

# HOUSE BILL 130

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CF SB 101

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By: **The Speaker (By Request - Administration) and Delegates Barnes, Bromwell, Busch, Costa, Feldman, Haynes, Hubbard, Morhaim, Nathan-Pulliam, and F. Turner**

Introduced and read first time: January 24, 2007

Assigned to: Appropriations and Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2007

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## 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~~  
10 providing for the distribution of the amounts collected to a special fund, to be  
11 used only to fund reimbursements to nursing facilities under the Medicaid  
12 program; providing that the quality assessment funds allocated for Medicaid  
13 reimbursement of nursing facilities are to be in addition to and not to supplant  
14 funds already appropriated for this purpose; requiring the Department to adopt  
15 certain regulations; ~~defining a certain term;~~ requiring the Department to seek  
16 certain approval for excluding a ~~continuing care facility from the definition of~~  
17 ~~nursing facility~~ nursing home bed in a certain continuing care retirement  
18 community; authorizing the Department to modify certain elements that  
19 determine the quality assessment under certain circumstances; making this Act

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### 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 subject to a certain contingency; providing for the termination of this Act;  
 2 requiring the Department to submit a certain report to the General Assembly  
 3 under certain circumstances; expressing the intent of the General Assembly  
 4 that the Department develop certain accountability measures to be used to  
 5 distribute certain revenues; and generally relating to a quality assessment on  
 6 nursing facilities.

7 BY repealing and reenacting, without amendments,  
 8 Article – Human Services  
 9 Section 10–401(d) and (m)  
 10 Annotated Code of Maryland  
 11 (As enacted by Chapter ~~== (S.B.6) 3~~ of the Acts of the General Assembly of 2007)

12 BY repealing and reenacting, with amendments,  
 13 Article – Human Services  
 14 Section 10–402(b)(1)  
 15 Annotated Code of Maryland  
 16 (As enacted by Chapter 3 of the Acts of the General Assembly of 2007)

17 BY repealing and reenacting, without amendments,  
 18 Article – Health – General  
 19 Section 19–301(l) and (o)  
 20 Annotated Code of Maryland  
 21 (2005 Replacement Volume and 2006 Supplement)

22 BY adding to  
 23 Article – Health – General  
 24 Section 19–310.1  
 25 Annotated Code of Maryland  
 26 (2005 Replacement Volume and 2006 Supplement)

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

29 **Article – Human Services**

30 10–401.

31 (d) “Continuing care” means:

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

33 (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 (1) "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 FOR THE PREVIOUS 3-MONTH PERIOD FISCAL  
 21 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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