# Ohio Legislative Service Commission

## Final Analysis

Bob Bennett

# Sub. S.B. 264

129th General Assembly
(As Passed by the General Assembly)

**Sens.** Jones, Niehaus, Burke, Lehner, Widener, Patton, Balderson, Beagle, Coley, Daniels, Eklund, Hite, Manning, Sawyer, Schaffer, Smith, Tavares, Wagoner

**Reps.** R. Adams, Amstutz, Anielski, Antonio, Baker, Blair, Boose, Bubp, Combs, Dovilla, Fende, Garland, Grossman, Hackett, Hill, Hottinger, Johnson, Kozlowski, Letson, Luckie, Lundy, Maag, Mallory, Martin, McClain, McGregor, Milkovich, Newbold, O'Brien, Phillips, Ramos, Ruhl, Sears, Slaby, Slesnick, Sprague, Thompson, Weddington, Young, Yuko

**Effective date:** March 22, 2012; Sections 1 to 4 effective July 1, 2012

## ACT SUMMARY

- Revises the law governing quality incentive payments paid to nursing facilities under the Medicaid program.
- Requires the Ohio Department of Job and Family Services (ODJFS), as part of the process of determining the amount of the quality incentive payment to be paid to a nursing facility, to award the facility one point for each accountability measure the facility meets.
- Establishes 23 accountability measures.
- Provides for the per Medicaid day amount of a quality incentive payment to be the product of the number of points a nursing facility is awarded for meeting accountability measures and $3.29, except that no quality incentive payment is to exceed $16.44 per Medicaid day.
- States the intent of the General Assembly periodically to amend the law governing quality incentive payments in a manner that increasingly provides for the payments to (1) serve as opportunities for nursing facilities to earn portions of their total Medicaid rates by satisfying accountability measures and (2) help differentiate among nursing facilities regarding quality.

- Provides for a qualifying nursing facility to receive a quality bonus in addition to its quality incentive payment if the residual budgeted amount for quality incentive payments for the fiscal year is greater than zero.

- Provides that a nursing facility qualifies for a quality bonus if the facility is awarded more than five points for meeting accountability measures.

- Provides that the total quality bonus to be paid to a qualifying nursing facility is to equal the product of the facility's quality bonus per Medicaid day and the number of the facility's Medicaid days.

## TABLE OF CONTENTS


Quality incentive payments ..... 2
Accountability measures ..... 3
Time periods for meeting accountability measures ..... 5
Calculations and percentages used for MDS-related accountability measures ..... 6
Fiscal year 2013 ..... 6
Fiscal year 2014 and thereafter ..... 7
When points are awarded for accountability measures regarding satisfaction surveys ..... 7
Adjustments to accountability measures ..... 8
Amount of quality incentive payment ..... 8
Customer satisfaction surveys ..... 8
Rules ..... 9
General Assembly's intent periodically to revise law ..... 9
Quality bonuses ..... 9
Nursing facilities' total Medicaid rates ..... 11


## CONTENT AND OPERATION

### Quality incentive payments

Effective July 1, 2012, the act revises the law governing quality incentive payments paid to nursing facilities under the Medicaid program.[1] A quality incentive payment is one of the components that make up the total Medicaid rate paid to a nursing facility. Payments for direct care costs, ancillary and support costs, tax costs, and capital costs are other components.

The act is a response to a provision in the main operating budget enacted by the 129th General Assembly, Am. Sub. H.B. 153. H.B. 153 requires the Ohio Department of Job and Family Services (ODJFS), for fiscal year 2013 and thereafter, to award each nursing facility participating in the Medicaid program points for meeting accountability

[1] R.C. 5111.244 (primary) and 5111.222 and Section 5.

measures in accordance with amendments to be made not later than December 31, 2011, to the law governing quality incentive payments. The act makes the amendments required by H.B. 153.

### Accountability measures

Under the act, ODJFS is to award a nursing facility one point for each of the following accountability measures the facility meets:

(1) The facility's overall score on its resident satisfaction survey (a customer satisfaction survey conducted or arranged by the Ohio Department of Aging (ODA) that contains the results of information obtained from a nursing facility's residents) is at least 86.

(2) The facility's overall score on its family satisfaction survey (an ODA customer satisfaction survey containing the results of information obtained from the families of a nursing facility's residents) is at least 88.

(3) The facility satisfies the requirements for participation in the Advancing Excellence in America's Nursing Homes campaign which is organized by a national group of entities interested in long-term care for the purpose of helping nursing homes provide quality care to their residents.

(4) The facility did not have a health deficiency with a scope and severity level greater than F or a deficiency that constitutes a substandard quality of care on its 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.

(5) The facility offers at least 50% of its residents restaurant-style dining, buffet-style dining, family-style dining, open dining, or 24-hour dining for at least one meal each day.

(6) At least 50% of the facility's residents are able to take a bath or shower as often as they choose.

(7) On its resident satisfaction survey, the facility has a score of at least 89 for the question regarding residents' ability to choose when to go to bed in the evening and a score of at least 76 for the question regarding residents' ability to choose when to get out of bed in the morning.

(8) On its family satisfaction survey, the facility has a score of at least 88 for the question regarding residents' ability to choose when to go to bed in the evening and, for the question regarding residents' ability to choose when to get out of bed in the morning, a score of at least 75 for fiscal year 2013 and another amount to be determined by ODJFS thereafter. (See "**Adjustments to accountability measures**," below.)

(9) At least 75% 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, the facility records the residents' care goals in their medical records, and the facility uses the residents' care goals in the development of the residents' individual plans of care.

(10) Not more than a particular percentage of the nursing facility's long-stay residents report severe to moderate pain during the assessment process known as the minimum data set (MDS). (See "**Calculations and percentages used for MDS-related accountability measures**," below.)

(11) Not more than a particular percentage of the facility's long-stay, high-risk residents have been assessed during the MDS assessment process as having one or more stage two, three, or four pressure ulcers. (See "**Calculations and percentages used for MDS-related accountability measures**," below.)

(12) Not more than a particular percentage of the facility's long-stay residents were physically restrained as reported during the MDS assessment process. (See "**Calculations and percentages used for MDS-related accountability measures**," below.)

(13) Less than a particular percentage of the facility's long-stay residents had a urinary tract infection as reported during the MDS assessment process. (See "**Calculations and percentages used for MDS-related accountability measures**," below.)

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

(15) An average of at least 50% 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 (a mirror located in either a resident bathroom or resident's room) 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 (a sink located in either a resident bathroom or resident's room) 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 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, and the facility communicates the policy to its staff, residents, and families of residents.

(18) The facility has a score of at least 90 on its resident satisfaction survey with regard to the question about residents' ability to personalize their rooms with personal belongings.

(19) The facility has a score of at least 95 on its family satisfaction survey with regard to the question about residents' ability to personalize their rooms with personal belongings.

(20) The facility 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 30-day period and the facility communicates the policy to its staff, residents, and families of residents.

(21) The facility's staff retention rate is at least 75%.

(22) The facility's turnover rate for nurse aides is not higher than 65%.

(23) For at least 50% 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.[2]

### Time periods for meeting accountability measures

To be awarded a point for meeting an accountability measure other than the accountability measure regarding deficiencies found on surveys (measure #4), a nursing facility must meet the accountability measure in the calendar year preceding the fiscal

[2] R.C. 5111.244(A) and (C).

year for which the point is to be awarded. However, a nursing facility must meet accountability measures #3, 5, 6, 9, 14 to 17, 20, 22, and 23 in the period beginning January 1, 2012, and ending March 31, 2012, to be awarded points for those accountability measures for fiscal year 2013.[3]

### Calculations and percentages used for MDS-related accountability measures

The act includes provisions regarding the calculations and percentages to be used for the accountability measures regarding the MDS assessment process (measures #10 to 13), including provisions applicable only to fiscal year 2013 and provisions applicable to fiscal year 2014 and thereafter.

#### Fiscal year 2013

For fiscal year 2013, the calculations and percentages to be used depend on whether the United States Centers for Medicare and Medicaid Services (CMS), by July 1, 2012, makes calculations using the 3.0 version of the MDS that indicate whether nursing facilities meet the MDS-related accountability measures.

If CMS makes such calculations by that date, ODJFS must rely on CMS's calculations and specify the percentages to be used for the purpose of the MDS-related accountability measures. In specifying the percentages, ODJFS must provide for at least 50% of nursing facilities to earn points for meeting the MDS-related accountability measures.

If CMS does not make such calculations by that date, ODJFS must do either of the following:

(1) Make the calculations using the 3.0 version of the MDS in accordance with the National Voluntary Consensus Standards for Nursing Homes (which are measures used to determine the quality of care provided by nursing facilities as endorsed by the National Quality Forum) and specify the percentages to be used for the purpose of the MDS-related accountability measures and, in specifying the percentages, provide for at least 50% of nursing facilities to earn points for meeting the MDS-related accountability measures.

(2) Rely on the most recent calculations CMS made using the 2.0 version of the MDS that indicate whether nursing facilities meet the MDS-related accountability measures and use the following percentages: (a) 4% for the accountability measure regarding long-stay residents who report severe to moderate pain (measure #10), (b) 9% for the accountability measure regarding long-stay, high risk residents who have been

[3] R.C. 5111.244(D)(1).

assessed as having one or more stage two, three, or four pressure ulcers (measure #11), (c) 2% for the accountability measure regarding long-stay residents who were physically restrained (measure #12), and (d) 10% for the MDS-related accountability measure regarding long-stay residents who had a urinary tract infection (measure #13).[4]

#### Fiscal year 2014 and thereafter

For fiscal year 2014 and thereafter, ODJFS is required to rely on calculations CMS makes using the 3.0 version of the MDS that indicate whether nursing facilities meet the MDS-related accountability measures. The percentages to be used depend on whether ODJFS, for fiscal year 2013, takes the actions required when CMS, by July 1, 2012, makes calculations using the 3.0 version of the MDS that indicate whether nursing facilities meet the MDS-related accountability measures or takes the actions required when CMS does not make such calculations by that date.

If ODJFS takes the actions required when CMS makes such calculations by that date, ODJFS is required to continue to use for fiscal years 2014 and thereafter the percentages that ODJFS specified be used for fiscal year 2013. If ODJFS takes the actions required when CMS does not make such calculations by that date, ODJFS is required to do the following:

(1) For fiscal year 2014, specify the percentages to be used for the MDS-related accountability measures and, in specifying the percentages, provide for at least 50% of nursing facilities to earn points for meeting the MDS-related accountability measures.

(2) For fiscal year 2015 and thereafter, continue to use the percentages that ODJFS specifies for fiscal year 2014.[5]

### When points are awarded for accountability measures regarding satisfaction surveys

A nursing facility is not to be awarded points for a fiscal year for the accountability measures regarding scores obtained on a resident satisfaction survey (measures #1, 7, and 18) unless a resident satisfaction survey was initiated for the facility in the calendar year preceding the fiscal year for which the points are to be awarded. Similarly, a nursing facility is not to be awarded points for a fiscal year for the accountability measures regarding scores obtained on a family satisfaction survey

[4] R.C. 5111.244(A)(1) and (E).

[5] R.C. 5111.244(A)(1) and (F).

(measures #2, 8, and 19) unless a family satisfaction survey was initiated for the facility in the calendar year preceding the fiscal year for which the points are to be awarded.[6]

### Adjustments to accountability measures

Not later than July 1, 2013, ODJFS must adjust the minimum score that a nursing facility must obtain to be awarded a point for the question on its family satisfaction survey regarding residents' ability to choose when to get out of bed in the morning (the second part of accountability measure #8) in a manner that causes at least 50% of nursing facilities to meet that part of the measure.[7]

### Amount of quality incentive payment

The per Medicaid day amount of a quality incentive payment to be paid to a nursing facility is to be the product of (1) the number of points the facility is awarded for meeting accountability measures and (2) $3.29. However, no quality incentive payment is to exceed $16.44 per Medicaid day.[8] A Medicaid day is a day during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's Medicaid-certified capacity.[9]

### Customer satisfaction surveys

The act revises the law governing the annual customer satisfaction surveys of long-term care facilities, including nursing facilities, that ODA is required to conduct or arrange. Continuing law provides that the results of a survey may include information obtained from residents, their families, or both. Under the act, a survey that is to include information obtained from nursing facility residents must include the questions regarding the scores obtained on a resident satisfaction survey for which a nursing facility may obtain points under the accountability measures (measures #7 and 18, which pertain to resident choice in when to go to and get out of bed and the ability to personalize rooms). And, a survey that is to include information obtained from the families of nursing facility residents must include the questions regarding the scores obtained on a family satisfaction survey for which a nursing facility may obtain points

---

[6] R.C. 5111.244(D)(2) and (3).

[7] R.C. 5111.244(D)(4).

[8] R.C. 5111.244(B) and Sections 3 and 4.

[9] R.C. 5111.20 (not in the act).

under the accountability measures (measures #8 and 19, which also pertain to resident choice in when to go to and get out of bed and ability to personalize rooms).[10]

### Rules

Continuing law requires the ODJFS Director to adopt rules as necessary to implement the law governing quality incentive payments. The act permits the rules to specify what is meant by "some" as that word is used in the accountability measure regarding resident bathrooms (measure #16).[11]

### General Assembly's intent periodically to revise law

The act states that it is the General Assembly's intent periodically to amend the law governing quality incentive payments in a manner that increasingly provides for the payments (1) to serve as opportunities for nursing facilities to earn portions of their total Medicaid rates by satisfying accountability measures and (2) therefore to help differentiate higher-quality nursing facilities from lower-quality nursing facilities.[12]

## Quality bonuses

The act provides for qualifying nursing facilities to receive quality bonuses for a fiscal year if the residual budgeted amount for quality incentive payments for the fiscal year is greater than zero.[13] The residual budgeted amount for quality incentive payments for a fiscal year is the amount determined for a fiscal year as follows:

(1) Multiply the total number of Medicaid days in the fiscal year by $16.44;

(2) Determine the total amount of quality incentive payments that was paid to all nursing facilities for the fiscal year;

(3) Subtract the amount determined under (2) from the product calculated under (1).

A nursing facility is to qualify for a quality bonus for a fiscal year if the facility is awarded more than five points for the fiscal year for meeting accountability measures. The total quality bonus to be paid to a qualifying nursing facility for a fiscal year is to equal the product of (1) the quality bonus per Medicaid day for the fiscal year

---

[10] R.C. 173.47.

[11] R.C. 5111.244(G).

[12] Section 6.

[13] R.C. 5111.245 (primary) and 5111.222.

determined for the facility and (2) the number of the facility's Medicaid days in the fiscal year. A nursing facility's quality bonus per Medicaid day for a fiscal year is the product of (1) the facility's quality bonus points for the fiscal year (an amount determined by subtracting five from the number of points awarded to the facility for meeting accountability measures) and (2) the quality bonus per point for the fiscal year. The quality bonus per point for a fiscal year is to be determined as follows:

(1) Determine the number of each qualifying nursing facility's point days for the fiscal year (an amount determined by multiplying a facility's quality bonus points by the number of the facility's Medicaid days);

(2) Determine the sum of all qualifying nursing facility's 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 (2).

The following illustrates the calculations made in determining nursing facilities' total quality bonuses:

| |
|---|
| **Total quality bonus:**<br>quality bonus per Medicaid day x number of Medicaid days |
| **Quality bonus per Medicaid day:**<br>quality bonus points x quality bonus per point |
| **Quality bonus points:**<br>number of quality incentive payment points - 5 |
| **Quality bonus per point:**<br>residual budgeted amount for quality incentive payments ÷ sum of all qualifying nursing facilities' point days |
| **Residual budgeted amount for quality incentive payments:**<br>(total Medicaid days x $16.44) - total amount of quality incentive payments |
| **Point days:**<br>quality bonus points x number of Medicaid days |

The act provides that the calculation of a nursing facility's bonus payment is not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.). The ODJFS Director is permitted to adopt rules as necessary to implement the bonus payments.

### Nursing facilities' total Medicaid rates

The act revises the law that identifies the components of nursing facilities' Medicaid payments. Prior law required that the *payments* that ODJFS must agree to make to a nursing facility pursuant to a Medicaid provider agreement were to equal the sum of the nursing facility's direct care costs, ancillary and support costs, tax costs, capital costs, and quality incentive payments. The act requires instead that the *total rate* that ODJFS must agree to pay for a fiscal year to a nursing facility is to equal the sum of those costs and payments. The act provides that the quality bonus is in addition to, but not part of, a nursing facility's total rate.[14]

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 11-28-11 |
| Reported, S. Finance | 11-30-11 |
| Passed Senate (31-0) | 11-30-11 |
| Reported, H. Finance & Appropriations | 12-14-11 |
| Passed House (94-0) | 12-14-11 |
| Senate concurred in House amendments (33-0) | 12-14-11 |

11-sb264-129.docx/ks

[14] R.C. 5111.222.