9 prohibited from enforcing a surety contract on behalf of an applicant
10 required as a condition of admission] Each nursing home facility shall
11 be prohibited from enforcing a contract with a third-party guarantor or
12 an admission agreement entered into with a responsible party who has

13 access to the assets or financial information of a nursing home facility
14 applicant or resident unless: (1) The guarantor under such contract or
15 [his spouse or his children or his grandchildren] the guarantor's
16 spouse, child or grandchild has received an assignment or transfer or
17 other disposition of property for less than fair market value, pursuant
18 to section 17b-261, from the applicant; or (2) the applicant fails to
19 return a properly completed application for Title XIX benefits to the
20 Department of Social Services in accordance with its regulations; and
21 (3) such contract contains a [clause which states the] notice advising
22 the applicant, third-party guarantor or responsible party that: (A) The
23 contract is enforceable against the guarantor or [his spouse or his
24 children or his grandchildren] the guarantor's spouse, child or
25 grandchild if such guarantor or [his spouse or his children or his
26 grandchildren have] the guarantor's spouse, child or grandchild has
27 received an assignment or transfer or other disposition of property for
28 less than fair market value, pursuant to section 17b-261, from the
29 applicant or if said applicant fails to return a properly completed
30 application for Title XIX benefits to the Department of Social Services
31 in accordance with its regulations; (B) state and federal law prohibit a
32 nursing home facility from requiring a third party to personally
33 guarantee payment as a condition of admission or continued stay in
34 the facility; and (C) due to the complexity involved in preparing an
35 application for Title XIX benefits, it may be advisable for the person
36 completing such application to seek professional assistance or legal
37 advice. Such notice shall be in writing in not less than ten-point,
38 boldface type, shall be stated in plain and simple language and,
39 whenever possible and in accordance with any applicable federal
40 guidelines, shall be in the primary language of the recipient.

41 (c) A nursing home facility may prepare and submit an application
42 for Title XIX benefits to the Department of Social Services on behalf of
43 a person residing in or seeking admission to the nursing home facility,
44 provided such person or such person's authorized representative
45 authorizes, in writing, the nursing home facility to prepare and submit
46 an application for Title XIX benefits on such person's behalf.

47 [(c)] (d) Nothing in this section shall be interpreted as prohibiting
48 the acceptance of a voluntary surety contract.

49 Sec. 2. Section 19a-491a of the general statutes is repealed and the
50 following is substituted in lieu thereof (*Effective January 1, 2013*):

51 (a) A person seeking a license to establish, conduct, operate or
52 maintain a nursing home shall provide the Department of Public
53 Health with the following information:

54 (1) (A) The name and business address of the owner and a statement
55 of whether the owner is an individual, partnership, corporation or
56 other legal entity; (B) the names of the officers, directors, trustees, or
57 managing and general partners of the owner, the names of persons
58 having a ten per cent or greater ownership interest in the owner, and a
59 description of each such person's occupation with the owner; and (C) if
60 the owner is a corporation which is incorporated in another state, a
61 certificate of good standing from the secretary of state of the state of
62 incorporation;

63 (2) A description of the relevant business experience of the owner
64 and of the administrator of the nursing home and evidence that the
65 administrator has a license issued pursuant to section 19a-514;

66 (3) Affidavits signed by the owner, any of the persons described in
67 subdivision (1) of this subsection, the administrator, assistant
68 administrator, the medical director, the director of nursing and
69 assistant director of nursing disclosing any matter in which such
70 person has been convicted of a felony, as defined in section 53a-25, or
71 has pleaded nolo contendere to a felony charge, or has been held liable
72 or enjoined in a civil action by final judgment, if the felony or civil
73 action involved fraud, embezzlement, fraudulent conversion or
74 misappropriation of property; or is subject to an injunction or
75 restrictive or remedial order of a court of record at the time of
76 application, within the past five years has had any state or federal
77 license or permit suspended or revoked as a result of an action brought
78 by a governmental agency or department, arising out of or relating to

79 health care business activity, including, but not limited to, actions
80 affecting the operation of a nursing home, retirement home, residential
81 care home or any facility subject to sections 17b-520 to 17b-535,
82 inclusive, or a similar statute in another state or country;

83 (4) (A) A statement as to whether or not the owner is, or is affiliated
84 with, a religious, charitable or other nonprofit organization; (B) the
85 extent of the affiliation, if any; (C) the extent to which the affiliate
86 organization will be responsible for the financial obligations of the
87 owner; and (D) the provision of the Internal Revenue Code of 1986, or
88 any subsequent corresponding internal revenue code of the United
89 States, as from time to time amended, if any, under which the owner or
90 affiliate is exempt from the payment of income tax;

91 (5) The location and a description of other health care facilities of the
92 owner, existing or proposed, and, if proposed, the estimated
93 completion date or dates and whether or not construction has begun;
94 and

95 (6) If the operation of the nursing home has not yet commenced, a
96 statement of the anticipated source and application of the funds used
97 or to be used in the purchase or construction of the home, including:

98 (A) An estimate of such costs as financing expense, legal expense,
99 land costs, marketing costs and other similar costs which the owner
100 expects to incur or become obligated for prior to the commencement of
101 operations; and

102 (B) A description of any mortgage loan or any other financing
103 intended to be used for the financing of the nursing home, including
104 the anticipated terms and costs of such financing.

105 (b) In addition to the information provided pursuant to subsection
106 (a) of this section, the commissioner may reasonably require an
107 applicant for a nursing home license or renewal of a nursing home
108 license to submit additional information. Such information may
109 include audited and certified financial statements of the owner,

110 including, (1) a balance sheet as of the end of the most recent fiscal
111 year, and (2) income statements for the most recent fiscal year of the
112 owner or such shorter period of time as the owner shall have been in
113 existence.

114 (c) No person acting individually or jointly with any other person
115 shall establish, conduct, operate or maintain a nursing home without
116 maintaining professional liability insurance or other indemnity against
117 liability for professional malpractice. The amount of insurance which
118 such person shall maintain as insurance or indemnity against claims
119 for injury or death for professional malpractice shall be not less than
120 one million dollars for one person, per occurrence, with an aggregate
121 of not less than three million dollars.

122 [(c)] (d) A person seeking to renew a nursing home license shall
123 furnish the department with any information required under
124 [subsection (a) of] this section that was not previously submitted and
125 with satisfactory written proof that the owner of the nursing home
126 consents to such renewal, if the owner is different from the person
127 seeking renewal, and shall provide data on any change in the
128 information submitted. The commissioner shall refuse to issue or
129 renew a nursing home license if the person seeking renewal fails to
130 provide the information required under this section. Upon such
131 refusal, the commissioner shall grant such license to the holder of the
132 certificate of need, provided such holder meets all requirements for
133 such licensure. If such holder does not meet such requirements, the
134 commissioner shall proceed in accordance with sections 19a-541 to 19a-
135 549, inclusive. If the commissioner is considering a license renewal
136 application pursuant to an order of the commissioner, the procedures
137 in this subsection shall apply to such consideration.

138 Sec. 3. Section 19a-491 of the 2012 supplement to the general statutes
139 is repealed and the following is substituted in lieu thereof (*Effective*
140 *January 1, 2013*):

141 (a) No person acting individually or jointly with any other person
142 shall establish, conduct, operate or maintain an institution in this state

143 without a license as required by this chapter, except for persons issued
144 a license by the Commissioner of Children and Families pursuant to
145 section 17a-145 for the operation of (1) a substance abuse treatment
146 facility, or (2) a facility for the purpose of caring for women during
147 pregnancies and for women and their infants following such
148 pregnancies. Application for such license shall be made to the
149 Department of Public Health upon forms provided by it and shall
150 contain such information as the department requires, which may
151 include affirmative evidence of ability to comply with reasonable
152 standards and regulations prescribed under the provisions of this
153 chapter. The commissioner may require as a condition of licensure that
154 an applicant sign a consent order providing reasonable assurances of
155 compliance with the Public Health Code. The commissioner may issue
156 more than one chronic disease hospital license to a single institution
157 until such time as the state offers a rehabilitation hospital license.

158 (b) If any person acting individually or jointly with any other person
159 owns real property or any improvements thereon, upon or within
160 which an institution, as defined in subsection (c) of section 19a-490, is
161 established, conducted, operated or maintained and is not the licensee
162 of the institution, such person shall submit a copy of the lease
163 agreement to the department at the time of any change of ownership
164 and with each license renewal application. The lease agreement shall,
165 at a minimum, identify the person or entity responsible for the
166 maintenance and repair of all buildings and structures within which
167 such an institution is established, conducted or operated. If a violation
168 is found as a result of an inspection or investigation, the commissioner
169 may require the owner to sign a consent order providing assurances
170 that repairs or improvements necessary for compliance with the
171 provisions of the Public Health Code shall be completed within a
172 specified period of time or may assess a civil penalty of not more than
173 one thousand dollars for each day that such owner is in violation of the
174 Public Health Code or a consent order. A consent order may include a
175 provision for the establishment of a temporary manager of such real
176 property who has the authority to complete any repairs or
177 improvements required by such order. Upon request of the

178 Commissioner of Public Health, the Attorney General may petition the
179 Superior Court for such equitable and injunctive relief as such court
180 deems appropriate to ensure compliance with the provisions of a
181 consent order. The provisions of this subsection shall not apply to any
182 property or improvements owned by a person licensed in accordance
183 with the provisions of subsection (a) of this section to establish,
184 conduct, operate or maintain an institution on or within such property
185 or improvements.

186 (c) Notwithstanding any regulation to the contrary, the
187 Commissioner of Public Health shall charge the following fees for the
188 biennial licensing and inspection of the following institutions: (1)
189 Chronic and convalescent nursing homes, per site, four hundred forty
190 dollars; (2) chronic and convalescent nursing homes, per bed, five
191 dollars; (3) rest homes with nursing supervision, per site, four hundred
192 forty dollars; (4) rest homes with nursing supervision, per bed, five
193 dollars; (5) outpatient dialysis units and outpatient surgical facilities,
194 six hundred twenty-five dollars; (6) mental health residential facilities,
195 per site, three hundred seventy-five dollars; (7) mental health
196 residential facilities, per bed, five dollars; (8) hospitals, per site, nine
197 hundred forty dollars; (9) hospitals, per bed, seven dollars and fifty
198 cents; (10) nonstate agency educational institutions, per infirmary, one
199 hundred fifty dollars; and (11) nonstate agency educational
200 institutions, per infirmary bed, twenty-five dollars.

201 (d) Notwithstanding any regulation, the commissioner shall charge
202 the following fees for the triennial licensing and inspection of the
203 following institutions: (1) Residential care homes, per site, five
204 hundred sixty-five dollars; and (2) residential care homes, per bed,
205 four dollars and fifty cents.

206 (e) The commissioner shall charge one thousand dollars for the
207 licensing and inspection every four years of outpatient clinics that
208 provide either medical or mental health service, and well-child clinics,
209 except those operated by municipal health departments, health
210 districts or licensed nonprofit nursing or community health agencies.

211 (f) The commissioner shall charge a fee of five hundred sixty-five
212 dollars for the technical assistance provided for the design, review and
213 development of an institution's construction, sale or change in
214 ownership.

215 (g) The commissioner may require as a condition of the licensure of
216 home health care agencies and homemaker-home health aide agencies
217 that each agency meet minimum service quality standards. In the
218 event the commissioner requires such agencies to meet minimum
219 service quality standards as a condition of their licensure, the
220 commissioner shall adopt regulations, in accordance with the
221 provisions of chapter 54, to define such minimum service quality
222 standards, which shall (1) allow for training of homemaker-home
223 health aides by adult continuing education, (2) require a registered
224 nurse to visit and assess each patient receiving homemaker-home
225 health aide services as often as necessary based on the patient's
226 condition, but not less than once every sixty days, and (3) require the
227 assessment prescribed by subdivision (2) of this subsection to be
228 completed while the homemaker-home health aide is providing
229 services in the patient's home.

230 (h) No person acting individually or jointly with any other person
231 shall establish, conduct, operate or maintain a home health care agency
232 or homemaker-home health aide agency without maintaining
233 professional liability insurance or other indemnity against liability for
234 professional malpractice. The amount of insurance which such person
235 shall maintain as insurance or indemnity against claims for injury or
236 death for professional malpractice shall be not less than one million
237 dollars for one person, per occurrence, with an aggregate of not less
238 than three million dollars.

239 Sec. 4. Subdivision (1) of subsection (b) of section 19a-493 of the
240 general statutes is repealed and the following is substituted in lieu
241 thereof (*Effective January 1, 2013*):

242 (b) (1) A nursing home license may be renewed biennially after (A)
243 an unscheduled inspection conducted by the department, (B)

244 submission of the information required by [subsections (a) and (c) of
245 section 19a-491a and any other information required by the
246 commissioner pursuant to subsection (b) of said] section 19a-491a, as
247 amended by this act, and (C) submission of evidence satisfactory to the
248 department that the nursing home is in compliance with the provisions
249 of this chapter, the Public Health Code and licensing regulations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	19a-539
Sec. 2	<i>January 1, 2013</i>	19a-491a
Sec. 3	<i>January 1, 2013</i>	19a-491
Sec. 4	<i>January 1, 2013</i>	19a-493(b)(1)

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Social Services, Dept.	GF - Potential Cost	None	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a cost to the Department of Social Services (DSS) associated with increased Medicaid rates. To the extent that the bill's provisions result in nursing facilities purchasing liability insurance that they otherwise would not have, such cost would be included in the facilities' Medicaid rates when rate increases are provided or when rebasing occurs. Current statute suspends such increases to nursing homes during the FY 12- FY 13 biennium.

The bill makes other changes to nursing home contracts and admissions agreements, which do not affect state payments to nursing homes.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 419*****AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.*****SUMMARY:**

This bill requires anyone who individually or jointly establishes, conducts, operates, or maintains a nursing home, home health care agency, or homemaker-home health aide agency to maintain professional liability insurance or other indemnity against liability for professional malpractice. The amount of insurance each such person must carry against claims for injury or death for malpractice must be at least \$1 million for one person, per occurrence, with an aggregate (i.e., the total for all claims within the coverage period) of at least \$3 million.

In most circumstances, the law prohibits nursing homes, residential care homes, rest homes with nursing supervision, and chronic and convalescent nursing homes (“nursing home facilities”) from enforcing an involuntary surety contract (a contract making another person, the guarantor, liable for the applicant’s bill). It carves out two exceptions: if the applicant (1) transferred property for less than fair market value to the guarantor or a close family member, for purposes of the applicant’s eligibility for Medicaid or (2) fails to apply for Medicaid. (Medicaid does not pay for residential care home services; thus as a practical matter, this law does not apply to them.)

The bill extends the prohibition to admission agreements entered into by a nursing home facility and a responsible party who has access to an applicant’s or resident’s assets or financial information. It appears that the prohibition on such agreements is subject to exception (2) noted above, but not exception (1).

The bill expands the notice requirements for such contracts and extends the notice requirements to such agreements with responsible parties. It specifies how the notices must appear.

The bill explicitly allows nursing home facility staff to fill out and submit a Medicaid application on a resident's or prospective resident's behalf. To do so, the facility needs the written authorization of the person or his or her authorized representative.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2012, except the malpractice insurance requirements are effective January 1, 2013.

NURSING HOME CONTRACTS

Contractual Notice

Existing law requires enforceable third-party nursing home facility contracts to have a clause stating that they are enforceable against the guarantor or his or her spouse, children, or grandchildren if (1) they received assets or property from the applicant for less than fair market value or (2) the applicant fails to complete a Medicaid application.

Under the bill, the contract and admission agreement must have notice provisions containing the information described above, and the following:

1. state and federal law prohibit a nursing home facility from requiring a third party to personally guarantee payment as a condition of admission or continued stay and
2. because of the complexity involved in filling out a Medicaid application, it may be advisable for the person completing the application to seek professional assistance or legal advice.

The notice must be printed in at least 10-point bold type, stated in plain and simple language, and, whenever possible and in accordance with any applicable federal guidelines, in the recipient's primary language.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/02/2012)