
By: **Senator Hollinger**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 18, 2005

Rules suspended

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 70B - Department of Aging
 19 Section 7(d) and (m)
 20 Annotated Code of Maryland
 21 (2003 Replacement Volume and 2004 Supplement)

22 BY repealing and reenacting, without amendments,
 23 Article - Health - General
 24 Section 19-301(l) and (o)
 25 Annotated Code of Maryland
 26 (2000 Replacement Volume and 2004 Supplement)

27 BY adding to
 28 Article - Health - General

1 Section 19-310.1
2 Annotated Code of Maryland
3 (2000 Replacement Volume and 2004 Supplement)

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

6 **Article 70B - Department of Aging**

7 7.

8 (d) "Continuing care" means furnishing or making available shelter and either
9 medical and nursing services or other health related services to an individual 60
10 years of age or older not related by blood or marriage to the provider for the life of the
11 individual or for a period in excess of 1 year under one or more written agreements
12 that require a transfer of assets or an entrance fee notwithstanding periodic charges.

13 (m) "Facility" means a physical plant in which continuing care is provided in
14 accordance with this subtitle.

15 **Article - Health - General**

16 19-301.

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

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

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

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

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

30 19-310.1.

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

34 (2) "NURSING FACILITY" DOES NOT INCLUDE A FACILITY THAT
35 PROVIDES CONTINUING CARE AS DEFINED IN ARTICLE 70 B, § 7 OF THE CODE.

1 (B) (1) THE DEPARTMENT MAY IMPOSE A QUALITY ASSESSMENT ON EACH
2 FREESTANDING NURSING FACILITY WITH 41 OR MORE BEDS OPERATING IN THE
3 STATE.

4 (2) THE AMOUNT PER NURSING FACILITY MAY NOT EXCEED 2% OF THE
5 NET OPERATING REVENUE FOR ALL NURSING FACILITIES OPERATING IN THE STATE
6 FOR THE PREVIOUS 3-MONTH PERIOD.

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

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

13 (C) (1) ON OR BEFORE THE 15TH DAY OF EACH QUARTER OF THE STATE
14 FISCAL YEAR, EACH NURSING FACILITY SHALL PAY TO THE STATE COMPTROLLER AN
15 AMOUNT DETERMINED BY THE DEPARTMENT BASED ON THE NUMBER OF LICENSED
16 BEDS IN THE NURSING FACILITY ON THE FIRST DAY OF THE PREVIOUS FISCAL
17 QUARTER.

18 (2) THE PAYMENT OF THE ASSESSMENT BY THE NURSING FACILITY
19 SHALL BE BASED ON NET RECEIPTS, NOT INCLUDING MEDICARE, FOR THE PREVIOUS
20 3-MONTH PERIOD FOR WHICH THE NURSING FACILITY HAS BEEN PAID THE FULLY
21 FUNDED MEDICAID REIMBURSEMENT RATE.

22 (D) (1) ALL AMOUNTS COLLECTED BY THE STATE COMPTROLLER UNDER
23 THIS SECTION SHALL BE USED BY THE DEPARTMENT TO FUND REIMBURSEMENTS
24 TO NURSING FACILITIES UNDER THE MEDICAID PROGRAM.

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

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

31 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
32 Health and Mental Hygiene shall seek approval from the Centers for Medicare and
33 Medicaid Services of a waiver under § 1903 of the federal Social Security Act that
34 would allow the State to receive tax revenue (within specified limitations) without a
35 reduction in federal financial participation, specifically by excluding a continuing
36 care facility from the definition of "nursing facility" under § 19-310.1 of the Health -
37 General Article as enacted by this Act.

38 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
39 take effect on the date that the Centers for Medicare and Medicaid Services approves
40 a waiver applied for in accordance with Section 2 of this Act. The Department of

1 Health and Mental Hygiene shall, within 5 working days of the date of the approval
2 of the State's waiver application, notify the Department of Legislative Services in
3 writing at 90 State Circle, Annapolis, Maryland 21401. If the waiver is denied, the
4 Department of Health and Mental Hygiene shall, within 5 working days of the date of
5 the denial of the State's waiver application, notify the Department of Legislative
6 Services in writing at 90 State Circle, Annapolis, Maryland 21401. If the waiver is
7 denied, this Act shall be null and void without the necessity of further action by the
8 General Assembly.

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

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

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

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

17 (b) If the assessment is terminated in accordance with subsection (a)(1) or (2)
18 of this section, the Department of Health and Mental Hygiene shall, within 5 working
19 days of the date of termination, notify the Department of Legislative Services in
20 writing at 90 State Circle, Annapolis, Maryland 21401.

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

24 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
25 Section 3 and subject to Section 4 of this Act, this Act shall take effect July 1, 2005. It
26 shall remain effective for a period of 4 years and, at the end of June 30, 2009, with no
27 further action required by the General Assembly, this Act shall be abrogated and of no
28 further force and effect.