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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 242

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PAY FOR SUCCESS CONTRACTS.

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

1 Section 1. Amend Title 29, Chapter 69 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows

3 Subchapter VII. Pay for Success Contracts

4 § 6990. Definitions.

5 For the purposes of this subchapter:

6 (1) “Outcome payment” means the money paid when a Pay for Success contract performance measure is
7 met.

8 (2) “Pay for Success contract” means a written agreement to provide a program, service, or economic
9 development initiative, under which an investor provides funding that a state agency agrees to repay to the investor
10 if the service, program, or economic development initiative meets the performance measures and outcomes in the
11 agreement.

12 (3) “Program intermediary” means a firm that contracts with a State agency to establish and deliver a
13 service, program, or economic development initiative by doing any of the following:

14 a. Delivering or contracting for relevant services or outcomes.

15 b. Raising capital to finance the delivery of services or outcomes.

16 c. Providing ongoing project management and investor relations for the social impact funding
17 instrument.

18 d. Raising capital to create jobs in scalable, high-growth startups.

19 § 6991. Authorization of Pay for Success contracts.

20 (a)(1) An agency may enter into a Pay for Success contract if the agency head determines with reasonable
21 certainty that the contract will produce a quantifiable public benefit or financial savings to the State by doing any of the
22 following:

23 a. Reducing or avoiding costs.

24 b. Increasing economic productivity.

25 c. Improving client outcomes.

26 d. Creating high wage jobs.

27 (2) A Pay for Success contract may be used for a service, program, or economic development initiative
28 that produces a public benefit or financial savings under paragraph (a)(1) of this section and includes any of the
29 following:

30 a. Economic development.

31 b. Early childhood education.

32 c. Workforce preparedness and employment, including school to work programs.

33 d. Public safety, including programs that reduce recidivism and address juvenile justice.

34 e. Health and human services, including programs for drug and alcohol addiction, mental health,
35 chronic homelessness, supportive housing, and child welfare services.

36 (b) A Pay for Success contract may be made between either of the following:

37 (1) An agency and a program intermediary.

38 (2) An agency and an investor.

39 (c) The agency head shall design a Pay for Success contract in collaboration with other relevant agencies and the
40 program intermediary or investor.

41 (d) The Director must approve the terms and conditions of a Pay for Success contract before an agency head may
42 enter into a contract under subsection (a) of this section.

43 (e) An agency must comply with the requirements of this chapter when selecting a program intermediary, investor,
44 or any necessary consulting assistance.

45 (f) Each Pay for Success contract must include all of the following:

46 (1) A full and thorough description of the objectives to be addressed by the Pay for Success contract and
47 an analysis of how the defined performance measures will demonstrate progress in addressing the objectives, and
48 how achieving the objectives should provide a significant public benefit, lead to a long-term reduction in State
49 expenditures, or enhance job growth.

50 (2) A requirement that the agency will hold the funds for the Pay for Success contract in a reserve account
51 that is specifically for the Pay for Success contract.

52 (3) A requirement that a substantial portion of the outcome payment is conditioned on achieving specific
53 outcomes based on the defined performance measures that lead to fiscal, economic, or social value for the State.

54 (4) A requirement that the program intermediary or investor provide evidence that the program
55 intermediary or investor has secured all of the necessary financing before service delivery begins.

56 (5) A description of the data each agency involved in developing the Pay for Success contract will
57 provide to the program intermediary or investor. The data will be provided by the agency only to the extent
58 permissible by law.

59 (6) The objective process that an independent evaluator, chosen by the agency head, will use to monitor
60 program progress and determine if a performance measure is achieved.

61 (7) The reporting requirements the program intermediary or investor must provide to the agency
62 regarding the program intermediary's or investor's progress in meeting the objectives.

63 (8) The method that will be used to calculate the amount and timing of outcome payments to the program
64 intermediary or investor during each year of the Pay for Success contract if the independent evaluator determines
65 that the program intermediary or investor achieves a performance measure.

66 (9) The terms under which a Pay for Success contract may be terminated.

67 § 6991. Pay for Success contract reserve account.

68 (a) The State Treasurer shall create a Pay for Success contract reserve account for public funds appropriated by the
69 General Assembly for each Pay for Success contract.

70 (b) Money held in a Pay for Success contract reserve account is not subject to yearly reversion until the Pay for
71 Success contract is completed or terminated and all obligations to the program intermediary or investor are satisfied.

72 (c) An agency head whose agency has entered a Pay for Success contract may authorize a payment under a Pay for
73 Success contract from the Pay for Success contract reserve account.

74 (d)(1) If the amount of funding in the Pay for Success contract reserve account does not equal or exceed the
75 amount of the total payments due to the program intermediary or investor under a Pay for Success contract if the program
76 intermediary and investor achieve full performance for the services or outcomes under the Pay for Success contract, the
77 agency head must submit to the Director a schedule detailing how much funding is needed in each remaining year of the
78 Pay for Success contract to meet the contract obligations.

79 (2) After the Director approves the schedule under paragraph (d)(1) of this section, the agency head must
80 request an appropriation from the General Assembly as part of the agency's annual budget request, in the amount
81 required under the schedule to meet the funding requirements under the Pay for Success contract, during each
82 fiscal year under the term of the contract.

83 (3) Funds appropriated by the General Assembly under this subsection must be designated as a separately
84 identifiable appropriation.

85 Section 2. The Office of Management and Budget shall establish the procedure for an agency to execute a Pay for
86 Success contract under this Act by December 1, 2018.

SYNOPSIS

This Act creates Pay for Success contracts. A Pay for Success contract is an agreement between a State agency and either a program intermediary or an investor under which an investor will provide upfront capital to fund a service, program, or economic development initiative. The State agency agrees to repay the program intermediary or investor if the service, program, or economic development initiative meets the performance measures and outcomes agreed to in the contract. An independent evaluator will determine if the performance measures and outcomes are met.

If the State agency contracts with a program intermediary, the program intermediary will manage all aspects of the project, including identifying the investor and the entity or entities that will provide the service, program, or economic development initiative. In other situations, a State agency will contract directly with the investor, who will contract directly with the entity or entities that will provide the service, program, or economic development initiative.

Author: Senator Walsh