HOUSE BILL NO. HB0193

Nursing care facility assessment.

Sponsored by: Representative(s) Childers, Buchanan and Pedersen and Senator(s) Bebout, Coe, Hines and Meier

A BILL

for

AN ACT relating to welfare; establishing the nursing care facility assessment as specified; establishing an account; providing definitions; providing regulatory authority; providing penalties; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 42-8-101 through 42-8-109 are created to read:

CHAPTER 8

NURSING CARE FACILITY ASSESSMENT ACT

42-8-101. Short title.

This article shall be known and may be cited as the "Wyoming Nursing Care Facility Assessment Act."

42-8-102. Definitions.

(a) As used in this article:

(i) "Account" means the nursing care facility assessment account created under W.S. 42-8-103;

(ii) "Department" means the department of health;

(iii) "Fiscal year" means the twelve (12) month period beginning July 1 and ending June 30;

(iv) "Medicaid" means as defined in W.S. 42-7-102(a)(iv);

(v) "Medicare resident day" means a resident day funded by the Medicare program, a Medicare advantage or special needs plan or by the Medicare hospice program;

(vi) "Net patient service revenue" means gross inpatient revenues from services provided to nursing care facility patients less reductions from gross inpatient revenue resulting from an inability to collect payment of charges. Inpatient care revenue excludes nonpatient 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 includes bad debts, contractual adjustments, uncompensated care, discounts and adjustments and other revenue deductions;

(vii) "Nursing care facility" means as defined in W.S. 35-2-901(a)(xvi);

(viii) "Resident day" means a calendar day of care provided to a nursing facility 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;

(ix) "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 under Medicare payment principles.

42-8-103. Nursing care facility assessment account.

(a) The nursing care facility assessment account is created.

(b) The state treasurer shall invest amounts deposited within the account in accordance with law, and all investment earnings shall be credited back to the account.

(c) The account shall consist of:

(i) Amounts collected or received by the department from nursing care facility assessments under this article;

(ii) All federal matching funds received by the department as a result of expenditures made by the department attributable to the account;

(iii) Any interest or penalties levied in conjunction with the administration of this article.

(d) The account 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, which shall be used to make Medicaid payments for nursing care facility services which exceed the amount of nursing care facility Medicaid rates, in the aggregate, as calculated in accordance with the approved state Medicaid plan in effect on October 1, 2010. The fund shall be used exclusively for the following purposes:

(i) To pay administrative expenses incurred by the department or its agent in performing the activities authorized by this article, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected in the fiscal year;

(ii) To increase nursing care facility payments to fund covered services to Medicaid beneficiaries within Medicare upper payment limits, as negotiated with the department. The upper payment limit for both the private

nursing care facilities and nonstate government-owned nursing facilities shall be calculated by the department in accordance with the provisions of 42 C.F.R. 447.272;

(iii) To repay the federal government any excess payments made to nursing facilities if the state plan, after approval by the federal centers for Medicare and Medicaid services, is subsequently disapproved for any reason and after the state has appealed. Nursing care facilities shall refund the excess payments to the assessment account. The department shall return the excess payments to the federal government and nursing care facility providers in the same proportion as the original financing. Individual nursing care facilities shall be reimbursed based on the proportion of the individual nursing care facility's assessment to the total assessment paid by nursing care facilities. If a nursing care facility is unable to refund payments as provided in this paragraph, the department shall develop a payment plan and deduct amounts from future Medicaid payments. The department shall refund the federal government for the federal portion of those overpayments; or

(iv) To make quarterly adjustment payments as provided in W.S. 42-8-108.

42-8-104. Assessments.

(a) Each nursing care facility shall pay the nursing care facility assessment to the account in accordance with this article.

(b) The aggregated amount of assessments for all nursing facilities during a fiscal year shall be the lesser of the amount necessary to fund the provisions of this article or 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 department 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 department shall promulgate rules for facility reporting of non-Medicare resident days and for payment of the assessment.

(c) The department shall collect, and each nursing care facility shall pay, the assessment under this section

on a quarterly basis. The initial payment shall be due not later than forty-five (45) days after the state plan has been approved by the federal centers for Medicare and Medicaid services. Subsequent payments are due not later than forty-five (45) days after the end of each calendar quarter.

(d) Nursing care facility operators may increase their charges to incorporate the cost of paying the assessment under this section, but shall not create a separate line-item charge on the bill reflecting the assessment.

42-8-105. Approval of state plan.

(a) The department shall seek necessary federal approval in the form of state plan amendments in order to implement the provisions of this article.

(b) The department shall adopt rules and regulations necessary to implement the provisions of this article or obtain approval of the state plan amendments.

42-8-106. Multiple facilities.

If a person conducts, operates or maintains more than one (1) nursing care facility licensed by the department, the person shall pay the assessment for each nursing care facility separately.

42-8-107. Penalties for failure to pay assessment.

(a) If a nursing care facility fails to pay an assessment when due under this article, there shall be added to the assessment a penalty equal to five percent (5%) of the amount of the assessment that was not paid when due. The penalty under this section may be waived by the department for good cause. Any payments after a penalty is assessed under this section shall be credited first to unpaid assessment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

(b) In addition to the penalty under subsection (a) of this section, the department may implement any of the following remedies for failure of a nursing care facility to pay its assessment when due under this article:

(i) Withhold any medical assistance reimbursement payments until the assessment is paid;

(ii) Suspend or revoke the nursing care facility's license; or

(iii) Develop a plan that requires the nursing care facility to pay any delinquent assessment in installments.

42-8-108. Quarterly adjustment payments.

(a) Each nursing facility is eligible for quarterly adjustments as provided in this section.

(b) The department shall determine the number of days that nursing care facility services where paid for by the Wyoming medical assistance program for the applicable state fiscal year. That number of days shall be utilized by the department to determine the nursing care facility adjustment payment. Adjustment payments shall be paid by the department on a quarterly basis to reimburse covered Medicaid expenditures in the aggregate within the upper payment limit. Each quarterly payment shall be made not

later than thirty (30) days after the end of the calendar quarter with the initial adjustment payment due not later than thirty (30) days after the approval by the federal centers for Medicare and Medicaid services of the state's plan reflecting facility adjustment payments.

42-8-109. Discontinuation of the assessment.

(a) The assessment imposed by this article shall be discontinued if:

(i) The state plan amendment reflecting the quarterly nursing care facility adjustment payments under W.S. 42-8-108 is not approved by the federal centers for Medicare and Medicaid services. The department may modify the rate adjustment provisions as necessary to obtain the federal centers for Medicare and Medicaid services approval if such changes do not exceed the authority and purposes of this article;

(ii) The department reduces rates to a level less than the rates effective on October 1, 2010 plus revenue increases from the account, including matches by federal financial participation;

(iii) The department or any other state agency attempts to utilize the money in the account for any use other than permitted by this article;

(iv) If federal financial participation to match assessments under this article becomes unavailable under federal law. In such case, the department shall terminate the imposition of assessments beginning on the date the federal statutory, regulatory or interpretive change takes effect.

(b) If collection of the assessment is discontinued as provided in this section, any amount in the account shall be returned to the nursing care facility from which the assessment was collected on the same basis as it was collected.

Section 2. W.S. 35-2-905(a) by creating a new paragraph (v) and 42-4-104(b) by creating a new paragraph (x) are amended to read:

35-2-905. Conditions, monitoring or revoking a license.

(a) The division may place conditions upon a license, install a division approved monitor or manager at the owner's or operator's expense, suspend admissions, or deny, suspend or revoke a license issued under this act if a licensee:

(v) Fails to pay a nursing care facility assessment and the department determines to suspend or revoke the license as provided in W.S. 42-8-107(b)(ii).

42-4-104. Powers and duties of department of health.

(b) In carrying out subsection (a) of this section, the department may:

(x) Provide for the withholding of medical assistance payments from nursing care facilities in accordance with W.S. 42-8-107(b)(i).

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)