

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2846

By: Jackson

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6 AS INTRODUCED

7 An Act relating to poor persons; amending 56 O.S.
8 2011, Section 2002, which relates to the Nursing
9 Facilities Quality of Care Fee; providing fee shall
10 not exceed certain amount if federal waiver is
11 approved; authorizing Oklahoma Health Care Authority
12 to seek approval of federal waivers to allow certain
13 assessment rate for certain facilities; providing for
14 certain assessment rate for certain facilities if
15 licensed by certain date; providing for certain
16 assessment rate for certain facilities that fail to
17 receive license by certain date; and providing an
18 effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 56 O.S. 2011, Section 2002, is
21 amended to read as follows:

22 Section 2002. A. For the purpose of providing quality care
23 enhancements, the Oklahoma Health Care Authority is authorized to
24 and shall assess a Nursing Facilities Quality of Care Fee pursuant
to this section upon each nursing facility licensed in this state.
Quality of care enhancements include, but are not limited to, the
purposes specified in this section.

1 B. As a basis for determining the Nursing Facilities Quality of
2 Care Fee assessed upon each licensed nursing facility, the ~~Oklahoma~~
3 ~~Health Care~~ Authority shall calculate a uniform per-patient day
4 rate. The rate shall be calculated by dividing six percent (6%) of
5 the total annual patient gross receipts of all licensed nursing
6 facilities in this state by the total number of patient days for all
7 licensed nursing facilities in this state. The result shall be the
8 per-patient day rate. Beginning July 15, 2004, the Nursing
9 Facilities Quality of Care Fee shall not be increased unless
10 specifically authorized by the Legislature.

11 C. Beginning on the first day after the approval of any federal
12 waivers received by the Authority pursuant to subsection N of this
13 section, the Nursing Facilities Quality of Care Fee shall not exceed
14 the amount or rate allowed by federal law.

15 D. The Nursing Facilities Quality of Care Fee owed by a
16 licensed nursing facility shall be calculated by the ~~Oklahoma Health~~
17 ~~Care~~ Authority by adding the daily patient census of a licensed
18 nursing facility, as reported by the facility for each day of the
19 month, and by multiplying the ensuing figure by the per-patient day
20 rate determined pursuant to the provisions of subsection B of this
21 section.

22 ~~D.~~ E. Each licensed nursing facility which is assessed the
23 Nursing Facilities Quality of Care Fee shall be required to file a
24 report on a monthly basis with the ~~Oklahoma Health Care~~ Authority

1 detailing the daily patient census and patient gross receipts at
2 such time and in such manner as required by the ~~Oklahoma Health Care~~
3 Authority.

4 ~~E.~~ F. 1. The Nursing Facilities Quality of Care Fee for a
5 licensed nursing facility for the period beginning October 1, 2000,
6 shall be determined using the daily patient census and annual
7 patient gross receipts figures reported to the ~~Oklahoma Health Care~~
8 Authority for the calendar year 1999 upon forms supplied by the
9 Authority.

10 2. The Nursing Facilities Quality of Care Fee for the fiscal
11 year beginning July 1, 2001, and each fiscal year thereafter shall
12 be determined by:

- 13 a. using the daily patient census and patient gross
14 receipts reports received by the Authority covering
15 the six-month period October 1 through March 31 of the
16 prior fiscal year, and
- 17 b. annualizing those figures.

18 For the 2005 fiscal year and each fiscal year thereafter, the
19 annualization of the Nursing Facilities Quality of Care Fee
20 specified in this paragraph shall be subject to the limitation in
21 subsection B of this section unless the provision of subsection C of
22 this section is met.

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1 ~~F.~~ G. The payment of the Nursing Facilities Quality of Care Fee
2 by licensed nursing facilities shall be an allowable cost for
3 Medicaid reimbursement purposes.

4 ~~G.~~ H. 1. There is hereby created in the State Treasury a
5 revolving fund to be designated the "Nursing Facility Quality of
6 Care Fund".

7 2. The fund shall be a continuing fund, not subject to fiscal
8 year limitations, and shall consist of:

- 9 a. all monies received by the Authority pursuant to this
10 section and otherwise specified or authorized by law,
- 11 b. monies received by the Authority due to federal
12 financial participation pursuant to Title XIX of the
13 Social Security Act, and
- 14 c. interest attributable to investment of money in the
15 fund.

16 3. All monies accruing to the credit of the fund are hereby
17 appropriated and shall be budgeted and expended by the Authority
18 for:

- 19 a. reimbursement of the additional costs paid to
20 Medicaid-certified nursing facilities for purposes
21 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
22 Title 63 of the Oklahoma Statutes,

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- 1 b. reimbursement of the Medicaid rate increases for
2 intermediate care facilities for the mentally retarded
3 (ICFs/MR),
- 4 c. nonemergency transportation services for Medicaid-
5 eligible nursing home clients,
- 6 d. eyeglass and denture services for Medicaid-eligible
7 nursing home clients,
- 8 e. ten additional ombudsmen employed by the Department of
9 Human Services,
- 10 f. ten additional nursing facility inspectors employed by
11 the State Department of Health,
- 12 g. pharmacy and other Medicaid services to qualified
13 Medicare beneficiaries whose incomes are at or below
14 one hundred percent (100%) of the federal poverty
15 level; provided however, pharmacy benefits authorized
16 for such qualified Medicare beneficiaries shall be
17 suspended if the federal government subsequently
18 extends pharmacy benefits to this population,
- 19 h. costs incurred by the ~~Oklahoma Health Care~~ Authority
20 in the administration of the provisions of this
21 section and any programs created pursuant to this
22 section,
- 23 i. durable medical equipment and supplies services for
24 Medicaid-eligible elderly adults, and

1 j. personal needs allowance increases for residents of
2 nursing homes and Intermediate Care Facilities for the
3 Mentally Retarded (ICFs/MR) from Thirty Dollars
4 (\$30.00) to Fifty Dollars (\$50.00) per month per
5 resident.

6 4. Expenditures from the fund shall be made upon warrants
7 issued by the State Treasurer against claims filed as prescribed by
8 law with the Director of the Office of State Finance for approval
9 and payment.

10 5. The fund and the programs specified in this section funded
11 by revenues collected from the Nursing Facilities Quality of Care
12 Fee pursuant to this section are exempt from budgetary cuts,
13 reductions, or eliminations.

14 6. The Medicaid rate increases for intermediate care facilities
15 for the mentally retarded (ICFs/MR) shall not exceed the net
16 Medicaid rate increase for nursing facilities including, but not
17 limited to, the Medicaid rate increase for which Medicaid-certified
18 nursing facilities are eligible due to the Nursing Facilities
19 Quality of Care Fee less the portion of that increase attributable
20 to treating the Nursing Facilities Quality of Care Fee as an
21 allowable cost.

22 7. The reimbursement rate for nursing facilities shall be made
23 in accordance with Oklahoma's Medicaid reimbursement rate
24 methodology and the provisions of this section.

1 8. No nursing facility shall be guaranteed, expressly or
2 otherwise, that any additional costs reimbursed to the facility will
3 equal or exceed the amount of the Nursing Facilities Quality of Care
4 Fee paid by the nursing facility.

5 ~~H.~~ I. 1. In the event that federal financial participation
6 pursuant to Title XIX of the Social Security Act is not available to
7 the Oklahoma Medicaid program, for purposes of matching expenditures
8 from the Nursing Facility Quality of Care Fund at the approved
9 federal medical assistance percentage for the applicable fiscal
10 year, the Nursing Facilities Quality of Care Fee shall be null and
11 void as of the date of the nonavailability of such federal funding,
12 through and during any period of nonavailability.

13 2. In the event of an invalidation of this section by any court
14 of last resort under circumstances not covered in subsection ~~I~~ J of
15 this section, the Nursing Facilities Quality of Care Fee shall be
16 null and void as of the effective date of that invalidation.

17 3. In the event that the Nursing Facilities Quality of Care Fee
18 is determined to be null and void for any of the reasons enumerated
19 in this subsection, any Nursing Facilities Quality of Care Fee
20 assessed and collected for any periods after such invalidation shall
21 be returned in full within sixty (60) days by the ~~Oklahoma Health~~
22 ~~Care~~ Authority to the nursing facility from which it was collected.

23 ~~I.~~ J. 1. If any provision of this section or the application
24 thereof shall be adjudged to be invalid by any court of last resort,

1 such judgment shall not affect, impair or invalidate the provisions
2 of the section, but shall be confined in its operation to the
3 provision thereof directly involved in the controversy in which such
4 judgment was rendered. The applicability of such provision to other
5 persons or circumstances shall not be affected thereby.

6 2. This subsection shall not apply to any judgment that affects
7 the rate of the Nursing Facilities Quality of Care Fee, its
8 applicability to all licensed nursing homes in the state, the usage
9 of the fee for the purposes prescribed in this section, and/or the
10 ability of the ~~Oklahoma Health Care~~ Authority to obtain full federal
11 participation to match its expenditures of the proceeds of the fee.

12 ~~J.~~ K. The ~~Oklahoma Health Care~~ Authority shall promulgate rules
13 for the implementation and enforcement of the Nursing Facilities
14 Quality of Care Fee established by this section.

15 ~~K.~~ L. The Authority shall provide for administrative penalties
16 in the event nursing facilities fail to:

- 17 1. Submit the Quality of Care Fee;
- 18 2. Submit the fee in a timely manner;
- 19 3. Submit reports as required by this section; or
- 20 4. Submit reports timely.

21 ~~H.~~ M. As used in this section:

- 22 1. "Nursing facility" means any home, establishment or
23 institution, or any portion thereof, licensed by the State

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1 Department of Health as defined in Section 1-1902 of Title 63 of the
2 Oklahoma Statutes;

3 2. "Medicaid" means the medical assistance program established
4 in Title XIX of the federal Social Security Act and administered in
5 this state by the ~~Oklahoma Health Care~~ Authority;

6 3. "Patient gross revenues" means gross revenues received in
7 compensation for services provided to residents of nursing
8 facilities including, but not limited to, client participation. The
9 term "patient gross revenues" shall not include amounts received by
10 nursing facilities as charitable contributions; and

11 4. "Additional costs paid to Medicaid-certified nursing
12 facilities under Oklahoma's Medicaid reimbursement methodology"
13 means both state and federal Medicaid expenditures including, but
14 not limited to, funds in excess of the aggregate amounts that would
15 otherwise have been paid to Medicaid-certified nursing facilities
16 under the Medicaid reimbursement methodology which have been updated
17 for inflationary, economic, and regulatory trends and which are in
18 effect immediately prior to the inception of the Nursing Facilities
19 Quality of Care Fee.

20 ~~M.~~ N. 1. The Authority is authorized to seek approval of the
21 necessary federal waivers that will allow the assessment rate
22 subject to the provision of subsection C of this section to remain
23 the same as those rates that were in effect prior to November 1,
24 2012, for all state-licensed continuum of care facilities.

1 2. Any facilities that make application to the State Department
2 of Health to become a licensed continuum of care facility no later
3 than June 1, 2012, shall be assessed at the same rate as those
4 facilities assessed pursuant to paragraph 1 of this subsection;
5 provided, that any facility making said application shall receive
6 the license on or before September 1, 2012. Any facility that fails
7 to receive such license from the State Department of Health by
8 September 1, 2012, shall be assessed at the rate established by
9 subsection C of this section subsequent to September 1, 2012.

10 O. If any provision of this section, or the application
11 thereof, is determined by any controlling federal agency, or any
12 court of last resort to prevent the state from obtaining federal
13 financial participation in the state's Medicaid program, such
14 provision shall be deemed null and void as of the date of the ~~non-~~
15 ~~availability~~ nonavailability of such federal funding and through and
16 during any period of ~~non-availability~~ nonavailability. All other
17 provisions of the bill shall remain valid and enforceable.

18 SECTION 2. This act shall become effective November 1, 2012.

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