

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1472 Session of
2013

INTRODUCED BY BAKER, HENNESSEY, GINGRICH, MILLARD, TOOHL,
STERN, RAPP, C. HARRIS, EVERETT, MICOZZIE, SAYLOR AND CLYMER,
JUNE 3, 2013

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES,
AS AMENDED, JUNE 5, 2013

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," in public assistance,
4 further providing for medical assistance payments for
5 institutional care; in intermediate care facilities
6 assessments, further providing for time periods and making
7 editorial changes; and, in hospital assessments, further
8 providing for authorization and for time period.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 443.1(7)(iv) of the act of June 13, 1967
12 (P.L.31, No.21), known as the Public Welfare Code, amended June
13 30, 2011 (P.L.89, No.22), is amended to read:

14 Section 443.1. Medical Assistance Payments for Institutional
15 Care.--The following medical assistance payments shall be made
16 on behalf of eligible persons whose institutional care is
17 prescribed by physicians:

18 * * *

19 (7) After June 30, 2007, payments to county and nonpublic
20 nursing facilities enrolled in the medical assistance program as

providers of nursing facility services shall be determined in accordance with the methodologies for establishing payment rates for county and nonpublic nursing facilities specified in the department's regulations and the Commonwealth's approved Title XIX State Plan for nursing facility services in effect after June 30, 2007. The following shall apply:

* * *

(iv) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for each fiscal year beginning on or after July 1, 2011, the department shall apply a revenue adjustment neutrality factor to county and nonpublic nursing facility payment rates so that the estimated Statewide day-weighted average payment rate in effect for that fiscal year is limited to the amount permitted by the funds appropriated by the General Appropriation Act for the fiscal year. The revenue adjustment neutrality factor shall remain in effect until the sooner of June 30, [2013] 2016, or the date on which a new rate-setting methodology for medical assistance nursing facility services which replaces the rate-setting methodology codified in 55 Pa. Code Chs. 1187 (relating to nursing facility services) and 1189 (relating to county nursing facility services) takes effect.

* * *

Section 2. The heading of Article XVIII-C and sections 801-C, 802-C, 803-C, 804-C, 805-C, 806-C, 807-C, 808-C, 809-C and 810-C of the act, added July 4, 2004 (P.L.528, No.69), are amended to read:

ARTICLE VIII-C

INTERMEDIATE CARE FACILITIES FOR [MENTALLY RETARDED] PERSONS
WITH AN INTELLECTUAL DISABILITY

ASSESSMENTS

Section 801-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment." The fee implemented pursuant to this article on every intermediate care facility for [mentally retarded] persons with an intellectual disability.

"Department." The Department of Public Welfare of the Commonwealth.

"Intermediate care facility for [mentally retarded] persons with an intellectual disability" or "[ICF/MR] ICF/ID." A public or private facility defined in section 1905 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1905).

"Medicaid." The program established under Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).

"Medical assistance program" or "program." The medical assistance program as administered by the Department of Public Welfare.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Social Security Act." 49 Stat. 620, 42 U.S.C. § 301 et seq.

Section 802-C. Authorization.

In order to generate additional revenues for medical assistance program recipients to have access to medically necessary [mental retardation] intellectual disability services, the department shall implement a monetary assessment on each [ICF/MR] ICF/ID subject to the conditions and requirements specified in this article.

Section 803-C. Implementation.

1 The [ICF/MR] ICF/ID assessments shall be implemented on an
2 annual basis as a health care-related tax as defined in section
3 1903(w) (3) (B) of the Social Security Act, or any amendments
4 thereto, and may be imposed and is required to be paid only to
5 the extent that the revenues generated from the assessment will
6 qualify as the State share of program expenditures eligible for
7 Federal financial participation.

8 Section 804-C. Amount.

9 The assessment rate shall be determined in accordance with
10 this article and implemented on an annual basis by the
11 department, as approved by the Governor, upon notification to
12 and in consultation with the [ICFs/MR] ICFs/ID. In each year in
13 which the assessment is implemented, the assessment rate shall
14 equal the amount established by the department subject to the
15 maximum aggregate amount that may be assessed pursuant to the 6%
16 indirect guarantee threshold set forth in 42 CFR 433.68(f) (3) (i)
17 (relating to permissible health care-related taxes [after the
18 transition period]) or any other maximum aggregate amount
19 established by law.

20 Section 805-C. Administration.

21 (a) Notice of assessment.--The secretary, before
22 implementing an assessment in any fiscal year, shall publish a
23 notice in the Pennsylvania Bulletin that specifies the amount of
24 the assessment being proposed and an explanation of the
25 assessment methodology and amount determination that identifies
26 the aggregate impact on [ICFs/MR] ICFs/ID subject to the
27 assessment. Interested parties shall have 30 days in which to
28 submit comments to the secretary. Upon expiration of the 30-day
29 comment period, the secretary, after consideration of the
30 comments, shall publish a second notice in the Pennsylvania

1 Bulletin announcing the rate of the assessment.

2 (b) Review of assessment.--Except as permitted under section
3 809-C, the secretary's determination of the aggregate amount and
4 the rate of the assessment pursuant to subsection (a) shall not
5 be subject to administrative or judicial review under 2 Pa.C.S.
6 Chs. 5 Subch. A (relating to practice and procedure of
7 Commonwealth agencies) and 7 Subch. A (relating to judicial
8 review of Commonwealth agency action) or any other provision of
9 law. No assessment implemented under this article nor forms or
10 reports required to be completed by [ICFs/MR] ICFs/ID pursuant
11 to this article shall be subject to the act of July 31, 1968
12 (P.L.769, No.240), referred to as the Commonwealth Documents
13 Law, the act of October 15, 1980 (P.L.950, No.164), known as the
14 Commonwealth Attorneys Act, or the act of June 25, 1982
15 (P.L.633, No.181), known as the Regulatory Review Act.

16 Section 806-C. Calculation.

17 Using the assessment rate implemented by the secretary
18 pursuant to section 804-C, each [ICF/MR] ICF/ID shall calculate
19 the assessment amounts it owes for a calendar quarter on a form
20 specified by the department and shall submit the form and the
21 amount owed to the department no later than the last day of that
22 calendar quarter or 30 days from the date of the department's
23 second notice published pursuant to section 805-C(a), whichever
24 is later.

25 Section 807-C. Purposes and uses.

26 No [ICF/MR] ICF/ID shall be directly guaranteed a repayment
27 of its assessment in derogation of 42 CFR 433.68 (relating to
28 permissible health care-related taxes [after the transition
29 period]), provided, however, in each fiscal year in which an
30 assessment is implemented, the department shall use the State

1 revenue collected from the assessment and any Federal funds
2 received by the Commonwealth as a direct result of the
3 assessment to fund services for persons with [mental
4 retardation] an intellectual disability.

5 Section 808-C. Records.

6 Upon request by the department, an [ICF/MR] ICF/ID shall
7 furnish to the department such records as the department may
8 specify in order to determine the assessment rate for a fiscal
9 year or the amount of the assessment due from the [ICF/MR]
10 ICF/ID or to verify that the [ICF/MR] ICF/ID has paid the
11 correct amount due. In the event that the department determines
12 that an [ICF/MR] ICF/ID has failed to pay an assessment or that
13 it has underpaid an assessment, the department shall notify the
14 [ICF/MR] ICF/ID in writing of the amount due, including
15 interest, and the date on which the amount due must be paid,
16 which shall not be less than 30 days from the date of the
17 notice. In the event that the department determines that an
18 [ICF/MR] ICF/ID has overpaid an assessment, the department shall
19 notify the [ICF/MR] ICF/ID in writing of the overpayment and,
20 within 30 days of the date of the notice of the overpayment,
21 shall either authorize a refund of the amount of the overpayment
22 or offset the amount of the overpayment against any amount that
23 may be owed to the department by the [ICF/MR] ICF/ID.

24 Section 809-C. Appeal rights.

25 An [ICF/MR] ICF/ID that is aggrieved by a determination of
26 the department as to the amount of the assessment due from the
27 [ICF/MR] ICF/ID or a remedy imposed pursuant to section 810-C
28 may file a request for review of the decision of the department
29 by the Bureau of Hearings and Appeals within the department,
30 which shall have exclusive jurisdiction in such matters. The

1 procedures and requirements of 67 Pa.C.S. Ch. 11 (relating to
2 medical assistance hearings and appeals) shall apply to requests
3 for review filed pursuant to this section except that, in any
4 such request for review, an [ICF/MR] ICF/ID may not challenge
5 the assessment rate determined by the secretary, but only
6 whether the department correctly determined the assessment
7 amount due from the [ICF/MR] ICF/ID using the assessment rate in
8 effect for the fiscal year.

9 Section 810-C. Enforcement.

10 In addition to any other remedy provided by law, the
11 department may enforce this article by imposing one or more of
12 the following remedies:

13 (1) When an [ICF/MR] ICF/ID fails to pay an assessment
14 or penalty in the amount or on the date required by this
15 article, the department may add interest at the rate provided
16 in section 806 of the act of April 9, 1929 (P.L.343, No.176),
17 known as The Fiscal Code, to the unpaid amount of the
18 assessment or penalty from the date prescribed for its
19 payment until the date it is paid.

20 (2) When an [ICF/MR] ICF/ID fails to file a report or to
21 furnish records to the department as required by this
22 article, the department may impose a penalty against the
23 [ICF/MR] ICF/ID in the amount of \$1,000 per day for each day
24 the report or required records are not filed or furnished to
25 the department.

26 (3) When an [ICF/MR] ICF/ID fails to pay all or part of
27 an assessment or penalty within 60 days of the date that
28 payment is due, the department may terminate the [ICF/MR]
29 ICF/ID from participation in the medical assistance program
30 and/or deduct the unpaid assessment or penalty and any

1 interest owed thereon from any payments due to the [ICF/MR]
2 ICF/ID until the full amount is recovered. Any such
3 termination or payment deduction shall be made only after
4 written notice to the [ICF/MR] ICF/ID.

5 (4) The secretary may waive all or part of the interest
6 or penalties assessed against an [ICF/MR] ICF/ID pursuant to
7 this article for good cause as shown by the [ICF/MR] ICF/ID.

8 Section 3. Section 811-C of the act, amended July 4, 2008
9 (P.L.557, No.44), is amended to read;

10 Section 811-C. Time periods.

11 (a) Imposition.--The assessment authorized under this
12 article shall not be imposed as follows:

13 (1) Prior to July 1, 2003, for private [ICFs/MR]
14 ICFs/ID.

15 (2) Prior to July 1, 2004, for public [ICFs/MR] ICFs/ID.

16 (3) In the absence of Federal financial participation as
17 described under section 803-C.

18 (b) Cessation.--The assessment authorized under this article
19 shall cease June 30, [2013] 2016, or earlier, if required by
20 law.

21 Section 4. Section 802-E of the act is amended by adding a
22 subsection to read:

23 Section 802-E. Authorization.

24 * * *

25 (a.1) Adjustments to assessment percentage.--

26 (1) For State fiscal years beginning after June 30, 2013,
27 and subject to the advance written approval of the secretary,
28 the municipality may make a proportionately uniform adjustment
29 to the assessment percentage established by ordinance under
30 subsection (a).

1 (2) After receiving written approval under paragraph (1) and
2 before implementing the adjustment, the municipality shall
3 provide advance public notice. The notice shall specify the
4 proposed adjusted assessment percentage and identify the
5 aggregate impact on general acute care hospitals located in the
6 municipality subject to the assessment. An interested party
7 shall have 30 days in which to submit comments to the
8 municipality. Upon expiration of the 30-day comment period, the
9 municipality, after consideration of the comments, shall publish
10 a subsequent notice announcing the adjusted assessment
11 percentage.

12 * * *

13 Section 5. Section 808-E of the act, reenacted October 22,
14 2010 (P.L.829, No.84), is amended to read:

15 Section 808-E. Time period.

16 (a) Cessation.--The assessment authorized under this article
17 shall cease June 30, [2013] 2016. <--

18 (b) Assessment.--

19 (1) A municipality shall have the power to enact the
20 assessment authorized in section 802-E(a) (2) either prior to
21 or during its fiscal year ending June 30, 2010.

22 (2) A municipality may adjust the assessment percentage
23 as specified under section 802-E(a.1) either prior to or
24 during the fiscal year in which the adjusted assessment
25 percentage takes effect.

26 Section 6. This act shall take effect ~~in 60 days~~ <--

27 IMMEDIATELY. <--