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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 AN APPROPRIATION.

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
department;
- B. "health care facility" means a skilled nursing

1 facility, intermediate care facility or intermediate care
2 facility for individuals with intellectual disabilities;

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

6 "Intermediate care facility" does not include an intermediate
7 care facility for individuals with intellectual disabilities;

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

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

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

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

24 H. "medicare part A" means insurance provided
25 through medicare for inpatient hospital, home health, skilled

1 nursing facility and hospice care;

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

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

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

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

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

24 SECTION 4. HEALTH CARE QUALITY SURCHARGE--RATE
25 CALCULATION--DATE PAYMENT DUE.--

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

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

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

19 (2) structure the rates for each skilled
20 nursing facility and intermediate care facility so that the
21 total estimated revenue received in the subsequent fiscal
22 year from all those facilities will equal six percent of the
23 net revenue received in the aggregate by those health care
24 facilities in the previous calendar year; and

25 (3) structure the rates for each

1 intermediate care facility for individuals with intellectual
2 disabilities so that the total estimated revenue received in
3 the subsequent fiscal year from all those facilities will
4 equal six percent of the net revenue received in the
5 aggregate by all those facilities in the previous calendar
6 year.

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

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

24 E. No later than thirty days following the
25 effective date of the Health Care Quality Surcharge Act, a

1 health care facility shall report to the human services
2 department the number of resident days provided by the health
3 care facility, broken down by payer, and the net revenue
4 earned by the health care facility for each of the most
5 recent four calendar quarters available. On each January 1,
6 April 1, July 1 and October 1 thereafter, a health care
7 facility shall report to the human services department the
8 number of resident days provided by the health care facility,
9 broken down by payer, and the net revenue earned by the
10 health care facility for the calendar quarter prior to the
11 previous quarter.

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

24 SECTION 5. EXEMPTION.--A health care facility with more
25 than ninety thousand annual medicaid-financed bed days may

1 claim an exemption in an amount equal to sixty-five percent
2 of the health care quality surcharge due in a reporting
3 period. The percentage and annual medicaid-financed bed days
4 threshold may be modified by rule promulgated by the human
5 services department, if necessary, for approval of the
6 surcharge program by the federal centers for medicare and
7 medicaid services.

8 SECTION 6. HEALTH CARE FACILITY FUND--DISABILITY HEALTH
9 CARE FACILITY FUND.--

10 A. The "health care facility fund" and the
11 "disability health care facility fund" are created in the
12 state treasury. The funds consist of appropriations,
13 distributions, transfers, gifts, grants, donations and
14 bequests made to the funds and income from the investment of
15 the funds. The funds shall be administered by the human
16 services department, and money in the funds is subject to
17 appropriation by the legislature to the human services
18 department to carry out the purposes provided in this
19 section. Money in the funds shall be disbursed on warrants
20 signed by the secretary of finance and administration
21 pursuant to vouchers signed by the secretary of human
22 services or the secretary's authorized representative. Any
23 balance remaining in the funds at the end of a fiscal year
24 shall not revert to the general fund.

25 B. At least eighty percent of the money in the

1 health care facility fund shall be used for the following
2 purposes and in the following order of priority for skilled
3 nursing facilities and intermediate care facilities:

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

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

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

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

25 (1) to increase per diem rates to those

1 facilities for the medicaid share of the health care quality
2 surcharge as a pass-through, medicaid-allowable cost; and

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

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

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

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

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

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

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

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

1 notification from that department to the taxation and revenue
2 department pursuant to Section 4 of the Health Care Quality
3 Surcharge Act.

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

6 "DISTRIBUTION--HEALTH CARE QUALITY SURCHARGE--HEALTH
7 CARE FACILITY FUND--DISABILITY HEALTH CARE FACILITY FUND.--

8 A. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the health care facility fund in an
10 amount equal to the net receipts attributable to the health
11 care quality surcharge imposed on skilled nursing facilities
12 and intermediate care facilities pursuant to the Health Care
13 Quality Surcharge Act.

14 B. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the disability health care facility
16 fund in an amount equal to the net receipts attributable to
17 the health care quality surcharge imposed on intermediate
18 care facilities for individuals with intellectual
19 disabilities pursuant to the Health Care Quality Surcharge
20 Act."

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

23 "7-1-2. APPLICABILITY.--The Tax Administration Act
24 applies to and governs:

25 A. the administration and enforcement of the

1 following taxes or tax acts as they now exist or may
2 hereafter be amended:

- 3 (1) Income Tax Act;
- 4 (2) Withholding Tax Act;
- 5 (3) Venture Capital Investment Act;
- 6 (4) Gross Receipts and Compensating Tax Act

7 and any state gross receipts tax;

- 8 (5) Liquor Excise Tax Act;
- 9 (6) Local Liquor Excise Tax Act;
- 10 (7) any municipal local option gross

11 receipts tax;

- 12 (8) any county local option gross receipts
- 13 tax;

- 14 (9) Special Fuels Supplier Tax Act;
- 15 (10) Gasoline Tax Act;
- 16 (11) petroleum products loading fee, which
- 17 fee shall be considered a tax for the purpose of the Tax
- 18 Administration Act;

- 19 (12) Alternative Fuel Tax Act;
- 20 (13) Cigarette Tax Act;
- 21 (14) Estate Tax Act;
- 22 (15) Railroad Car Company Tax Act;
- 23 (16) Investment Credit Act, rural job tax
- 24 credit, Laboratory Partnership with Small Business Tax Credit
- 25 Act, Technology Jobs and Research and Development Tax Credit

1 Act, Film Production Tax Credit Act, Affordable Housing Tax
2 Credit Act and high-wage jobs tax credit;

3 (17) Corporate Income and Franchise Tax Act;

4 (18) Uniform Division of Income for Tax

5 Purposes Act;

6 (19) Multistate Tax Compact;

7 (20) Tobacco Products Tax Act;

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

12 (22) the Health Care Quality Surcharge Act;

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

16 (1) Resources Excise Tax Act;

17 (2) Severance Tax Act;

18 (3) any severance surtax;

19 (4) Oil and Gas Severance Tax Act;

20 (5) Oil and Gas Conservation Tax Act;

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

22 (7) Oil and Gas Ad Valorem Production Tax

23 Act;

24 (8) Natural Gas Processors Tax Act;

25 (9) Oil and Gas Production Equipment Ad

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
5 payment 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
14 or 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
24 authorized by the Solid Waste Act, which fee shall be
25 considered a tax for purposes of the Tax Administration Act;

1 (6) the water conservation fee imposed by
2 Section 74-1-13 NMSA 1978, which fee shall be considered a
3 tax 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
10 the 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
14 of human services shall seek a waiver, a state plan amendment
15 or whatever federal authorization is necessary to implement
16 the provisions of the Health Care Quality Surcharge Act.

17 SECTION 12. DELAYED REPEAL.--Sections 1 through 9 of
18 this 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. _____

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