

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 246

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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 AN APPROPRIATION.

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

**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

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underscored material = new  
[bracketed material] = delete

1 provider reimbursement rates and support facility quality  
2 improvement efforts in skilled nursing facilities, intermediate  
3 care facilities and intermediate care facilities for  
4 individuals with intellectual disabilities.

5 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
6 Health Care Quality Surcharge Act:

7 A. "department" means the taxation and revenue  
8 department;

9 B. "health care facility" means a skilled nursing  
10 facility, intermediate care facility or intermediate care  
11 facility for individuals with intellectual disabilities;

12 C. "intermediate care facility" means a facility  
13 with greater than sixty beds and is licensed by the department  
14 of health to provide intermediate nursing care. "Intermediate  
15 care facility" does not include an intermediate care facility  
16 for individuals with intellectual disabilities;

17 D. "intermediate care facility for individuals with  
18 intellectual disabilities" means a facility licensed by the  
19 department of health to provide food, shelter, health or  
20 rehabilitative and active treatment for individuals with  
21 intellectual disabilities or persons with related conditions;

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

25 F. "medicare" means coverage provided pursuant to

1 part A or part B of Title 18 of the federal Social Security  
2 Act, as amended;

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

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

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

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

19 K. "resident day" means a calendar day of care  
20 provided to a resident in a health care facility, including the  
21 day of admission and not including the day of discharge;  
22 provided that admission and discharge occurring on the same day  
23 shall constitute one resident day;

24 L. "skilled nursing facility" means a facility with  
25 greater than sixty beds and is licensed by the department of

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1 health to provide skilled nursing services; and

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

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

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

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

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

24 (2) structure the rates for each skilled  
25 nursing facility and intermediate care facility so that the

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1 total estimated revenue received in the subsequent fiscal year  
2 from all those facilities will equal six percent of the net  
3 revenue received in the aggregate by those health care  
4 facilities in the previous calendar year; and

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

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

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

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1 will result in reimbursement rates that equal, but do not  
2 exceed, those limits.

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

15 F. The surcharge imposed pursuant to this section  
16 may be referred to as the "health care quality surcharge".  
17 Health care quality surcharge payments are due quarterly by the  
18 twenty-fifth day of the month subsequent to the end of each  
19 calendar quarter based upon the non-medicare bed days reported  
20 on the most recently filed calendar quarter report required  
21 pursuant to Subsection E of this section. Initial health care  
22 quality surcharge payments shall be based upon the non-medicare  
23 bed days reported on the most recently filed calendar quarter  
24 report required pursuant to Subsection E of this section  
25 closest to the effective date of the Health Care Quality

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1 Surcharge Act.

2           SECTION 5. [NEW MATERIAL] EXEMPTION.--A health care  
3 facility with more than ninety thousand annual medicaid-  
4 financed bed days may claim an exemption in an amount equal to  
5 sixty-five percent of the health care quality surcharge due in  
6 a reporting period. The percentage and annual medicaid-  
7 financed bed days threshold may be modified by rule promulgated  
8 by the human services department, if necessary, for approval of  
9 the surcharge program by the federal centers for medicare and  
10 medicaid services.

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

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

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1 shall not revert to the general fund.

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

6 (1) to increase per diem rates to those  
7 facilities for the medicaid share of the health care quality  
8 surcharge as a pass-through, medicaid-allowable cost;

9 (2) to annually increase, on a per diem basis,  
10 as provided by rule promulgated by the human services  
11 department, each facility's respective medicaid fee-for-service  
12 and medicaid managed care reimbursement rates above those in  
13 effect upon the effective date of the Health Care Quality  
14 Surcharge Act and in subsequent years thereafter by at least  
15 the rate of nursing home inflation for the rate year as  
16 published on behalf of the federal centers for medicare and  
17 medicaid services; and

18 (3) to provide financial incentives in the  
19 form of supplemental payments, paid no less frequently than  
20 quarterly, based upon performance data to improve the quality  
21 of skilled nursing facilities and intermediate care facilities.

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

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1 (1) to increase per diem rates to those  
2 facilities for the medicaid share of the health care quality  
3 surcharge as a pass-through, medicaid-allowable cost; and

4 (2) to increase each facility's respective  
5 medicaid fee-for-service reimbursement rates above those in  
6 effect on the effective date of the Health Care Quality  
7 Surcharge Act.

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

13 E. The initial health care quality surcharge  
14 payment by health care facilities for the first calendar  
15 quarter ending after the effective date of the Health Care  
16 Quality Surcharge Act shall be made twenty-five days after the  
17 date the federal centers for medicare and medicaid services  
18 approve the authorization sought by the secretary of human  
19 services pursuant to Section 11 of this 2019 act.

20 F. The initial quarterly supplemental payments to  
21 health care facilities made pursuant to Subsection B of this  
22 section for the first calendar quarter ending after the  
23 effective date of the Health Care Quality Surcharge Act shall  
24 be made thirty days after the date the federal centers for  
25 medicare and medicaid services approve the authorization sought

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1 by the secretary of human services pursuant to Section 11 of  
2 this 2019 act. The initial per diem payments to health care  
3 facilities made pursuant to Subsections B and C of this section  
4 shall be made thirty days after the date the federal centers  
5 for medicare and medicaid services approve the authorization  
6 sought by the secretary of human services pursuant to Section  
7 11 of this 2019 act.

8 G. Subsequent health care quality surcharge  
9 payments by health care facilities will be made twenty-five  
10 days after the end of each calendar quarter for that calendar  
11 quarter. Subsequent supplemental payments made to health care  
12 facilities pursuant to Subsection B of this section shall be  
13 made thirty days after the end of each calendar quarter for  
14 that calendar quarter.

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

21 SECTION 8. [NEW MATERIAL] DEPARTMENTS REQUIRED TO  
22 PROMULGATE RULES.--The taxation and revenue department and the  
23 human services department shall promulgate rules to carry out  
24 the provisions of the Health Care Quality Surcharge Act, as  
25 appropriate for each department, including the rate

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1 calculations required to be performed by the human services  
 2 department, and the notification from that department to the  
 3 taxation and revenue department pursuant to Section 4 of the  
 4 Health Care Quality Surcharge Act.

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

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

10 A. A distribution pursuant to Section 7-1-6.1 NMSA  
 11 1978 shall be made to the health care facility fund in an  
 12 amount equal to the net receipts attributable to the health  
 13 care quality surcharge imposed on skilled nursing facilities  
 14 and intermediate care facilities pursuant to the Health Care  
 15 Quality Surcharge Act.

16 B. A distribution pursuant to Section 7-1-6.1 NMSA  
 17 1978 shall be made to the disability health care facility fund  
 18 in an amount equal to the net receipts attributable to the  
 19 health care quality surcharge imposed on intermediate care  
 20 facilities for individuals with intellectual disabilities  
 21 pursuant to the Health Care Quality Surcharge Act."

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

24 "7-1-2. APPLICABILITY.--The Tax Administration Act  
 25 applies to and governs:

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

- 4                   (1) Income Tax Act;
- 5                   (2) Withholding Tax Act;
- 6                   (3) Venture Capital Investment Act;
- 7                   (4) Gross Receipts and Compensating Tax Act  
8 and any state gross receipts tax;
- 9                   (5) Liquor Excise Tax Act;
- 10                  (6) Local Liquor Excise Tax Act;
- 11                  (7) any municipal local option gross receipts  
12 tax;
- 13                  (8) any county local option gross receipts  
14 tax;
- 15                  (9) Special Fuels Supplier Tax Act;
- 16                  (10) Gasoline Tax Act;
- 17                  (11) petroleum products loading fee, which fee  
18 shall be considered a tax for the purpose of the Tax  
19 Administration Act;
- 20                  (12) Alternative Fuel Tax Act;
- 21                  (13) Cigarette Tax Act;
- 22                  (14) Estate Tax Act;
- 23                  (15) Railroad Car Company Tax Act;
- 24                  (16) Investment Credit Act, rural job tax  
25 credit, Laboratory Partnership with Small Business Tax Credit

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1 Act, Technology Jobs and Research and Development Tax Credit  
 2 Act, Film Production Tax Credit Act, Affordable Housing Tax  
 3 Credit Act and high-wage jobs tax credit;

4 (17) Corporate Income and Franchise Tax Act;

5 (18) Uniform Division of Income for Tax

6 Purposes Act;

7 (19) Multistate Tax Compact;

8 (20) Tobacco Products Tax Act; ~~and~~

9 (21) the telecommunications relay service  
 10 surcharge imposed by Section 63-9F-11 NMSA 1978, which  
 11 surcharge shall be considered a tax for the purposes of the Tax  
 12 Administration Act; and

13 (22) the Health Care Quality Surcharge Act;

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

17 (1) Resources Excise Tax Act;

18 (2) Severance Tax Act;

19 (3) any severance surtax;

20 (4) Oil and Gas Severance Tax Act;

21 (5) Oil and Gas Conservation Tax Act;

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

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

24 (8) Natural Gas Processors Tax Act;

25 (9) Oil and Gas Production Equipment Ad

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1 Valorem Tax Act;

2 (10) Copper Production Ad Valorem Tax Act;

3 (11) any advance payment required to be made  
4 by any act specified in this subsection, which advance payment  
5 shall be considered a tax for the purposes of the Tax

6 Administration Act;

7 (12) Enhanced Oil Recovery Act;

8 (13) Natural Gas and Crude Oil Production  
9 Incentive Act; and

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

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

15 (1) Weight Distance Tax Act;

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

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

20 (4) 911 emergency surcharge and the network  
21 and database surcharge, which surcharges shall be considered  
22 taxes for purposes of the Tax Administration Act;

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

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

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

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

11 **SECTION 11. TEMPORARY PROVISION--HUMAN SERVICES**

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

17 **SECTION 12. DELAYED REPEAL.--**Sections 1 through 9 of this  
18 act are repealed effective January 1, 2023.

19 **SECTION 13. EFFECTIVE DATE.--**The effective date of the  
20 provisions of this act is July 1, 2019.