

An Act

ENROLLED SENATE
BILL NO. 237

By: Simpson, Ivester, Johnson
(Constance) and Fields of
the Senate

and

Hardin of the House

An act relating to the Nursing Facilities Quality of Care Fee; amending 56 O.S. 2011, Section 2002, as last amended by Section 38 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, which relates to the Nursing Facilities Quality of Care Fee; exempting facilities operated by the Oklahoma Department of Veterans Affairs; amending 63 O.S. 2011, Sections 1-890.4 and 1-1905, which relate to fees; exempting facilities operated by the Oklahoma Department of Veterans Affairs; and declaring an emergency.

SUBJECT: Exempting certain facilities operated by the Oklahoma Department of Veterans Affairs from certain fees

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

SECTION 1. AMENDATORY 56 O.S. 2011, Section 2002, as last amended by Section 38 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, 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.

Facilities operated by the Oklahoma Department of Veterans Affairs shall be exempt from this fee. 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 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 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.

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 Authority detailing the daily patient census and patient gross receipts at such time and in such manner as required by the Authority.

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 Authority for the calendar year 1999 upon forms supplied by the Authority.

2. Annually the Nursing Facilities Quality of Care Fee shall be determined by:

- a. using the daily patient census and patient gross receipts reports received by the Authority for the most recent available twelve (12) months, and
- b. annualizing those figures.

Each 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.

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

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 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 Management and Enterprise Services 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.

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 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 Authority to the nursing facility from which it was collected.

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 Authority to obtain full federal participation to match its expenditures of the proceeds of the fee.

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

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.

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 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.

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 nonavailability of such federal funding and through and during any

period of nonavailability. All other provisions of the bill shall remain valid and enforceable.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.4, is amended to read as follows:

Section 1-890.4. A. Each application for establishment of a continuum of care facility or assisted living center shall be accompanied by a nonrefundable application fee. The State Board of Health shall develop a sliding fee scale not to exceed One Thousand Dollars (\$1,000.00) for each application, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee. The scale shall be based upon the bed capacity of the continuum of care facilities or assisted living centers.

B. Each application for an initial license, or annual renewal of the license, to operate a continuum of care facility or assisted living center shall be accompanied by a license fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from this fee. Each application for an initial or renewal license for a continuum of care facility that includes an adult day care component shall be accompanied by an additional license fee in an amount to be determined by the Board, but not to exceed Seventy-five Dollars (\$75.00), except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee.

C. Each application to establish or license a continuum of care facility or assisted living center shall be on a form approved by the Commissioner to include, but not be limited to, the following:

1. Disclosure of the applicant's identity and background in the operation of continuum of care and assisted living services; and

2. Evidence of the adequacy of the applicant's financial resources and ability to ensure adequate staffing.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1905, is amended to read as follows:

Section 1-1905. A. An application for a license, or renewal thereof, to operate a facility shall be accompanied by a fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee. All licenses shall be on a form prescribed by the State Commissioner of Health, which shall include, but not be limited to, the maximum bed capacity for which it is granted and the date the license was issued. The license shall:

1. Not be transferable or assignable;
 2. Be posted in a conspicuous place on the licensed premises;
 3. Be issued only for the premises named in the application;
- and

4. Expire twelve (12) months from the date of issuance, provided an initial license shall expire one hundred eighty (180) days after the date of issuance. Licenses may be issued for a period of more than twelve (12) months, but not more than twenty-four (24) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates to all months of the year.

B. The fee for a license amendment to reflect an increase in bed capacity shall be prorated based on the number of days remaining in the licensure period and the change in the number of beds, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee.

C. The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this act arising out of the notice of violation.

D. 1. When transfer of ownership or operation of a facility is proposed, the transferee shall notify the Department of the transfer and apply for a new license at least thirty (30) days prior to final transfer.

2. The transferor shall remain responsible for the operation of the facility until such time as a license is issued to the transferee.

3. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction as provided in this act.

4. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

E. Nursing and specialized facilities, as defined and licensed pursuant to the Nursing Home Care Act shall be surveyed through an unannounced inspection at least once every fifteen (15) months, with a statewide average survey cycle of twelve (12) months.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of February, 2013.

Angela Gable
Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2013.

John R. Doney
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th

day of April, 20 13, at 2:13 o'clock P M.

By: *Audrey Roedel*

Approved by the Governor of the State of Oklahoma this 29th

day of April, 20 13, at 4:35 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 29th

day of April, 20 13, at 5:30 o'clock P M.

By: *Mary Fallin*