



# State of Tennessee

## PUBLIC CHAPTER NO. 859

HOUSE BILL NO. 1783

By Representatives Harrison, Lamberth

Substituted for: Senate Bill No. 1872

By Senators Overbey, Yager

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, Title 71, Chapter 5, is amended by adding the following language as a new part 28:

71-5-2801.

As used in this part, unless the context otherwise requires:

(1) "Account" means the nursing home assessment trust fund created under this part;

(2) "Bureau" means the bureau of TennCare;

(3) "Commencement date" means the later of July 1, 2014, or the date when the bureau has received the necessary federal approval to implement the assessment described in this part and implements the provisions of the nursing home assessment trust fund;

(4) "Fiscal year" (FY) means the twelve (12) month period beginning July 1st and ending June 30th of each calendar year;

(5) "Fund" as used in this part shall mean the nursing home assessment trust fund created under this part;

(6) "Medicaid" shall have the same meaning as "medical assistance" as defined in § 71-5-103;

(7) "Medicare resident day" means a resident day funded under 42 U.S.C. Chapter 7 (Title XVIII of the Social Security Act) commonly referred to as the Medicare program Parts A-D;

(8) "Net patient service revenue" means gross inpatient revenues from services provided to nursing home patients less reductions from gross inpatient revenue resulting from an inability to collect payment of charges. Inpatient care revenue excludes non-patient care revenue such as beauty and barber, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues. Reductions from gross revenue include bad debts, contractual adjustments, uncompensated care, discounts and adjustments and other revenue deductions;

(9) "Nursing facility" means any entity defined as a nursing home under § 68-11-201 and licensed under title 68 by the department of health;

(10) "Resident day" means a calendar day of care provided to a nursing home resident, including the day of admission and excluding the day of discharge, provided that one (1) resident day shall be deemed to exist when admission and discharge occur on the same day; and

(11) "Upper payment limit" means the limitation established pursuant to 42 C.F.R. 447.272 that disallows federal matching funds when state medicaid agencies pay certain classes of nursing care facilities an aggregate amount for services furnished by that class of nursing care facilities that would exceed the amount that would be paid under medicare payment principles.

71-5-2802.

(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of providing nursing home care. The assessment fee imposed by this part shall be in addition to all other privilege taxes.

(b) The nursing home assessment trust fund is created. The general assembly intends that the proceeds of the annual coverage assessment not be used as a justification to reduce or eliminate the state funding to the TennCare program. The fund shall not be used to replace any moneys otherwise appropriated to the TennCare program by the general assembly.

(c) The trust fund shall consist of:

(1) Amounts collected or received by the bureau from nursing home assessments under this part;

(2) Investment earnings credited to the assets of the nursing home assessment trust fund. The state treasurer shall invest amounts deposited within the account in accordance with law, and all investment earnings shall be credited back to the fund; and

(3) Any penalties levied in conjunction with the administration of this part.

(d) The trust fund is created for the purpose of receiving funds as specified in this section. Collected assessment funds shall be used to secure federal matching funds available through the state medicaid plan.

(e) All revenue collected pursuant to this part shall be deposited in the nursing home assessment trust fund.

(f) All nursing home annual assessment fee payments made by nursing homes under this section and received by this state; all investment earnings credited to the nursing home annual assessment fee payments; any interest and penalties paid under this section by any nursing home; and all funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be available to and used by the bureau of TennCare for the sole purpose of providing payment to nursing homes.

(g) No part of the nursing home annual assessment fee payments made by nursing homes under this section and received by this state; the investment earnings credited to the nursing home annual assessment fee payments; the interest and penalties paid under this section by any nursing home; or the funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be used for any purpose other than providing payment to nursing homes.

(h) The fund shall be used exclusively for the following purposes:

(1) To make expenditures for nursing facility services under the TennCare program for FY 2014- 2015 at the full rates 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 2014-2015, except for the availability of one-time funding for that year only. Payment of full rates as described in this section shall be satisfied before making any other payments from the fund;

(2) To make medicaid payments for nursing facility services which exceed the amount of full nursing home medicaid rates, as calculated in accordance with the approved state medicaid plan in effect on July 1, 2014, including but not limited to a supplemental transitional payment to nursing facilities for the transition to an acuity based reimbursement system;

(3) To provide funding for the implementation of that acuity-based reimbursement system upon implementation of an acuity-based reimbursement system, that shall include at a minimum a quality performance component for nursing facility services and a nursing rate component. The nursing rate component shall be adjusted by the average medicaid case-mix of the facility utilizing the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Resource Utilization Group-Version 4 (RUG-IV), 48-Grouper model; and

(4) To pay nursing home covered services covered for medicaid beneficiaries within medicare upper payment limits, as negotiated with the bureau. The upper payment limit of all nursing homes shall be calculated by the bureau using the higher of the cost based or prospective payment system approach in accordance with 42 C.F.R. 447.272.

(i) Any funds remaining in the nursing home assessment trust fund after payments are made as provided for in subsection (h) above shall remain in the trust fund as a reserve for future uses consistent with subsection (h). If the funds in the nursing home assessment trust fund are insufficient to meet all the purposes established in § 71-5-2804(b), the bureau of TennCare shall not be required to procure additional funding from other sources to make the payments noted in § 71-5-2804(b), but instead shall be permitted to reduce all payments on a pro rata basis so as not to exceed the amounts held at any time in the nursing home assessment trust fund.

71-5-2803.

(a) Each nursing home shall pay the nursing home assessment in monthly installments to the account in accordance with this part.

(b) The aggregated amount of assessments for all nursing facilities during a fiscal year shall not be less than the amount necessary to fund the provisions of this part or exceed the maximum amount that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)(i). The bureau shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of medicare resident days. The per-resident day assessment rate shall be uniform. The bureau shall promulgate rules for facility reporting of non-medicare resident days and for payment of the assessment

(c) The aggregated amount of assessments for all nursing facilities from the commencement date through June 30, 2015, shall equal four and one-half percent (4.5%) of the net patient service revenue as defined in § 71-5-2801.

(d) The initial monthly installment due after the commencement date shall be due not later than sixty (60) days after the commencement date, unless a later date is set by the bureau. Payments for subsequent months are due not later than twenty-five (25) days after the end of each calendar month.

(e) Nursing homes shall not create a separate line-item charge on the bill reflecting the assessment.

(f) The annual assessment imposed by this part shall not be effective and validly imposed until the bureau:

(1) Has provided to the Tennessee Health Care Association written notice that includes a determination from the Centers for Medicare and Medicaid Services (CMS) that the annual assessment is a permissible source of revenue that shall not adversely affect the amount of federal financial participation in the TennCare program; and

(2) Has provided evidence that the bureau of TennCare will implement an acuity-based reimbursement methodology for nursing facility care developed in consultation with the Tennessee Health Care Association.

71-5-2804.

(a) Upon enactment of the assessment fee pursuant to this part, the bureau of TennCare shall make increased payments to nursing facilities for FY 2014-2015 as a part of a transition to a full acuity-based reimbursement system.

(b) During FY 2014-2015, the bureau of TennCare shall make a supplemental transitional payment to nursing facilities for the transition to an acuity based reimbursement system, which exceeds the amount of nursing home medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on July 1, 2014. The total aggregate amount of funds available for this supplemental payment shall be equal to the difference between:

(1) The aggregated amount of nursing home trust fund assessments scheduled to be paid by all nursing homes during FY 2014-2015; and

(2) The total amount of nursing home privilege tax paid by all nursing homes during FY 2013-2014. The supplemental transitional payments shall be allocated as follows, in consultation with the Tennessee Health Care Association:

(A) Thirty-percent (30%) allocated in the same manner as the 2013 acuity payment;

(B) Thirty-percent (30%) allocated strictly based on medicaid day-weighted CMI score;

(C) Twenty-percent (20%) allocated based on quality measures adopted by the bureau of TennCare and the Tennessee Health Care Association;

(D) Nineteen-percent (19%) allocated to fund full payment of nursing facility reimbursement rates as set forth in § 71-5-2802(h)(1); and

(E) One-percent (1%) allocated for administrative costs associated with systems development, which shall be used to implement an electronic cost report submission system and online process for facilities to submit data needed to support the new acuity-based reimbursement system.

71-5-2805.

(a) The bureau shall seek necessary federal approval in the form of state plan amendments in order to implement the provisions of this part, if it determined such approvals are necessary.

(b) The bureau is authorized to adopt rules and regulations necessary to implement the provisions of this part or obtain approval of the state plan amendments.

71-5-2806.

(a) If any part of any assessment fee imposed by §71-5-2803 is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such assessment fee. Thereafter, on the first day of each month during which any part of any assessment fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such assessment fee or prior accrued penalty. Payment shall be deemed to have been made upon date of deposit in the United States mail.

(b) The bureau of TennCare may for good cause approve an alternative payment plan, as long as full payment of the assessment fee plus any penalties are made. So long as the facility is current with payment of the current assessment and any authorized payment plan approved by the bureau of TennCare, no further penalties will be applied. Any payments after a penalty is assessed under this section shall be credited first to unpaid assessment amounts rather than to penalty amounts, beginning with the most delinquent installment.

(c) If a nursing home is more than ninety (90) days delinquent in paying an installment of its annual nursing home assessment fee or becomes delinquent on an approved payment plan, the bureau of TennCare shall initiate proceedings before the board for licensing health care facilities ("board"), in accordance with the Uniform Administrative Procedures Act, as compiled in title 4, chapter 5, so that the board may suspend admissions to the facility or otherwise direct the facility to pay the assessment fee and any accrued penalties in full within a prescribed period of time. If the facility does not pay the assessment fee and any accrued penalties in full within the prescribed period of time as directed by the board, the board shall suspend admissions to the facility. Any suspension of admissions imposed according to this section shall immediately be lifted following the full payment of the assessment fee and any accrued penalties by the facility. If full payment of the assessment fee and any accrued penalties is not paid within sixty (60) days from the first day of the suspension of admissions, the bureau of TennCare shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act so that the board may consider the revocation of the facility's license.

(d) The board may waive, in whole or in part, any penalty imposed under this section upon a determination that there is good cause for such a waiver. A board waiver shall excuse the payment of that penalty amount but shall not excuse payment of any assessments.

(e)

(1) Any facility that is delinquent on the payment of its nursing home annual assessment fee as provided for in § 68-11-216 as of July 16, 2014 must establish a payment plan as provided for in this section.

(2) If a facility has established a payment plan concerning the delinquency that has been approved by the bureau of TennCare by August 15, 2014, all fees and penalties imposed by this section shall not be imposed so long as the facility is current with its payment plan, and no interest shall accrue on any balance unpaid as of July 1, 2014.

(3) If a facility has not established a payment plan approved by the bureau of TennCare by August 15, 2014, the bureau shall have the authority to recoup the amount of any supplemental transitional payments as provided for in § 71-5-2804(b)(2)(A)-(C), and such amounts shall be applied to reduce the unpaid balance of any nursing home assessment fees owed by the facility.

71-5-2807.

For the purposes of this part, any nursing home participating in the medicaid program shall file cost reports in accordance with the rules adopted by the bureau. Any nursing home participating in the medicaid program that does not adopt the uniform classification of accounts, or other acceptable accounting methods as shall be established by the rules of the bureau, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, or does not submit cost data as required by the bureau, shall be assessed a penalty of one hundred dollars (\$100.00) for each day such provider is not in compliance with this section. The bureau may waive, in whole or in part, any penalty upon a determination that there is good cause for such a waiver. The penalty imposed by this section shall supercede any penalty imposed under § 12-4-304.

71-5-2808.

The fiscal review committee shall review and have oversight of the implementation of this part and the nursing home assessment trust fund.

71-5-2809.

Enactment of this part and any amendments to this part shall not operate to excuse the monthly installment payment of the nursing home assessment fee due on July 15, 2014 pursuant to § 68-11-216(c).

71-5-2810.

(a) The nursing home annual assessment fee established by this part shall terminate on June 30, 2015.

(b) The assessment imposed by this part shall be suspended if the bureau attempts to utilize the money in the account for any use other than permitted by this part.

(c) Any assessment fee obligation imposed by § 71-5-2803 shall be suspended to the extent that, and for the period that receipt of the assessment fee by the state results in, a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

71-5-2811.

(a) If the bureau of TennCare has not received the necessary approvals from the Centers for Medicare and Medicaid Services to impose this annual assessment prior to July 1, 2014, or cannot administratively implement the provisions of § 71-5-2802 and § 71-5-2803 prior to July 1, 2014, the assessment fee shall be set pursuant to subsection (b) below until the commencement date.

(b) Upon the occurrence of the conditions described in subsection (a), the amount of the assessment fee shall be set at and uniformly applied to all beds licensed as nursing home beds by this state on July 1, 2014, for the fiscal year following that date at the rate of two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year. Licensed facilities that are owned or operated by an agency of this state are not excluded from paying the assessment fee. There shall be no exclusions, deductions or adjustments applied to the assessment fee of any licensed facility different from any other such facility. Beds licensed after July 1, 2014, shall pay a prorated amount of the

annual assessment fee for the fiscal year following such date, provided, that no such assessment fee shall be due to the extent that the beds licensed after July 1, 2014, were the result of the transfer of such beds from one (1) licensed facility to another licensed facility, where the transferor facility had already paid the full amount of the assessment fee on such beds, or where the transferor facility agrees to continue to pay the monthly installments due with respect to such beds. Such assessment fee shall be paid in equal monthly installments of one-twelfth (1/12) of two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year. The installments are due on the fifteenth day of each following month beginning August 15, 2014, for the July 2014 installment and ending with a final payment on the fifteenth of the month following the commencement date.

(c) The penalties authorized under § 71-5-2806 shall apply to delinquencies arising under this section.

(d) This section shall have no effect after the commencement date set by § 71-5-2801.

SECTION 2. Tennessee Code Annotated, Section 71-5-1412, is amended by deleting the date "June 30, 2015" in subsection (c) and inserting the date "June 30, 2017".

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it.

HOUSE BILL NO. 1783

PASSED: April 14, 2014



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES



RON RAMSEY  
SPEAKER OF THE SENATE

APPROVED this 30<sup>th</sup> day of April 2014



BILL HASLAM, GOVERNOR