



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Van Mitchell, Secretary

October 23, 2015

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
H-107 State House
Annapolis, MD 21401-1991

The Honorable Michael E. Busch
Speaker of the House of Delegates
H-101 State House
Annapolis, MD 21401-1991

Re: Health – General § 19-310.1(f)/SB 101 (Chapter 503 of the Acts of 2007), as amended by HB 67 (Chapter 58 of the Acts of 2015) – Report on Implementation of Quality Assessment on Nursing Facilities

Dear President Miller and Speaker Busch:

I am pleased to submit the report required by SB 101, enacted during the 2007 regular session of the General Assembly, which required the Department to report by March 1, 2008 and annually thereafter on the implementation of a quality assessment on specified Maryland nursing facilities. SB 101 established in law this quality assessment on Maryland nursing facilities (with the exception of facilities with fewer than 45 beds, and those operated by Continuing Care Retirement Communities, or CCRCs), to be applied to all non-Medicare days of care provided by the facility in the previous quarter of the State fiscal year.

HB 67, enacted during the 2015 session of the General Assembly, changed the date of the required annual report to September 1 of each year, in recognition that the March 1 date fell before the current fiscal year's final expenditures were known, and before the budget allocation for the next fiscal year's allocation was finalized by the General Assembly.

This report will update the General Assembly on the implementation of the quality assessment during FY 2015, and provide the specific information required by Health-General Article § 19-310.1(f). For the FY 2015 assessment, the Department established two per diem payment rates for nursing facilities subject to the assessment on non-Medicare days of care. These rates were \$24.03 for most nursing facilities, and, for the five facilities providing the highest number of Medicaid days of care in the previous year, \$6.05 per non-Medicare day of care. By a letter dated March 31, 2015, the Department notified the Centers for Medicare and Medicaid Services

(CMS) Maryland continues to meet the statistical test for a waiver of the broad-based and uniformity requirements related to the health care-related tax imposed on certain nursing facility patient days in Maryland nursing facilities (this correspondence is attached to the report).

Information Specified by Health – General § 19-310.1(f) Reporting Requirement

Health – General §19-310.1(f) requires that the Department report by September 1, 2015 and annually thereafter on its implementation of the quality assessment. The relevant section of the new statute specified that this report include the following information:

- (1) The percentage and amount of the assessment charged to each nursing facility subject to [the assessment];
- (2) The number of nursing facilities subject to [the assessment] with a net loss; and
- (3) A comparison of the total amount provided in the Medicaid budget for nursing home reimbursement in the current fiscal year to the actual amount received in the immediately prior fiscal year.

In response to the first section, the percentage and amount that each nursing facility will pay is projected in the statistical model submitted to CMS each year by dividing the amount of revenue to be collected via the quality assessment — in FY 2015 this totaled \$145,955,678 — by multiplying the per diem assessment rate, \$24.03 or \$6.05, by the facility's non-Medicare days of care projected for FY 2015, from a statewide total of 7,289,741 projected for FY 2015.¹

Pinpointing the exact amount of revenue earned by each nursing facility — since the quality assessment program generates funds that both repay each provider in part for the amount of assessment paid for each Medicaid day of care, and augment the overall Medicaid reimbursement rate — is complicated due to the methodology with which the Department sets nursing facility rates. The variation between facilities along the four cost centers — nursing, other patient care, administrative and routine, and capital costs — make head-to-head benefit versus cost comparisons approximate at best. The factors that contribute to a net loss with regard to the payment of the quality assessment are a relatively low number of Medicaid days of care, and relatively high numbers of private pay days, for which these facilities will pay the per diem but receive neither a refunded per diem nor an enhanced Medicaid rate. The facility with the highest net loss resulting from the payment of the quality assessment is the only privately-owned, non-CCRC nursing facility that does not participate at all in the Medicaid Program.

The following chart shows the 21 nursing facilities that the statistical model developed for the FY 2015 quality assessment projected would pay more for their non-Medicare days of care than they would benefit by being reimbursed for the assessment paid for Medicaid days and also by receiving the higher Medicaid rates partially financed by the assessment.

¹ The actual total number of assessable days for FY 2015 will have been provided to the Department by mid-May 2016, a compilation of fiscal year-end cost reports from all facilities. The Department's audit contractor uses these reports to verify the number of days for which each facility has reported and paid a per diem.

Nursing Facilities with Projected Net Loss from Payment of FY 2015 Quality Assessment

Facility	Medicaid Days	Medicare Days	Total Non-Medicare Days Subject to Assessment	FY 15 Net Impact: Rate Increase + Reimbursement of Tax for Medicaid Days, minus Assessment paid
Carriage Hill Bethesda	-	8,751	26,254	(\$630,884)
Homewood at Crumland Farms	14,324	5,454	35,494	(\$296,704)
Rockville Nursing Home	8,784	2,682	26,857	(\$280,365)
Charlotte Hall Veterans Home	42,716	7,834	84,228	(\$242,648)
Manor Care Potomac	17,193	17,637	34,127	(\$235,709)
St. Thomas More Medical Complex	35,224	30,059	56,245	(\$163,965)
Hillhaven Nursing Center	8,352	4,150	18,559	(\$158,785)
Lorien Encore at Turf Valley	9,258	8,677	12,102	(\$155,368)
Lorien Elkridge	7,783	6,954	10,411	(\$138,023)
St. Joseph's Ministries	16,276	6,331	28,763	(\$134,181)
Lorien Bulle Rock	4,921	3,259	8,413	(\$116,933)
The Villa	27,799	6,462	32,443	(\$98,694)
Deer's Head Center	16,611	-	22,632	(\$89,425)
Green House Residences at Stadium Place	9,139	1,835	11,045	(\$77,057)
Genesis Glade Valley Center	17,238	15,652	27,376	(\$66,700)
Genesis Franklin Woods Center	15,300	16,907	22,186	(\$58,774)
Crofton Convalescent and Rehab Center	29,138	15,936	42,585	(\$43,519)
Genesis Spa Creek Center	17,634	19,300	24,978	(\$39,713)
Potomac Valley Nursing and Wellness Center	29,022	5,333	50,038	(\$27,012)
Manor Care Woodbridge Valley	18,202	15,046	25,326	(\$7,606)
Williamsport Nursing Home	22,360	9,907	31,634	(\$2,654)

This means that the large majority of nursing facilities subject to the assessment — a total of 182 during FY 2015 — derived at least some level of benefit from the assessment, and those with high percentages of Medicaid recipients benefitted most.

The enabling legislation also requires a comparison of the Medicaid budget for nursing home reimbursement for the current and the upcoming fiscal years, shown below.

FY 2015 reimbursement	\$1,159,020,390
FY 2016 (appropriation)	\$1,151,021,412

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If you have any questions about this report, or would like additional information, please contact Allison Taylor, Director of Governmental Affairs at (410) 767-6480.

Sincerely,



Van T. Mitchell
Secretary

Attachment: Letter of Notification to CMS for FY 2015 Quality Assessment Model
Susan Tucker, Executive Director, Office of Health Services to Victoria Wachino, Acting
Director, Center for Medicaid, CHIP, and Survey and Certification, Centers for Medicare and
Medicaid Services, March 31, 2015

cc: The Honorable Edward J. Kasemyer, Chairman
Senate Budget and Taxation Committee
The Honorable Thomas M. Middleton, Chairman
Senate Finance Committee
The Honorable Maggie McIntosh, Chairman
House Appropriations Committee
The Honorable Peter A. Hammen, Chairman
House Health and Government Operations Committee
Shannon McMahan
Susan Tucker
Mark Leeds
Susan Panek
Allison Taylor
Sarah Albert, MSAR #10382



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March 31, 2015

Victoria Wachino
Acting Director
Center for Medicaid, CHIP, and Survey & Certification
Centers for Medicare & Medicaid Services
Room C5-21-17
Mail Stop S2-26-12
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Wachino:

This is to notify the Centers for Medicare & Medicaid Services (CMS) that Maryland continues to meet the statistical test for a waiver of the broad-based and uniformity requirements related to the health care-related tax imposed on certain nursing facility patient days in Maryland nursing facilities. The updated model of the tax is attached to this letter, and an electronic version will be sent to members of your staff who review the model each year. Your office reviewed and approved the model for and the initial imposition of this health care-related tax, by a letter dated December 19, 2007, and has approved an update to our waiver each year since.

The structure of the tax Maryland has instituted remains unchanged, although the per diem amounts will change because the revenue subject to the required statistical test is derived from FY 2013 cost reports, indexed to 2015:

- (1) Medicare patient days are excluded from the tax;
- (2) Nursing facilities in continuing care retirement communities (CCRCs) are excluded from the tax;
- (3) Nursing facilities with fewer than 45 beds are excluded from the tax;
- (4) The five providers with the highest number of Medicaid patient days are assessed a lower rate, a rate of \$6.05 per non-Medicare patient day in this year's model;
- (5) All other nursing facilities are assessed \$24.03 per non-Medicare patient day.

Since the structure mandated by 2007 statute continues to result in a health care-related tax that is neither broad-based nor uniform, Maryland's health care-related tax must meet the requirements of 42 CFR 433.68(e)(2). Accordingly, Maryland's proposed tax does not hold any facilities harmless through a direct relationship between the amount of tax paid and the benefit received. Although not all Maryland nursing facilities will be assessed for purposes of creating the special fund to augment nursing facility reimbursement, all Maryland Medicaid providers whose rates are established in accordance with State Medicaid regulations will receive the enhanced reimbursement for their Medicaid recipients, including the facilities with fewer than 45 beds and CCRCs whose nursing facilities are enrolled in the Program.

The attached spreadsheet shows the model for calculating the tax applicable to non-Medicare days of care beginning with January 1, 2015, and what the impact would be on each facility in the State, including those excluded from the assessment by statute. The spreadsheet demonstrates that the assessment meets the statistical "slope" test in accordance with the requirements specified at

§433.68(e)(2). Because Maryland Medicaid nursing facility rates did not change during the first half of the State fiscal year, the effective date of the assessments to be paid under this updated statistical model will be January 1, 2015.

Please contact Mark A. Leeds, Director, Long Term Care and Community Support Services, Office of Health Services, if you have questions or need further information. Mr. Leeds may be reached at (410) 767-1443.

Sincerely,



Susan J. Tucker
Executive Director
Office of Health Services
Maryland Medicaid Program

Attachment

cc: Francis McCullough, Associate Regional Administrator, Region III
Kristin A. Fan, Financial Management Group, CMCS
Stuart Goldstein, Funding Specialist, CMCS