

SENATE BILL 101

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71r0162
CF HB 130

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

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 24, 2007

CHAPTER _____

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 that a
5 certain continuing care operation is not subject to a certain quality assessment;
6 providing for the terms of the assessment; requiring a certain assessment to be
7 paid to the State Comptroller at a certain time; providing that the payment of
8 the assessment by the nursing facility shall be based on a certain ~~net receipts~~
9 amount per non-Medicare day of service; requiring the Department to use the
10 amounts collected to fund reimbursements to nursing facilities under the
11 Medicaid program; providing that the quality assessment funds allocated for
12 Medicaid reimbursement of nursing facilities are to be in addition to and not to
13 supplant funds already appropriated for this purpose; requiring the Department
14 to develop certain accountability measures on which the distribution of certain
15 revenues may be based; requiring the Department to adopt certain regulations;
16 ~~defining a certain term;~~ requiring the Department to seek certain approval for
17 excluding a ~~continuing care facility from the definition of nursing facility~~
18 nursing home bed in a certain continuing care retirement community;
19 authorizing the Department to modify certain elements that determine the
20 quality assessment under certain circumstances; making this Act subject to a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain contingency; providing for the termination of this Act; requiring the
 2 Department to submit a certain report to the General Assembly under certain
 3 circumstances; and generally relating to a quality assessment on nursing
 4 facilities.

5 BY repealing and reenacting, without amendments,
 6 Article – Human Services
 7 Section 10–401(d) and (m)
 8 Annotated Code of Maryland
 9 (As enacted by Chapter __ (S.B.6) of the Acts of the General Assembly of 2007)

10 BY repealing and reenacting, with amendments,
 11 Article – Human Services
 12 Section 10–402(b)(1)
 13 Annotated Code of Maryland
 14 (As enacted by Chapter __ (S.B. 6) of the Acts of the General Assembly of 2007)

15 BY repealing and reenacting, without amendments,
 16 Article – Health – General
 17 Section 19–301(l) and (o)
 18 Annotated Code of Maryland
 19 (2005 Replacement Volume and 2006 Supplement)

20 BY adding to
 21 Article – Health – General
 22 Section 19–310.1
 23 Annotated Code of Maryland
 24 (2005 Replacement Volume and 2006 Supplement)

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

27 **Article – Human Services**

28 10–401.

29 (d) “Continuing care” means:

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

31 (2) continuing care at home.

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

3 10-402.

4 (b) (1) A continuing care operation that is subject to the provisions of this
5 subtitle is not subject to:

6 (i) the Maryland Health Maintenance Organization Act under
7 Title 19, Subtitle 7 of the Health – General Article;

8 (ii) except for § 15-603 of the Insurance Article, the Insurance
9 Article;

10 (iii) Title 8 of the Real Property Article; [or]

11 (iv) any county or municipal landlord-tenant law; OR

12 (v) § 19-310.1 OF THE HEALTH – GENERAL ARTICLE.

13 **Article – Health – General**

14 19-301.

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

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

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

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

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

1 **19-310.1.**

2 (A) (1) ~~IN THIS SECTION, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF~~
 3 ~~THIS SUBSECTION, "NURSING FACILITY" HAS THE MEANING STATED IN § 19-301~~
 4 ~~OF THIS SUBTITLE.~~

5 ~~(2) "NURSING FACILITY" DOES NOT INCLUDE A FACILITY THAT~~
 6 ~~PROVIDES CONTINUING CARE AS DEFINED IN § 10-401 OF THE HUMAN~~
 7 ~~SERVICES ARTICLE~~ THIS SECTION APPLIES TO A NURSING FACILITY, AS
 8 DEFINED IN § 19-301 OF THIS SUBTITLE, THAT:

9 (I) HAS 45 OR MORE BEDS; AND

10 (II) OPERATES IN THE STATE.

11 (2) THIS SECTION DOES NOT APPLY TO A NURSING HOME BED IN
 12 A CONTINUING CARE RETIREMENT COMMUNITY THAT HAS OBTAINED A
 13 CERTIFICATE OF REGISTRATION TO PROVIDE CONTINUING CARE UNDER TITLE
 14 10, SUBTITLE 4 OF THE HUMAN SERVICES ARTICLE.

15 (B) (1) THE DEPARTMENT MAY IMPOSE A QUALITY ASSESSMENT ON
 16 EACH FREESTANDING NURSING FACILITY OPERATING IN THE STATE WITH 45 OR
 17 MORE BEDS SUBJECT TO THIS SECTION.

18 (2) THE AMOUNT ASSESSED PER NURSING FACILITY MAY NOT
 19 EXCEED 2% OF THE NET OPERATING REVENUE FOR ALL NURSING FACILITIES
 20 OPERATING IN THE STATE SUBJECT TO THIS SECTION FOR THE PREVIOUS 3-
 21 MONTH PERIOD FISCAL QUARTER.

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

27 (4) THE ASSESSMENT AUTHORIZED BY THIS SECTION SHALL BE
 28 PAID BY EACH NURSING FACILITY IN ACCORDANCE WITH THIS SECTION.

29 ~~(C) (1) ON OR BEFORE THE 15TH DAY OF EACH QUARTER OF THE~~
 30 ~~STATE FISCAL YEAR, EACH NURSING FACILITY SHALL PAY TO THE STATE~~

~~1 COMPTRROLLER AN AMOUNT DETERMINED BY THE DEPARTMENT BASED ON THE
2 REVENUE EARNED BY THE NURSING FACILITY FOR THE PREVIOUS QUARTER
3 EXCLUDING REVENUE FROM THE MEDICARE PROGRAM.~~

~~4 (2) THE PAYMENT OF THE ASSESSMENT BY THE NURSING
5 FACILITY SHALL BE BASED ON NET RECEIPTS, NOT INCLUDING MEDICARE, FOR
6 THE PREVIOUS 3 MONTH PERIOD FOR WHICH THE NURSING FACILITY HAS BEEN
7 PAID THE FULLY FUNDED MEDICAID REIMBURSEMENT RATE.~~

8 (C) (1) ON OR BEFORE THE 60TH DAY AFTER EACH QUARTER OF THE
9 STATE FISCAL YEAR, EACH NURSING FACILITY SUBJECT TO THIS SECTION
10 SHALL PAY TO THE COMPTRROLLER AN AMOUNT DETERMINED BY THE
11 DEPARTMENT BASED ON AN AMOUNT PER NON-MEDICARE DAY OF SERVICE
12 FOR THE PREVIOUS FISCAL QUARTER.

13 (2) THE ASSESSMENT SHALL BE BASED ON AN AMOUNT PER
14 PATIENT DAY, NOT INCLUDING MEDICARE DAYS, NECESSARY TO FULLY FUND
15 THE NURSING FACILITY PAYMENT SYSTEM AS PROVIDED UNDER SUBSECTION
16 (B)(3) OF THIS SECTION.

17 (D) (1) ALL AMOUNTS COLLECTED BY THE STATE COMPTRROLLER
18 UNDER THIS SECTION SHALL BE USED BY THE DEPARTMENT TO FUND
19 REIMBURSEMENTS TO NURSING FACILITIES UNDER THE MEDICAID PROGRAM.

20 (2) THE FUNDS ALLOCATED BY THE DEPARTMENT AS
21 REIMBURSEMENTS TO NURSING FACILITIES UNDER THIS SECTION SHALL BE IN
22 ADDITION TO AND MAY NOT SUPPLANT FUNDS ALREADY APPROPRIATED FOR
23 THIS PURPOSE.

24 (3) (I) 1. IN CONSULTATION WITH REPRESENTATIVES OF
25 NURSING FACILITIES AND OTHER STAKEHOLDERS, THE DEPARTMENT SHALL
26 DEVELOP ACCOUNTABILITY MEASURES THAT INDICATE QUALITY OF CARE OR A
27 COMMITMENT TO QUALITY OF CARE, TO BE USED FOR DISTRIBUTION OF A
28 PORTION OF THE REVENUES FROM THE ASSESSMENT UNDER THIS SECTION TO
29 NURSING FACILITIES SUBJECT TO THIS SUBSECTION.

30 2. THE ACCOUNTABILITY MEASURES DEVELOPED
31 UNDER THIS PARAGRAPH SHALL BE OBJECTIVE AND MEASURABLE, AND, WHEN

1 CONSIDERED IN COMBINATION WITH EACH OTHER, SHALL HAVE A
2 CORRELATION TO RESIDENTS' QUALITY OF LIFE AND CARE.

3 (II) BEGINNING JULY 1, 2008, SUBJECT TO RESTRICTIONS
4 UNDER FEDERAL LAW, UP TO 75% OF THE REVENUES FROM THE ASSESSMENT
5 UNDER THIS SECTION MAY BE DISTRIBUTED TO NURSING FACILITIES SUBJECT
6 TO THIS SUBSECTION BASED ON THE ACCOUNTABILITY MEASURES DEVELOPED
7 UNDER THIS PARAGRAPH.

8 (III) THE DISTRIBUTION OF REVENUES AS PROVIDED IN THIS
9 PARAGRAPH SHALL BE USED AS AN INCENTIVE FOR NURSING FACILITIES TO
10 PROVIDE QUALITY CARE AND MAY NOT BE USED TO DIRECTLY OR INDIRECTLY
11 HOLD HARMLESS ANY NURSING FACILITY.

12 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT
13 THIS SECTION.

14 (F) ON OR BEFORE MARCH 1, 2008, AND EACH YEAR THEREAFTER, THE
15 DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE
16 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE
17 IMPLEMENTATION OF THIS SECTION, INCLUDING:

18 (1) THE PERCENTAGE AND AMOUNT OF THE ASSESSMENT
19 CHARGED TO EACH NURSING FACILITY SUBJECT TO THIS SECTION;

20 (2) THE NUMBER OF NURSING FACILITIES SUBJECT TO THIS
21 SECTION WITH A NET LOSS; AND

22 (3) A COMPARISON OF THE TOTAL AMOUNT PROVIDED IN THE
23 MEDICAID BUDGET FOR NURSING HOME REIMBURSEMENT IN THE CURRENT
24 FISCAL YEAR TO THE AMOUNT PROPOSED FOR THE UPCOMING FISCAL YEAR.

25 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
26 Health and Mental Hygiene;

27 (1) shall seek approval from the Centers for Medicare and Medicaid
28 Services of a waiver under § 1903 of the federal Social Security Act that would allow
29 the State to receive tax revenue (within specified limitations) without a reduction in

1 federal financial participation, specifically by excluding a ~~continuing care facility from~~
2 ~~the definition of “nursing facility” under § 19-310.1 of the~~
3 ~~Health – General Article as enacted by this Act~~ nursing home bed in a continuing care
4 retirement community under § 19-310.1(a)(2) of the Health – General Article, as
5 enacted by Section 1 of this Act; and

6 (2) may modify the minimum licensed bed capacity of a nursing
7 facility subject to the imposition of a quality assessment under § 19-310.1 of the
8 Health – General Article, as enacted by Section 1 of this Act, or other elements that
9 determine the quality assessment, as required by the Centers for Medicare and
10 Medicaid Services as a condition for the approval of the waiver applied for under item
11 (1) of this section.

12 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
13 take effect on the ~~date that~~ first day of the State fiscal quarter during which the
14 Centers for Medicare and Medicaid Services approves a waiver applied for in
15 accordance with Section 2 of this Act. The Department of Health and Mental Hygiene
16 shall, within 5 working days of the date of the approval of the State’s waiver
17 application, notify the Department of Legislative Services in writing at 90 State Circle,
18 Annapolis, Maryland 21401. If the waiver is denied, the Department of Health and
19 Mental Hygiene shall, within 5 working days of the date of the denial of the State’s
20 waiver application, notify the Department of Legislative Services in writing at 90
21 State Circle, Annapolis, Maryland 21401. If the waiver is denied, this Act shall be null
22 and void without the necessity of further action by the General Assembly.

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.