

SENATE BILL 414

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P2
HB 1201/00 - ECM

2001 Regular Session
11r1213

By: **Senators Pinsky, Conway, Exum, Hughes, Kelley, McFadden, Mitchell,
Sfikas, and Teitelbaum**

Introduced and read first time: February 2, 2001

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts and State Financial Assistance Programs -**
3 **Investment and Accountability Act**

4 FOR the purpose of requiring certain contractors and subcontractors to pay certain
5 employees a certain minimum salary level under certain State procurement
6 contracts; requiring certain recipients of State financial assistance and certain
7 health care providers receiving certain revenue levels through the State's
8 medical assistance program to pay certain employees a certain minimum salary
9 level; requiring the State to pay State employees the same minimum salary
10 level; providing certain exemptions; requiring an alternative minimum salary
11 level for work previously performed by State employees; requiring the
12 Commissioner of Labor and Industry to prescribe a living wage level based on a
13 certain federal rate, to administer and enforce requirements with regard to
14 employees other than State employees, and to investigate complaints involving
15 employees other than State employees; requiring the Secretary of Budget and
16 Management to administer and enforce requirements and investigate
17 complaints involving State employees; requiring certain units of State
18 government to adopt regulations and authorizing certain units to grant certain
19 waivers; granting certain employees rights of free speech and association;
20 requiring covered employers to post certain information; authorizing an
21 employee other than a State employee to sue for certain damages under certain
22 circumstances; providing certain remedies and certain procedural requirements;
23 prohibiting an employer from retaliating against an employee based on a certain
24 action; establishing certain penalties; defining certain terms; and generally
25 relating to levels of wages paid to State employees and to employees under
26 certain service contracts and financial assistance programs supported with
27 State revenues.

28 BY repealing and reenacting, with amendments,
29 Article - State Finance and Procurement
30 Section 11-101(x)
31 Annotated Code of Maryland
32 (1995 Replacement Volume and 2000 Supplement)

1 BY adding to
2 Article - State Finance and Procurement
3 Section 12-101(c); and 19-101 through 19-111, inclusive, to be under the new
4 title "Title 19. Living Wage"
5 Annotated Code of Maryland
6 (1995 Replacement Volume and 2000 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article - Health - General
9 Section 15-105
10 Annotated Code of Maryland
11 (2000 Replacement Volume)

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

14 **Article - State Finance and Procurement**

15 11-101.

16 (x) (1) "Unit" means an officer or other entity that is in the Executive
17 Branch of the State government and is authorized by law to enter into a procurement
18 contract.

19 (2) FOR PURPOSES OF TITLE 19 OF THIS ARTICLE, "UNIT" INCLUDES AN
20 ENTITY IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT THAT ADMINISTERS A
21 FINANCIAL ASSISTANCE PROGRAM REQUIRING THE PAYMENT OF LIVING WAGE
22 RATES.

23 (3) "Unit" does not include:

24 (i) a bistate, multistate, bicounty, or multicounty governmental
25 agency; or

26 (ii) a special tax district, sanitary district, drainage district, soil
27 conservation district, water supply district, or other political subdivision of the State.
28 12-101.

29 (C) THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
30 OF TITLE 19 OF THIS ARTICLE TO:

31 (1) CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE
32 PROVISIONS OF TITLE 19 OF THIS ARTICLE, AFTER CONSULTATION WITH THE
33 COMMISSIONER OF LABOR AND INDUSTRY; AND

34 (2) STATE EMPLOYEES, AFTER CONSULTATION WITH THE SECRETARY
35 OF BUDGET AND MANAGEMENT.

TITLE 19. LIVING WAGE.

19-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

(C) "EMPLOYER" MEANS:

(1) THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT; OR

(2) A FOR PROFIT OR NOT FOR PROFIT ENTITY THAT:

(I) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR MORE;

(II) HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR MORE UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION;

(III) IS A HEALTH CARE PROVIDER THAT RECEIVES 50% OR MORE OF ITS ANNUAL GROSS REVENUES THROUGH THE STATE'S MEDICAL ASSISTANCE PROGRAM; OR

(IV) SUBJECT TO § 19-102(B)(3) OF THIS TITLE, IS A RECIPIENT OF STATE FINANCIAL ASSISTANCE.

(D) "INDEX" MEANS THE MOST RECENT AVAILABLE FIGURE STATED IN THE PUBLICATION "POVERTY IN THE UNITED STATES", PUBLISHED BY THE UNITED STATES BUREAU OF THE CENSUS AND UPDATED ON AN ANNUAL BASIS, WHICH DEFINES THE NATIONAL POVERTY LEVEL FOR A FAMILY OF FOUR.

(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, "LIVING WAGE" MEANS AN HOURLY WAGE RATE SET BY THE COMMISSIONER THAT, BASED ON A 40-HOUR WORKWEEK, WOULD PROVIDE AN EMPLOYEE WITH AN ANNUAL INCOME THAT IS AT LEAST 130% OF THE INDEX.

(2) IF THE PUBLISHED NATIONAL POVERTY LEVEL FOR A FAMILY OF FOUR IS REDUCED, THE LIVING WAGE SET BY THE COMMISSIONER MAY NOT BE LESS THAN THE HOURLY WAGE IN EFFECT DURING THE PREVIOUS YEAR.

(F) "RECIPIENT OF STATE ASSISTANCE" MEANS A FOR PROFIT OR NOT FOR PROFIT EMPLOYER THAT RECEIVES STATE ASSISTANCE THROUGH BOND PROCEEDS, GRANT, LOAN, RENT SUBSIDY, OR TAX INCENTIVE.

19-102.

(A) THIS TITLE DOES NOT APPLY TO AN EMPLOYER THAT IS A NOT FOR PROFIT ENTITY:

(1) THAT HAS ANNUAL GROSS REVENUES OF LESS THAN:

1 (I) ON OR BEFORE SEPTEMBER 30, 2002, \$10,000,000; AND

2 (II) ON OR AFTER OCTOBER 1, 2002, \$1,000,000;

3 (2) THAT EMPLOYS FEWER THAN 30 EMPLOYEES; OR

4 (3) THAT RECEIVES AN ECONOMIC HARDSHIP WAIVER UNDER § 19-105
5 OF THIS TITLE.

6 (B) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER:

7 (1) WHO IS THE STATE OR A PRINCIPAL UNIT OF THE STATE;

8 (2) FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT
9 LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A
10 STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE
11 CONTRACT;

12 (3) THAT IS A HEALTH CARE PROVIDER SUBJECT TO THIS TITLE; OR

13 (4) THAT IS A RECIPIENT OF STATE FINANCIAL ASSISTANCE:

14 (I) FOR THE DURATION OF A PARTICULAR PROJECT FUNDED IN
15 FULL OR IN PART BY THE STATE IF THE STATE FUNDING IS TIED SPECIFICALLY TO
16 THAT PROJECT AND AT LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY
17 WORKWEEK RELATES TO THE PROJECT;

18 (II) FOR THE TERM OF FINANCIAL ASSISTANCE IF AT LEAST
19 ONE-HALF OF THE EMPLOYEE'S TIME IS SPENT ON PROPERTY CONTROLLED BY THE
20 EMPLOYER AND THE EMPLOYER RECEIVED ANY FORM OF FINANCIAL ASSISTANCE
21 FROM THE STATE THAT EXTENDS OVER TIME IN CONNECTION WITH THE PROPERTY;
22 OR

23 (III) FOR THE TERM ESTABLISHED AS A CONDITION OF OTHER
24 STATE FINANCIAL ASSISTANCE PROGRAMS BY THE UNIT THAT ADMINISTERS THE
25 PROGRAM UNDER WHICH THE ASSISTANCE IS MADE AVAILABLE.

26 19-103.

27 (A) SUBJECT TO SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, AN
28 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
29 THIS TITLE AT AN HOURLY RATE THAT IS AT LEAST THE LIVING WAGE AS SET BY THE
30 COMMISSIONER.

31 (B) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
32 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
33 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER TITLE
34 17, SUBTITLE 2 OF THIS ARTICLE OR OF THIS TITLE.

1 (C) IF A CONTRACT FOR SERVICES COVERS WORK PREVIOUSLY PERFORMED
2 BY STATE EMPLOYEES, AN EMPLOYER SHALL PAY AN EMPLOYEE A WAGE RATE THAT
3 IS NOT LESS THAN THE GREATER OF:

4 (1) (I) THE STEP 1 RATE WITHIN THE LOWEST GRADE AT WHICH THE
5 POSITION WOULD BE CLASSIFIED IF THE WORK CONTINUED TO BE PERFORMED BY
6 STATE EMPLOYEES; AND

7 (II) EITHER COMPARABLE BENEFITS OR THE CASE EQUIVALENT OF
8 COMPARABLE BENEFITS; OR

9 (2) THE WAGE RATE REQUIRED UNDER THIS TITLE.

10 (D) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT OR FINANCIAL
11 ASSISTANCE PROGRAM DETERMINES THAT APPLICATION OF THIS TITLE WOULD
12 CONFLICT WITH ANY APPLICABLE FEDERAL PROGRAM REQUIREMENT, THIS TITLE
13 DOES NOT APPLY TO THE CONTRACT OR PROGRAM.

14 19-104.

15 (A) THE COMMISSIONER ANNUALLY SHALL DETERMINE THE LIVING WAGE
16 RATE APPLICABLE UNDER THIS TITLE.

17 (B) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
18 EMPLOYERS SUBJECT TO THIS TITLE AND:

19 (1) EXCEPT FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH
20 REGARD ONLY TO ITS OWN EMPLOYEES, MAY REQUIRE THAT AN EMPLOYER KEEP
21 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
22 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
23 ENFORCEMENT OF THIS TITLE; AND

24 (2) FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH REGARD
25 TO ITS OWN EMPLOYEES, MAY REQUIRE THAT THE PRINCIPAL UNIT KEEP RECORDS
26 AND SUBMIT REPORTS TO THE SECRETARY OF BUDGET AND MANAGEMENT THAT
27 THE SECRETARY DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION
28 AND ENFORCEMENT OF THIS TITLE.

29 (C) IN CONSULTATION WITH THE COMMISSIONER, EACH UNIT THAT
30 ADMINISTERS A STATE FINANCIAL ASSISTANCE PROGRAM SHALL ADOPT
31 REGULATIONS GOVERNING THE APPLICATION OF THIS TITLE TO RECIPIENTS OF
32 STATE ASSISTANCE SUBJECT TO THE PROVISIONS OF THIS TITLE.

33 19-105.

34 (A) NOTWITHSTANDING § 19-103 OF THIS TITLE, A NOT FOR PROFIT ENTITY
35 THAT IS SUBJECT TO THIS TITLE MAY APPLY TO THE UNIT RESPONSIBLE FOR THE
36 APPLICABLE CONTRACT OR PROGRAM REQUESTING AN ECONOMIC HARDSHIP
37 WAIVER UNDER WHICH WAGE LEVELS REQUIRED UNDER THIS TITLE WOULD NOT
38 APPLY.

1 (B) THE UNIT MAY ONLY GRANT A WAIVER UNDER THIS SECTION AFTER:

2 (1) A REVIEW OF THE NOT FOR PROFIT ENTITY'S FINANCIAL SITUATION,
3 INCLUDING SALARY LEVELS OF THE ENTITY'S MANAGEMENT PERSONNEL; AND

4 (2) A DETERMINATION THAT THE APPLICATION OF THIS TITLE WOULD
5 CAUSE AN UNDUE HARDSHIP ON THE ENTITY'S OPERATION.

6 19-106.

7 (A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE
8 SPEECH AND ASSOCIATION.

9 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT
10 BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS
11 UNDER THIS TITLE IS VOID.

12 (2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED
13 THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

14 19-107.

15 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS
16 ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS
17 TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK
18 SITE A NOTICE OF:

19 (1) THE LIVING WAGE RATE;

20 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

21 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
22 COMMISSIONER.

23 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
24 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
25 WORK SITE.

26 (C) (1) IF THE VIOLATION DOES NOT INVOLVE A STATE EMPLOYEE, AND
27 SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE COMMISSIONER
28 MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL PENALTY NOT
29 EXCEEDING \$50 PER VIOLATION.

30 (2) THE SECRETARY OF BUDGET AND MANAGEMENT MAY TAKE
31 APPROPRIATE ACTION UNDER THE STATE PERSONNEL MANAGEMENT SYSTEM
32 AGAINST ANY PRINCIPAL UNIT OR APPOINTING AUTHORITY OF A PRINCIPAL UNIT
33 THAT VIOLATES THIS SECTION WITH REGARD TO A STATE EMPLOYEE.

1 19-108.

2 (A) (1) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER
3 THIS TITLE IF THE COMPLAINT INVOLVES AN EMPLOYEE WHO IS NOT A STATE
4 EMPLOYEE.

5 (2) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL
6 INVESTIGATE A COMPLAINT UNDER THIS TITLE AGAINST A PRINCIPAL UNIT OF
7 STATE GOVERNMENT BY A STATE EMPLOYEE.

8 (B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE
9 UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE
10 EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

11 (C) IN AN INVESTIGATION UNDER SUBSECTION (A) (1) OF THIS SECTION, AN
12 EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE COMMISSIONER OR THE
13 COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND PAYROLL RECORDS, AND
14 ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR PURPOSES OF ENFORCING
15 THIS TITLE.

16 (D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE
17 COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

18 (2) AT LEAST 10 DAYS BEFORE THE HEARING, THE COMMISSIONER
19 SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
20 INTERESTED PARTIES.

21 (3) THE NOTICE SHALL INCLUDE:

22 (I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION;
23 AND

24 (II) THE TIME AND PLACE OF THE HEARING.

25 (4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

26 (I) SUBPOENA WITNESSES;

27 (II) ADMINISTER OATHS; AND

28 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND
29 OTHER EVIDENCE.

30 (E) (1) AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER
31 SHALL:

32 (I) ISSUE A DETERMINATION; AND

33 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY
34 WITH A COPY OF THE DETERMINATION.

1 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
2 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
3 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 19-108 OF THIS TITLE.

4 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY
5 THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
6 COMMISSIONER'S DETERMINATION.

7 19-109.

8 (A) IN A CASE INVOLVING AN EMPLOYEE OTHER THAN A STATE EMPLOYEE, IF
9 THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A PROVISION OF
10 THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE EMPLOYER SHALL:

11 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

12 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH
13 EMPLOYEE WHO IS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS
14 TITLE.

15 (B) IN A CASE INVOLVING A STATE EMPLOYEE, IF THE SECRETARY OF
16 BUDGET AND MANAGEMENT DETERMINES THAT THE EMPLOYER VIOLATED A
17 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
18 EMPLOYER SHALL PAY RESTITUTION TO EACH AFFECTED EMPLOYEE.

19 19-110.

20 (A) (1) IF AN EMPLOYEE OTHER THAN A STATE EMPLOYEE IS PAID LESS
21 THAN THE WAGE RATE REQUIRED UNDER THIS TITLE OR IF AN EMPLOYER
22 RETALIATES AGAINST THE EMPLOYEE SOLELY BECAUSE THE EMPLOYEE EXERCISED
23 RIGHTS GRANTED UNDER THIS TITLE, THE EMPLOYEE IS ENTITLED TO SUE TO
24 RECOVER TREBLE THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE
25 REQUIRED UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

26 (2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS
27 REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM
28 FILING AN ACTION UNDER THIS SECTION.

29 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR
30 WAGES.

31 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE
32 SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

33 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE
34 PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS
35 TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

36 (D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,
37 THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES

1 UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,
2 INCLUDING REASONABLE ATTORNEY FEES.

3 19-111.

4 (A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE SOLELY
5 BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.

6 (B) AN EMPLOYER OTHER THAN A STATE EMPLOYER WHO VIOLATES
7 SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
8 CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT
9 EXCEEDING 1 YEAR OR BOTH.

10 **Article - Health - General**

11 15-105.

12 (a) (1) The Department shall adopt rules and regulations for the
13 reimbursement of providers under the Program. However, except for an invoice that
14 must be submitted to a Medicare intermediary or Medicare carrier for an individual
15 who may have both Medicare and Medicaid coverage, payment may not be made for
16 an invoice that is received more than 1 year after the dates of the services given.

17 (2) IN CONSULTATION WITH THE COMMISSIONER OF LABOR AND
18 INDUSTRY, THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE
19 APPLICATION OF TITLE 19 OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO
20 HEALTH CARE PROVIDERS SUBJECT TO THE PROVISIONS OF THAT TITLE.

21 (b) A provider who fails to submit an invoice within the required time may not
22 recover the amount later from the Program recipient.

23 (c) (1) The Department shall adopt regulations for the reimbursement of
24 specialty outpatient treatment and diagnostic services rendered to Program
25 recipients at a freestanding clinic owned and operated by a hospital that is under a
26 capitation agreement approved by the Health Services Cost Review Commission.

27 (2) (i) Except as provided in subparagraph (ii) of this paragraph, the
28 reimbursement rate under paragraph (1) of this subsection shall be set according to
29 Medicare standards and principles for retrospective cost reimbursement as described
30 in 42 CFR Part 413 or on the basis of charges, whichever is less.

31 (ii) The reimbursement rate for a hospital that has transferred
32 outpatient oncology, diagnostic, rehabilitative, and digestive disease services to an
33 off-site facility prior to January 1, 1999 shall be set according to the rates approved
34 by the Health Services Cost Review Commission if:

35 1. The transfer of services was due to zoning restrictions at
36 the hospital campus;

