

1 SENATE BILL 400

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE QUALITY ASSURANCE  
12 ASSESSMENT ACT; PROVIDING FOR FEES TO ENHANCE FEDERAL  
13 PARTICIPATION IN MEDICAID; PROVIDING FOR THE USE OF QUALITY  
14 ASSURANCE FEES TO INCREASE MEDICAID RATES AND SUPPORT QUALITY  
15 IMPROVEMENT IN SKILLED NURSING FACILITIES, INTERMEDIATE CARE  
16 FACILITIES AND INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS  
17 WITH INTELLECTUAL DISABILITIES; CREATING SEPARATE FUNDS FOR  
18 ASSESSED FEES; RESTRICTING THE USE OF ASSESSED FUNDS; PROVIDING  
19 FOR A DELAYED REPEAL; MAKING AN APPROPRIATION; DECLARING AN  
20 EMERGENCY.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
24 cited as the "Quality Assurance Assessment Act".

25 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Quality Assurance Assessment Act:

2 A. "department" means the human services  
3 department;

4 B. "intermediate care facility" means a facility  
5 licensed by the department of health to provide intermediate  
6 nursing care, but does not include an intermediate care  
7 facility for individuals with intellectual disabilities;

8 C. "intermediate care facility for individuals with  
9 intellectual disabilities" means a facility licensed by the  
10 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 D. "medicaid" means the medical assistance program  
14 established pursuant to Title 19 of the federal Social Security  
15 Act and regulations promulgated pursuant to that act;

16 E. "medicare" means coverage provided pursuant to  
17 the federal Health Insurance for the Aged Act, Title 18 of the  
18 Social Security Act Amendments of 1965, as then enacted or  
19 later amended;

20 F. "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 G. "medicare part A" means insurance provided  
25 through medicare for inpatient hospital, home health, skilled

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1 nursing facility and hospice care;

2 H. "net revenue" means gross inpatient revenue  
3 reported by the skilled nursing facility, intermediate care  
4 facility or intermediate care facility for individuals with  
5 intellectual disabilities for routine nursing and ancillary  
6 inpatient services provided to residents by such facility, less  
7 applicable contractual allowances and bad debt;

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

13 J. "quality assurance fee" means a fee assessed to  
14 enhance federal financial participation in medicaid to increase  
15 medicaid rates and support facility quality improvement efforts  
16 in skilled nursing facilities, intermediate care facilities and  
17 intermediate care facilities for individuals with intellectual  
18 disabilities;

19 K. "resident day" means a calendar day of care  
20 provided to a resident in a skilled nursing facility,  
21 intermediate care facility or intermediate care facility for  
22 individuals with intellectual disabilities, including the day  
23 of admission and not including the day of discharge; provided  
24 that admission and discharge occurring on the same day shall  
25 constitute one resident day;

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1           L. "skilled nursing facility" means a facility  
2 licensed by the department of health to provide skilled nursing  
3 services;

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

7           N. "uniformity waiver" means a waiver of the  
8 uniform tax requirement for permissible health-care-related  
9 taxes as provided in federal law pursuant to 42 C.F.R. §433.68  
10 (e)(2)(i) and (ii).

11           **SECTION 3. [NEW MATERIAL] DEPARTMENT DUTIES--**  
12 **POWERS--IMPOSITION OF QUALITY ASSURANCE FEE ON SKILLED NURSING**  
13 **AND INTERMEDIATE CARE FACILITIES--EXEMPT FACILITIES.--**

14           A. No later than thirty days following the  
15 effective date of the Quality Assurance Assessment Act, the  
16 department shall require each skilled nursing facility and  
17 intermediate care facility to report the number of resident  
18 days provided by the facility broken down by payer and the net  
19 revenue earned by the facility for each of the most recent  
20 three calendar quarters. Thereafter, the department shall  
21 require each skilled nursing facility and intermediate care  
22 facility to report quarterly the number of resident days  
23 provided by each facility broken down by payer and the net  
24 revenue earned by the facility in the previous calendar quarter  
25 no later than twenty days after the end of the calendar

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1 quarter.

2 B. No later than sixty days following the effective  
3 date of the Quality Assurance Assessment Act, the department  
4 shall determine, based upon the aggregate information reported  
5 pursuant to Subsection A of this section by skilled nursing  
6 facilities and intermediate care facilities for the two most  
7 recent calendar quarters, a quality assurance fee per non-  
8 medicare bed day. The quality assurance fee shall be assessed  
9 quarterly and retroactively for the third and fourth quarters  
10 of calendar year 2017 and shall be due twenty days following  
11 the approval of the uniformity waiver for skilled nursing  
12 facilities and intermediate care facilities pursuant to the  
13 Quality Assurance Assessment Act from the federal centers for  
14 medicare and medicaid services and implementation of the rate  
15 increases authorized by Subsection B of Section 4 of the  
16 Quality Assurance Assessment Act.

17 C. By December 1, 2017 and each December 1  
18 thereafter, the department shall determine a quality assurance  
19 fee per non-medicare bed day to be paid by each skilled nursing  
20 facility and intermediate care facility subject to the quality  
21 assurance fee for the next calendar year. The department shall  
22 determine the 2018 calendar year fee and the fee for all  
23 subsequent calendar years based upon the aggregate information  
24 reported by skilled nursing facilities and intermediate care  
25 facilities for the most recent four calendar quarters. No

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1 later than December 15, 2017 and each December 15 thereafter,  
2 the department shall notify facilities subject to the quality  
3 assurance fee in writing of the amount of the fee per non-  
4 medicare bed day for the next calendar year.

5 D. The quality assurance fee provided for in this  
6 section shall not be uniform or broad-based. Skilled nursing  
7 facilities or intermediate care facilities with sixty or fewer  
8 beds shall be exempt from this fee. The department may lower  
9 the fee for certain high-volume medicaid skilled nursing  
10 facilities to meet the uniformity waiver redistributive tests  
11 of 42 C.F.R. §433.68(e)(2). The amount of a facility's quality  
12 assurance fee shall not exceed the threshold, as determined by  
13 the federal centers for medicare and medicaid services, above  
14 which the fee is deemed to constitute an indirect guarantee not  
15 meeting federal requirements for permissible health-care-  
16 related taxes.

17 E. No later than ninety days following the  
18 effective date of the Quality Assurance Assessment Act, the  
19 secretary of human services shall request the federal centers  
20 for medicare and medicaid services to approve a quality  
21 assurance fee uniformity waiver for skilled nursing facilities  
22 and intermediate care facilities pursuant to the Quality  
23 Assurance Assessment Act. The department may modify, add to or  
24 reduce the categories of facilities that are subject to the  
25 quality assurance fee as necessary to obtain federal centers

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1 for medicare and medicaid services approval; provided that the  
2 quality assurance fees assessed and collected are deposited,  
3 administered, disbursed and used as directed in Section 4 of  
4 the Quality Assurance Assessment Act.

5 F. The department shall prepare and distribute a  
6 form for each skilled nursing facility and intermediate care  
7 facility that is subject to the quality assurance fee to:

8 (1) report resident days broken down by payer  
9 and net revenue earned for the previous calendar quarter; and

10 (2) calculate the facility's quality assurance  
11 fee due in the current calendar quarter.

12 G. The quality assurance fee provided for in this  
13 section shall not be assessed unless the following conditions  
14 are met:

15 (1) the federal centers for medicare and  
16 medicaid services has approved the state's imposition of a  
17 quality assurance fee upon skilled nursing facilities and  
18 intermediate care facilities pursuant to the Quality Assurance  
19 Assessment Act and has granted a uniformity waiver to the  
20 state; and

21 (2) the full amount of the quality assurance  
22 fees assessed and collected pursuant to this section remains  
23 available for the purposes specified in Section 4 of the  
24 Quality Assurance Assessment Act.

25 SECTION 4. [NEW MATERIAL] FACILITY QUALITY ASSURANCE FUND

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1       CREATED--ADMINISTRATION--USES.--

2               A.   The "facility quality assurance fund" is created  
3       as a nonreverting fund in the state treasury.  The fund  
4       consists of appropriations and quality assurance fees paid by  
5       skilled nursing facilities and intermediate care facilities,  
6       income from the investment of the fund, gifts, grants,  
7       donations and bequests.  The fund shall be administered by the  
8       department, and money in the fund is subject to appropriation  
9       by the legislature to the department to carry out its duties  
10      pursuant to the Quality Assurance Assessment Act.  Money in the  
11      fund shall be disbursed on warrants signed by the secretary of  
12      finance and administration pursuant to vouchers signed by the  
13      secretary of human services or the secretary's authorized  
14      representative.  Any balance remaining in the fund at the end  
15      of a fiscal year shall not revert to the general fund.

16              B.  The facility quality assurance fund shall be  
17      used for the following purposes and in the following order of  
18      priority for skilled nursing facilities and intermediate care  
19      facilities to:

20                      (1)  reimburse the medicaid share of the  
21      quality assurance fee as a pass-through, medicaid-allowable  
22      cost; and

23                      (2)  increase each facility's respective  
24      medicaid fee-for-service and medicaid managed care  
25      reimbursement rates above those in effect on July 1, 2017.

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1           C. A maximum of fifteen percent of the total amount  
2 of annual quality assurance fees collected by the department  
3 from skilled nursing facilities and intermediate care  
4 facilities may be used for purposes other than those specified  
5 in Subsection B of this section. No quality assurance fees or  
6 money in the facility quality assurance fund shall be used to  
7 supplant any general fund support for the state medicaid  
8 program.

9           SECTION 5. [NEW MATERIAL] DEPARTMENT DUTIES--IMPOSITION  
10 OF QUALITY ASSURANCE FEE ON INTERMEDIATE CARE FACILITIES FOR  
11 INDIVIDUALS WITH INTELLECTUAL DISABILITIES.--

12           A. No later than thirty days following the  
13 effective date of the Quality Assurance Assessment Act, the  
14 department shall require each intermediate care facility for  
15 individuals with intellectual disabilities to report the number  
16 of resident days provided by the facility broken down by payer  
17 and the net revenue earned by the facility for each of the most  
18 recent three calendar quarters. Thereafter, the department  
19 shall require each intermediate facility for individuals with  
20 intellectual disabilities to report quarterly the number of  
21 resident days provided by each facility broken down by payer  
22 and the net revenue earned by the facility in the previous  
23 calendar quarter no later than twenty days after the end of the  
24 calendar quarter.

25           B. No later than sixty days following the effective

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1 date of the Quality Assurance Assessment Act, the department  
2 shall determine, based upon the aggregate information reported  
3 pursuant to Subsection A of this section for the two most  
4 recent calendar quarters, a uniform and broad-based quality  
5 assurance fee per resident day to be assessed retroactively and  
6 quarterly upon each intermediate care facility for individuals  
7 with intellectual disabilities for the third and fourth  
8 quarters of calendar year 2017.

9 C. By December 1, 2017 and each December 1  
10 thereafter, the department shall determine a uniform quality  
11 assurance fee for each intermediate care facility for  
12 individuals with intellectual disabilities per resident day to  
13 be paid by each facility for the next calendar year. The  
14 department shall determine the 2018 calendar year fee and the  
15 fee for all subsequent calendar years based upon the aggregate  
16 information reported by intermediate care facilities for  
17 individuals with intellectual disabilities pursuant to  
18 Subsection A of this section for the most recent four calendar  
19 quarters. By December 15, 2017 and each December 15  
20 thereafter, the department shall notify intermediate care  
21 facilities for individuals with intellectual disabilities  
22 subject to the quality assurance fee in writing of the amount  
23 of the fee per resident day to be paid by each intermediate  
24 care facility for individuals with intellectual disabilities  
25 for the next calendar year.

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1           D. The amount of an intermediate care facility for  
2 individuals with intellectual disabilities' quality assurance  
3 fee pursuant to this section shall not exceed the threshold, as  
4 determined by the federal centers for medicare and medicaid  
5 services, above which the fee is deemed to constitute an  
6 indirect guarantee not meeting federal requirements for  
7 permissible health-care-related taxes.

8           E. No later than ninety days following the  
9 effective date of the Quality Assurance Assessment Act, the  
10 department shall seek a state plan amendment from the federal  
11 centers for medicare and medicaid services to adjust medicaid  
12 reimbursement rates and implement medicaid reimbursement rate  
13 increases pursuant to Subsection B of Section 6 of the Quality  
14 Assurance Assessment Act.

15           F. The department shall prepare and distribute a  
16 form for each intermediate care facility for individuals with  
17 intellectual disabilities to:

18                   (1) report resident days broken down by payer  
19 and net revenue earned for the previous quarter; and

20                   (2) calculate the facility's quality assurance  
21 fee due in the current quarter.

22           G. The quality assurance fee provided for in this  
23 section shall not be assessed unless the full amount of the  
24 quality assurance fees assessed and collected pursuant to this  
25 section of the remains available for the purposes specified in

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1 Section 6 of the Quality Assurance Assessment Act.

2 SECTION 6. [NEW MATERIAL] INTERMEDIATE CARE FACILITY FOR  
3 INDIVIDUALS WITH INTELLECTUAL DISABILITIES QUALITY ASSURANCE  
4 FUND CREATED--ADMINISTRATION--USES.--

5 A. The "intermediate care facility for individuals  
6 with intellectual disabilities quality assurance fund" is  
7 created as a nonreverting fund in the state treasury. The fund  
8 consists of appropriations and quality assurance fees paid by  
9 intermediate care facilities for individuals with intellectual  
10 disabilities, income from the investment of the fund, gifts,  
11 grants, donations and bequests. The fund shall be administered  
12 by the department, and money in the fund is subject to  
13 appropriation by the legislature to the department to carry out  
14 its duties pursuant to the Quality Assurance Assessment Act.  
15 Money in the fund shall be disbursed on warrants signed by the  
16 secretary of finance and administration pursuant to vouchers  
17 signed by the secretary of human services or the secretary's  
18 authorized representative. Any balance remaining in the fund  
19 at the end of a fiscal year shall not revert to the general  
20 fund.

21 B. The intermediate care facility for individuals  
22 with intellectual disabilities quality assurance fund shall be  
23 used for the following purposes and in the following order of  
24 priority for intermediate care facilities for individuals with  
25 intellectual disabilities to:

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1 (1) reimburse the medicaid share of the  
2 quality assurance fee as a pass-through, medicaid-allowable  
3 cost; and

4 (2) increase each facility's respective  
5 medicaid reimbursement rates above those in effect as of July  
6 1, 2017.

7 C. A maximum of fifteen percent of the amount of  
8 annual aggregate quality assurance fees collected by the  
9 department from intermediate care facilities for individuals  
10 with intellectual disabilities may be used for purposes other  
11 than those specified in Subsection B of this section. No  
12 quality assurance fees or money in the intermediate care  
13 facility for individuals with intellectual disabilities quality  
14 assurance fund shall be used to supplant any general fund  
15 support for the state medicaid program.

16 SECTION 7. [NEW MATERIAL] QUALITY ASSURANCE FEE  
17 PAYMENTS--REFUNDS.--

18 A. All quality assurance fees shall be paid to the  
19 department in the time and manner established by the  
20 department.

21 B. The initial quality assurance fee assessed to a  
22 skilled nursing facility or intermediate care facility shall be  
23 due no later than twenty days after the state receives a  
24 uniformity waiver from the federal centers for medicare and  
25 medicaid services approving the imposition of the quality

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1 assurance fee pursuant to the Quality Assurance Assessment Act  
2 and the implementation of rate increases authorized by  
3 Subsection B of Section 4 of the Quality Assurance Assessment  
4 Act, retroactive to July 1, 2017.

5 C. Subsequent payments of a quality assurance fee  
6 assessed to a skilled nursing facility or intermediate care  
7 facility shall be due no later than twenty days after the end  
8 of each calendar quarter as long as the state's uniformity  
9 waiver and medicaid rate increases implemented pursuant to the  
10 Quality Assurance Assessment Act remain in place.

11 D. The initial quality assurance fee assessed to an  
12 intermediate care facility for individuals with intellectual  
13 disabilities shall be due no later than twenty days after the  
14 state receives approval of a state plan amendment from the  
15 federal centers for medicare and medicaid services for medicaid  
16 reimbursement rate increases authorized by Subsection B of  
17 Section 6 of the Quality Assurance Assessment Act and medicaid  
18 reimbursement rates have been increased in accordance with  
19 Subsection B of Section 6 of that act, retroactive to July 1,  
20 2017.

21 E. Subsequent payments of a quality assurance fee  
22 assessed to an intermediate care facility for individuals with  
23 intellectual disabilities shall be due no later than twenty  
24 days after the end of each calendar quarter as long as medicaid  
25 rate increases implemented pursuant to the Quality Assurance

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1 Assessment Act remain in place.

2 F. If the department determines that a skilled  
3 nursing facility, intermediate care facility or intermediate  
4 care facility for individuals with intellectual disabilities  
5 has underpaid or overpaid the quality assurance fee, the  
6 department shall give written notice within ten calendar days  
7 of its determination to the facility of the amount due to the  
8 department or to be refunded by the department to the facility.  
9 An underpayment or refund shall be made within thirty days of  
10 the issuance of such written notice.

11 SECTION 8. DELAYED REPEAL.--Sections 1 through 7 of this  
12 act are repealed effective January 1, 2021.

13 SECTION 9. EMERGENCY.--It is necessary for the public  
14 peace, health and safety that this act take effect immediately.