

1 SENATE BILL 246

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO STATE REVENUE; ENACTING THE HEALTH CARE QUALITY
12 SURCHARGE ACT; IMPOSING A TEMPORARY SURCHARGE ON CERTAIN HEALTH
13 CARE FACILITIES; PROVIDING THAT REVENUE FROM THE SURCHARGE
14 SHALL BE USED TO REIMBURSE A PORTION OF THE SURCHARGE AS A
15 MEDICAID-ALLOWABLE COST AND TO INCREASE MEDICAID PROVIDER
16 REIMBURSEMENT RATES; PROVIDING A DELAYED REPEAL OF THE ACT;
17 MAKING THE ACT CONTINGENT ON FEDERAL AUTHORIZATION OF THE ACT;
18 MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
25 Health Care Quality Surcharge Act is to enhance federal

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

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

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

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

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

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

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

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

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

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

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

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

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

25 L. "skilled nursing facility" means a facility with

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1 greater than sixty beds and is licensed by the department of
2 health to provide skilled nursing services; and

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

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

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

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

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

25 (2) structure the rates for each skilled

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1 nursing facility and intermediate care facility so that the
2 total estimated revenue received in the subsequent fiscal year
3 from all those facilities will equal six percent of the net
4 revenue, calculated on an accrual basis, received in the
5 aggregate by those health care facilities in the previous
6 calendar year; and

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

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

22 D. If the rate of net revenue provided in Paragraph
23 (3) of Subsection B of this section results in medicaid fee-
24 for-service and medicaid managed care reimbursement rates that
25 exceed the upper payment limits allowed by Section

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1 1902(a)(30)(A) of the federal Social Security Act, as that
2 section may be amended or renumbered, the rate of the health
3 care quality surcharge shall be reduced to a percentage that
4 will result in reimbursement rates that equal, but do not
5 exceed, those limits.

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

18 F. The surcharge imposed pursuant to this section
19 may be referred to as the "health care quality surcharge".
20 Initial payment is due no earlier than thirty days after the
21 effective date of the Health Care Quality Surcharge Act.
22 Thereafter, the surcharge shall be remitted to the department
23 on or before the twenty-fifth day of the month following the
24 month for which the taxable event occurs.

25 G. The health care quality surcharge shall not

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

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

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

16 A. The "health care facility fund" and the
17 "disability health care facility fund" are created in the state
18 treasury. The funds shall consist of appropriations,
19 distributions, transfers, gifts, grants, donations and bequests
20 made to the funds and income from the investment of the funds.
21 The funds shall be administered by the human services
22 department, and money in the funds is subject to appropriation
23 by the legislature to the human services department to carry
24 out the purposes provided in this section. Money in the funds
25 shall be disbursed on warrants signed by the secretary of

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1 finance and administration pursuant to vouchers signed by the
2 secretary of human services or the secretary's authorized
3 representative. Any balance remaining in the funds at the end
4 of a fiscal year shall not revert to the general fund.

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

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

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

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

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

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

25 D. No more than twenty percent of the money in the

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1 health care facility fund or the disability health care
2 facility fund may be used by the human services department to
3 administer the state medicaid program for purposes other than
4 those provided in Subsection B of this section.

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

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

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

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

25 A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the health care facility fund in an
2 amount equal to the net receipts attributable to the health
3 care quality surcharge imposed on skilled nursing facilities
4 and intermediate care facilities pursuant to the Health Care
5 Quality Surcharge Act.

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

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

14 "7-1-2. APPLICABILITY.--The Tax Administration Act
15 applies to and governs:

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

- 19 (1) Income Tax Act;
- 20 (2) Withholding Tax Act;
- 21 (3) Venture Capital Investment Act;
- 22 (4) Gross Receipts and Compensating Tax Act
- 23 and any state gross receipts tax;
- 24 (5) Liquor Excise Tax Act;
- 25 (6) Local Liquor Excise Tax Act;

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- 1 (7) any municipal local option gross receipts
2 tax;
- 3 (8) any county local option gross receipts
4 tax;
- 5 (9) Special Fuels Supplier Tax Act;
- 6 (10) Gasoline Tax Act;
- 7 (11) petroleum products loading fee, which fee
8 shall be considered a tax for the purpose of the Tax
9 Administration Act;
- 10 (12) Alternative Fuel Tax Act;
- 11 (13) Cigarette Tax Act;
- 12 (14) Estate Tax Act;
- 13 (15) Railroad Car Company Tax Act;
- 14 (16) Investment Credit Act, rural job tax
15 credit, Laboratory Partnership with Small Business Tax Credit
16 Act, Technology Jobs and Research and Development Tax Credit
17 Act, Film Production Tax Credit Act, Affordable Housing Tax
18 Credit Act and high-wage jobs tax credit;
- 19 (17) Corporate Income and Franchise Tax Act;
- 20 (18) Uniform Division of Income for Tax
21 Purposes Act;
- 22 (19) Multistate Tax Compact;
- 23 (20) Tobacco Products Tax Act; ~~and~~
- 24 (21) the telecommunications relay service
25 surcharge imposed by Section 63-9F-11 NMSA 1978, which

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

3 (22) the Health Care Quality Surcharge Act;

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

- 7 (1) Resources Excise Tax Act;
- 8 (2) Severance Tax Act;
- 9 (3) any severance surtax;
- 10 (4) Oil and Gas Severance Tax Act;
- 11 (5) Oil and Gas Conservation Tax Act;
- 12 (6) Oil and Gas Emergency School Tax Act;
- 13 (7) Oil and Gas Ad Valorem Production Tax Act;
- 14 (8) Natural Gas Processors Tax Act;
- 15 (9) Oil and Gas Production Equipment Ad

16 Valorem Tax Act;

17 (10) Copper Production Ad Valorem Tax Act;

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

21 Administration Act;

22 (12) Enhanced Oil Recovery Act;

23 (13) Natural Gas and Crude Oil Production

24 Incentive Act; and

25 (14) intergovernmental production tax credit

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1 and intergovernmental production equipment tax credit;

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

5 (1) Weight Distance Tax Act;

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

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

10 (4) 911 emergency surcharge and the network
11 and database surcharge, which surcharges shall be considered
12 taxes for purposes of the Tax Administration Act;

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

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

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

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

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1 **SECTION 11. TEMPORARY PROVISION--HUMAN SERVICES**
2 DEPARTMENT SHALL APPLY FOR AUTHORIZATION.--On or before thirty
3 days from the effective date of this section, the secretary of
4 human services shall seek a waiver, state plan amendment or
5 whatever federal authorization is necessary to implement the
6 provisions of the Health Care Quality Surcharge Act.

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

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

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