

7-40-8. Repealed.

History: Laws 2018, ch. 57, § 8; repealed by Laws 2019, ch. 47, § 4.

ANNOTATIONS

Repealed — Laws 2019, ch. 47, § 4 repealed 7-40-8 NMSA 1978, as enacted by Laws 2018, ch. 57, § 8, relating to penalty for failure to pay tax, serving process, appointment of secretary as process agent, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

7-40-9. Repealed.

History: Laws 2018, ch. 57, § 9; repealed by Laws 2019, ch. 47, § 4.

ANNOTATIONS

Repeals. — Laws 2019, ch. 47, § 4 repealed 7-40-9 NMSA 1978, as enacted by Laws 2018, ch. 57, § 9, relating to distribution of premium tax, refunds, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

7-40-10. Department shall promulgate rules.

The department shall promulgate rules to carry out the provisions of the Insurance Premium Tax Act.

History: Laws 2018, ch. 57, § 10.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 57, § 32 made Laws 2018, ch. 57, § 10 effective January 1, 2020.

ARTICLE 41

Health Care Quality Surcharge

7-41-1. Short title.

Sections 1 through 8 [7-41-1 to 7-41-8 NMSA 1978] of this act may be referred to as the "Health Care Quality Surcharge Act".

History: Laws 2019, ch. 53, § 1.

ANNOTATIONS

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-1 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 53, § 11 provided that on or before sixty days from the effective date of this section, the secretary of human services shall seek a waiver, a state plan amendment or whatever federal authorization is necessary to implement the provisions of the Health Care Quality Surcharge Act.

7-41-2. 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.

History: Laws 2019, ch. 53, § 2.

ANNOTATIONS

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-2 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 53, § 11 provided that on or before sixty days from the effective date of this section, the secretary of human services shall seek a waiver, a state plan amendment or whatever federal authorization is necessary to implement the provisions of the Health Care Quality Surcharge Act.

7-41-3. 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 facility, intermediate care facility or intermediate care facility for individuals with intellectual disabilities;
- C. "intermediate care facility" means a facility with greater than sixty beds and is licensed by the department of health to provide intermediate nursing care.

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

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

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

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

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

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

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

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

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

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

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

History: Laws 2019, ch. 53, § 3.

ANNOTATIONS

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-3 NMSA 1978 effective January 1, 2023.

Cross references. — For Title 18 of the federal Social Security Act, see 42 U.S.C. §§ 1395 to 1395.

For Title 19 of the federal Social Security Act, see 42 U.S.C. § 1396 et seq.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

7-41-4. Health care quality surcharge; rate calculation; date payment due.

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

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

- (1) set a uniform rate per non-medicare day in health care facilities not to exceed the maximum allowed by federal law governing the approval of the state medicaid plan or any waiver from that plan;
- (2) structure the rates for each skilled nursing facility and intermediate care facility so that the total estimated revenue received in the subsequent fiscal year from all those facilities will equal six percent of the net revenue received in the aggregate by those health care facilities in the previous calendar year; and
- (3) structure the rates for each intermediate care facility for individuals with intellectual disabilities so that the total estimated revenue received in the subsequent fiscal year from all those facilities will equal six percent of the net revenue received in the aggregate by all those facilities in the previous calendar year.

C. If the rate of net revenue provided in Paragraph (2) or (3) of Subsection B of this section exceeds the maximum percentage of net revenue for all health care facilities allowed by Section 1903(w)(4) of the federal Social Security Act, as that section may be amended or renumbered, the rate of the health care quality surcharge shall be reduced

to a percentage that will equal, but not exceed, the maximum percentage allowed by that federal law.

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

E. No later than thirty days following the effective date of the Health Care Quality Surcharge Act, a health care facility shall report to the human services department [health care authority department] the number of resident days provided by the health care facility, broken down by payer, and the net revenue earned by the health care facility for each of the most recent four calendar quarters available. On each January 1, April 1, July 1 and October 1 thereafter, a health care facility shall report to the human services department [health care authority department] the number of resident days provided by the health care facility, broken down by payer, and the net revenue earned by the health care facility for the calendar quarter prior to the previous quarter.

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

History: Laws 2019, ch. 53, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-4 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

7-41-5. Exemption.

A health care facility with more than ninety thousand annual medicaid-financed bed days may claim an exemption in an amount equal to sixty-five percent of the health care quality surcharge due in a reporting period. The percentage and annual medicaid-financed bed days threshold may be modified by rule promulgated by the human services department [health care authority department], if necessary, for approval of the surcharge program by the federal centers for medicare and medicaid services.

History: Laws 2019, ch. 53, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-5 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

7-41-6. Health care facility fund; disability health care facility fund.

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

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

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

(2) to annually increase, on a per diem basis, as provided by rule promulgated by the human services department [health care authority department], each facility's respective medicaid fee-for-service and medicaid managed care

reimbursement rates above those in effect upon the effective date of the Health Care Quality Surcharge Act and in subsequent years thereafter by at least the rate of nursing home inflation for the rate year as published on behalf of the federal centers for medicare and medicaid services; and

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

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

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

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

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

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

F. The initial quarterly supplemental payments to health care facilities made pursuant to Subsection B of this section for the first calendar quarter ending after the effective date of the Health Care Quality Surcharge Act shall be made thirty days after the date the federal centers for medicare and medicaid services approve the authorization sought by the secretary of human services pursuant to Section 11 of this 2019 act. The initial per diem payments to health care facilities made pursuant to Subsections B and C of this section shall be made thirty days after the date the federal centers for medicare and medicaid services approve the authorization sought by the secretary of human services pursuant to Section 11 of this 2019 act.

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

History: Laws 2019, ch. 53, § 6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-6 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

Temporary provisions. — Laws 2019, ch. 53, § 11 provided that on or before sixty days from the effective date of this section, the secretary of human services shall seek a waiver, a state plan amendment or whatever federal authorization is necessary to implement the provisions of the Health Care Quality Surcharge Act.

7-41-7. Administration and enforcement of act.

The department shall interpret the provisions of the Health Care Quality Surcharge Act. The department shall administer and enforce the collection of the health care quality surcharge, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of that surcharge.

History: Laws 2019, ch. 53, § 7.

ANNOTATIONS

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-41-7 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53 effective July 1, 2019.

7-41-8. Departments required to promulgate rules.

The taxation and revenue department and the human services department [health care authority department] shall promulgate rules to carry out the provisions of the Health Care Quality Surcharge Act, as appropriate for each department, including the rate calculations required to be performed by the human services department [health care authority department], and the notification from that department to the taxation and revenue department pursuant to Section 4 [7-41-4 NMSA 1978] of the Health Care Quality Surcharge Act.