

CHAPTER 503

(Senate Bill 101)

AN ACT concerning

Nursing Facilities – Quality Assessment – Medicaid Reimbursement

FOR the purpose of authorizing the Department of Health and Mental Hygiene to impose a quality assessment on certain nursing facilities; providing that a certain continuing care operation is not subject to a certain quality assessment; providing for the terms of the assessment; requiring a certain assessment to be paid to the State Comptroller at a certain time; providing that the payment of the assessment by the nursing facility shall be based on a certain ~~net receipts~~ amount per non-Medicare day of service; ~~requiring the Department to use~~ providing for the distribution of the amounts collected to a special fund, to be used only to fund reimbursements to nursing facilities under the Medicaid program; providing that the quality assessment funds allocated for Medicaid reimbursement of nursing facilities are to be in addition to and not to supplant funds already appropriated for this purpose; ~~requiring the Department to develop certain accountability measures on which the distribution of certain revenues may be based;~~ requiring the Department to adopt certain regulations; ~~defining a certain term;~~ requiring the Department to seek certain approval for excluding a ~~continuing care facility from the definition of nursing facility~~ nursing home bed in a certain continuing care retirement community; authorizing the Department to modify certain elements that determine the quality assessment under certain circumstances; making this Act subject to a certain contingency; providing for the termination of this Act; requiring the Department to submit a certain report to the General Assembly under certain circumstances; expressing the intent of the General Assembly that the Department develop certain accountability measures to be used to distribute certain revenues; and generally relating to a quality assessment on nursing facilities.

BY repealing and reenacting, without amendments,

Article – Human Services

Section 10-401(d) and (m)

Annotated Code of Maryland

(As enacted by Chapter ~~—(S.B.6)~~ 3 of the Acts of the General Assembly of 2007)

BY repealing and reenacting, with amendments,

Article – Human ServicesSection 10–402(b)(1)Annotated Code of Maryland(As enacted by Chapter ~~(S.B. 6)~~ 3 of the Acts of the General Assembly of 2007)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 19–301(l) and (o)

Annotated Code of Maryland

(2005 Replacement Volume and 2006 Supplement)

BY adding to

Article – Health – General

Section 19–310.1

Annotated Code of Maryland

(2005 Replacement Volume and 2006 Supplement)

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

Article – Human Services

10–401.

(d) “Continuing care” means:

- (1) continuing care in a retirement community; or
- (2) continuing care at home.

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

10–402.(b) (1) A continuing care operation that is subject to the provisions of this subtitle is not subject to:(i) the Maryland Health Maintenance Organization Act under Title 19, Subtitle 7 of the Health – General Article;

- Article;
- (ii) except for § 15-603 of the Insurance Article, the Insurance
 - (iii) Title 8 of the Real Property Article; [or]
 - (iv) any county or municipal landlord-tenant law; OR
 - (v) § 19-310.1 OF THE HEALTH - GENERAL ARTICLE.

Article - Health - General

19-301.

(1) "Nursing facility" means a related institution that provides nursing care for 2 or more unrelated individuals.

(o) (1) "Related institution" means an organized institution, environment, or home that:

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

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

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

19-310.1.

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

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

(I) HAS 45 OR MORE BEDS; AND

(II) OPERATES IN THE STATE.

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

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

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

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

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

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

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

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

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

(D) (1) ALL AMOUNTS COLLECTED BY THE STATE COMPTROLLER UNDER THIS SECTION SHALL BE *DISTRIBUTED TO A SPECIAL FUND, TO BE* USED BY THE DEPARTMENT *ONLY* TO FUND REIMBURSEMENTS TO NURSING FACILITIES UNDER THE MEDICAID PROGRAM.

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

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

~~2. THE ACCOUNTABILITY MEASURES DEVELOPED UNDER THIS PARAGRAPH SHALL BE OBJECTIVE AND MEASURABLE, AND, WHEN CONSIDERED IN COMBINATION WITH EACH OTHER, SHALL HAVE A CORRELATION TO RESIDENTS' QUALITY OF LIFE AND CARE.~~

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

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

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

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

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

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

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

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

(1) shall seek approval from the Centers for Medicare and Medicaid Services of a waiver under § 1903 of the federal Social Security Act that would allow the State to receive tax revenue (within specified limitations) without a reduction in federal financial participation, specifically by excluding a ~~continuing care facility from the definition of “nursing facility” under § 19-310.1 of the Health – General Article as enacted by this Act~~ nursing home bed in a continuing care retirement community under § 19-310.1(a)(2) of the Health – General Article, as enacted by Section 1 of this Act; and

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that:

(a) Beginning July 1, 2008, a portion of the revenues from the quality assessment shall be distributed to nursing facilities subject to this Act based on accountability measures that indicate quality of care or a commitment to quality of care. The accountability measures should be objective, measurable, and when considered in combination with each other, deemed to have a correlation to residents' quality of life and care. The Department of Health and Mental Hygiene shall develop

accountability measures in consultation with representatives of the nursing facilities and other stakeholders.

(b) Up to 25% of the revenues generated by the quality assessment shall be distributed as provided in this section, to the extent federal law allows. Further, the distribution of revenues as provided in this section shall be used as an incentive for nursing facilities to provide quality care, and may not be used to directly or indirectly hold harmless any nursing facility.

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

Approved by the Governor, May 17, 2007.