# An Act

ENROLLED HOUSE
BILL NO. 2270

By: Cox, Jackson, Hilliard, McNiel, Ownbey, Williams, Sherrer and Hoskin of the House

and

Johnson (Rob), Burrage and Ivester of the Senate

An Act relating to poor persons; amending 56 O.S. 2011, Section 2002, which relates to the Nursing Facilities Quality of Care Fee; providing fee shall not exceed certain amount if federal waiver is approved; providing for determination of fee; providing for certain assessment rate for certain facilities if federal waiver is approved; providing for certain assessment rate for certain facilities if licensed by certain date; providing for certain assessment rate for certain facilities that fail to receive license by certain date; and providing an effective date.

SUBJECT: Nursing Facilities Quality of Care Fee

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

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

Section 2002. A. For the purpose of providing quality care enhancements, the Oklahoma Health Care Authority is authorized to 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.

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

C. Pursuant to any approved Medicaid waiver and pursuant to subsection N of this section, the Nursing Facilities Quality of Care Fee shall not exceed the amount or rate allowed by federal law for nursing home licensed bed days.

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

~~D.~~ E. Each licensed nursing facility which is assessed the Nursing Facilities Quality of Care Fee shall be required to file a report on a monthly basis with the ~~Oklahoma Health Care~~ Authority detailing the daily patient census and patient gross receipts at such time and in such manner as required by the ~~Oklahoma Health Care~~ Authority.

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

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

a. using the daily patient census and patient gross receipts reports received by the Authority ~~covering~~

~~the six-month period October 1 through March 31 of the prior fiscal year~~ for the most recent available twelve (12) months, and

b. annualizing those figures.

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

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

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

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

a. all monies received by the Authority pursuant to this section and otherwise specified or authorized by law,

b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and

c. interest attributable to investment of money in the fund.

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

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

b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),

c. nonemergency transportation services for Medicaid-eligible nursing home clients,

d. eyeglass and denture services for Medicaid-eligible nursing home clients,

e. ten additional ombudsmen employed by the Department of Human Services,

f. ten additional nursing facility inspectors employed by the State Department of Health,

g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,

h. costs incurred by the ~~Oklahoma Health Care~~ Authority in the administration of the provisions of this section and any programs created pursuant to this section,

i. durable medical equipment and supplies services for Medicaid-eligible elderly adults, and

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

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

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

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

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

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

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

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

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

~~I.~~ J. 1. If any provision of this section or the application thereof shall be adjudged to be invalid by any court of last resort, such judgment shall not affect, impair or invalidate the provisions of the section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such

judgment was rendered. The applicability of such provision to other persons or circumstances shall not be affected thereby.

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

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

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

1. Submit the Quality of Care Fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by this section; or

4. Submit reports timely.

~~L.~~ M. As used in this section:

1. "Nursing facility" means any home, establishment or institution, or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

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

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

4. "Additional costs paid to Medicaid-certified nursing facilities under Oklahoma's Medicaid reimbursement methodology" means both state and federal Medicaid expenditures including, but

not limited to, funds in excess of the aggregate amounts that would otherwise have been paid to Medicaid-certified nursing facilities under the Medicaid reimbursement methodology which have been updated for inflationary, economic, and regulatory trends and which are in effect immediately prior to the inception of the Nursing Facilities Quality of Care Fee.

~~M.~~ N. 1. As per any approved federal Medicaid waiver, the assessment rate subject to the provision of subsection C of this section is to remain the same as those rates that were in effect prior to January 1, 2012, for all state-licensed continuum of care facilities.

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

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

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

Passed the House of Representatives the 14th day of March, 2012.

Presiding Officer of the House of Representatives

Passed the Senate the 17th day of April, 2012.

Presiding Officer of the Senate

**OFFICE OF THE GOVERNOR**

**Received by the Governor this** 18th

**day of** April, **20** 12,

**at** 1:03 **o'clock** P **M.**

**By:** Jessica R Byers

**Approved by the Governor of the State of Oklahoma the** 24th **day of** April, **20** 12, **at** 2:53 **o'clock** PM.

**Governor of the State of Oklahoma**

**OFFICE OF THE SECRETARY OF STATE**

**Received by the Secretary of State this**

24th **day of** April, **20** 12,

**at** 4:06 **o'clock** P **M.**

**By:** Michelle R Day