

CHAPTER 417

(House Bill 782)

AN ACT concerning

Nursing Facilities – Accountability Measures – Pay-for-Performance Program

FOR the purpose of requiring the Department of Health and Mental Hygiene to ~~consult with certain individuals to make a certain evaluation on or before a certain date; requiring the Department to make a certain report to the General Assembly on or before a certain date; prohibiting the Department from distributing certain revenues until a certain date or the termination of certain rate reductions; requiring the Department to use certain accountability measures;~~ develop certain accountability measures for use in a pay-for-performance program; requiring the Department, in consultation with certain stakeholders, to make certain changes to the program on or before a certain date and each year thereafter; requiring the Department to examine and modify the program to include improvement measures in the scoring criteria on or before certain dates; requiring the Department to score nursing facilities based on certain scoring criteria and to send a certain transmittal to certain nursing facilities on or before a certain date; requiring the Department to distribute a certain percentage of the revenues generated by a certain quality assessment beginning on a certain date; requiring the Department to implement a certain program beginning on a certain date; requiring the Department to consult with certain stakeholders to assess the State’s long-term care reimbursement methodology, to conduct a certain evaluation of the methodology, and to make a certain report to the General Assembly on or before a certain date; codifying the provisions of law relating to the pay-per-performance program; and generally relating to nursing facilities and accountability measures for a pay-for-performance program.

~~BY repealing and reenacting, with amendments,
Chapter 503 of the Acts of the General Assembly of 2007, as amended by
Chapter 200 of the Acts of the General Assembly of 2008
Section 5~~

BY adding to
Article – Health – General
Section 19-14B-01 to be under the new subtitle “Subtitle 14B.
Pay-for-Performance Program for Nursing Homes”
Annotated Code of Maryland
(2005 Replacement Volume and 2008 Supplement)

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

~~Chapter 503 of the Acts of 2007, as amended by Chapter 200 of the Acts of 2008~~

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

~~(a) [Beginning] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, BEGINNING July 1, 2009, 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 Department of Health and Mental Hygiene shall develop a plan for accountability measures to use in a pay for performance program in consultation with representatives of the nursing facilities and other stakeholders. 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) The plan developed by the Department under subsection (a) of this section shall include:~~

- ~~(1) Program goals;~~
- ~~(2) Recommended options;~~
- ~~(3) Funding sources;~~
- ~~(4) Implementation timelines and benchmarking periods; and~~
- ~~(5) The administrative cost of implementation of a pay for performance program.~~

~~(c) ON OR BEFORE OCTOBER 1, 2009, THE DEPARTMENT SHALL CONSULT WITH REPRESENTATIVES OF NURSING FACILITIES AND OTHER STAKEHOLDERS TO REEVALUATE THE ACCOUNTABILITY MEASURES DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION AND EVALUATE THE DISTRIBUTION OF FUNDING AND EDUCATION REGARDING THE FINAL SCORING CRITERIA. IN REEVALUATING THE ACCOUNTABILITY MEASURES, THE DEPARTMENT SHALL CONSIDER OTHER ACCOUNTABILITY PROGRAMS.~~

~~[(c)] (D) Up to 25% of the revenues generated by the quality assessment shall be in an incentive program to 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.~~

~~[(d)] (E) (1) On or before December 1, 2008, the plan required under this section shall be submitted by the Department, in accordance with § 2-1246 of the State Government Article, to the General Assembly.~~

~~(2) ON OR BEFORE DECEMBER 1, 2009, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY ON THE REEVALUATION AND EVALUATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.~~

~~(F) (1) THE DEPARTMENT MAY NOT DISTRIBUTE REVENUES GENERATED BY THE QUALITY ASSESSMENT TO NURSING FACILITIES THROUGH AN INCENTIVE PROGRAM AS PROVIDED UNDER SUBSECTION (D) OF THIS SECTION UNTIL THE LATER OF JULY 1, 2011, OR THE TERMINATION OF RATE REDUCTIONS IMPOSED ON NURSING FACILITIES BY THE STATE.~~

~~(2) THE DEPARTMENT SHALL EVALUATE NURSING HOMES USING ACCOUNTABILITY MEASURES DEVELOPED BY THE DEPARTMENT UNDER SUBSECTION (C) OF THIS SECTION BUT MAY NOT DISTRIBUTE REVENUES TO NURSING FACILITIES BASED ON THE ACCOUNTABILITY MEASURES AS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.~~

Article – Health – General

SUBTITLE 14B. PAY-FOR-PERFORMANCE PROGRAM FOR NURSING HOMES.

19-14B-01.

(A) (1) AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A PORTION OF THE REVENUES FROM THE QUALITY ASSESSMENT THAT IS ASSESSED UNDER § 19-310.1 OF THIS TITLE SHALL BE DISTRIBUTED TO NURSING FACILITIES SUBJECT TO § 19-310.1 OF THIS TITLE BASED ON ACCOUNTABILITY MEASURES THAT INDICATE QUALITY OF CARE OR A COMMITMENT TO QUALITY OF CARE.

(2) IN CONSULTATION WITH REPRESENTATIVES OF THE NURSING FACILITIES AND OTHER STAKEHOLDERS, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL DEVELOP ACCOUNTABILITY MEASURES TO USE IN A

PAY-FOR-PERFORMANCE PROGRAM THAT TAKE INTO ACCOUNT BOTH PERFORMANCE AND IMPROVEMENT.

(3) THE ACCOUNTABILITY MEASURES SHALL BE OBJECTIVE, MEASURABLE, AND WHEN CONSIDERED IN COMBINATION WITH EACH OTHER, DEEMED TO HAVE A CORRELATION TO RESIDENTS' QUALITY OF LIFE AND CARE.

(B) (1) ON OR BEFORE DECEMBER 1, 2009, AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL, IN CONSULTATION WITH REPRESENTATIVES OF NURSING FACILITIES AND OTHER INTERESTED STAKEHOLDERS, MAKE NECESSARY CHANGES TO THE PAY-FOR-PERFORMANCE PROGRAM TO DETERMINE THE EFFECT ON PROVIDERS AND TO DETERMINE IF THE MEASURES SATISFY THE REQUIREMENTS OF BEING OBJECTIVE, MEASURABLE, AND, WHEN CONSIDERED IN COMBINATION WITH EACH OTHER, HAVE A CORRELATION TO RESIDENTS' QUALITY OF LIFE AND CARE.

(2) IN PERFORMING THE REVIEW REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, ON OR BEFORE DECEMBER 1, 2009, AND ON OR BEFORE DECEMBER 1, 2010, THE DEPARTMENT SHALL EXAMINE AND MODIFY THE PAY-FOR-PERFORMANCE PROGRAM TO INCLUDE IMPROVEMENT MEASURES IN THE SCORING CRITERIA.

(C) (1) UP TO 25% OF THE REVENUES GENERATED BY THE QUALITY ASSESSMENT UNDER ~~§ 19-301.1~~ § 19-310.1 OF THIS TITLE SHALL BE IN AN INCENTIVE PROGRAM TO BE DISTRIBUTED AS PROVIDED IN THIS SECTION, TO THE EXTENT FEDERAL LAW ALLOWS.

(2) 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.

(D) ON OR BEFORE DECEMBER 1, 2008, THE PLAN REQUIRED UNDER THIS SECTION SHALL BE SUBMITTED BY THE DEPARTMENT, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

(E) ON OR BEFORE JULY 1, 2009, THE DEPARTMENT SHALL:

(1) (I) SCORE NURSING FACILITIES BASED ON SCORING CRITERIA DEVELOPED AND REPORTED TO THE GENERAL ASSEMBLY IN THE DECEMBER 1, 2008, REPORT AS REQUIRED BY CHAPTER 200 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2008; AND

(II) SEND EACH NURSING FACILITY A TRANSMITTAL WITH THE SCORING CRITERIA, THE PERFORMANCE OF THE NURSING FACILITY RELATIVE TO THE SCORING, AND THE MONIES THAT WOULD HAVE BEEN RECEIVED BY THE NURSING FACILITY USING THE SCORING CRITERIA.

(2) BEGINNING JULY 1, 2010, THE DEPARTMENT SHALL DISTRIBUTE 50% OF THE REVENUES GENERATED BY THE QUALITY ASSESSMENT THAT IS ASSESSED UNDER § 19-310.1 OF THIS TITLE AND REQUIRED FOR USE IN A PAY-FOR-PERFORMANCE PROGRAM TO NURSING FACILITIES AS PROVIDED IN THIS SECTION.

(3) BEGINNING JULY 1, 2011, THE DEPARTMENT SHALL FULLY IMPLEMENT THE PAY-FOR-PERFORMANCE PROGRAM AS PROVIDED IN THIS SECTION.

(F) (1) (I) THE DEPARTMENT SHALL CONSULT WITH REPRESENTATIVES OF NURSING FACILITIES AND OTHER STAKEHOLDERS TO ASSESS THE STATE'S LONG-TERM CARE REIMBURSEMENT METHODOLOGY AND WHETHER IT IS PROSPECTIVE AND PREDICTABLE, PROMOTES QUALITY AND EFFICIENCY, AND CONSIDERS SEVERITY.

(II) IN EVALUATING THE STATE'S REIMBURSEMENT METHODOLOGY, THE DEPARTMENT SHALL CONSIDER ALTERNATIVE REIMBURSEMENT MECHANISMS, THE PAY-FOR-PERFORMANCE PROGRAM, AND QUALITY AND OUTCOME-BASED MEASURES.

(2) ON OR BEFORE OCTOBER 1, 2010, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE EVALUATION REQUIRED UNDER SUBSECTION (F)(1) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2009.

Approved by the Governor, May 7, 2009.