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Senator Jones

Cosponsors: Senators Niehaus, Burke, Lehner, Widener, Patton, Balderson, Beagle, Coley, Daniels, Eklund, Hite, Manning, Sawyer, Schaffer, Smith, Tavares, Wagoner

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A B I L L

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. 1 2 3 4 5 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 amended and section 5111.245 of the Revised Code be enacted to read as follows: 7 8 9

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 10 11 12 13 14 15 16 17

(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; 76 77

(ii) The percentage used pursuant to division (F)(3)(b) of this section. 78 79

(2) "Complaint surveys" has the same meaning as in 42 C.F.R. 488.30. 80 81

(3) "Customer satisfaction survey" means the annual survey of long-term care facilities required by section 173.47 of the Revised Code. 82 83 84

(4) "Deficiency" has the same meaning as in 42 C.F.R. 488.301. 85 86

(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. 87 88 89 90

(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. 91 92 93 94 95 96

(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. 97 98 99 100

(8) "Nurse aide" has the same meaning as in section 3721.21 of the Revised Code. 101 102

(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 103 104 105

facility's residents. 106

(10) "Room mirror" means a mirror that is located in either of the following rooms: 107 108

(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom; 109 110 111

(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. 112 113

(11) "Room sink" means a sink that is located in either of the following rooms: 114 115

(a) A resident bathroom if the sink used by a resident after the resident uses the resident bathroom is in the resident bathroom; 116 117 118

(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. 119 120

(12) "Standard survey" has the same meaning as in 42 C.F.R. 488.301. 121 122

(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: 123 124 125 126 127 128 129 130

(a) The number of points the provider's nursing facility is awarded for meeting accountability measures under division (C) of this section; 131 132 133

(b) Three dollars and twenty-nine cents. ~~The amount of a quality incentive payment paid to a provider of a nursing facility~~ 134 135

~~that is awarded no points may be zero.~~

<u>(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.</u>

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

~~(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; 196 197

(d) Open dining in which residents have at least a two-hour period to choose when to have a meal; 198 199

(e) Twenty-four-hour dining in which residents may order meals from the facility any time of the day. 200 201

(6) At least fifty per cent of the facility's residents are able to take a bath or shower as often as they choose. 202 203

(7) The facility has at least both of the following scores on its resident satisfaction survey: 204 205

(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; 206 207 208

(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. 209 210 211

(8) The facility has at least both of the following scores on its family satisfaction survey: 212 213

(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; 214 215 216

(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. 217 218 219

(9) All of the following apply to the facility: 220

(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 221 222 223 224 225

advance care planning, with a member of the residents' healthcare teams that the facility, residents, and residents' sponsors consider appropriate. 226 227 228

(b) The facility records the residents' care goals, including the residents' advance care planning preferences, in their medical records. 229 230 231

(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. 232 233 234

(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. 235 236 237

(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. 238 239 240 241

(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. 242 243 244

(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. 245 246 247

(14) The facility uses a tool for tracking residents' admissions to hospitals. 248 249

(15) An average of at least fifty per cent of the facility's medicaid-certified beds are in private rooms. 250 251

(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: 252 253 254

(a) There are room mirrors that are accessible to residents 255

in wheelchairs, can be adjusted so as to be visible to residents who are seated or standing, or both. 256 257

(b) There are room sinks that are accessible to residents in wheelchairs and have clearance for wheelchairs. 258 259

(c) There are room sinks that have faucets with adaptive or easy-to-use lever or paddle handles. 260 261

(17) The facility maintains and provides to its staff and residents 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. 262 263 264 265

(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. 266 267 268 269

(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. 270 271 272 273

(20) The facility does both of the following: 274

(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; 275 276 277 278

(b) Communicates the policy to its staff, residents, and families of residents. 279 280

(21) The facility's staff retention rate is at least seventy-five per cent. 281 282

(22) The facility's turnover rate for nurse aides is not higher than sixty-five per cent. 283 284

(23) For at least fifty per cent of the resident care 285

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)~~(c)~~, (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: 347

(a) Rely on those calculations; 348

(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. 349 350 351 352

(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: 353 354 355 356 357

(a) Do both of the following: 358

(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; 359 360 361

(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. 362 363 364 365

(b) Do all of the following: 366

(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; 367 368 369 370

(ii) Use four per cent as the applicable percentage for the accountability measure identified in division (C)(10) of this section; 371 372 373

(iii) Use nine per cent as the applicable percentage for the accountability measure identified in division (C)(11) of this section; 374 375 376

(iv) Use two per cent as the applicable percentage for the accountability measure identified in division (C)(12) of this section; 377 378 379

(v) Use ten per cent as the applicable percentage for the accountability measure identified in division (C)(13) of this section. 380 381 382

(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: 383 384 385

(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; 386 387 388 389

(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; 390 391 392 393 394

(3) If the department takes action pursuant to division (E)(2) of this section for fiscal year 2013, do the following: 395 396

(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; 397 398 399 400 401

(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. 402 403 404 405

(G) The director of job and family services shall adopt rules 406

under section 5111.02 of the Revised Code as necessary to implement this section. 407 408

The rules may specify what is meant by "some" as that word is used in division (C)(16) of this section. 409 410

Sec. 5111.245. (A) As used in this section: 411

(1) "Point days for a fiscal year" means the product of the following: 412 413

(a) A qualifying nursing facility's quality bonus points for the fiscal year; 414 415

(b) The number of the qualifying nursing facility's medicaid days in the fiscal year. 416 417

(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. 418 419 420

(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. 421 422 423 424

(4) "Residual budgeted amount for quality incentive payments for a fiscal year" means the amount determined for a fiscal year as follows: 425 426 427

(a) Multiply the total number of medicaid days in the fiscal year by sixteen dollars and forty-four cents; 428 429

(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; 430 431 432

(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. 433 434 435

(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: 436 437 438

(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. 439 440 441

(2) The residual budgeted amount for quality incentive payments for the fiscal year is greater than zero. 442 443

(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: 444 445 446

(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; 447 448 449

(2) The number of the qualifying nursing facility's medicaid days in the fiscal year. 450 451

(D) A qualifying nursing facility's quality bonus per medicaid day for a fiscal year shall be the product of the following: 452 453 454

(1) The nursing facility's quality bonus points for the fiscal year; 455 456

(2) The quality bonus per point for the fiscal year determined under division (E) of this section. 457 458

(E) The quality bonus per point for a fiscal year shall be determined as follows: 459 460

(1) Determine the number of each qualifying nursing facility's point days for the fiscal year; 461 462

(2) Determine the sum of all qualifying nursing facilities' point days for the fiscal year; 463 464

(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. 465 466 467

(F) The calculation of a qualifying nursing facility's bonus payment is not subject to appeal under Chapter 119. of the Revised Code. 468 469 470

(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. 471 472 473

Section 2. That existing sections 173.47, 5111.222, and 5111.244 of the Revised Code are hereby repealed. 474 475

Section 3. That Section 309.30.70 of Am. Sub. H.B. 153 of the 129th General Assembly be amended to read as follows: 476 477

Sec. 309.30.70. FISCAL YEAR 2013 MEDICAID REIMBURSEMENT SYSTEM FOR NURSING FACILITIES 478 479

(A) As used in this section: 480

"Franchise permit fee," "Medicaid days," "nursing facility," and "provider" have the same meanings as in section 5111.20 of the Revised Code. 481 482 483

"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. 484 485 486 487 488 489 490

"Nursing facility services" means nursing facility services covered by the Medicaid program that a nursing facility provides 491 492

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. 524 525 526

(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. 527 528 529 530 531 532

Section 4. That existing Section 309.30.70 of Am. Sub. H.B. 153 of the 129th General Assembly is hereby repealed. 533 534

Section 5. Sections 1 to 4 of this act shall take effect July 1, 2012. 535 536