

As Introduced

**129th General Assembly
Regular Session
2011-2012**

S. B. No. 264

Senator Jones

Cosponsors: Senators Niehaus, Burke, Lehner

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A B I L L

To amend sections 173.47, 5111.222, and 5111.244 and 1
to enact section 5111.245 of the Revised Code and 2
to amend Section 309.30.70 of Am. Sub. H.B. 153 of 3
the 129th General Assembly regarding quality 4
incentive payments and quality bonuses paid to 5
nursing facilities under the Medicaid program. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 173.47, 5111.222, and 5111.244 be 7
amended and section 5111.245 of the Revised Code be enacted to 8
read as follows: 9

Sec. 173.47. (A) For purposes of publishing the Ohio 10
long-term care consumer guide, the department of aging shall 11
conduct or provide for the conduct of an annual customer 12
satisfaction survey of each long-term care facility. The results 13
of the surveys may include information obtained from long-term 14
care facility residents, their families, or both. A survey that is 15
to include information obtained from nursing facility residents 16
shall include the questions specified in divisions (C)(7)(a) and 17
(b) and (18) of section 5111.244 of the Revised Code. A survey 18
that is to include information obtained from the families of 19

nursing facility residents shall include the questions specified 20
in divisions (C)(8)(a) and (b) and (19) of section 5111.244 of the 21
Revised Code. 22

(B) Each long-term care facility shall cooperate in the 23
conduct of its annual customer satisfaction survey. 24

Sec. 5111.222. (A) Except as otherwise provided by sections 25
5111.20 to 5111.331 of the Revised Code and by division (B) of 26
this section, the ~~payments~~ total rate that the department of job 27
and family services shall agree to ~~make~~ pay for a fiscal year to 28
the provider of a nursing facility pursuant to a provider 29
agreement shall equal the sum of all of the following: 30

(1) The rate for direct care costs determined for the nursing 31
facility under section 5111.231 of the Revised Code; 32

(2) The rate for ancillary and support costs determined for 33
the nursing facility's ancillary and support cost peer group under 34
section 5111.24 of the Revised Code; 35

(3) The rate for tax costs determined for the nursing 36
facility under section 5111.242 of the Revised Code; 37

(4) The quality incentive payment paid to the nursing 38
facility under section 5111.244 of the Revised Code; 39

(5) The rate for capital costs determined for the nursing 40
facility's capital costs peer group under section 5111.25 of the 41
Revised Code. 42

(B) The department shall adjust the rates otherwise 43
determined under division (A) of this section as directed by the 44
general assembly through the enactment of law governing medicaid 45
payments to providers of nursing facilities, including any law 46
that establishes factors by which the rates are to be adjusted. 47

(C) In addition to paying a nursing facility provider the 48

total rate determined for the nursing facility under division (A) 49
of this section for a fiscal year, the department shall pay the 50
provider a quality bonus under section 5111.245 of the Revised 51
Code for that fiscal year if the provider's nursing facility is a 52
qualifying nursing facility, as defined in that section, for that 53
fiscal year. The quality bonus shall not be part of the total 54
rate. 55

Sec. 5111.244. (A) As used in this section, ~~"deficiency" and~~ 56
~~"standard survey" have the same meanings as in section 5111.35 of~~ 57
~~the Revised Code:~~ 58

(1) "Applicable percentage" means the percentage that the 59
department of job and family services specifies for a particular 60
accountability measure pursuant to division (D) of this section. 61

(2) "Complaint surveys" has the same meaning as in 42 C.F.R. 62
488.30. 63

(3) "Customer satisfaction survey" means the annual survey of 64
long-term care facilities required by section 173.47 of the 65
Revised Code. 66

(4) "Deficiency" has the same meaning as in 42 C.F.R. 67
488.301. 68

(5) "Family satisfaction survey" means a customer 69
satisfaction survey, or part of a customer satisfaction survey, 70
that contains the results of information obtained from the 71
families of a nursing facility's residents. 72

(6) "Minimum data set" means the standardized, uniform 73
comprehensive assessment of nursing facility residents that is 74
used to identify potential problems, strengths, and preferences of 75
residents and is part of the resident assessment instrument 76
required by section 1919(e)(5) of the "Social Security Act," 101 77
Stat. 1330-197 (1987), 42 U.S.C. 1396r(e)(5), as amended. 78

(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. 79
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(8) "Nurse aide" has the same meaning as in section 3721.21 of the Revised Code. 83
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(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. 85
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(10) "Room mirror" means a mirror that is located in either of the following rooms: 89
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(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom; 91
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(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. 94
95

(11) "Room sink" means a sink that is located in either of the following rooms: 96
97

(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom; 98
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(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. 101
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(12) "Standard survey" has the same meaning as in 42 C.F.R. 488.301. 103
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(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 105
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under division (C) of this section. The Subject to division (B)(2) 109
of this section, the per medicaid day amount of a quality 110
incentive payment paid to a provider shall be based on the product 111
of the following: 112

(a) The number of points the provider's nursing facility is 113
awarded for meeting accountability measures under division (C) of 114
this section; 115

(b) Three dollars and twenty-nine cents. The amount of a 116
quality incentive payment paid to a provider of a nursing facility 117
that is awarded no points may be zero. 118

(2) The maximum quality incentive payment that may be paid to 119
the provider of a nursing facility for a fiscal year shall be 120
sixteen dollars and forty-four cents per medicaid day. 121

(C)(1) For fiscal year 2012 only and subject Subject to 122
division (C)(2)(D) of this section, the department shall award 123
each nursing facility participating in the medicaid program points 124
one point for meeting each of the following accountability 125
measures the facility meets: 126

(a) The facility had no health deficiencies on the facility's 127
most recent standard survey. 128

(b) The facility had no health deficiencies with a scope and 129
severity level greater than E, as determined under nursing 130
facility certification standards established under Title XIX, on 131
the facility's most recent standard survey. 132

(c) The facility's resident satisfaction is above the 133
statewide average. 134

(d) The facility's family satisfaction is above the statewide 135
average. 136

(e) The number of hours the facility employs nurses is above 137
the statewide average. 138

(f) The facility's employee retention rate is above the	139
average for the facility's peer group established in division (C)	140
of section 5111.231 of the Revised Code.	141
(g) The facility's occupancy rate is above the statewide	142
average.	143
(h) The facility's case mix score is above the statewide	144
average.	145
(i) The facility's medicaid utilization rate is above the	146
statewide average.	147
(2) A nursing facility shall be awarded one point for each of	148
the accountability measures specified in divisions (C)(1)(a) to	149
(h) of this section that the nursing facility meets. A nursing	150
facility shall be awarded three points for meeting the	151
accountability measure specified in division (C)(1)(i) of this	152
section. The	153
<u>(1) The facility's overall score on its resident satisfaction</u>	154
<u>survey is at least eighty-six.</u>	155
<u>(2) The facility's overall score on its family satisfaction</u>	156
<u>survey is at least eighty-eight.</u>	157
<u>(3) The facility satisfies the requirements for participation</u>	158
<u>in the advancing excellence in America's nursing homes campaign.</u>	159
<u>(4) The facility had neither of the following on the</u>	160
<u>facility's most recent standard survey or any complaint surveys</u>	161
<u>conducted in the calendar year preceding the fiscal year for which</u>	162
<u>the point is to be awarded:</u>	163
<u>(a) A health deficiency with a scope and severity level</u>	164
<u>greater than F;</u>	165
<u>(b) A deficiency that constitutes a substandard quality of</u>	166
<u>care.</u>	167
<u>(5) The facility offers at least fifty per cent of its</u>	168

<u>residents at least one of the following dining choices for at</u>	169
<u>least one meal each day:</u>	170
<u>(a) Restaurant-style dining in which food is brought from the</u>	171
<u>food preparation area to residents per the residents' orders;</u>	172
<u>(b) Buffet-style dining in which residents obtain their own</u>	173
<u>food, or have the facility's staff bring food to them per the</u>	174
<u>residents' directions, from the buffet;</u>	175
<u>(c) Family-style dining in which food is customarily served</u>	176
<u>on a platter and shared by residents;</u>	177
<u>(d) Open dining in which residents have at least a two-hour</u>	178
<u>period to choose when to have a meal;</u>	179
<u>(e) Twenty-four-hour dining in which residents may order</u>	180
<u>meals from the facility any time of the day.</u>	181
<u>(6) At least fifty per cent of the facility's residents are</u>	182
<u>able to take a bath or shower as often as they choose.</u>	183
<u>(7) The facility has at least both of the following scores on</u>	184
<u>its resident satisfaction survey:</u>	185
<u>(a) With regard to the question in the survey regarding</u>	186
<u>residents' ability to choose when to go to bed in the evening, at</u>	187
<u>least eighty-nine;</u>	188
<u>(b) With regard to the question in the survey regarding</u>	189
<u>residents' ability to choose when to get out of bed in the</u>	190
<u>morning, at least seventy-six.</u>	191
<u>(8) The facility has at least both of the following scores on</u>	192
<u>its family satisfaction survey:</u>	193
<u>(a) With regard to the question in the survey regarding</u>	194
<u>residents' ability to choose when to go to bed in the evening, at</u>	195
<u>least eighty-eight;</u>	196
<u>(b) With regard to the question in the survey regarding</u>	197

residents' ability to choose when to get out of bed in the 198
morning, at least seventy-five. 199

(9) All of the following apply to the facility: 200

(a) At least seventy-five per cent of the facility's 201
residents have the opportunity, following admission to the 202
facility and before completing or quarterly updating their 203
individual plans of care, to discuss their goals for the care they 204
are to receive at the facility, including their preferences for 205
advance care planning, with a member of the residents' healthcare 206
teams that the facility, residents, and residents' sponsors 207
consider appropriate. 208

(b) The facility records the residents' care goals, including 209
the residents' advance care planning preferences, in their medical 210
records. 211

(c) The facility uses the residents' care goals, including 212
the residents' advance care planning preferences, in the 213
development of the residents' individual plans of care. 214

(10) As calculated in accordance with the national voluntary 215
consensus standards for nursing homes, not more than the 216
applicable percentage of the facility's long-stay residents report 217
severe to moderate pain during the minimum data set assessment 218
process. 219

(11) As calculated in accordance with the national voluntary 220
consensus standards for nursing homes, not more than the 221
applicable percentage of the facility's long-stay, high-risk 222
residents have been assessed as having one or more stage two, 223
three, or four pressure ulcers during the minimum data set 224
assessment process. 225

(12) As calculated in accordance with the national voluntary 226
consensus standards for nursing homes, not more than the 227
applicable percentage of the facility's long-stay residents were 228

physically restrained as reported during the minimum data set 229
assessment process. 230

(13) As calculated in accordance with the national voluntary 231
consensus standards for nursing homes, less than the applicable 232
percentage of the facility's long-stay residents had a urinary 233
tract infection as reported during the minimum data set assessment 234
process. 235

(14) The facility uses a tool for tracking residents' 236
admissions to hospitals. 237

(15) At least fifty per cent of the facility's 238
medicaid-certified beds are in private rooms. 239

(16) The facility has accessible resident bathrooms, all of 240
which meet at least two of the following standards and at least 241
some of which meet all of the following standards: 242

(a) There are room mirrors that are accessible to residents 243
in wheelchairs, can be adjusted so as to be visible to residents 244
who are seated or standing, or both. 245

(b) There are room sinks that are accessible to residents in 246
wheelchairs and have clearance for wheelchairs. 247

(c) There are room sinks that have faucets with adaptive or 248
easy-to-use lever or paddle handles. 249

(17) The facility maintains and provides to its staff and 250
residents a written policy that prohibits the use of overhead 251
paging systems or limits the use of overhead paging systems to 252
emergencies, as defined in the policy. 253

(18) The facility has a score of at least ninety on its 254
resident satisfaction survey with regard to the question in the 255
survey regarding residents' ability to personalize their rooms 256
with personal belongings. 257

(19) The facility has a score of at least ninety-five on its 258

family satisfaction survey with regard to the question in the 259
survey regarding residents' ability to personalize their rooms 260
with personal belongings. 261

(20) The facility does both of the following: 262

(a) Maintains a written policy that requires consistent 263
assignment of nurse aides and specifies the goal of having a 264
resident receive nurse aide care from not more than eight 265
different nurse aides during a thirty-day period; 266

(b) Communicates the policy to its staff, residents, and 267
families of residents. 268

(21) The facility's staff retention rate is at least 269
seventy-five per cent. 270

(22) The facility's turnover rate for nurse aides is not 271
higher than sixty-five per cent. 272

(23) A nurse aide attends and participates in at least fifty 273
per cent of the resident care conferences in the facility for 274
residents for whom the nurse aide is a primary caregiver. 275

(D) Except where the period of time is expressly stated in 276
division (C) of this section, the department shall specify the 277
period of time for which a nursing facility must meet an 278
accountability measure for the nursing facility to be awarded a 279
point for the accountability measure. For the purpose of quality 280
incentive payments to be made for fiscal year 2013, the period of 281
time for which the accountability measures identified in divisions 282
(C)(3), (5), (6), (9) to (17), (20), (22), and (23) of this 283
section must be met shall not be calendar year 2011. 284

The department shall award points pursuant to division 285
(C)(1)(e), (7), or ~~(d)~~(18) of this section to a nursing facility 286
only if a ~~survey of resident or family~~ satisfaction survey was 287
~~conducted~~ initiated under section 173.47 of the Revised Code for 288

the nursing facility in the calendar year ~~2010~~ preceding the 289
fiscal year for which the points are to be awarded. 290

~~(D)(1) For fiscal year 2013 and thereafter, the department 291
shall award each nursing facility participating in the medicaid 292
program points for meeting accountability measures in accordance 293
with amendments to be made to this section not later than December 294
31, 2011, that provide for all of the following: 295~~

~~(a) Meaningful accountability measures of quality of care, 296
quality of life, and nursing facility staffing; 297~~

~~(b) The maximum number of points that a nursing facility may 298
earn for meeting accountability measures; 299~~

~~(c) A methodology for calculating the quality incentive 300
payment that recognizes different business and care models in 301
nursing facilities by providing flexibility in nursing facilities' 302
ability to earn the entire quality incentive payment; 303~~

~~(d) A quality bonus to be paid at the end of a fiscal year in 304
a manner that provides for all funds that the general assembly 305
intends to be used for the quality incentive payment for that 306
fiscal year are distributed to nursing facilities. 307~~

~~(2) For the purpose of division (D)(1)(d) of this section, 308
the amount of funds that the general assembly intends to be used 309
for the quality incentive payment for a fiscal year shall be the 310
product of the following: 311~~

~~(a) The number of medicaid days in the fiscal year; 312~~

~~(b) The maximum quality incentive payment the general 313
assembly has specified in law to be paid to nursing facilities for 314
that fiscal year. 315~~

The department shall award points pursuant to division 316
(C)(2), (8), or (19) of this section to a nursing facility only if 317
a family satisfaction survey was initiated under section 173.47 of 318

the Revised Code for the nursing facility in the calendar year 319
preceding the fiscal year for which the points are to be awarded. 320

The department shall specify the percentages to be used for 321
the purposes of divisions (C)(10), (11), (12), and (13) of this 322
section. In specifying the percentages, the department shall 323
provide for at least fifty per cent of nursing facilities to earn 324
points for meeting the accountability measures identified in those 325
divisions as determined using the 3.0 version of the minimum data 326
set. 327

Not later than July 1, 2013, the department shall adjust the 328
score used for the purpose of the accountability measure 329
identified in division (C)(8)(b) of this section in a manner that 330
causes the score to be the average score that nursing facilities 331
earn for that accountability measure on the family satisfaction 332
survey initiated in calendar year 2012. 333

(E) The director of job and family services shall adopt rules 334
under section 5111.02 of the Revised Code as necessary to 335
implement this section. 336

The rules may specify what is meant by "some" as that word is 337
used in division (C)(16) of this section. 338

Sec. 5111.245. (A) As used in this section: 339

(1) "Point days for a fiscal year" means the product of the 340
following: 341

(a) A qualifying nursing facility's quality bonus points for 342
the fiscal year; 343

(b) The number of the qualifying nursing facility's medicaid 344
days in the fiscal year. 345

(2) "Qualifying nursing facility" means a nursing facility 346
that qualifies for a quality bonus for a fiscal year as determined 347
under division (B) of this section. 348

(3) "Quality bonus points for a fiscal year" means the amount 349
determined by subtracting five from the number of points awarded 350
to a qualifying nursing facility under division (C) of section 351
5111.244 of the Revised Code for a fiscal year. 352

(4) "Residual budgeted amount for quality incentive payments 353
for a fiscal year" means the amount determined for a fiscal year 354
as follows: 355

(a) Multiply the total number of medicaid days in the fiscal 356
year by sixteen dollars and forty-four cents; 357

(b) Determine the total amount of quality incentive payments 358
that is to be paid under section 5111.244 of the Revised Code to 359
all nursing facility providers for the fiscal year; 360

(c) Subtract the amount determined under division (A)(4)(b) 361
of this section from the product calculated under division 362
(A)(4)(a) of this section. 363

(B) The department of job and family services shall pay a 364
nursing facility provider a quality bonus for a fiscal year if 365
both of the following apply: 366

(1) The provider's nursing facility is awarded more than five 367
points under division (C) of section 5111.244 of the Revised Code 368
for the fiscal year. 369

(2) The residual budgeted amount for quality incentive 370
payments for the fiscal year is greater than zero. 371

(C) The total quality bonus to be paid to the provider of a 372
qualifying nursing facility for a fiscal year shall equal the 373
product of the following: 374

(1) The quality bonus per medicaid day for the fiscal year 375
determined for the provider's qualifying nursing facility under 376
division (D) of this section; 377

(2) The number of the qualifying nursing facility's medicaid 378

days in the fiscal year. 379

(D) A qualifying nursing facility's quality bonus per 380
medicaid day for a fiscal year shall be the product of the 381
following: 382

(1) The nursing facility's quality bonus points for the 383
fiscal year; 384

(2) The quality bonus per point for the fiscal year 385
determined under division (E) of this section. 386

(E) The quality bonus per point for a fiscal year shall be 387
determined as follows: 388

(1) Determine the number of each qualifying nursing 389
facility's point days for the fiscal year; 390

(2) Determine the sum of all qualifying nursing facilities' 391
point days for the fiscal year; 392

(3) Divide the residual budgeted amount for quality incentive 393
payments for the fiscal year by the sum determined under division 394
(E)(2) of this section. 395

(F) The calculation of a qualifying nursing facility's bonus 396
payment is not subject to appeal under Chapter 119. of the Revised 397
Code. 398

(G) The director of job and family services may adopt rules 399
under section 5111.02 of the Revised Code as necessary to 400
implement this section. 401

Section 2. That existing sections 173.47, 5111.222, and 402
5111.244 of the Revised Code are hereby repealed. 403

Section 3. That Section 309.30.70 of Am. Sub. H.B. 153 of the 404
129th General Assembly be amended to read as follows: 405

Sec. 309.30.70. FISCAL YEAR 2013 MEDICAID REIMBURSEMENT	406
SYSTEM FOR NURSING FACILITIES	407
(A) As used in this section:	408
"Franchise permit fee," "Medicaid days," "nursing facility,"	409
and "provider" have the same meanings as in section 5111.20 of the	410
Revised Code.	411
"Low resource utilization resident" means a Medicaid	412
recipient residing in a nursing facility who, for purposes of	413
calculating the nursing facility's Medicaid reimbursement rate for	414
direct care costs, is placed in either of the two lowest resource	415
utilization groups, excluding any resource utilization group that	416
is a default group used for residents with incomplete assessment	417
data.	418
"Nursing facility services" means nursing facility services	419
covered by the Medicaid program that a nursing facility provides	420
to a resident of the nursing facility who is a Medicaid recipient	421
eligible for Medicaid-covered nursing facility services.	422
(B) Except as otherwise provided by this section, the	423
provider of a nursing facility that has a valid Medicaid provider	424
agreement on June 30, 2012, and a valid Medicaid provider	425
agreement during fiscal year 2013 shall be paid, for nursing	426
facility services the nursing facility provides during fiscal year	427
2013, the rate calculated for the nursing facility under sections	428
5111.20 to 5111.331 of the Revised Code with the following	429
adjustments:	430
(1) The, except that the cost per case mix-unit calculated	431
under section 5111.231 of the Revised Code, the rate for ancillary	432
and support costs calculated under section 5111.24 of the Revised	433
Code, the rate for tax costs calculated under section 5111.242 of	434
the Revised Code, and the rate for capital costs calculated under	435

section 5111.25 of the Revised Code shall each be increased by 436
5.08 per cent+ 437

~~(2) The maximum quality incentive payment made under section 438
5111.244 of the Revised Code shall be \$16.44 per Medicaid day. 439~~

(C) The rate determined under division (B) of this section 440
shall not be paid for nursing facility services provided to low 441
resource utilization residents. Except as provided in division (D) 442
of this section, the provider of a nursing facility that has a 443
valid Medicaid provider agreement on June 30, 2012, and a valid 444
Medicaid provider agreement during fiscal year 2013 shall be paid, 445
for nursing facility services the nursing facility provides during 446
fiscal year 2013 to low resource utilization residents, \$130.00 447
per Medicaid day. 448

(D) If the franchise permit fee must be reduced or eliminated 449
to comply with federal law, the Department of Job and Family 450
Services shall reduce the amount it pays providers of nursing 451
facility services under this section as necessary to reflect the 452
loss to the state of the revenue and federal financial 453
participation generated from the franchise permit fee. 454

(E) The Department of Job and Family Services shall follow 455
this section in determining the rate to be paid to the provider of 456
a nursing facility that has a valid Medicaid provider agreement on 457
June 30, 2012, and a valid Medicaid provider agreement during 458
fiscal year 2013 notwithstanding anything to the contrary in 459
sections 5111.20 to 5111.331 of the Revised Code. 460

Section 4. That existing Section 309.30.70 of Am. Sub. H.B. 461
153 of the 129th General Assembly is hereby repealed. 462

Section 5. Sections 1 to 4 of this act shall take effect July 463
1, 2012. 464