



Senate

General Assembly

File No. 646

January Session, 2013

Senate Bill No. 1060

Senate, April 30, 2013

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 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 Section 19a-491a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective January 1, 2014*):

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

6 (1) (A) The name and business address of the owner and a statement
7 of whether the owner is an individual, partnership, corporation or
8 other legal entity; (B) the names of the officers, directors, trustees, or
9 managing and general partners of the owner, the names of persons
10 having a ten per cent or greater ownership interest in the owner, and a
11 description of each such person's occupation with the owner; and (C) if
12 the owner is a corporation which is incorporated in another state, a

13 certificate of good standing from the secretary of state of the state of
14 incorporation;

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

18 (3) Affidavits signed by the owner, any of the persons described in
19 subdivision (1) of this subsection, the administrator, assistant
20 administrator, the medical director, the director of nursing and
21 assistant director of nursing disclosing any matter in which such
22 person has been convicted of a felony, as defined in section 53a-25, or
23 has pleaded nolo contendere to a felony charge, or has been held liable
24 or enjoined in a civil action by final judgment, if the felony or civil
25 action involved fraud, embezzlement, fraudulent conversion or
26 misappropriation of property; or is subject to an injunction or
27 restrictive or remedial order of a court of record at the time of
28 application, within the past five years has had any state or federal
29 license or permit suspended or revoked as a result of an action brought
30 by a governmental agency or department, arising out of or relating to
31 health care business activity, including, but not limited to, actions
32 affecting the operation of a nursing home, retirement home, residential
33 care home or any facility subject to sections 17b-520 to 17b-535,
34 inclusive, or a similar statute in another state or country;

35 (4) (A) A statement as to whether or not the owner is, or is affiliated
36 with, a religious, charitable or other nonprofit organization; (B) the
37 extent of the affiliation, if any; (C) the extent to which the affiliate
38 organization will be responsible for the financial obligations of the
39 owner; and (D) the provision of the Internal Revenue Code of 1986, or
40 any subsequent corresponding internal revenue code of the United
41 States, as from time to time amended, if any, under which the owner or
42 affiliate is exempt from the payment of income tax;

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

46 and

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

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

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

57 (b) In addition to the information provided pursuant to subsection
58 (a) of this section, the commissioner may reasonably require an
59 applicant for a nursing home license or renewal of a nursing home
60 license to submit additional information. Such information may
61 include audited and certified financial statements of the owner,
62 including, (1) a balance sheet as of the end of the most recent fiscal
63 year, and (2) income statements for the most recent fiscal year of the
64 owner or such shorter period of time as the owner shall have been in
65 existence.

66 (c) No person acting individually or jointly with any other person
67 shall establish, conduct, operate or maintain a nursing home without
68 maintaining professional liability insurance or other indemnity against
69 liability for professional malpractice. The amount of insurance which
70 such person shall maintain as insurance or indemnity against claims
71 for injury or death for professional malpractice shall be not less than
72 one million dollars for one person, per occurrence, with an aggregate
73 of not less than three million dollars. The requirements of this
74 subsection shall not apply to any person who establishes, conducts,
75 operates or maintains a residential care home.

76 [(c)] (d) A person seeking to renew a nursing home license shall

77 furnish the department with any information required under
78 [subsection (a) of] this section that was not previously submitted and
79 with satisfactory written proof that the owner of the nursing home
80 consents to such renewal, if the owner is different from the person
81 seeking renewal, and shall provide data on any change in the
82 information submitted. The commissioner shall refuse to issue or
83 renew a nursing home license if the person seeking renewal fails to
84 provide the information required under this section. Upon such
85 refusal, the commissioner shall grant such license to the holder of the
86 certificate of need, provided such holder meets all requirements for
87 such licensure. If such holder does not meet such requirements, the
88 commissioner shall proceed in accordance with sections 19a-541 to 19a-
89 549, inclusive. If the commissioner is considering a license renewal
90 application pursuant to an order of the commissioner, the procedures
91 in this subsection shall apply to such consideration.

92 Sec. 2. Section 19a-491 of the general statutes is repealed and the
93 following is substituted in lieu thereof (*Effective January 1, 2014*):

94 (a) No person acting individually or jointly with any other person
95 shall establish, conduct, operate or maintain an institution in this state
96 without a license as required by this chapter, except for persons issued
97 a license by the Commissioner of Children and Families pursuant to
98 section 17a-145 for the operation of (1) a substance abuse treatment
99 facility, or (2) a facility for the purpose of caring for women during
100 pregnancies and for women and their infants following such
101 pregnancies. Application for such license shall be made to the
102 Department of Public Health upon forms provided by it and shall
103 contain such information as the department requires, which may
104 include affirmative evidence of ability to comply with reasonable
105 standards and regulations prescribed under the provisions of this
106 chapter. The commissioner may require as a condition of licensure that
107 an applicant sign a consent order providing reasonable assurances of
108 compliance with the Public Health Code. The commissioner may issue
109 more than one chronic disease hospital license to a single institution
110 until such time as the state offers a rehabilitation hospital license.

111 (b) If any person acting individually or jointly with any other person
112 owns real property or any improvements thereon, upon or within
113 which an institution, as defined in subsection (c) of section 19a-490, is
114 established, conducted, operated or maintained and is not the licensee
115 of the institution, such person shall submit a copy of the lease
116 agreement to the department at the time of any change of ownership
117 and with each license renewal application. The lease agreement shall,
118 at a minimum, identify the person or entity responsible for the
119 maintenance and repair of all buildings and structures within which
120 such an institution is established, conducted or operated. If a violation
121 is found as a result of an inspection or investigation, the commissioner
122 may require the owner to sign a consent order providing assurances
123 that repairs or improvements necessary for compliance with the
124 provisions of the Public Health Code shall be completed within a
125 specified period of time or may assess a civil penalty of not more than
126 one thousand dollars for each day that such owner is in violation of the
127 Public Health Code or a consent order. A consent order may include a
128 provision for the establishment of a temporary manager of such real
129 property who has the authority to complete any repairs or
130 improvements required by such order. Upon request of the
131 Commissioner of Public Health, the Attorney General may petition the
132 Superior Court for such equitable and injunctive relief as such court
133 deems appropriate to ensure compliance with the provisions of a
134 consent order. The provisions of this subsection shall not apply to any
135 property or improvements owned by a person licensed in accordance
136 with the provisions of subsection (a) of this section to establish,
137 conduct, operate or maintain an institution on or within such property
138 or improvements.

139 (c) Notwithstanding any regulation to the contrary, the
140 Commissioner of Public Health shall charge the following fees for the
141 biennial licensing and inspection of the following institutions: (1)
142 Chronic and convalescent nursing homes, per site, four hundred forty
143 dollars; (2) chronic and convalescent nursing homes, per bed, five
144 dollars; (3) rest homes with nursing supervision, per site, four hundred
145 forty dollars; (4) rest homes with nursing supervision, per bed, five

146 dollars; (5) outpatient dialysis units and outpatient surgical facilities,
147 six hundred twenty-five dollars; (6) mental health residential facilities,
148 per site, three hundred seventy-five dollars; (7) mental health
149 residential facilities, per bed, five dollars; (8) hospitals, per site, nine
150 hundred forty dollars; (9) hospitals, per bed, seven dollars and fifty
151 cents; (10) nonstate agency educational institutions, per infirmary, one
152 hundred fifty dollars; and (11) nonstate agency educational
153 institutions, per infirmary bed, twenty-five dollars.

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

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

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

168 (g) The commissioner may require as a condition of the licensure of
169 home health care agencies and homemaker-home health aide agencies
170 that each agency meet minimum service quality standards. In the
171 event the commissioner requires such agencies to meet minimum
172 service quality standards as a condition of their licensure, the
173 commissioner shall adopt regulations, in accordance with the
174 provisions of chapter 54, to define such minimum service quality
175 standards, which shall (1) allow for training of homemaker-home
176 health aides by adult continuing education, (2) require a registered
177 nurse to visit and assess each patient receiving homemaker-home
178 health aide services as often as necessary based on the patient's

179 condition, but not less than once every sixty days, and (3) require the
180 assessment prescribed by subdivision (2) of this subsection to be
181 completed while the homemaker-home health aide is providing
182 services in the patient's home.

183 (h) No person acting individually or jointly with any other person
184 shall establish, conduct, operate or maintain a home health care agency
185 or homemaker-home health aide agency without maintaining
186 professional liability insurance or other indemnity against liability for
187 professional malpractice. The amount of insurance which such person
188 shall maintain as insurance or indemnity against claims for injury or
189 death for professional malpractice shall be not less than one million
190 dollars for one person, per occurrence, with an aggregate of not less
191 than three million dollars.

192 [(h)] (i) On and after June 15, 2012, until June 30, 2017, the
193 commissioner shall not issue or renew a license under this chapter for
194 any hospital certified to participate in the Medicare program as a long-
195 term care hospital under Section 1886(d)(1)(B)(iv) of the Social Security
196 Act (42 USC 1395ww) unless such hospital was so certified under said
197 federal act on January 1, 2012.

198 Sec. 3. Subdivision (1) of subsection (b) of section 19a-493 of the
199 general statutes is repealed and the following is substituted in lieu
200 thereof (*Effective January 1, 2014*):

201 (b) (1) A nursing home license may be renewed biennially after (A)
202 an unscheduled inspection conducted by the department, (B)
203 submission of the information required by [subsections (a) and (c) of
204 section 19a-491a and any other information required by the
205 commissioner pursuant to subsection (b) of said] section 19a-491a, as
206 amended by this act, and (C) submission of evidence satisfactory to the
207 department that the nursing home is in compliance with the provisions
208 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>January 1, 2014</i>	19a-491a
Sec. 2	<i>January 1, 2014</i>	19a-491
Sec. 3	<i>January 1, 2014</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 14 \$	FY 15 \$
Department of Social Services	GF - Cost	Potential	Potential

Municipal Impact: None

Explanation

The bill requires nursing homes, home health care agencies and homemaker-home health aide agencies to maintain professional liability insurance at certain levels. The bill could result in a cost to the Department of Social Services associated with increased Medicaid rates. To the extent that the bill's provisions result in facilities purchasing liability insurance that they otherwise would not have, such cost could 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 Department of Public Health's responsibilities towards these entities are not affected by the bill's requirements.

The Out Years

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

OLR Bill Analysis**SB 1060*****AN ACT CONCERNING 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 insurance must cover malpractice claims for injury or death of 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.

The bill explicitly exempts residential care homes from this requirement.

The bill also makes a conforming change.

EFFECTIVE DATE: January 1, 2014

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 41 Nay 1 (04/12/2013)