

CHAPTER NO. 169

SENATE BILL NO. 694

**By Henry, Ramsey, Crutchfield, Graves, Trail, Haynes,
Harper, Kilby, McNally, Cooper, Burks, McLeary**

Substituted for: House Bill No. 1135

**By Briley, Mr. Speaker Naifeh, Sherry Jones, Harmon, Borchert, Chumney, Rinks, Shaw,
Armstrong, Maddox, Shepard, Pinion, Hackworth, Litz, Yokley, Fitzhugh, Tindell,
Sontany, Pruitt, Langster, Coleman, Cobb, Bone, Brenda Turner, Henri Brooks, Hood,
Garrett, Michael Turner, Ferguson, Cooper, Newton, Vaughn, Kent, Todd, Sargent,
Godsey, Hargett, Walker, Patton, DuBois, Dunn, Harry Brooks, Bittle, Wood, Montgomery,
Crider, Pleasant, John DeBerry, Brown, Head, Davidson, Ulysses Jones, McMillan, West,
Winningham, Fraley, Curtiss, Hargrove, Miller, McDonald, Towns**

AN ACT to amend Tennessee Code Annotated, Title 63; Title 68 and Title 71, relative to nursing home facilities and services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be referred to as the "Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act".

SECTION 2. Tennessee Code Annotated, Section 68, Chapter 1, Part 1, is amended by adding the following language, designated as a new Section 68-1-120:

Section 68-1-120. The commissioner shall submit a report by not later than February 1 of each year to the Governor and to each House of the General Assembly regarding the department's nursing home inspection and enforcement activities during the previous year. The report shall analyze trends in compliance with nursing home standards and residents' rights by nursing homes in the state, and shall be limited to identifying those trends through aggregate and quantitative data only. In preparing the report, the commissioner may utilize quantitative data compiled by nursing homes pursuant to federal or state regulations. The commissioner shall ensure that the report is promptly made available to the public by dissemination via the Internet and that the report is available for members of the public to copy.

SECTION 3. Tennessee Code Annotated Section 68-11-207, is amended by adding the following new subsection, to be designated as a new subsection (e):

(e)(1) In addition to the authority granted above, the board shall have the authority to place a facility on probation. To be considered for probation, a facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 C.F.R. § 488.301. None of the surveys can have been initiated by an unusual event or incident self reported by the facility.

(2) If a facility meets those criteria, the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating such a hearing, the board shall provide notice to the facility detailing what specific non-compliance the board has identified that the facility must respond to at the probation hearing.

(3) Prior to imposing probation, the board may consider and address in its findings all factors which it deems relevant, including, but not limited to, the following:

(A) What degree of sanctions is necessary to ensure immediate and continued compliance; and

(B) Whether the non-compliance was an unintentional error or omission, or was not fully within the control of the facility; and

(C) Whether the nursing home recognized the non-compliance and took steps to correct the identified issues, including whether the facility notified the department of the non-compliance either voluntarily or as required by state law or regulations; and

(D) The character and degree of impact of the non-compliance on the health, safety and welfare of the patient or patients in the facility; and

(E) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the non-compliance; and

(F) The facility's prior history of compliance or non-compliance.

(4) If the board places a facility on probation, the facility shall detail in a plan of correction those specific actions, which when followed, will correct the non-compliance identified by the board.

(5) During the period of probation, the facility must make reports on a schedule determined by the board. These reports must demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged or confidential under any state or federal law or regulation.

(6) The board is authorized at any time during the probation to remove the probational status of the facility's license, based upon information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.

(7) The board must rescind the probational status of the facility if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional non-compliance that warrants an additional term of probation as defined in § 68-11-207(e)(1).

(8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the facility is not taking steps to correct non-compliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law.

(9) The hearing to place a facility on probation including all proceedings under this subsection and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(10) The provisions in this act in no way relieve any party from the responsibility to report suspected adult abuse, neglect and/or exploitation to, or to share information with, the Adult Protective Services Program in accordance with the provisions of the Tennessee Adult Protection Act, Tennessee Code Annotated, Title 71, Chapter 6, Part 1.

SECTION 4. Tennessee Code Annotated, Section 68-11-801, is amended by adding the following new subsection, to be designated as follows:

(e) The imposition of a state civil penalty pursuant to this section and the decision to impose such shall not be affected by either the imposition or withholding of a federal sanction under the provisions of Title XVIII (42 U.S.C. § 1395 et seq.) or XIX (42 U.S.C. § 1396 et seq.) of the Social Security Act.

SECTION 5. Tennessee Code Annotated, Section 68-11-811, is amended by deleting from subsection (a) the language "five thousand dollars (\$5,000)" and substituting instead "seven thousand five hundred dollars (\$7,500)"; by deleting from subsection (b) the language "one thousand dollars (\$1,000)" and substituting instead "one thousand five hundred dollars (\$1,500)"; by deleting from subsection (c) the language "two hundred fifty dollars (\$250)" and substituting instead "two hundred fifty dollars (\$250) and not more than four hundred dollars (\$400)".

SECTION 6. Tennessee Code Annotated, Section 68-11-210, is amended by adding the following language, to be designated as a new subsection (d):

(d) Any nursing home that files for federal bankruptcy protection shall immediately inform the Commissioner of Health regarding its financial condition and the status of the legal proceedings. In overseeing a facility that has filed for federal bankruptcy protection, the Department of Health shall follow any existing policies or regulations pertaining to any special inspection or oversight of such a facility. The fund established by § 68-11-827 may be used for the purpose of protecting the residents of such a nursing home, if the facility's non-compliance with the conditions of continued licensure, applicable state and federal statutes, rules, regulations and contractual standards threatens the residents' continuous care, the residents' property, the nursing home's continued operation, or the nursing home's continued participation in the medical assistance program of Title 71, Chapter 5. The commissioner shall inform the attorney general and reporter regarding the status of the legal proceedings.

SECTION 7. Tennessee Code Annotated, Section 71-6-103(d), is amended by replacing the semicolon at the end of subsection (d)(2) with a period and adding the following language to the end of the subsection:

The Commissioner of Health, upon becoming aware through personal knowledge, receipt of a report or otherwise, of confirmed exploitation, abuse, or neglect of a nursing home resident, shall report such instances to the Tennessee Bureau of Investigation for a determination by the bureau as to whether the circumstances reported constitute abuse of the Medicaid program or other criminal violation.

SECTION 8. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following language, which shall be designated as a new section:

71-5-195. The comptroller of the treasury, in conjunction with any appropriate TennCare drug utilization review committees, shall study the use of prescription drugs in nursing homes and the costs of those prescription drugs for residents of nursing homes. The study shall examine prescription use overall, and shall focus on any practices that would improve the quality of resident care while reducing costs to the TennCare program. By January 1, 2005, the comptroller of the treasury shall deliver its report to the Speakers of the respective Houses of the General Assembly.

SECTION 9. If any provision of this act or the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect on July 1, 2003, the public welfare requiring it.

PASSED: May 12, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of May 2003


PHIL BREDESEN, GOVERNOR