

# AN ACT

To amend sections 173.47, 5111.222, and 5111.244 and to enact section 5111.245 of the Revised Code and to amend Section 309.30.70 of Am. Sub. H.B. 153 of the 129th General Assembly regarding quality incentive payments and quality bonuses paid to nursing facilities under the Medicaid program.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 173.47, 5111.222, and 5111.244 be amended and section 5111.245 of the Revised Code be enacted to read as follows:

Sec. 173.47. (A) For purposes of publishing the Ohio long-term care consumer guide, the department of aging shall conduct or provide for the conduct of an annual customer satisfaction survey of each long-term care facility. The results of the surveys may include information obtained from long-term care facility residents, their families, or both. A survey that is to include information obtained from nursing facility residents shall include the questions specified in divisions (C)(7)(a) and (b) and (18) of section 5111.244 of the Revised Code. A survey that is to include information obtained from the families of nursing facility residents shall include the questions specified in divisions (C)(8)(a) and (b) and (19) of section 5111.244 of the Revised Code.

(B) Each long-term care facility shall cooperate in the conduct of its annual customer satisfaction survey.

Sec. 5111.222. (A) Except as otherwise provided by sections 5111.20 to 5111.331 of the Revised Code and by division (B) of this section, the ~~payments~~ total rate that the department of job and family services shall agree to ~~make pay for a fiscal year~~ to the provider of a nursing facility pursuant to a provider agreement shall equal the sum of all of the following:

(1) The rate for direct care costs determined for the nursing facility under section 5111.231 of the Revised Code;

(2) The rate for ancillary and support costs determined for the nursing facility's ancillary and support cost peer group under section 5111.24 of the Revised Code;

(3) The rate for tax costs determined for the nursing facility under section 5111.242 of the Revised Code;

(4) The quality incentive payment paid to the nursing facility under section 5111.244 of the Revised Code;

(5) The rate for capital costs determined for the nursing facility's capital costs peer group under section 5111.25 of the Revised Code.

(B) The department shall adjust the rates otherwise determined under division (A) of this section as directed by the general assembly through the enactment of law governing medicaid payments to providers of nursing facilities, including any law that establishes factors by which the rates are to be adjusted.

(C) In addition to paying a nursing facility provider the total rate determined for the nursing facility under division (A) of this section for a fiscal year, the department shall pay the provider a quality bonus under section 5111.245 of the Revised Code for that fiscal year if the provider's nursing facility is a qualifying nursing facility, as defined in that section, for that fiscal year. The quality bonus shall not be part of the total rate.

Sec. 5111.244. (A) As used in this section, "~~deficiency~~" and "~~standard survey~~" have the same meanings as in section 5111.35 of the Revised Code;

(1) "Applicable percentage" means, for the accountability measures identified in divisions (C)(10) to (13) of this section, the following:

(a) For fiscal year 2013, whichever of the following applies:

(i) The percentage that the department of job and family services specifies for an accountability measure pursuant to division (E)(1)(b) or (E)(2)(a)(ii) of this section;

(ii) The percentage specified for an accountability measure in division (E)(2)(b), (ii), (iii), (iv), or (v) of this section.

(b) For fiscal year 2014, whichever of the following applies:

(i) The percentage used pursuant to division (F)(2) of this section;

(ii) The percentage that the department specifies for an accountability measure pursuant to division (F)(3)(a) of this section.

(c) For fiscal year 2015 and thereafter, whichever of the following applies:

(i) The percentage used pursuant to division (F)(2) of this section;

(ii) The percentage used pursuant to division (F)(3)(b) of this section.

(2) "Complaint surveys" has the same meaning as in 42 C.F.R. 488.30.

(3) "Customer satisfaction survey" means the annual survey of long-term care facilities required by section 173.47 of the Revised Code.

(4) "Deficiency" has the same meaning as in 42 C.F.R. 488.301.

(5) "Family satisfaction survey" means a customer satisfaction survey.

or part of a customer satisfaction survey, that contains the results of information obtained from the families of a nursing facility's residents.

(6) "Minimum data set" means the standardized, uniform comprehensive assessment of nursing facility residents that is used to identify potential problems, strengths, and preferences of residents and is part of the resident assessment instrument required by section 1919(e)(5) of the "Social Security Act," 101 Stat. 1330-197 (1987), 42 U.S.C. 1396r(e)(5), as amended.

(7) "National voluntary consensus standards for nursing homes" means measures used to determine the quality of care provided by nursing facilities as endorsed by the national quality forum.

(8) "Nurse aide" has the same meaning as in section 3721.21 of the Revised Code.

(9) "Resident satisfaction survey" means a customer satisfaction survey, or part of a customer satisfaction survey, that contains the results of information obtained from a nursing facility's residents.

(10) "Room mirror" means a mirror that is located in either of the following rooms:

(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom;

(b) A resident's room if the sink used by a resident after the resident uses the resident bathroom is in the resident's room.

(11) "Room sink" means a sink that is located in either of the following rooms:

(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom;

(b) A resident's room if the sink used by a resident after the resident uses the resident bathroom is in the resident's room.

(12) "Standard survey" has the same meaning as in 42 C.F.R. 488.301.

(B) ~~The~~ (1) Each fiscal year, the department of job and family services shall pay a quality incentive payment to the provider of each nursing facility a quality incentive payment that is awarded one or more points for meeting accountability measures under division (C) of this section. ~~The~~ Subject to division (B)(2) of this section, the per medicaid day amount of a quality incentive payment paid to a provider shall be based on the product of the following:

(a) The number of points the provider's nursing facility is awarded for meeting accountability measures under division (C) of this section;

(b) Three dollars and twenty-nine cents. ~~The amount of a quality incentive payment paid to a provider of a nursing facility that is awarded no~~

~~points may be zero.~~

(2) The maximum quality incentive payment that may be paid to the provider of a nursing facility for a fiscal year shall be sixteen dollars and forty-four cents per medicaid day.

~~(C)(1) For fiscal year 2012 only and subject~~ Subject to division (C)(2) divisions (D), (E), and (F) of this section, the department shall award each nursing facility participating in the medicaid program ~~points~~ one point for meeting each of the following accountability measures the facility meets:

~~(a) The facility had no health deficiencies on the facility's most recent standard survey.~~

~~(b) The facility had no health deficiencies with a scope and severity level greater than E, as determined under nursing facility certification standards established under Title XIX, on the facility's most recent standard survey.~~

~~(c) The facility's resident satisfaction is above the statewide average.~~

~~(d) The facility's family satisfaction is above the statewide average.~~

~~(e) The number of hours the facility employs nurses is above the statewide average.~~

~~(f) The facility's employee retention rate is above the average for the facility's peer group established in division (C) of section 5111.231 of the Revised Code.~~

~~(g) The facility's occupancy rate is above the statewide average.~~

~~(h) The facility's case mix score is above the statewide average.~~

~~(i) The facility's medicaid utilization rate is above the statewide average.~~

~~(2) A nursing facility shall be awarded one point for each of the accountability measures specified in divisions (C)(1)(a) to (h) of this section that the nursing facility meets. A nursing facility shall be awarded three points for meeting the accountability measure specified in division (C)(1)(i) of this section. The~~

(1) The facility's overall score on its resident satisfaction survey is at least eighty-six.

(2) The facility's overall score on its family satisfaction survey is at least eighty-eight.

(3) The facility satisfies the requirements for participation in the advancing excellence in America's nursing homes campaign.

(4) The facility had neither of the following on the facility's most recent standard survey conducted not later than the last day of the calendar year preceding the fiscal year for which the point is to be awarded or any complaint surveys conducted in the calendar year preceding the fiscal year for which the point is to be awarded:

(a) A health deficiency with a scope and severity level greater than F;

(b) A deficiency that constitutes a substandard quality of care.

(5) The facility offers at least fifty per cent of its residents at least one of the following dining choices for at least one meal each day:

(a) Restaurant-style dining in which food is brought from the food preparation area to residents per the residents' orders;

(b) Buffet-style dining in which residents obtain their own food, or have the facility's staff bring food to them per the residents' directions, from the buffet;

(c) Family-style dining in which food is customarily served on a serving dish and shared by residents;

(d) Open dining in which residents have at least a two-hour period to choose when to have a meal;

(e) Twenty-four-hour dining in which residents may order meals from the facility any time of the day.

(6) At least fifty per cent of the facility's residents are able to take a bath or shower as often as they choose.

(7) The facility has at least both of the following scores on its resident satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least eighty-nine;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least seventy-six.

(8) The facility has at least both of the following scores on its family satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least eighty-eight;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least seventy-five.

(9) All of the following apply to the facility:

(a) At least seventy-five per cent of the facility's residents have the opportunity, following admission to the facility and before completing or quarterly updating their individual plans of care, to discuss their goals for the care they are to receive at the facility, including their preferences for advance care planning, with a member of the residents' healthcare teams that the facility, residents, and residents' sponsors consider appropriate.

(b) The facility records the residents' care goals, including the residents' advance care planning preferences, in their medical records.

(c) The facility uses the residents' care goals, including the residents' advance care planning preferences, in the development of the residents'

individual plans of care.

(10) Not more than the applicable percentage of the facility's long-stay residents report severe to moderate pain during the minimum data set assessment process.

(11) Not more than the applicable percentage of the facility's long-stay, high-risk residents have been assessed as having one or more stage two, three, or four pressure ulcers during the minimum data set assessment process.

(12) Not more than the applicable percentage of the facility's long-stay residents were physically restrained as reported during the minimum data set assessment process.

(13) Less than the applicable percentage of the facility's long-stay residents had a urinary tract infection as reported during the minimum data set assessment process.

(14) The facility uses a tool for tracking residents' admissions to hospitals.

(15) An average of at least fifty per cent of the facility's medicaid-certified beds are in private rooms.

(16) The facility has accessible resident bathrooms, all of which meet at least two of the following standards and at least some of which meet all of the following standards:

(a) There are room mirrors that are accessible to residents in wheelchairs, can be adjusted so as to be visible to residents who are seated or standing, or both.

(b) There are room sinks that are accessible to residents in wheelchairs and have clearance for wheelchairs.

(c) There are room sinks that have faucets with adaptive or easy-to-use lever or paddle handles.

(17) The facility does both of the following:

(a) Maintains a written policy that prohibits the use of overhead paging systems or limits the use of overhead paging systems to emergencies, as defined in the policy;

(b) Communicates the policy to its staff, residents, and families of residents.

(18) The facility has a score of at least ninety on its resident satisfaction survey with regard to the question in the survey regarding residents' ability to personalize their rooms with personal belongings.

(19) The facility has a score of at least ninety-five on its family satisfaction survey with regard to the question in the survey regarding residents' ability to personalize their rooms with personal belongings.

(20) The facility does both of the following:

(a) Maintains a written policy that requires consistent assignment of nurse aides and specifies the goal of having a resident receive nurse aide care from not more than eight different nurse aides during a thirty-day period;

(b) Communicates the policy to its staff, residents, and families of residents.

(21) The facility's staff retention rate is at least seventy-five per cent.

(22) The facility's turnover rate for nurse aides is not higher than sixty-five per cent.

(23) For at least fifty per cent of the resident care conferences in the facility, a nurse aide who is a primary caregiver for the resident attends and participates in the conference.

(D)(1) To be awarded a point for meeting an accountability measure under division (C) of this section other than the accountability measure identified in division (C)(4) of this section, a nursing facility must meet the accountability measure in the calendar year preceding the fiscal year for which the point is to be awarded. However, a nursing facility must meet the accountability measures specified in divisions (C)(3), (5), (6), (9), (14) to (17), (20), (22), and (23) of this section in the period beginning January 1, 2012, and ending March 31, 2012, to be awarded points for those accountability measures for fiscal year 2013.

(2) The department shall award points pursuant to division (C)(1)(e), (7), or ~~(d)~~(18) of this section to a nursing facility only if a ~~survey of resident or family satisfaction survey was conducted~~ initiated under section 173.47 of the Revised Code for the nursing facility in the calendar year ~~2010~~ preceding the fiscal year for which the points are to be awarded.

~~(D)(1) For fiscal year 2013 and thereafter, the department shall award each nursing facility participating in the medicaid program points for meeting accountability measures in accordance with amendments to be made to this section not later than December 31, 2011, that provide for all of the following:~~

~~(a) Meaningful accountability measures of quality of care, quality of life, and nursing facility staffing;~~

~~(b) The maximum number of points that a nursing facility may earn for meeting accountability measures;~~

~~(c) A methodology for calculating the quality incentive payment that recognizes different business and care models in nursing facilities by providing flexibility in nursing facilities' ability to earn the entire quality incentive payment;~~

~~(d) A quality bonus to be paid at the end of a fiscal year in a manner that provides for all funds that the general assembly intends to be used for the quality incentive payment for that fiscal year are distributed to nursing facilities.~~

~~(2) For the purpose of division (D)(1)(d) of this section, the amount of funds that the general assembly intends to be used for the quality incentive payment for a fiscal year shall be the product of the following:~~

~~(a) The number of medicaid days in the fiscal year;~~

~~(b) The maximum quality incentive payment the general assembly has specified in law to be paid to nursing facilities for that fiscal year.~~

~~(3) The department shall award points pursuant to division (C)(2), (8), or (19) of this section to a nursing facility only if a family satisfaction survey was initiated under section 173.47 of the Revised Code for the nursing facility in the calendar year preceding the fiscal year for which the points are to be awarded.~~

~~(4) Not later than July 1, 2013, the department shall adjust the score used for the purpose of division (C)(8)(b) of this section in a manner that causes at least fifty per cent of nursing facilities to meet division (C)(8)(b) of this section.~~

~~(E) For the purposes of awarding points under divisions (C)(10) to (13) of this section for fiscal year 2013, the following apply:~~

~~(1) If, by July 1, 2012, the United States centers for medicare and medicaid services makes calculations using the 3.0 version of the minimum data set that indicate whether nursing facilities meet those accountability measures, the department shall do both of the following:~~

~~(a) Rely on those calculations;~~

~~(b) Specify the percentages to be used for the purposes of those accountability measures and, in specifying the percentages, provide for at least fifty per cent of nursing facilities to earn points for meeting those accountability measures.~~

~~(2) If, by July 1, 2012, the United States centers for medicare and medicaid services does not make calculations using the 3.0 version of the minimum data set that indicate whether nursing facilities meet those accountability measures, the department shall do either of the following:~~

~~(a) Do both of the following:~~

~~(i) Make the calculations using the 3.0 version of the minimum data set in accordance with the national voluntary consensus standards for nursing homes;~~

~~(ii) Specify the percentages to be used for the purposes of those accountability measures and, in specifying the percentages, provide for at~~

least fifty per cent of nursing facilities to earn points for meeting those accountability measures.

(b) Do all of the following:

(i) Rely on the most recent calculations the United States centers for medicare and medicaid services made using the 2.0 version of the minimum data set that indicate whether nursing facilities meet those accountability measures:

(ii) Use four per cent as the applicable percentage for the accountability measure identified in division (C)(10) of this section:

(iii) Use nine per cent as the applicable percentage for the accountability measure identified in division (C)(11) of this section:

(iv) Use two per cent as the applicable percentage for the accountability measure identified in division (C)(12) of this section:

(v) Use ten per cent as the applicable percentage for the accountability measure identified in division (C)(13) of this section.

(F) For the purposes of awarding points under divisions (C)(10) to (13) of this section for fiscal year 2014 and thereafter, the department shall do the following:

(1) Rely on calculations the United States centers for medicare and medicaid services makes using the 3.0 version of the minimum data set that indicate whether nursing facilities meet those accountability measures:

(2) If the department takes action pursuant to division (E)(1) of this section for fiscal year 2013, continue to use the percentages the department specifies pursuant to division (E)(1)(b) of this section for the purposes of those accountability measures:

(3) If the department takes action pursuant to division (E)(2) of this section for fiscal year 2013, do the following:

(a) For fiscal year 2014, specify the percentages to be used for the purposes of those accountability measures and, in specifying the percentages, provide for at least fifty per cent of nursing facilities to earn points for meeting those accountability measures:

(b) For fiscal year 2015 and thereafter, continue to use the percentages the department specifies pursuant to division (F)(3)(a) of this section for the purposes of those accountability measures.

(G) The director of job and family services shall adopt rules under section 5111.02 of the Revised Code as necessary to implement this section.

The rules may specify what is meant by "some" as that word is used in division (C)(16) of this section.

Sec. 5111.245. (A) As used in this section:

(1) "Point days for a fiscal year" means the product of the following:

(a) A qualifying nursing facility's quality bonus points for the fiscal year:

(b) The number of the qualifying nursing facility's medicaid days in the fiscal year.

(2) "Qualifying nursing facility" means a nursing facility that qualifies for a quality bonus for a fiscal year as determined under division (B) of this section.

(3) "Quality bonus points for a fiscal year" means the amount determined by subtracting five from the number of points awarded to a qualifying nursing facility under division (C) of section 5111.244 of the Revised Code for a fiscal year.

(4) "Residual budgeted amount for quality incentive payments for a fiscal year" means the amount determined for a fiscal year as follows:

(a) Multiply the total number of medicaid days in the fiscal year by sixteen dollars and forty-four cents;

(b) Determine the total amount of quality incentive payments that was paid under section 5111.244 of the Revised Code to all nursing facility providers for the fiscal year;

(c) Subtract the amount determined under division (A)(4)(b) of this section from the product calculated under division (A)(4)(a) of this section.

(B) The department of job and family services shall pay a nursing facility provider a quality bonus for a fiscal year if both of the following apply:

(1) The provider's nursing facility is awarded more than five points under division (C) of section 5111.244 of the Revised Code for the fiscal year.

(2) The residual budgeted amount for quality incentive payments for the fiscal year is greater than zero.

(C) The total quality bonus to be paid to the provider of a qualifying nursing facility for a fiscal year shall equal the product of the following:

(1) The quality bonus per medicaid day for the fiscal year determined for the provider's qualifying nursing facility under division (D) of this section;

(2) The number of the qualifying nursing facility's medicaid days in the fiscal year.

(D) A qualifying nursing facility's quality bonus per medicaid day for a fiscal year shall be the product of the following:

(1) The nursing facility's quality bonus points for the fiscal year;

(2) The quality bonus per point for the fiscal year determined under division (E) of this section.

(E) The quality bonus per point for a fiscal year shall be determined as follows:

(1) Determine the number of each qualifying nursing facility's point days for the fiscal year;

(2) Determine the sum of all qualifying nursing facilities' point days for the fiscal year;

(3) Divide the residual budgeted amount for quality incentive payments for the fiscal year by the sum determined under division (E)(2) of this section.

(F) The calculation of a qualifying nursing facility's bonus payment is not subject to appeal under Chapter 119. of the Revised Code.

(G) The director of job and family services may adopt rules under section 5111.02 of the Revised Code as necessary to implement this section.

SECTION 2. That existing sections 173.47, 5111.222, and 5111.244 of the Revised Code are hereby repealed.

SECTION 3. That Section 309.30.70 of Am. Sub. H.B. 153 of the 129th General Assembly be amended to read as follows:

Sec. 309.30.70. FISCAL YEAR 2013 MEDICAID REIMBURSEMENT SYSTEM FOR NURSING FACILITIES

(A) As used in this section:

"Franchise permit fee," "Medicaid days," "nursing facility," and "provider" have the same meanings as in section 5111.20 of the Revised Code.

"Low resource utilization resident" means a Medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's Medicaid reimbursement rate for direct care costs, is placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data.

"Nursing facility services" means nursing facility services covered by the Medicaid program that a nursing facility provides to a resident of the nursing facility who is a Medicaid recipient eligible for Medicaid-covered nursing facility services.

(B) Except as otherwise provided by this section, the provider of a nursing facility that has a valid Medicaid provider agreement on June 30, 2012, and a valid Medicaid provider agreement during fiscal year 2013 shall be paid, for nursing facility services the nursing facility provides during

fiscal year 2013, the rate calculated for the nursing facility under sections 5111.20 to 5111.331 of the Revised Code ~~with the following adjustments:~~

~~(1) The, except that the cost per case mix-unit calculated under section 5111.231 of the Revised Code, the rate for ancillary and support costs calculated under section 5111.24 of the Revised Code, the rate for tax costs calculated under section 5111.242 of the Revised Code, and the rate for capital costs calculated under section 5111.25 of the Revised Code shall each be increased by 5.08 per cent;~~

~~(2) The maximum quality incentive payment made under section 5111.244 of the Revised Code shall be \$16.44 per Medicaid day.~~

(C) The rate determined under division (B) of this section shall not be paid for nursing facility services provided to low resource utilization residents. Except as provided in division (D) of this section, the provider of a nursing facility that has a valid Medicaid provider agreement on June 30, 2012, and a valid Medicaid provider agreement during fiscal year 2013 shall be paid, for nursing facility services the nursing facility provides during fiscal year 2013 to low resource utilization residents, \$130.00 per Medicaid day.

(D) If the franchise permit fee must be reduced or eliminated to comply with federal law, the Department of Job and Family Services shall reduce the amount it pays providers of nursing facility services under this section as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

(E) The Department of Job and Family Services shall follow this section in determining the rate to be paid to the provider of a nursing facility that has a valid Medicaid provider agreement on June 30, 2012, and a valid Medicaid provider agreement during fiscal year 2013 notwithstanding anything to the contrary in sections 5111.20 to 5111.331 of the Revised Code.

SECTION 4. That existing Section 309.30.70 of Am. Sub. H.B. 153 of the 129th General Assembly is hereby repealed.

SECTION 5. Sections 1 to 4 of this act shall take effect July 1, 2012.

SECTION 6. It is the intent of the General Assembly periodically to amend section 5111.244 of the Revised Code in a manner that increasingly provides for the quality incentive payments paid under that section to serve

as opportunities for nursing facilities to earn portions of their total Medicaid rates by satisfying accountability measures and therefore help differentiate higher-quality nursing facilities from lower-quality nursing facilities.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

Sub. S. B. No. 264

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_