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AN ACT
RELATING TO STATE REVENUE; ENACTING THE HEALTH CARE QUALITY
SURCHARGE ACT; IMPOSING A TEMPORARY SURCHARGE ON CERTAIN
HEALTH CARE FACILITIES; PROVIDING THAT REVENUE FROM THE
SURCHARGE SHALL BE USED TO REIMBURSE A PORTION OF THE
SURCHARGE AS A MEDICAID-ALLOWABLE COST AND TO INCREASE
MEDICAID PROVIDER REIMBURSEMENT RATES; PROVIDING A DELAYED
REPEAL OF THE ACT; MAKING THE ACT CONTINGENT ON FEDERAL
AUTHORIZATION OF THE ACT; MAKING AN APPROPRIATION; DECLARING
AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 8 of this
act may be referred to as the "Health Care Quality Surcharge
Act".

SECTION 2. PURPOSE.--The purpose of the Health Care
Quality Surcharge Act is to enhance federal financial
participation in medicaid to increase medicaid provider
reimbursement rates and support facility quality improvement
efforts in skilled nursing facilities, intermediate care
facilities and intermediate care facilities for individuals
with intellectual disabilities.

SECTION 3. DEFINITIONS.--As used in the Health Care
Quality Surcharge Act:

A. "department" means the taxation and revenue

1 department;

2 B. "health care facility" means a skilled nursing
3 facility, intermediate care facility or intermediate care
4 facility for individuals with intellectual disabilities;

5 C. "intermediate care facility" means a facility
6 with greater than sixty beds and is licensed by the
7 department of health to provide intermediate nursing care.

8 "Intermediate care facility" does not include an intermediate
9 care facility for individuals with intellectual disabilities;

10 D. "intermediate care facility for individuals
11 with intellectual disabilities" means a facility licensed by
12 the department of health to provide food, shelter, health or
13 rehabilitative and active treatment for individuals with
14 intellectual disabilities or persons with related conditions;

15 E. "medicaid" means the medical assistance program
16 established pursuant to Title 19 of the federal Social
17 Security Act and regulations promulgated pursuant to that
18 act;

19 F. "medicare" means coverage provided pursuant to
20 part A or part B of Title 18 of the federal Social Security
21 Act, as amended;

22 G. "medicare advantage" means insurance that
23 expands a medicare beneficiary's options for participation in
24 private sector health plans with networks of participating
25 providers;

1 H. "medicare part A" means insurance provided
2 through medicare for inpatient hospital, home health, skilled
3 nursing facility and hospice care;

4 I. "net revenue" means gross inpatient revenue
5 reported by a health care facility for routine nursing and
6 ancillary inpatient services provided to residents by the
7 facility, less applicable contractual allowances and bad
8 debt;

9 J. "non-medicare bed day" means a day for which
10 the primary payer is not medicare part A, medicare advantage
11 or a special needs plan. A non-medicare bed day excludes any
12 day on which a resident is not in the facility or the
13 facility is paid to hold the bed while the resident is on
14 leave;

15 K. "resident day" means a calendar day of care
16 provided to a resident in a health care facility, including
17 the day of admission and not including the day of discharge;
18 provided that admission and discharge occurring on the same
19 day shall constitute one resident day;

20 L. "skilled nursing facility" means a facility
21 with greater than sixty beds and is licensed by the
22 department of health to provide skilled nursing services; and

23 M. "special needs plan" means a specific type of
24 medicare advantage plan that limits membership to individuals
25 with specific diseases or characteristics.

1 SECTION 4. HEALTH CARE QUALITY SURCHARGE--RATE

2 CALCULATION--DATE PAYMENT DUE--EXCEPTIONS.--

3 A. A surcharge is imposed on each health care
4 facility. The surcharge shall be per day for each
5 non-medicare bed day. The rate of the surcharge shall be
6 annually calculated by the human services department pursuant
7 to Subsection B of this section.

8 B. No later than sixty days following the
9 effective date of the Health Care Quality Surcharge Act and
10 by June 1 of each year thereafter, the human services
11 department shall calculate the rate of the surcharge to be
12 paid by each health care facility during the subsequent
13 fiscal year and shall notify the taxation and revenue
14 department and each such health care facility of the
15 applicable rates. In calculating the rates, the human
16 services department shall:

17 (1) set a uniform rate per non-medicare day
18 in health care facilities not to exceed the maximum allowed
19 by federal law governing the approval of the state medicaid
20 plan or any waiver from that plan;

21 (2) structure the rates for each skilled
22 nursing facility and intermediate care facility so that the
23 total estimated revenue received in the subsequent fiscal
24 year from all those facilities will equal six percent of the
25 net revenue, calculated on an accrual basis, received in the

1 aggregate by those health care facilities in the previous
2 calendar year; and

3 (3) structure the rates for each
4 intermediate care facility for individuals with intellectual
5 disabilities so that the total estimated revenue received in
6 the subsequent fiscal year from all those facilities will
7 equal six percent of the net revenue, calculated on an
8 accrual basis, received in the aggregate by all those
9 facilities in the previous calendar year.

10 C. If the rate of net revenue provided in
11 Paragraph (2) or (3) of Subsection B of this section exceeds
12 the maximum percentage of net revenue for all health care
13 facilities allowed by Section 1903(w)(4) of the federal
14 Social Security Act, as that section may be amended or
15 renumbered, the rate of the health care quality surcharge
16 shall be reduced to a percentage that will equal, but not
17 exceed, the maximum percentage allowed by that federal law.

18 D. If the rate of net revenue provided in
19 Paragraph (3) of Subsection B of this section results in
20 medicaid fee-for-service and medicaid managed care
21 reimbursement rates that exceed the upper payment limits
22 allowed by Section 1902(a)(30)(A) of the federal Social
23 Security Act, as that section may be amended or renumbered,
24 the rate of the health care quality surcharge shall be
25 reduced to a percentage that will result in reimbursement

1 rates that equal, but do not exceed, those limits.

2 E. No later than thirty days following the
3 effective date of the Health Care Quality Surcharge Act, a
4 health care facility shall report to the human services
5 department the number of resident days provided by the health
6 care facility, broken down by payer, and the net revenue
7 earned by the health care facility for each of the most
8 recent four calendar quarters available. On each January 1,
9 April 1, July 1 and October 1 thereafter, a health care
10 facility shall report to the human services department the
11 number of resident days provided by the health care facility,
12 broken down by payer, and the net revenue earned by the
13 health care facility for the calendar quarter prior to the
14 previous quarter.

15 F. The surcharge imposed pursuant to this section
16 may be referred to as the "health care quality surcharge".
17 Initial payment is due no earlier than thirty days after the
18 effective date of the Health Care Quality Surcharge Act.
19 Thereafter, the surcharge shall be remitted to the department
20 on or before the twenty-fifth day of the month following the
21 month for which the taxable event occurs.

22 G. The health care quality surcharge shall not
23 apply to, and the calculation pursuant to Paragraph (2) of
24 Subsection B of this section shall not include net revenues
25 from, health care facilities for which imposing the surcharge

1 would jeopardize approval or renewal of a waiver, state plan
2 amendment or other federal authorization necessary to
3 implement the provisions of the Health Care Quality Surcharge
4 Act. The human services department shall promptly notify the
5 taxation and revenue department of such facilities when
6 identified.

7 SECTION 5. EXEMPTION.--A health care facility with more
8 than ninety thousand annual medicaid-financed bed days may
9 claim an exemption in an amount equal to sixty-five percent
10 of the health care quality surcharge due in a reporting
11 period.

12 SECTION 6. HEALTH CARE FACILITY FUND--DISABILITY HEALTH
13 CARE FACILITY FUND.--

14 A. The "health care facility fund" and the
15 "disability health care facility fund" are created in the
16 state treasury. The funds shall consist of appropriations,
17 distributions, transfers, gifts, grants, donations and
18 bequests made to the funds and income from the investment of
19 the funds. The funds shall be administered by the human
20 services department, and money in the funds is subject to
21 appropriation by the legislature to the human services
22 department to carry out the purposes provided in this
23 section. Money in the funds shall be disbursed on warrants
24 signed by the secretary of finance and administration
25 pursuant to vouchers signed by the secretary of human

1 services or the secretary's authorized representative. Any
2 balance remaining in the funds at the end of a fiscal year
3 shall not revert to the general fund.

4 B. At least eighty percent of the money in the
5 health care facility fund shall be used for the following
6 purposes and in the following order of priority for skilled
7 nursing facilities and intermediate care facilities:

8 (1) to reimburse those facilities the
9 medicaid share of the health care quality surcharge as a
10 pass-through, medicaid-allowable cost; and

11 (2) to increase each facility's respective
12 medicaid fee-for-service and medicaid managed care
13 reimbursement rates above those in effect on July 1, 2018.

14 C. The disability health care facility fund shall
15 be used for the following purposes and in the following order
16 of priority for intermediate care facilities for individuals
17 with intellectual disabilities:

18 (1) to reimburse those facilities the
19 medicaid share of the health care quality surcharge as a
20 pass-through, medicaid-allowable cost; and

21 (2) to increase each facility's respective
22 medicaid fee-for-service and medicaid managed care
23 reimbursement rates above those in effect on July 1, 2018.

24 D. No more than twenty percent of the money in the
25 health care facility fund or the disability health care

1 facility fund may be used by the human services department to
2 administer the state medicaid program for purposes other than
3 those provided in Subsection B of this section.

4 SECTION 7. ADMINISTRATION AND ENFORCEMENT OF ACT.--The
5 department shall interpret the provisions of the Health Care
6 Quality Surcharge Act. The department shall administer and
7 enforce the collection of the health care quality surcharge,
8 and the Tax Administration Act applies to the administration
9 and enforcement of that surcharge.

10 SECTION 8. DEPARTMENTS REQUIRED TO PROMULGATE RULES.--
11 The taxation and revenue department and the human services
12 department shall promulgate rules to carry out the provisions
13 of the Health Care Quality Surcharge Act, as appropriate for
14 each department, including the rate calculations required to
15 be performed by the human services department, and the
16 notification from that department to the taxation and revenue
17 department pursuant to Section 4 of the Health Care Quality
18 Surcharge Act.

19 SECTION 9. A new section of the Tax Administration Act
20 is enacted to read:

21 "DISTRIBUTION--HEALTH CARE QUALITY SURCHARGE--HEALTH
22 CARE FACILITY FUND--DISABILITY HEALTH CARE FACILITY FUND.--

23 A. A distribution pursuant to Section 7-1-6.1
24 NMSA 1978 shall be made to the health care facility fund in
25 an amount equal to the net receipts attributable to the

1 health care quality surcharge imposed on skilled nursing
2 facilities and intermediate care facilities pursuant to the
3 Health Care Quality Surcharge Act.

4 B. A distribution pursuant to Section 7-1-6.1
5 NMSA 1978 shall be made to the disability health care
6 facility fund in an amount equal to the net receipts
7 attributable to the health care quality surcharge imposed on
8 intermediate care facilities for individuals with
9 intellectual disabilities pursuant to the Health Care Quality
10 Surcharge Act."

11 SECTION 10. Section 7-1-2 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 2, as amended) is amended to read:

13 "7-1-2. APPLICABILITY.--The Tax Administration Act
14 applies to and governs:

15 A. the administration and enforcement of the
16 following taxes or tax acts as they now exist or may
17 hereafter be amended:

- 18 (1) Income Tax Act;
- 19 (2) Withholding Tax Act;
- 20 (3) Venture Capital Investment Act;
- 21 (4) Gross Receipts and Compensating Tax Act
22 and any state gross receipts tax;
- 23 (5) Liquor Excise Tax Act;
- 24 (6) Local Liquor Excise Tax Act;
- 25 (7) any municipal local option gross

1 receipts tax;

2 (8) any county local option gross receipts

3 tax;

4 (9) Special Fuels Supplier Tax Act;

5 (10) Gasoline Tax Act;

6 (11) petroleum products loading fee, which

7 fee shall be considered a tax for the purpose of the Tax

8 Administration Act;

9 (12) Alternative Fuel Tax Act;

10 (13) Cigarette Tax Act;

11 (14) Estate Tax Act;

12 (15) Railroad Car Company Tax Act;

13 (16) Investment Credit Act, rural job tax

14 credit, Laboratory Partnership with Small Business Tax Credit

15 Act, Technology Jobs and Research and Development Tax Credit

16 Act, Film Production Tax Credit Act, Affordable Housing Tax

17 Credit Act and high-wage jobs tax credit;

18 (17) Corporate Income and Franchise Tax Act;

19 (18) Uniform Division of Income for Tax

20 Purposes Act;

21 (19) Multistate Tax Compact;

22 (20) Tobacco Products Tax Act;

23 (21) the telecommunications relay service

24 surcharge imposed by Section 63-9F-11 NMSA 1978, which

25 surcharge shall be considered a tax for the purposes of the

1 Tax Administration Act; and

2 (22) the Health Care Quality Surcharge Act;

3 B. the administration and enforcement of the
4 following taxes, surtaxes, advanced payments or tax acts as
5 they now exist or may hereafter be amended:

6 (1) Resources Excise Tax Act;

7 (2) Severance Tax Act;

8 (3) any severance surtax;

9 (4) Oil and Gas Severance Tax Act;

10 (5) Oil and Gas Conservation Tax Act;

11 (6) Oil and Gas Emergency School Tax Act;

12 (7) Oil and Gas Ad Valorem Production Tax

13 Act;

14 (8) Natural Gas Processors Tax Act;

15 (9) Oil and Gas Production Equipment Ad

16 Valorem Tax Act;

17 (10) Copper Production Ad Valorem Tax Act;

18 (11) any advance payment required to be made

19 by any act specified in this subsection, which advance
20 payment shall be considered a tax for the purposes of the Tax
21 Administration Act;

22 (12) Enhanced Oil Recovery Act;

23 (13) Natural Gas and Crude Oil Production

24 Incentive Act; and

25 (14) intergovernmental production tax credit

1 and intergovernmental production equipment tax credit;

2 C. the administration and enforcement of the
3 following taxes, surcharges, fees or acts as they now exist
4 or may hereafter be amended:

5 (1) Weight Distance Tax Act;

6 (2) the workers' compensation fee authorized
7 by Section 52-5-19 NMSA 1978, which fee shall be considered a
8 tax for purposes of the Tax Administration Act;

9 (3) Uniform Unclaimed Property Act (1995);

10 (4) 911 emergency surcharge and the network
11 and database surcharge, which surcharges shall be considered
12 taxes for purposes of the Tax Administration Act;

13 (5) the solid waste assessment fee
14 authorized by the Solid Waste Act, which fee shall be
15 considered a tax for purposes of the Tax Administration Act;

16 (6) the water conservation fee imposed by
17 Section 74-1-13 NMSA 1978, which fee shall be considered a
18 tax for the purposes of the Tax Administration Act; and

19 (7) the gaming tax imposed pursuant to the
20 Gaming Control Act; and

21 D. the administration and enforcement of all other
22 laws, with respect to which the department is charged with
23 responsibilities pursuant to the Tax Administration Act, but
24 only to the extent that the other laws do not conflict with
25 the Tax Administration Act."

1 SECTION 11. TEMPORARY PROVISION--HUMAN SERVICES
2 DEPARTMENT SHALL APPLY FOR AUTHORIZATION.--On or before
3 thirty days from the effective date of this section, the
4 secretary of human services shall seek a waiver, state plan
5 amendment or whatever federal authorization is necessary to
6 implement the provisions of the Health Care Quality Surcharge
7 Act.

8 SECTION 12. DELAYED REPEAL.--Sections 1 through 9 of
9 this act are repealed effective January 1, 2022.

10 SECTION 13. CONTINGENT EFFECTIVE DATE.--The effective
11 date of the provisions of Sections 1 through 9 of this act is
12 the first day of the month following the day that the
13 secretary of human services certifies to the secretary of
14 taxation and revenue, the secretary of finance and
15 administration, the legislative council service and the New
16 Mexico compilation commission that the federal centers for
17 medicare and medicaid services has approved the authorization
18 sought by the secretary of human services pursuant to Section
19 11 of this act.

20 SECTION 14. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect
22 immediately.

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