



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

May 9, 2013

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 House of Delegates
H-101 State House
Annapolis, MD 21401 - 1991

**Re: Annual Report on Implementation of Nursing Home Quality Assessment as
Required by Health – General §19-310.1 (f) and SB 101 (Chapter 503 of the
Acts of 2007)**

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 Maryland 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 a 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"). The quality assessment is applied to all non-Medicare days of care provided by the facility in the previous quarter of the State fiscal year. This report will update the General Assembly on the implementation of the quality assessment during FY 2012, and provide the specific information required by §19-310.1(f) of the Health-General Article.

For the FY 2012 assessment, the Department implemented the increase of the revenue cap provided for in the Budget Reconciliation and Financing Act (BRFA) of 2011 (HB 72, Chapter 397, Laws of 2011), from 4% to 5.5% of the operating revenue for all nursing facilities subject to the quality assessment. This resulted in a per diem assessment increase from \$14.01 in FY 2011 to \$19.94 for FY 2012, and, for the five facilities providing the highest number of Medicaid days of care in the previous year, from \$4.40 per day to \$5.32 per day for FY 2012.

Annual Update to and Submission of the Quality Assessment Model to CMS

In order to continue the quality assessment program, the Department must annually seek approval from the federal Centers for Medicare and Medicaid Services (CMS) of a “health care-related tax” pursuant to applicable federal regulations at 42 CFR §433.68. Given that the Maryland quality assessment is not applied to all nursing facilities in the State, and given that the amount of total annual nursing home revenue (upon which the amount of collectible assessment is based) changes each year, the Department must annually submit a recalculated statistical model to CMS, in order to receive a waiver of the “uniform tax” requirement. By a letter dated November 3, 2011, CMS notified the Department that its proposed model for the FY 2012 assessment was approved. (This correspondence is attached to the report.) The first FY 2012 payment was due on November 29, 2011. The CMS-approved model projected that the Nursing Facility Quality Assessment would generate \$125,306,015 during FY 2012.

Information Specified by SB 101 Reporting Requirement

SB 101 requires that the Department report by March 1, 2008 and annually thereafter on its implementation of the quality assessment. This annual report must 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 amount proposed for the upcoming fiscal year.

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 — in FY 2012, \$125,306,015 — by the number of projected non-Medicare days of care, out of a total of 6,752,451 projected for FY 2012.¹

Pinpointing the exact amount of revenue earned by each nursing facility — since the quality assessment program generates funds that both repay each provider for the amount of assessment paid for each Medicaid day of care, and augment the overall Medicaid reimbursement rate — is complicated by the complexities of 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. However, on average in each fiscal year since the quality assessment was implemented in March 2008, the Department estimates that between 6 and 16 facilities would have experienced a net loss, resulting from their relatively low 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.

¹ The actual total number of assessable days for FY 2012 will be provided to the Department by mid-May 2013, a compilation of fiscal year-end cost reports from all facilities; this is available in mid-May of each year. The Department's cost settlement audit contractor uses these reports to verify the number of days for which each facility has reported and paid a per diem.

The following chart shows the eight nursing facilities that the statistical model developed for the FY 2012 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. The largest projected deficit by far is experienced by the one provider that is not an enrolled Medicaid provider and thus provides no Medicaid days of care. This means that the large majority of nursing facilities subject to the assessment — a total of 183, during FY 2012 — derived at least some level of benefit from the assessment, and those with high percentages of Medicaid recipients benefitted most. Also of note, before the FY 2012 collection began, two facilities in effect removed themselves from the statutory obligation to pay the quality assessment: one, Friends Nursing Home, became a continuing care retirement community, and the other, Little Sisters of the Poor, reduced its licensed beds from 48 to 42. As noted above, neither CCRCs nor nursing facilities with fewer than 45 beds are subject to the quality assessment.

**Nursing Facilities with Projected Net Loss from Payment of
Quality Assessment, FY 2012**

Provider Name	Private pay days	Medicaid Days	Other Gov't paid days (includes Medicare days)	Medicare Days	Total Days of Care	FY 12 Net Benefit (Loss): Increases in MA Rates Plus Reimbursement of Per Diem for MA Days of Care, Minus Quality Assessment Payment
Carriage Hill Bethesda	28,579	0	6,741	6,741	35,320	-\$559,005
Rockville Nursing Home	20,924	8,770	2,396	2,396	32,090	-\$251,698
Manor Care - Potomac	15,377	16,759	20,377	18,197	52,513	-\$146,736
Hillhaven Healthcare	12,484	6,852	3,128	3,128	22,464	-\$141,098
Glade Valley Nursing & Rehab Ctr	15,758	18,663	8,847	8,847	43,268	-\$56,937
Brightwood Center - Genesis	7,566	10,489	17,028	17,028	35,083	-\$49,118
Franklin Woods Center – Genesis	8,861	13,830	15,879	15,879	38,570	-\$23,962
Copper Ridge	10,848	11,402	1,625	1,625	23,875	-\$17,431

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 2013 (appropriation)	\$1,099,283,218
FY 2014 (appropriation)	\$1,100,803,048

Thank you for your consideration of this information. If you have any questions about this report, or would like additional information, please contact Mark A. Leeds, Director of Medicaid's Long Term Care and Community Support Services, at (410) 767-1443.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua M. Sharfstein". The signature is fluid and cursive, with the first name "Josh" being particularly prominent.

Joshua M. Sharfstein, M.D.
Secretary

Attachment: Correspondence Related to Approval of Quality Assessment Model Between
Cynthia Mann, Centers for Medicare and Medicaid Services, and Susan Tucker,
Executive Director, Medicaid Office of Health Services

cc: The Honorable Edward J. Kasemeyer, Chairman, Senate Budget and Taxation Committee
The Honorable Thomas M. Middleton, Chairman, Senate Finance Committee
The Honorable Norman Conway, Chairman, House Appropriations Committee
The Honorable Peter A. Hammen, Chairman, House Health and Government Operations
Committee
Ms. Marie Grant
Mr. Mark Leeds
Mr. Charles Milligan
Mr. John Newman
Mr. Simon Powell



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Maryland Department of Health and Mental Hygiene

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Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

September 28, 2011

Cynthia Mann, 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. Mann:

This is to request the renewed approval by the Centers for Medicare & Medicaid Services (CMS) for a waiver of the broad-based and uniformity requirements related to the tax on certain nursing facility patient days in Maryland nursing facilities. 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 approved an update to our waiver for State Fiscal Year 2011 in a letter dated November 2, 2010.

The most significant difference between the assumptions and the implementation of the health care-related tax for State Fiscal Year 2012 from the four previous years for which the waiver request has been submitted to CMS is that, pursuant to State legislation enacted during the 2011 session of the Maryland General Assembly, the maximum allowed tax rate has been raised from 4 percent to 5.5 percent of nursing home revenue. [Chapter 397, Laws of Maryland 2011 (House Bill 72)]

The structure of the tax Maryland has instituted remains unchanged, although the per diem amounts will change because of the increase in the revenue cap:

- (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) Providers with more than 58,000 Medicaid patient days are assessed a lower rate, a rate of \$5.32 per non-Medicare patient day in this year's model;
- (5) All other nursing facilities are assessed \$19.94 per non-Medicare patient day.

Toll Free 1-877-4MD-DHMH – TTY/Maryland Relay Service 1-800-735-2258

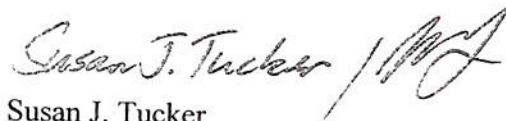
Web Site: www.dhmh.state.md.us

Since the structure mandated by 2007 Maryland statute continues to result in a health care-related tax that is neither broad-based nor uniform, Maryland again requests approval of a waiver of these requirements, under §433.68(e)(2) of the applicable federal regulation. 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 proposed model for calculating the tax for July through June of SFY 2012, 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). The Maryland Medicaid Program requests an effective date of July 1, 2011 for the assessments to be paid under the updated statistical model.

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

Attachment

cc: Francis T. McCullough, Associate Regional Administrator, Region III
Kristin A. Fan, Financial Management Group, CMSO
Stuart Goldstein, Funding Specialist, CMSO
Charles Hines, Funding Specialist, CMSO
Rosemary Feild, Medicaid Representative for Maryland, Region III
Gary Knight, CMS, Region III
Joshua M. Sharfstein, M.D., Secretary, Department of Health and Mental Hygiene
Charles J. Milligan, Jr., JD, MPH, Deputy Secretary, Health Care Financing
Mark A. Leeds, Director, Long Term Care & Community Support Services Administration

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and CHIP Services

Susan Tucker
Executive Director
Office of Health Services
Maryland Department of Health and Mental Hygiene
201 West Preston Street
Baltimore, Maryland 21201

NOV - 3 2011

Dear Ms. Tucker:

This is in response to your request for waiver of the broad based and uniformity requirements related to a tax on certain nursing facility patient days. Maryland is requesting this waiver as an update to its previously approved waiver of the broad based and uniformity requirements for its nursing facility assessment program. Upon review and consideration of the information formally provided to Centers for Medicare and Medicaid Services (CMS) on September 29, 2011, I am pleased to inform you that your request for waiver of the broad based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Social Security Act (the Act) is approved.

The tax structure for which Maryland requested waiver would be imposed as follows:

- (i) Medicare patient days are excluded from the tax ;
- (ii) Continuing Care Retirement Centers are excluded from the tax;
- (iii) Nursing facilities with less than 45 beds are excluded from the tax;
- (iv) Nursing facilities with more than 58,000 Medicaid patient days are assessed \$5.32 per non-Medicare patient day;
- (v) All other nursing facilities are assessed \$19.94 per non-Medicare patient day.

Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve broad-based and uniformity waiver applications if the net impact of the tax is generally redistributive and that the amount of the tax is not directly correlated to Medicaid payments.

The Federal regulation at 42 CFR 433.68(e)(2) describes the statistical test necessary for a state to demonstrate that the proposed tax structure is generally redistributive. Maryland's statistical demonstration is addressed below. Moreover, the Federal regulation at 42 CFR 433.68(f) describes the circumstances in which a direct correlation would exist. Upon review of Maryland's statute implementing the proposed nursing facility tax and the review of Maryland's methodology for increasing Medicaid reimbursement to nursing facilities, it appears that no direct correlation exists between the tax and associated increase in Medicaid reimbursement.

Analysis

To determine the generally redistributive nature of the proposed nursing facility patient day tax, Maryland calculated the slope (expressed as B1) of a linear regression for a broad-based and uniform tax in which the dependent variable was each nursing facility's percentage share of the total tax paid, if the tax was uniformly imposed on all nursing facility patient days in the State and the independent variable was each nursing facility's number of Medicaid patient days.

Maryland then calculated the slope (expressed as B2) of a linear regression for the State's actual proposed tax program in which the dependent variable was each nursing facility's percentage share of the total tax paid, and the independent variable was the number of Medicaid patient days for each nursing facility.

Using the patient day and tax rate data you provided, CMS also performed the regression analysis calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the Maryland nursing facility patient day tax is **1.00941**.

Therefore, we are able to approve your request for a waiver of the broad based and uniformity provisions of section 1903(w)(3)(C) of the Act for the proposed nursing facility patient day tax.

The Federal regulations at 42 CFR 433.72(c)(2) specify that a waiver will be effective for tax programs commencing on or after August 13, 1993, on the first day of the calendar quarter in which the waiver is received by CMS. CMS received the State of Maryland's request for waiver of the broad based and uniformity requirements on September 29, 2011 with a requested effective date of July 1, 2011. Therefore, the effective date of Maryland's request for waiver of the broad based and uniformity requirements is July 1, 2011.

CMS reserves the right to perform a financial management review at any time to ensure that the State operation of the tax on nursing facilities continues to meet the requirements of section 1903(w) of the Act.

I hope this information addresses all of your concerns, if you have further questions or need additional information please contact Stuart Goldstein at (410) 786-0694.

Sincerely,



Cindy Mann
Director
CMCS