

State of Tennessee

PUBLIC CHAPTER NO. 883

HOUSE BILL NO. 1656

By Representatives Johnson, Shaw

Substituted for: Senate Bill No. 2074

By Senators Overbey, Bowling

AN ACT to amend Tennessee Code Annotated, Title 68 and Title 71, relative to nursing homes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-5-1002, is amended by deleting subdivision (h)(1) in its entirety and substituting instead the following:

(1) To make expenditures for nursing facility services under the TennCare program for FY 2016-2017 at the full rates for the specified fiscal year as set in accordance with § 71-5-105(a)(3)(B)–(D), that would have been subject to reduction by the bureau of TennCare for FY 2016-2017, except for the availability of one-time funding for that year only. Payment of full rates to restore a rate reduction from the bureau of TennCare as described in this section shall be satisfied only by the money available in the fund described in this section and before making any other payments from the fund;

SECTION 2. Tennessee Code Annotated, Section 71-5-1003, is amended by deleting in subsection (a) the language “monthly” and substituting instead the language “quarterly”.

SECTION 3. Tennessee Code Annotated, Section 71-5-1003, is further amended by deleting subsections (c) and (d) and substituting instead the following:

(c) The aggregated amount of assessments for all nursing facilities from July 1, 2016, through June 30, 2017, shall equal four and three-quarters percent (4.75%) of the net patient service revenue. The annual assessment for each nursing facility shall be determined as follows:

(1) Any licensed nursing home that is licensed on July 1, 2016, for fifty (50) beds or fewer shall pay an assessment rate equal to three percent (3%) of net patient service revenue, divided by all non-medicare days. The facility shall pay the per diem rate for each of its non-medicare days;

(2) Any licensed nursing home that on July 1, 2016, operates as part of a continuing care retirement community shall pay an assessment rate equal to three percent (3%) of net patient service revenue, divided by all non-medicare days. The facility shall pay the per diem rate for each of its non-medicare days;

(3) Any licensed nursing home providing fifty thousand (50,000) or greater medicaid patient days for the twelve (12) months ending December 31 of the prior year shall pay an assessment of two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year. The facility shall pay the per bed rate on all beds licensed as of July 1 of each year. This annual nursing home assessment fee, the high-volume medicaid threshold, or both can be modified if necessary to meet the redistribution test of 42 CFR 433.68(e)(2);

(4) Any nursing home facility that is initially licensed and commences operations after July 1, 2016, shall pay in FY 2016-2017 a prorated assessment equal to two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year, prorated to accrue from the date the nursing facility became certified to participate in TennCare. The change in ownership of an existing licensed facility shall not meet the requirements of this subdivision (c)(4);

(5) Any licensed nursing home not meeting the criteria of subdivisions (c)(1)–(4) shall pay an equal annual per facility assessment at such amounts necessary to ensure that the aggregated amount of assessments for all nursing facilities from July 1, 2016, through June 30, 2017, shall equal four and three-quarters percent (4.75%) of the net patient service revenue; and

(6) Any facility that ceases to be licensed by the department of health shall not be required to pay assessment fees accruing after the date of its licensure termination.

SECTION 4. Tennessee Code Annotated, Section 71-5-1004, is amended by deleting in subsection (a), the language “for FY 2015-2016” and replacing it with the language “for FY 2016-2017”.

SECTION 5. Tennessee Code Annotated, Section 71-5-1004, is further amended by deleting in subdivision (b)(1) the language “During FY 2015-2016” and replacing it with the language “During FY 2016-2017”; and further amending subdivision (b)(1) by deleting the language “on July 1, 2015.” and replacing it with the language, “on July 1, 2016.”

SECTION 6. Tennessee Code Annotated, Section 71-5-1004, is further amended by deleting in subdivision (b)(2)(A) the language “during FY 2015-2016” and replacing it with the language “during FY 2016-2017”.

SECTION 7. Tennessee Code Annotated, Section 71-5-1004, is amended by deleting in subdivision (c)(1) the language “2014 acuity payment” and replacing it with the words “FY 2014-2015 acuity payment”.

SECTION 8. Tennessee Code Annotated, Section 71-5-1004, is further amended by deleting in subdivision (c)(3) the language “Twenty-six percent (26%)” and substituting instead the language “Thirty percent (30%)”, and further amend by deleting subdivision (c)(4) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 71-5-1009, is amended by deleting the language “of any nursing home assessment fee due prior to July 1, 2015” and substituting instead the language “of any nursing home assessment fee due prior to July 1, 2016”.

SECTION 10. Tennessee Code Annotated, Section 71-5-1010, is amended in subsection (a) by deleting the year “2016” and substituting instead the year “2017”.

SECTION 11. Tennessee Code Annotated, Section 71-5-1412, is amended by deleting the section in its entirety and replacing it with the following language:

(a) A managed care organization (MCO) shall contract with any nursing facility licensed under title 68, chapter 11, part 2, and certified by the centers for medicare and medicaid services, that provides medicaid nursing facility services pursuant to an approved preadmission evaluation (PAE) and is willing to contract with the MCO to provide that service under the same terms and conditions as are offered to any other participating facility contracted with that MCO to provide that service under any policy, contract, or plan that is part of the TennCare managed long-term care service delivery system. Terms and conditions shall not include the rate of reimbursement.

(b) Nothing in this section shall be interpreted as preventing the bureau of TennCare or an MCO from enforcing the provisions of a contract between an MCO and a nursing facility or as preventing the bureau of TennCare from adopting reasonable and necessary requirements for the participation of a nursing facility in the TennCare program. All requirements for participation adopted after the effective date of this act shall be promulgated by the bureau of TennCare as a rule under title 4, chapter 5, part 2, and shall include a hearing under § 4-5-203, prior to the enforcement of such requirement as part of any provider contract, unless otherwise required by federal law.

SECTION 12. Tennessee Code Annotated, Section 71-5-1003, is amended by adding the following language at the end of subsection (a):

In the event of a change of ownership or management of a nursing facility, the successor entity shall be liable for all unpaid nursing home assessment fees, penalties, and interest, and full payment of those fees, penalties, and interest shall be a precondition to the successor entity obtaining a TennCare identification number.

SECTION 13. Tennessee Code Annotated, Section 71-5-1003, is further amended by inserting the following language as a new subsection (d) and appropriately redesignating subsequent subsections:

(d) Each nursing home shall pay its nursing home annual assessment fee as set forth in subsection (c) in equal quarterly installments, with the first quarterly installment due on the fifteenth day of the first month of the first quarter of the state fiscal year after the bureau of TennCare has satisfied the requirements of subsection (f). Subsequent installments shall be due on the fifteenth day of the first month of the three (3) successive calendar quarters following the calendar quarter in which the first installment is due.

SECTION 14. Tennessee Code Annotated, Section 71-5-1006, is amended by adding the following language at the end of subsection (b):

The bureau of TennCare may, as part of an approved payment plan, waive, in whole or in part, any penalty or interest imposed under this section. A waiver shall excuse the payment of that penalty or interest amount but shall not excuse payment of any assessments. Nothing in this section shall require the bureau of TennCare to agree to or approve any waiver under this section, and the waivers shall only be approved after the bureau's determination that there is good cause for the waiver.

SECTION 15. Tennessee Code Annotated, Section 71-5-1006, is amended by deleting subsections (c) and (d) in their entirety and substituting instead the following:

(c)

(1) If a nursing facility fails to pay a quarterly installment of the nursing home assessment fee within thirty (30) days of its due date or becomes or is in arrears for payment of its nursing home assessment fee upon the effective date of this act and does not have an approved payment plan for which payments are current, the bureau of TennCare shall direct its contracted managed care organizations (MCOs) to recover the full amount of the then-outstanding nursing home assessment fee and any applicable penalties and interest, which shall be accomplished through recoupment from payments made by the MCOs to nursing facilities to recover the full amount of the then-outstanding nursing home assessment fee and any related penalties and interest. TennCare MCOs shall remit promptly any of these recouped payments to the bureau of TennCare. The bureau of TennCare may recoup such amounts in as few or as many installment payments as it deems appropriate.

(2) If a nursing facility is more than ninety (90) days delinquent in paying any installment of its annual nursing home assessment fee; or becomes delinquent in any approved payment plan by more than ninety (90) days or fails to provide timely payment of any and all subsequent quarterly installments of its annual nursing home assessment fee while past due amounts are being recouped pursuant to subdivision (c)(1), the bureau of TennCare shall:

(A) Initiate a proceeding before the board for licensing health care facilities, in accordance with the Uniform Administrative Procedures Act, for the purpose of having the board indefinitely suspend admissions to the facility until all outstanding nursing home assessment fees and applicable penalties and interest have been repaid. Failure of a nursing facility to pay a quarterly installment of the nursing home assessment fee, or any penalties or interest required to be paid by this part, shall be considered by the board to be a license deficiency; and

(B) Initiate proceedings to terminate the nursing facility's TennCare identification number.

(3) Upon initiation of a proceeding before the board for licensing healthcare facilities by the bureau of TennCare pursuant to subdivision (c)(2), the board shall suspend admissions to the facility after the bureau of TennCare meets the burden of proof required by the Uniform Administrative Procedures Act. The board shall have no discretion to impose any sanction or take any action other than that set out in this subdivision (c)(3) in the proceeding. Immediately following the full payment by the facility, or its successor, of all then-outstanding assessment fees and any applicable penalties and interest, any suspension of admissions to the nursing facility imposed according to this section shall be automatically lifted without requiring further action by the board, so long as the full payment of then-outstanding amounts are made within the sixty (60) days immediately following the date of the suspension of admissions.

(4) On or after the sixtieth day following the date of suspension of admissions to the nursing facility if either the nursing facility fails to pay all then-outstanding nursing home assessment fees and any applicable penalties and interest accrued thereon or the nursing facility fails to be current on the terms of its payment plan if a plan is in place, then the bureau of TennCare shall initiate proceedings before the board for licensing healthcare facilities in accordance with the Uniform Administrative Procedures Act for the purpose of revoking the nursing facility's license. Upon initiation of a proceeding before the board by the bureau of TennCare pursuant to this subdivision (c)(4), the board shall revoke the nursing facility's license upon the bureau of TennCare meeting the burden of proof required by the Uniform Administrative Procedures Act. The board shall have no discretion to impose any sanction or take any action other than that set out in this subdivision (c)(4) in the proceeding.

(5) Revocation of either the nursing facility's license or the nursing facility's TennCare identification number shall not remedy, discharge, satisfy, or otherwise extinguish the nursing facility's liability for the then-outstanding nursing home assessment fees and any related penalties and interest.

(6) Upon revocation of the nursing facility's license or termination of the nursing facility's TennCare identification number, the nursing facility shall be required to reapply for a license, TennCare identification number, or both the license and the identification number, in order to provide services to the TennCare population. As a condition of reapplication, the nursing facility, or its successor shall pay in full all then-outstanding nursing home assessment fees, penalties, and interest.

(7) Notwithstanding this part, the bureau of TennCare is authorized to file a civil action against a covered nursing facility and its controlling person or persons to collect any nursing home assessment fees, penalties, and interest when such fees, penalties, and interest have been delinquent for more than ninety (90) days. The bureau of TennCare shall have the right to pursue a civil action pursuant to this subdivision (c)(7) simultaneously while pursuing actions in subdivisions (c)(2) and (4). The bureau of TennCare shall be entitled to receive, in addition to the nursing home assessment fees, penalties, and interest, all reasonable costs of litigation, including attorneys' fees and court costs, incurred by it in bringing a civil action under this subdivision (c)(7). Exclusive jurisdiction and venue for a civil action authorized in this subdivision (c)(7) shall be in the chancery court for Davidson County, Tennessee. For the purposes of this subdivision (c)(7), "controlling person or persons" means any and all natural persons or entities that own more than fifty percent (50%) of the nursing facility, or the natural person or persons, entity or entities that is or are the majority owner of the nursing facility if no owner owns more than fifty percent (50%) of the nursing facility.

(d) Unless otherwise agreed to by the bureau of TennCare and the nursing facility, full payment to the bureau of TennCare of any outstanding nursing home assessment fees, and any applicable penalties and interest, shall be required for the continuation of the nursing facility's ongoing certification as a medicaid provider.

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SECTION 16. Tennessee Code Annotated, Section 71-5-1413, is amended by renumbering the current subsection (e) as a new subsection (f), and inserting the following as a new subsection (e):

(e) When acuity and quality supplemental transition payments that are made pursuant to § 71-5-1004 are transitioned into the medicaid per diem rates of the nursing home reimbursement system, the bureau of TennCare, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, may implement these changes through emergency rules in accordance with § 4-5-208.

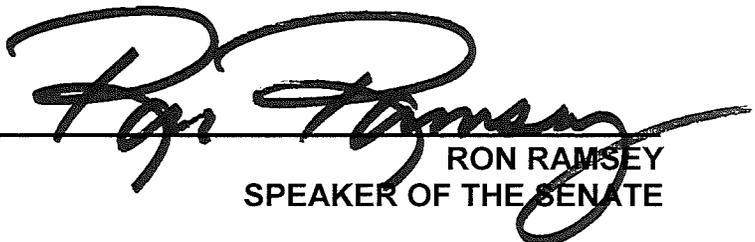
SECTION 17. This act shall take effect July 1, 2016, the public welfare requiring it.

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PASSED: April 19, 2016



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 27th day of April 2016



BILL HASLAM, GOVERNOR