

LAWS OF DELAWARE
VOLUME 81
CHAPTER 366
149th GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 242
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

Subchapter VII. Pay for Success Contracts

§ 6990. Definitions.

For the purposes of this subchapter:

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

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

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

- a. Delivering or contracting for relevant services or outcomes.
- b. Raising capital to finance the delivery of services or outcomes.
- c. Providing ongoing project management and investor relations for the social impact funding instrument.
- d. Raising capital to create jobs in scalable, high-growth startups.

§ 6991. Authorization of Pay for Success contracts.

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

- a. Reducing or avoiding costs.
- b. Increasing economic productivity.
- c. Improving client outcomes.
- d. Creating high wage jobs.

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

- a. Economic development.
- b. Public education, including early childhood education.
- c. Workforce preparedness and employment, including school to work programs.
- d. Public safety, including programs that reduce recidivism and address juvenile justice.
- e. Health and human services, including programs for drug and alcohol addiction, mental health, chronic homelessness, supportive housing, and child welfare services.

(3) A Pay for Success contract for education must comply with the specific procedures for Pay for Success contracts for public education. The procedures for Pay for Success contracts for public education must be consistent with the recommendations from a working group.

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

- (1) An agency and a program intermediary.

(2) An agency and an investor.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 6991. Pay for Success contract reserve account.

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

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

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

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

(2) After the Director approves the schedule under paragraph (d)(1) of this section, the agency head must request an appropriation from the General Assembly as part of the agency's annual budget request, in the amount required under the

schedule to meet the funding requirements under the Pay for Success contract, during each fiscal year under the term of the contract.

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

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

Section 3. The Office of Management and Budget shall form a working group for the purpose of advising the Office on the content of the procedures for Pay for Success contracts for public education. The working group shall include all of the following members or a designee appointed by a member serving by virtue of position:

- (1) A State Senator from the majority caucus, appointed the President Pro Tem of the Senate.
- (2) A State Representative from the majority caucus, appointed by the Speaker of the House.
- (3) A State Senator from the minority caucus, appointed the President Pro Tem.
- (4) A State Representative from the minority caucus, appointed by the Speaker of the House.
- (5) The Secretary of the Department of Education.
- (6) The Chair of the Delaware Early Childhood Council.
- (7) The President of the Delaware State Education Association.
- (8) The Executive Director of the Delaware Association of School Administrators.
- (9) The Executive Director of the Delaware School Board Association.
- (10) The Executive Director of the Delaware Charter Schools Network.

Approved August 8, 2018