



Senate

General Assembly

File No. 506

February Session, 2016

Substitute Senate Bill No. 209

Senate, April 6, 2016

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S
RECOMMENDATIONS REGARDING THE PROTECTION OF
RESIDENTS IN HEALTH CARE INSTITUTIONS.***

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

1 Section 1. Section 19a-524 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 If, upon review, investigation or inspection pursuant to section 19a-
4 498, the Commissioner of Public Health determines that a nursing
5 home facility or residential care home has violated any provision of
6 section 17a-411, 19a-491a to 19a-491c, inclusive, 19a-493a, 19a-521 to
7 19a-529, inclusive, 19a-531 to 19a-551, inclusive, or 19a-553 to 19a-555,
8 inclusive, or any regulation in the Public Health Code or regulation
9 relating to licensure or the Fire Safety Code relating to the operation or
10 maintenance of a nursing home facility or residential care home, which
11 violation has been classified in accordance with section 19a-527, as
12 amended by this act, [he or she shall immediately] the commissioner
13 may issue or cause to be issued a citation to the licensee of such

14 nursing home facility or residential care home. Governmental
15 immunity shall not be a defense to any citation issued or civil penalty
16 imposed pursuant to sections 19a-524 to 19a-528, inclusive. Each such
17 citation shall be in writing, shall provide notice of the nature and scope
18 of the alleged violation or violations and shall be sent by certified mail
19 to the licensee at the address of the nursing home facility or residential
20 care home in issue. A copy of such citation shall also be sent to the
21 licensed administrator at the address of the nursing home facility or
22 residential care home.

23 Sec. 2. Section 19a-525 of the general statutes is repealed and the
24 following is substituted in lieu thereof (*Effective October 1, 2016*):

25 (a) The administrator of the nursing home facility or residential care
26 home, or [his or her] the administrator's designee, shall, [within three
27 days, excluding Saturdays, Sundays and holidays, of] not later than
28 five business days after receipt of the citation by the licensee, notify the
29 commissioner if the licensee contests the citation. If the administrator
30 fails to so notify the commissioner [within such three-day period] not
31 later than five business days after such receipt, the citation shall be
32 deemed a final order of the commissioner, effective upon the
33 expiration of said period.

34 (b) If any administrator of a nursing home facility or residential care
35 home, or [his or her] the administrator's designee, notifies the
36 commissioner that the licensee contests the citation, the commissioner
37 shall provide [within five days of such notice, excluding Saturdays,
38 Sundays and holidays,] an informal conference between the licensee
39 and the commissioner or the commissioner's designee. Not later than
40 five business days after the conclusion of the informal conference, the
41 commissioner shall notify the licensee of the commissioner's
42 conclusions resulting from the informal conference. If the licensee [and
43 commissioner fail to reach an agreement at such conference, the]
44 disagrees with the commissioner's conclusions, the licensee shall notify
45 the commissioner in writing and the commissioner shall set the matter
46 down for a hearing as a contested case in accordance with chapter 54.],

47 not more than five nor less than three days after such conference, with
48 notice of the date of such hearing to the administrator not less than
49 two days before such hearing, provided the minimum time
50 requirements may be waived by agreement. The commissioner shall,
51 not later than three days, excluding Saturdays, Sundays and holidays,]
52 The commissioner shall, after the conclusion of the informal conference
53 if an agreement is reached at, or as a result of, such conference, or after
54 the hearing, issue a final order, based on findings of fact, affirming,
55 modifying or vacating the citation.

56 Sec. 3. Section 19a-527 of the general statutes is repealed and the
57 following is substituted in lieu thereof (*Effective October 1, 2016*):

58 Citations issued pursuant to section 19a-524, as amended by this act,
59 for violations of statutory or regulatory requirements shall be classified
60 according to the nature of the violation and shall state such
61 classification and the amount of the civil penalty to be imposed on the
62 face thereof. The Commissioner of Public Health shall, by regulation in
63 accordance with chapter 54, classify violations as follows:

64 [(a)] (1) Class A violations are conditions that the Commissioner of
65 Public Health determines present an immediate danger of death or
66 serious harm to any patient in the nursing home facility or residential
67 care home. For each class A violation, a civil penalty of not more than
68 [five] ten thousand dollars may be imposed;

69 [(b)] (2) Class B violations are conditions that the Commissioner of
70 Public Health determines present a probability of death or serious
71 harm in the reasonably foreseeable future to any patient in the nursing
72 home facility or residential care home, but that he or she does not find
73 constitute a class A violation. For each [such] class B violation, a civil
74 penalty of not more than [three] five thousand dollars may be
75 imposed.

76 Sec. 4. Subsection (a) of section 19a-494 of the general statutes is
77 repealed and the following is substituted in lieu thereof (*Effective*
78 *October 1, 2016*):

79 (a) The Commissioner of Public Health, after a hearing held in
80 accordance with the provisions of chapter 54, may take any of the
81 following actions, singly or in combination, in any case in which the
82 commissioner finds that there has been a substantial failure to comply
83 with the requirements established under this chapter, the Public
84 Health Code or licensing regulations:

85 (1) Revoke a license or certificate;

86 (2) Suspend a license or certificate;

87 (3) Censure a licensee or certificate holder;

88 (4) Issue a letter of reprimand to a licensee or certificate holder;

89 (5) Place a licensee or certificate holder on probationary status and
90 require him to report regularly to the department on the matters which
91 are the basis of the probation;

92 (6) Restrict the acquisition of other facilities for a period of time set
93 by the commissioner;

94 (7) Issue an order compelling compliance with applicable statutes or
95 regulations of the department; [or]

96 (8) Impose a directed plan of correction; or

97 (9) Appoint temporary management for a facility in accordance with
98 the provisions of 42 CFR 488.415, as amended from time to time, for a
99 period of time to be determined by the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	19a-524
Sec. 2	October 1, 2016	19a-525
Sec. 3	October 1, 2016	19a-527
Sec. 4	October 1, 2016	19a-494(a)

Statement of Legislative Commissioners:

In Section 2(a), "[within such three-day] after such five-day period," was changed to "[within such three-day period] not later than five business days after such receipt" and in Section 2(b), "his or her designee" was changed to "[his or her] the administrator's designee", for clarity and internal consistency; and in Section 3(2), "Class B violation" was changed to "class B violation" for internal consistency and consistency with standard drafting conventions.

PH *Joint Favorable Subst.*

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 17 \$	FY 18 \$
Social Services, Dept.	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a cost to the Department of Social Services (DSS) to the extent an interim Medicaid rate is provided during the time period in which a facility has temporary management as a condition of such temporary management. The actual cost would be dependent on the interim rate and the duration of temporary management.

The increase in Class A and Class B civil penalty maximums under the bill is not anticipated to result in a General Fund revenue gain, as the Department of Public Health does not typically utilize penalty maximums.¹

The Out Years

The annualized, ongoing, potential fiscal impact to DSS identified above would continue into the future subject to the interim rate and the duration of temporary management.

¹In 2015, the Department of Public Health issued and collected 10 Class A penalties for a total of \$6,630 (the current maximum penalty is \$5,000 for each violation, increased to \$10,000 under the bill). That same year, the agency issued and collected 136 Class B penalties for a total of \$131,655 (the current maximum penalty is \$3,000 for each violation, increased to \$5,000 under the bill).

OLR Bill Analysis**sSB 209*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE PROTECTION OF RESIDENTS IN HEALTH CARE INSTITUTIONS.*****SUMMARY:**

This bill makes various changes to the process by which the Department of Public Health (DPH) issues citations to nursing home facilities and residential care homes (RCH) for violations of state laws and regulations. Among other things, it:

1. allows, rather than requires, DPH to issue such citations;
2. extends, from three to five business days, the time in which a facility or home must notify DPH that it is contesting a citation;
3. eliminates the requirement that DPH hold an informal conference within five business days of a licensee's request and instead requires DPH to notify the licensee of the results of the conference within five business days;
4. increases the civil penalty for (a) certain Class A violations from five to 10 thousand dollars and (b) certain Class B violations from three to five thousand dollars; and
5. allows DPH to appoint temporary management as a disciplinary action against a home or facility.

EFFECTIVE DATE: October 1, 2016

NOTICE AND CONTESTED CITATION REQUIREMENTS

The bill extends, from three to five business days, the amount of time a nursing home or RCH administrator has after a licensee receives

a citation to notify the DPH commissioner that the licensee contests the citation. If the administrator fails to provide the notice, the bill deems the citation a final order after that five day period, instead of after the current three day period.

Currently, the DPH commissioner, after receiving such notice, must provide an informal conference with the licensee. The bill (1) eliminates a requirement that the commissioner schedule the conference within five days and (2) allows him to send a designee to the conference in his place. Under the bill, the commissioner must notify the licensee of his conclusions resulting from the conference within five days of its conclusion.

Currently, if the licensee and commissioner fail to reach an agreement at the conference, the commissioner must (1) schedule the matter for a contested case hearing between three and five days after the conference's conclusion and (2) provide notice of the hearing time and date to the facility administrator at least two days before the hearing, though the latter requirement may be waived by agreement. The bill instead requires the commissioner to schedule such a hearing if the licensee notifies the commissioner in writing that he or she disagrees with the commissioner's conclusions. It also eliminates the timeframe in which such a hearing must be scheduled and the associated notice requirement.

Currently, the commissioner must, within three business days after a hearing or after an agreement is reached at a conference, issue a final order affirming, modifying, or vacating the citation. The bill eliminates this three day deadline and specifies that the commissioner must also issue such an order if an agreement is reached as the result of a conference.

TEMPORARY MANAGEMENT

The law authorizes the DPH commissioner to take several forms of disciplinary action against a nursing facility or RCH following a contested case hearing and finding that the facility violated the law,

regulations, or Public Health Code (e.g., license or certificate suspension or revocation). The bill additionally gives the commissioner the authority under such circumstances to appoint temporary management for the facility in compliance with federal regulations for a period of time he determines (See BACKGROUND).

BACKGROUND

Temporary Management

Under federal regulations, temporary management means the temporary appointment by the state or the Centers for Medicare and Medicaid Services (CMS) of a substitute facility manager or administrator with authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility’s operation. The regulations also specify, among other things, manager qualifications and salary requirements (42 CFR § 488.415).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/21/2016)