

SENATE BILL 192

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Gerald Ortiz y Pino and Steven P. Neville

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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:

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

SECTION 2. [NEW MATERIAL] 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. [NEW MATERIAL] DEFINITIONS.--As used in the Health Care Quality Surcharge Act:

- A. "department" means the taxation and revenue department;
- B. "health care facility" means a skilled nursing facility, intermediate care facility or intermediate care facility for individuals with intellectual disabilities;
- C. "intermediate care facility" means a facility with greater than sixty beds SFC→that and ←SFC is licensed by the department of health to provide intermediate nursing care. "Intermediate care facility" does not include an intermediate care facility for individuals with intellectual disabilities;
- D. "intermediate care facility for individuals with intellectual disabilities" means a facility licensed by the department of health to provide food, shelter, health or

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rehabilitative and active treatment for individuals with intellectual disabilities or persons with related conditions;

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

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

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

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

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

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

K. "resident day" means a calendar day of care

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provided to a resident in a health care facility, including the day of admission and not including the day of discharge; provided that admission and discharge occurring on the same day shall constitute one resident day;

L. "skilled nursing facility" means a facility with greater than sixty beds SFC→~~that~~ and ←SFC is licensed by the department of health to provide skilled nursing services; and

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

SECTION 4. [NEW MATERIAL] HEALTH CARE QUALITY SURCHARGE--RATE CALCULATION--DATE PAYMENT DUE--EXCEPTIONS.--

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

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

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

(2) structure the rates for each skilled nursing facility and intermediate care facility so that the total estimated revenue received in the subsequent fiscal year from all those facilities will equal six percent of the net revenue, calculated on an accrual basis, received in the aggregate by those health care facilities in the previous calendar year; and

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

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

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percentage allowed by that federal law.

D. If the rate of net revenue provided in Paragraph (3) of Subsection B of this section results in medicaid fee-for-service and medicaid managed care reimbursement rates that exceed the upper payment limits allowed by Section 1902(a)(30)(A) of the federal Social Security Act, as that section may be amended or renumbered, the rate of the health care quality surcharge shall be reduced to a percentage that will result in reimbursement rates that equal, but do not exceed, those limits.

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

F. The surcharge imposed pursuant to this section may be referred to as the "health care quality surcharge". Initial payment is due no earlier than thirty days after the

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effective date of the Health Care Quality Surcharge Act. Thereafter, the surcharge shall be remitted to the department on or before the twenty-fifth day of the month following the month for which the taxable event occurs.

G. The health care quality surcharge shall not apply to, and the calculation pursuant to Paragraph (2) of Subsection B of this section shall not include net revenues from, health care facilities for which imposing the surcharge would jeopardize approval or renewal of a waiver, state plan amendment or other federal authorization necessary to implement the provisions of the Health Care Quality Surcharge Act. The human services department shall promptly notify the taxation and revenue department of such facilities when identified.

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

SECTION 6. [NEW MATERIAL] HEALTH CARE FACILITY FUND--
DISABILITY HEALTH CARE FACILITY FUND.--

A. The "health care facility fund" and the "disability health care facility fund" are created in the state treasury. The funds shall consist of appropriations, distributions, transfers, gifts, grants, donations and bequests made to the funds and income from the investment of the funds.

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The funds shall be administered by the human services department, and money in the funds is subject to appropriation by the legislature to the human services department to carry out the purposes provided in this section. Money in the funds shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of human services or the secretary's authorized representative. Any balance remaining in the funds at the end of a fiscal year shall not revert to the general fund.

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

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

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

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

(1) to reimburse those facilities the medicaid share of the health care quality surcharge as a pass-through,

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medicaid-allowable cost; and

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

D. No more than twenty percent of the money in the
health care facility fund or the disability health care
facility fund may be used by the human services department to
administer the state medicaid program for purposes other than
those provided in Subsection B of this section.

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

SECTION 8. [NEW MATERIAL] DEPARTMENTS REQUIRED TO
PROMULGATE RULES.--The taxation and revenue department and the
human services department shall promulgate rules to carry out
the provisions of the Health Care Quality Surcharge Act, as
appropriate for each department, including the rate
calculations required to be performed by the human services
department, and the notification from that department to the
taxation and revenue department pursuant to Section 4 of the
Health Care Quality Surcharge Act.

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

"[NEW MATERIAL] DISTRIBUTION--HEALTH CARE QUALITY SURCHARGE--HEALTH CARE FACILITY FUND--DISABILITY HEALTH CARE FACILITY FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care facility fund in an amount equal to the net receipts attributable to the health care quality surcharge imposed on skilled nursing facilities and intermediate care facilities pursuant to the Health Care Quality Surcharge Act.

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

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

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

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

- (1) Income Tax Act;
- (2) Withholding Tax Act;

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- (3) Venture Capital Investment Act;
- (4) Gross Receipts and Compensating Tax Act
and any state gross receipts tax;
- (5) Liquor Excise Tax Act;
- (6) Local Liquor Excise Tax Act;
- (7) any municipal local option gross receipts
tax;
- (8) any county local option gross receipts
tax;
- (9) Special Fuels Supplier Tax Act;
- (10) Gasoline Tax Act;
- (11) petroleum products loading fee, which fee
shall be considered a tax for the purpose of the Tax
Administration Act;
- (12) Alternative Fuel Tax Act;
- (13) Cigarette Tax Act;
- (14) Estate Tax Act;
- (15) Railroad Car Company Tax Act;
- (16) Investment Credit Act, rural job tax
credit, Laboratory Partnership with Small Business Tax Credit
Act, Technology Jobs and Research and Development Tax Credit
Act, Film Production Tax Credit Act, Affordable Housing Tax
Credit Act and high-wage jobs tax credit;
- (17) Corporate Income and Franchise Tax Act;
- (18) Uniform Division of Income for Tax

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Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act; [~~and~~]

(21) the telecommunications relay service

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

surcharge shall be considered a tax for the purposes of the Tax Administration Act; and

(22) the Health Care Quality Surcharge Act;

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

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad

Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made

by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax

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Administration Act;

(12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production

Incentive Act; and

(14) intergovernmental production tax credit
and intergovernmental production equipment tax credit;

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

(1) Weight Distance Tax Act;

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

(3) Uniform Unclaimed Property Act (1995);

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

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

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

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

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

SECTION 11. TEMPORARY PROVISION--HUMAN SERVICES

DEPARTMENT SHALL APPLY FOR AUTHORIZATION.--On or before thirty days from the effective date of this section, the secretary of human services shall seek a waiver, state plan amendment or whatever federal authorization is necessary to implement the provisions of the Health Care Quality Surcharge Act.

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

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

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