

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 600

Introduced by Campbell, 25.

Read first time January 19, 2011

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to health care facilities; to adopt the Nursing
- 2 Facility Quality Assurance Assessment Act; to provide an
- 3 operative date; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 30 of this act shall be known
2 and may be cited as the Nursing Facility Quality Assurance Assessment
3 Act.

4 Sec. 2. For purposes of the Nursing Facility Quality
5 Assurance Assessment Act, the definitions found in sections 3 to 16
6 of this act apply.

7 Sec. 3. Bed-hold day means a day during which a bed is
8 kept open pursuant to the bed-hold policy of the nursing facility or
9 skilled nursing facility which permits a resident to return to the
10 facility and resume residence in the facility after a transfer to a
11 hospital or therapeutic leave.

12 Sec. 4. Continuing care retirement community means an
13 operational entity or related organization which, under a life care
14 contract, provides a continuum of services, including, but not
15 limited to, independent living, assisted-living, nursing facility,
16 and skilled nursing facility services within the same or a contiguous
17 municipality as defined in section 18-2410.

18 Sec. 5. Department means the Department of Health and
19 Human Services.

20 Sec. 6. Gross inpatient revenue means the revenue paid to
21 a nursing facility or skilled nursing facility for inpatient resident
22 care, room, board, and services less contractual adjustments, bad
23 debt, and revenue from sources other than operations, including, but
24 not limited to, interest, guest meals, gifts, and grants.

25 Sec. 7. Hospital has the meaning found in section 71-419.

1 Sec. 8. Life care contract means a contract between a
2 continuing care retirement community and a resident of such community
3 or his or her legal representative which:

4 (1) Includes each of the following express promises:

5 (a) The community agrees to provide services at any level
6 along the continuum of care levels offered by the community;

7 (b) The base room fee will not increase as a resident
8 transitions among levels of care, excluding any services or items
9 upon which both parties initially agreed; and

10 (c) If the resident outlives and exhausts resources to
11 pay for services, the community will continue to provide services at
12 a reduced price or free of charge to the resident, excluding any
13 payments from medicare, the medical assistance program, or a private
14 insurance policy for which the resident is eligible and the community
15 is certified or otherwise qualified to receive; and

16 (2) Requires the resident to agree to pay an entry fee to
17 the community and to remain in the community for a minimum length of
18 time subject to penalties against the entry fee.

19 Sec. 9. Medical assistance program means the medical
20 assistance program established pursuant to the Medical Assistance
21 Act.

22 Sec. 10. Medicare day means any day of resident stay
23 funded by medicare as the payment source and includes a day funded
24 under Medicare Part A, under a Medicare Advantage or special needs
25 plan, or under medicare hospice.

1 Sec. 11. Medicare upper payment limit means the
2 limitation established by 42 C.F.R. 447.272 establishing a maximum
3 amount of payment for services under the medical assistance program
4 to nursing facilities, skilled nursing facilities, and hospitals.

5 Sec. 12. Nursing facility has the meaning found in
6 section 71-424.

7 Sec. 13. Quality assurance assessment means the
8 assessment imposed under section 17 of this act.

9 Sec. 14. Resident day means the calendar day in which
10 care is provided to an individual resident of a nursing facility or
11 skilled nursing facility that is not reimbursed under medicare,
12 including the day of admission but not including the day of
13 discharge, unless the dates of admission and discharge occur on the
14 same day, in which case the resulting number of resident days is one
15 resident day.

16 Sec. 15. Skilled nursing facility has the meaning found
17 in section 71-429.

18 Sec. 16. Total resident days means the total number of
19 residents residing in the nursing facility or skilled nursing
20 facility between July 1 and June 30, multiplied by the number of days
21 each such resident resided in that nursing facility or skilled
22 nursing facility. If a resident is admitted and discharged on the
23 same day, the resident shall be considered to be a resident for that
24 day.

25 Sec. 17. Except for facilities which are exempt under

1 section 18 of this act and facilities referred to in section 19 of
2 this act, each nursing facility or skilled nursing facility licensed
3 under the Health Care Facility Licensure Act shall pay a quality
4 assurance assessment based on total resident days, including bed-hold
5 days, less medicare days, for the purpose of improving the quality of
6 nursing facility or skilled nursing facility care in this state. The
7 assessment shall be three dollars and fifty cents for each resident
8 day for the preceding calendar quarter. The assessment in the
9 aggregate shall not exceed the amount stated in section 20 of this
10 act.

11 Sec. 18. The department shall exempt the following
12 providers from the quality assurance assessment:

13 (1) State-operated veteran's homes listed in section
14 80-315;

15 (2) Nursing facilities and skilled nursing facilities
16 with twenty-six or fewer licensed beds; and

17 (3) Continuing care retirement communities.

18 Sec. 19. The department shall reduce the quality
19 assurance assessment for either certain high-volume medicaid nursing
20 facilities or skilled nursing facilities with high patient volumes to
21 meet the redistribution tests in 42 C.F.R. 433.68(e)(2). Under this
22 section, the assessment shall be based on total resident days,
23 including bed-hold days, less medicare days, for the purpose of
24 improving the quality of nursing facility or skilled nursing facility
25 care in this state.

1 Sec. 20. The aggregate quality assurance assessment shall
2 not exceed the lower of the amount necessary to accomplish the uses
3 specified in section 26 of this act or the maximum amount of gross
4 inpatient revenue that may be assessed pursuant to the indirect
5 guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)
6 (i). The aggregate quality assurance assessment shall be imposed on a
7 per-nonmedicare-day basis.

8 Sec. 21. Each nursing facility or skilled nursing
9 facility shall pay the quality assurance assessment to the department
10 on a quarterly basis after the medical assistance payment rates of
11 the facility are adjusted pursuant to section 26 of this act. The
12 department shall prepare and distribute a form on which a nursing
13 facility or skilled nursing facility shall calculate and report the
14 quality assurance assessment. A nursing facility or skilled nursing
15 facility shall submit the completed form with the quality assurance
16 assessment no later than thirty days following the end of each
17 calendar quarter.

18 Sec. 22. The department shall collect the quality
19 assurance assessment and remit the assessment to the State Treasurer
20 for credit to the Nursing Facility Quality Assurance Fund. No
21 proceeds from the quality assurance assessment, including the federal
22 match, shall be placed in the General Fund unless otherwise provided
23 in the Nursing Facility Quality Assurance Assessment Act.

24 Sec. 23. A nursing facility or skilled nursing facility
25 shall report the quality assurance assessment on a separate line of

1 the medicaid cost report of the nursing facility or skilled nursing
2 facility. The quality assurance assessment shall be treated as a
3 separate component in developing rates paid to nursing facilities or
4 skilled nursing facilities and shall not be included with existing
5 rate components. In developing a rate component for the quality
6 assurance assessment, the assessment shall be treated as a direct
7 pass-through to each nursing facility and skilled nursing facility,
8 retroactive to the operative date of this act. The quality assurance
9 assessment shall not be subject to any cost limitation or revenue
10 offset.

11 Sec. 24. If the department determines that a nursing
12 facility or skilled nursing facility has underpaid or overpaid the
13 quality assurance assessment, the department shall notify the nursing
14 facility or skilled nursing facility of the unpaid quality assurance
15 assessment or refund due. Such payment or refund shall be due or
16 refunded within thirty days after the issuance of the notice.

17 Sec. 25. (1) A nursing facility or skilled nursing
18 facility that fails to pay the quality assurance assessment within
19 the timeframe specified in section 21 or 24 of this act, whichever is
20 applicable, shall pay, in addition to the outstanding quality
21 assurance assessment, a penalty of XX percent of the quality
22 assurance assessment amount owed for each month or portion of a month
23 that the assessment is overdue. If the department determines that
24 good cause is shown for failure to pay the quality assurance
25 assessment, the department shall waive the penalty or a portion of

1 the penalty.

2 (2) If a quality assurance assessment has not been
3 received by the department within thirty days following the quarter
4 for which the assessment is due, the department shall withhold an
5 amount equal to the quality assurance assessment and penalty owed
6 from any payment due such nursing facility or skilled nursing
7 facility under the medical assistance program.

8 (3) The quality assurance assessment shall constitute a
9 debt due the state and may be collected by civil action, including,
10 but not limited to, the filing of tax liens, and any other method
11 provided for by law.

12 (4) The department shall remit any penalty collected
13 pursuant to this section to the State Treasurer for distribution in
14 accordance with Article VII, section 5, of the Constitution of
15 Nebraska.

16 Sec. 26. (1) The Nursing Facility Quality Assurance Fund
17 is created. Interest and income earned by the fund shall be credited
18 to the fund. Any money in the fund available for investment shall be
19 invested by the state investment officer pursuant to the Nebraska
20 Capital Expansion Act and the Nebraska State Funds Investment Act.

21 (2) The department shall use the Nursing Facility Quality
22 Assurance Fund, including the matching federal financial
23 participation under Title XIX of the federal Social Security Act, as
24 amended, for the purpose of enhancing rates paid under the medical
25 assistance program to nursing facilities and skilled nursing

1 facilities, exclusive of the reimbursement paid under the medical
2 assistance program, and shall not use the fund to replace or offset
3 existing state funds paid to nursing facilities and skilled nursing
4 facilities for providing services under the medical assistance
5 program.

6 (3) The Nursing Facility Quality Assurance Fund shall
7 also be used as follows:

8 (a) To pay the department an administrative fee for
9 enforcing and collecting the quality assurance assessment. The
10 administrative fee shall be XXX dollars for fiscal year 2011-12 and
11 XXX dollars for fiscal year 2012-13. The State Treasurer shall credit
12 the amount of the administrative fee out of the proceeds of the
13 quality assurance assessment to the Health and Human Services Cash
14 Fund;

15 (b) To pay the share under the medical assistance program
16 of a quality assurance assessment as an add-on to the rate under the
17 medical assistance program for costs incurred by a nursing facility
18 or skilled nursing facility. This rate add-on shall account for the
19 cost incurred by a nursing facility or skilled nursing facility in
20 paying the quality assurance assessment but only with respect to the
21 pro rata portion of the assessment that correlates with the resident
22 days in the nursing facility or skilled nursing facility that are
23 attributable to residents funded by the medical assistance program;

24 (c) To rebase rates under the medical assistance program
25 in accordance with the medicaid state plan as defined in section

1 68-907. In calculating rates, the proceeds of the quality assurance
2 assessments and federal match not utilized under subdivisions (3)(a)
3 and (b) of this section shall be used to enhance rates by increasing
4 the annual inflation factor to the extent allowed by such proceeds
5 and any funds appropriated by the Legislature; and

6 (d) To increase quality assurance payments to fund
7 covered services to recipients of benefits from the medical
8 assistance program within medicare upper payment limits as determined
9 by the department following consultation with nursing facilities and
10 skilled nursing facilities.

11 Sec. 27. (1) On or before XX, 2011, the department shall
12 submit an application to the Centers for Medicare and Medicaid
13 Services of the United States Department of Health and Human Services
14 amending the medicaid state plan as defined in section 68-907 by
15 requesting a waiver of the uniformity requirement pursuant to 42
16 C.F.R. 433.68(e) to exempt certain facilities from the quality
17 assurance assessment and to permit other facilities to pay the
18 quality assurance assessment at lower rates.

19 (2) The quality assurance assessment is not due and
20 payable until an amendment to the medicaid state plan which increases
21 the rates paid to nursing facilities and skilled nursing facilities
22 is approved by the Centers for Medicare and Medicaid Services and the
23 nursing facilities and skilled nursing facilities have been
24 compensated retroactively for the increased rate for services
25 pursuant to section 26 of this act.

1 (3) If the waiver requested under this section is not
2 approved by the Centers for Medicare and Medicaid Services, the
3 Nebraska Department of Health and Human Services may resubmit the
4 waiver application to address any changes required by the Centers for
5 Medicare and Medicaid Services in the rejection of such application,
6 including the classes of facilities exempt and the rates or amounts
7 for quality assurance assessments, if such changes do not exceed the
8 authority and purposes of the Nursing Facility Quality Assurance
9 Assessment Act.

10 Sec. 28. (1) The department shall discontinue collection
11 of the quality assurance assessments if:

12 (a) The waiver requested pursuant to section 27 of this
13 act or the medicaid state plan amendment reflecting the payment rates
14 in section 26 of this act is given final disapproval by the Centers
15 for Medicare and Medicaid Services of the United States Department of
16 Health and Human Services;

17 (b) In any fiscal year, the state appropriates funds for
18 nursing facility or skilled nursing facility rates at an amount that
19 reimburses nursing facilities or skilled nursing facilities at a
20 lesser percentage than the median percentage appropriated to other
21 classes of providers of covered services under the medical assistance
22 program;

23 (c) If money in the Nursing Facility Quality Assurance
24 Fund is appropriated, transferred, or otherwise expended for any use
25 other than uses permitted pursuant to the Nursing Facility Quality

1 Assurance Assessment Act; or

2 (d) If federal financial participation to match the
3 quality assurance assessments made under the act becomes unavailable
4 under federal law. In such case, the department shall terminate the
5 collection of the quality assurance assessments beginning on the date
6 the federal statutory, regulatory, or interpretive change takes
7 effect.

8 (2) If collection of the quality assurance assessment is
9 discontinued as provided in this section, the money in the Nursing
10 Facility Quality Assurance Fund shall be returned to the nursing
11 facilities or skilled nursing facilities from which the quality
12 assurance assessments were collected on the same basis as the
13 assessments were assessed.

14 Sec. 29. A nursing facility or skilled nursing facility
15 aggrieved by an action of the department under the Nursing Facility
16 Quality Assurance Assessment Act may file a petition for hearing with
17 the director of the Division of Medicaid and Long-Term Care of the
18 department. The hearing shall be conducted pursuant to the
19 Administrative Procedure Act and rules and regulations of the
20 department.

21 Sec. 30. The department may adopt and promulgate rules
22 and regulations to carry out the Nursing Facility Quality Assurance
23 Assessment Act.

24 Sec. 31. This act becomes operative on July 1, 2011.

25 Sec. 32. Since an emergency exists, this act takes effect

1 when passed and approved according to law.