

SENATE BILL 101

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By: **The President (By Request - Administration) and Senators Hogan, Middleton, and Miller**

Introduced and read first time: January 22, 2007

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Facilities - Quality Assessment - Medicaid Reimbursement**

3 FOR the purpose of authorizing the Department of Health and Mental Hygiene to
4 impose a quality assessment on certain nursing facilities; providing for the
5 terms of the assessment; requiring a certain assessment to be paid to the State
6 Comptroller at a certain time; providing that the payment of the assessment by
7 the nursing facility shall be based on certain net receipts; requiring the
8 Department to use the amounts collected to fund reimbursements to nursing
9 facilities under the Medicaid program; providing that the quality assessment
10 funds allocated for Medicaid reimbursement of nursing facilities are to be in
11 addition to and not to supplant funds already appropriated for this purpose;
12 requiring the Department to adopt certain regulations; defining a certain term;
13 requiring the Department to seek certain approval for excluding a continuing
14 care facility from the definition of nursing facility; making this Act subject to a
15 certain contingency; providing for the termination of this Act; and generally
16 relating to a quality assessment on nursing facilities.

17 BY repealing and reenacting, without amendments,

18 Article - Human Services

19 Section 10-401(d) and (m)

20 Annotated Code of Maryland

21 (As enacted by Chapter __ (S.B.6) of the Acts of the General Assembly of 2007)

22 BY repealing and reenacting, without amendments,

23 Article - Health - General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 19–301(l) and (o)
2 Annotated Code of Maryland
3 (2005 Replacement Volume and 2006 Supplement)

4 BY adding to
5 Article – Health – General
6 Section 19–310.1
7 Annotated Code of Maryland
8 (2005 Replacement Volume and 2006 Supplement)

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

11 **Article – Human Services**

12 10–401.

13 (d) “Continuing care” means:

14 (1) continuing care in a retirement community; or

15 (2) continuing care at home.

16 (m) “Facility” means a physical plant in which continuing care in a
17 retirement community is provided in accordance with this subtitle.

18 **Article – Health – General**

19 19–301.

20 (l) “Nursing facility” means a related institution that provides nursing care
21 for 2 or more unrelated individuals.

22 (o) (1) “Related institution” means an organized institution, environment,
23 or home that:

24 (i) Maintains conditions or facilities and equipment to provide
25 domiciliary, personal, or nursing care for 2 or more unrelated individuals who are
26 dependent on the administrator, operator, or proprietor for nursing care or the
27 subsistence of daily living in a safe, sanitary, and healthful environment; and

28 (ii) Admits or retains the individuals for overnight care.

1 (2) “Related institution” does not include a nursing facility or visiting
2 nurse service that is conducted only by or for adherents of a bona fide church or
3 religious organization, in accordance with tenets and practices that include reliance on
4 treatment by spiritual means alone for healing.

5 **19-310.1.**

6 (A) (1) **IN THIS SECTION, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF**
7 **THIS SUBSECTION, “NURSING FACILITY” HAS THE MEANING STATED IN § 19-301**
8 **OF THIS SUBTITLE.**

9 (2) **“NURSING FACILITY” DOES NOT INCLUDE A FACILITY THAT**
10 **PROVIDES CONTINUING CARE AS DEFINED IN § 10-401 OF THE HUMAN**
11 **SERVICES ARTICLE.**

12 (B) (1) **THE DEPARTMENT MAY IMPOSE A QUALITY ASSESSMENT ON**
13 **EACH FREESTANDING NURSING FACILITY OPERATING IN THE STATE WITH 45 OR**
14 **MORE BEDS.**

15 (2) **THE AMOUNT ASSESSED PER NURSING FACILITY MAY NOT**
16 **EXCEED 2% OF THE NET OPERATING REVENUE FOR ALL NURSING FACILITIES**
17 **OPERATING IN THE STATE FOR THE PREVIOUS 3-MONTH PERIOD.**

18 (3) **THE AGGREGATE ANNUAL ASSESSMENT MAY NOT EXCEED THE**
19 **AMOUNT NECESSARY TO FULLY FUND THE NURSING FACILITY PAYMENT SYSTEM**
20 **TAKING INTO CONSIDERATION ANY OTHER REVENUE SOURCE OR COST SAVINGS**
21 **THE DEPARTMENT DETERMINES COULD BE USED TO REDUCE FUNDING**
22 **SHORTFALLS.**

23 (4) **THE ASSESSMENT AUTHORIZED BY THIS SECTION SHALL BE**
24 **PAID BY EACH NURSING FACILITY IN ACCORDANCE WITH THIS SECTION.**

25 (C) (1) **ON OR BEFORE THE 15TH DAY OF EACH QUARTER OF THE**
26 **STATE FISCAL YEAR, EACH NURSING FACILITY SHALL PAY TO THE STATE**
27 **COMPTROLLER AN AMOUNT DETERMINED BY THE DEPARTMENT BASED ON THE**
28 **REVENUE EARNED BY THE NURSING FACILITY FOR THE PREVIOUS QUARTER**
29 **EXCLUDING REVENUE FROM THE MEDICARE PROGRAM.**

30 (2) **THE PAYMENT OF THE ASSESSMENT BY THE NURSING**
31 **FACILITY SHALL BE BASED ON NET RECEIPTS, NOT INCLUDING MEDICARE, FOR**

1 **THE PREVIOUS 3-MONTH PERIOD FOR WHICH THE NURSING FACILITY HAS BEEN**
2 **PAID THE FULLY FUNDED MEDICAID REIMBURSEMENT RATE.**

3 **(D) (1) ALL AMOUNTS COLLECTED BY THE STATE COMPTROLLER**
4 **UNDER THIS SECTION SHALL BE USED BY THE DEPARTMENT TO FUND**
5 **REIMBURSEMENTS TO NURSING FACILITIES UNDER THE MEDICAID PROGRAM.**

6 **(2) THE FUNDS ALLOCATED BY THE DEPARTMENT AS**
7 **REIMBURSEMENTS TO NURSING FACILITIES UNDER THIS SECTION SHALL BE IN**
8 **ADDITION TO AND MAY NOT SUPPLANT FUNDS ALREADY APPROPRIATED FOR**
9 **THIS PURPOSE.**

10 **(E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT**
11 **THIS SECTION.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
13 Health and Mental Hygiene shall seek approval from the Centers for Medicare and
14 Medicaid Services of a waiver under § 1903 of the federal Social Security Act that
15 would allow the State to receive tax revenue (within specified limitations) without a
16 reduction in federal financial participation, specifically by excluding a continuing care
17 facility from the definition of “nursing facility” under § 19–310.1 of the
18 Health – General Article as enacted by this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
20 take effect on the date that the Centers for Medicare and Medicaid Services approves a
21 waiver applied for in accordance with Section 2 of this Act. The Department of Health
22 and Mental Hygiene shall, within 5 working days of the date of the approval of the
23 State’s waiver application, notify the Department of Legislative Services in writing at
24 90 State Circle, Annapolis, Maryland 21401. If the waiver is denied, the Department
25 of Health and Mental Hygiene shall, within 5 working days of the date of the denial of
26 the State’s waiver application, notify the Department of Legislative Services in writing
27 at 90 State Circle, Annapolis, Maryland 21401. If the waiver is denied, this Act shall
28 be null and void without the necessity of further action by the General Assembly.

29 SECTION 4. AND BE IT FURTHER ENACTED, That:

30 (a) The assessment on nursing facilities authorized by this Act shall
31 terminate if:

32 (1) the assessment is not permissible under § 1903(w) of the Social
33 Security Act; or

1 (2) the nursing home payment system is replaced with a system that
2 is not cost-based and the Department is unable to obtain the enhanced federal match
3 since the nursing facility assessment as an allowable cost would not be applicable.

4 (b) If the assessment is terminated in accordance with subsection (a) of this
5 section, the Department of Health and Mental Hygiene shall, within 5 working days of
6 the date of termination, notify the Department of Legislative Services in writing at 90
7 State Circle, Annapolis, Maryland 21401.

8 (c) If the assessment is terminated in accordance with subsection (a) of this
9 section, this Act shall be null and void without the necessity of further action by the
10 General Assembly.

11 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
12 Section 3 and subject to Section 4 of this Act, this Act shall take effect July 1, 2007. It
13 shall remain effective for a period of 5 years and, at the end of June 30, 2012, with no
14 further action required by the General Assembly, this Act shall be abrogated and of no
15 further force and effect.