

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 695 Session of
2019

INTRODUCED BY BROOKS, MAY 31, 2019

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 27, 2019

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 AND FOR NONEMERGENCY MEDICAL <--
 6 TRANSPORTATION SERVICES AND PROVIDING FOR UNIFORM STATEWIDE
 7 PREFERRED DRUG LIST; in nursing facility assessments, further
 8 providing for DEFINITIONS, FOR CALCULATION, FOR REMEDIES, FOR <--
 9 REPAYMENT AND FOR time periods; in intermediate care
 10 facilities for persons with an intellectual disability
 11 assessments, further providing for DEFINITIONS AND FOR time <--
 12 periods; and, in hospital assessments, further providing for <--
 13 ~~time period.~~; AND MAKING A RELATED REPEAL. <--

14 The General Assembly of the Commonwealth of Pennsylvania
 15 hereby enacts as follows:

16 ~~Section 1. Sections 443.1(7)(iv), 815 A, 811 C(b) and 808 <--~~
 17 ~~E(a) of the act of June 13, 1967 (P.L.31, No.21), known as the <--~~
 18 ~~Human Services Code, are amended to read:~~

19 SECTION 1. SECTION 443.1(7)(IV) OF THE ACT OF JUNE 13, 1967 <--
 20 (P.L.31, NO.21), KNOWN AS THE HUMAN SERVICES CODE, IS AMENDED TO
 21 READ:

22 Section 443.1. Medical Assistance Payments for Institutional
 23 Care.--The following medical assistance payments shall be made

1 on behalf of eligible persons whose institutional care is
2 prescribed by physicians:

3 * * *

4 (7) After June 30, 2007, payments to county and nonpublic
5 nursing facilities enrolled in the medical assistance program as
6 providers of nursing facility services shall be determined in
7 accordance with the methodologies for establishing payment rates
8 for county and nonpublic nursing facilities specified in the
9 department's regulations and the Commonwealth's approved Title
10 XIX State Plan for nursing facility services in effect after
11 June 30, 2007. The following shall apply:

12 * * *

13 (iv) Subject to Federal approval of such amendments as may
14 be necessary to the Commonwealth's approved Title XIX State
15 Plan, for each fiscal year beginning on or after July 1, 2011,
16 the department shall apply a revenue adjustment neutrality
17 factor to county and nonpublic nursing facility payment rates so
18 that the estimated Statewide day-weighted average payment rate
19 in effect for that fiscal year is limited to the amount
20 permitted by the funds appropriated by the General Appropriation
21 Act for the fiscal year. The revenue adjustment neutrality
22 factor shall remain in effect until the sooner of June 30,
23 [2019] 2022, or the date on which a new rate-setting methodology
24 for medical assistance nursing facility services which replaces
25 the rate-setting methodology codified in 55 Pa. Code Chs. 1187
26 (relating to nursing facility services) and 1189 (relating to
27 county nursing facility services) takes effect.

28 * * *

29 SECTION 2. SECTION 443.12 OF THE ACT IS AMENDED BY ADDING
30 SUBSECTIONS TO READ:

<--

1 SECTION 443.12. NONEMERGENCY MEDICAL TRANSPORTATION
2 SERVICES.--* * *

3 (D) THE DEPARTMENT MAY NOT ENTER INTO A CONTRACT WITH A
4 BROKER UNDER SUBSECTION (B) PRIOR TO THE COMPLETION OF THE
5 ANALYSIS REQUIRED UNDER SUBSECTION (E).

6 (E) PRIOR TO THE IMPLEMENTATION OF THE FULL-RISK BROKERAGE
7 MODEL, THE DEPARTMENT, IN COORDINATION WITH THE DEPARTMENT OF
8 TRANSPORTATION AND THE DEPARTMENT OF AGING, SHALL COMMISSION AN
9 ANALYSIS THAT PROVIDES AT A MINIMUM THE FOLLOWING:

10 (1) AN ANALYSIS OF CURRENT FEDERAL AND STATE LAW,
11 REGULATIONS AND POLICIES CONTROLLING THE NONEMERGENCY MEDICAL
12 TRANSPORTATION AND OTHER HUMAN SERVICES TRANSPORTATION PROGRAMS
13 ADMINISTERED IN THE COMMONWEALTH, INCLUDING THE AUTHORIZED
14 METHODS OF DELIVERY AND LIMITATIONS OR RESTRICTIONS IMPOSED ON
15 THE METHODS OF DELIVERY.

16 (2) AN ANALYSIS OF THE EFFECTIVENESS AND EFFICIENCY OF THE
17 CURRENT NONEMERGENCY TRANSPORTATION SERVICE DELIVERY AS IT
18 RELATES TO ALL HUMAN SERVICE PROGRAMS IN THIS COMMONWEALTH.

19 (3) A REVIEW OF OTHER STATES' MODELS OF DELIVERING
20 NONEMERGENCY MEDICAL AND OTHER HUMAN SERVICES TRANSPORTATION,
21 INCLUDING THE NUMBER OF OTHER STATES THAT UTILIZE A FULL-RISK
22 BROKERAGE MODEL AND THE EFFECT A BROKERAGE MODEL HAS HAD ON
23 PUBLIC TRANSIT IN THOSE STATES.

24 (4) AN ANALYSIS OF THE POSITIVE AND NEGATIVE IMPACT OF
25 MAINTAINING THE CURRENT TRANSPORTATION DELIVERY MODEL VERSUS
26 IMPLEMENTING A FULL-RISK BROKERAGE MODEL AS IT RELATES TO THE
27 STATE AND LOCAL GOVERNMENT ENTITIES, INCLUDING FINANCIAL IMPACT.

28 (5) AN ANALYSIS OF THE IMPACT ON CONSUMERS, INCLUDING AN
29 INCREASE OR DECREASE IN QUALITY AND SERVICE AVAILABILITY.

30 (F) THE ANALYSIS UNDER SUBSECTION (E) SHALL BE COMPLETED NO

1 LATER THAN NINETY ONE HUNDRED EIGHTY DAYS FROM THE EFFECTIVE <--
2 DATE OF THIS SUBSECTION, AND. A PRELIMINARY REPORT OF THE <--
3 ANALYSIS UNDER SUBSECTION (E) SHALL BE COMPLETED NO LATER THAN
4 NINETY DAYS FROM THE EFFECTIVE DATE OF THIS SUBSECTION. THE
5 ANALYSIS UNDER SUBSECTION (E) AND THE PRELIMINARY REPORT UNDER
6 THIS SUBSECTION SHALL BE DELIVERED TO THE FOLLOWING:

7 (1) THE SECRETARY OF HUMAN SERVICES.

8 (2) THE SECRETARY OF AGING.

9 (3) THE SECRETARY OF TRANSPORTATION.

10 (4) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE
11 APPROPRIATIONS COMMITTEE OF THE SENATE.

12 (5) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE
13 APPROPRIATIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

14 (6) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE HEALTH
15 AND HUMAN SERVICES COMMITTEE OF THE SENATE.

16 (7) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE HEALTH
17 COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

18 ~~(G) THE DEPARTMENT OF THE AUDITOR GENERAL SHALL PERFORM AN~~ <--
19 ~~AUDIT OF ALL NONEMERGENCY MEDICAL TRANSPORTATION SERVICE~~
20 ~~PROVIDERS OPERATING IN THIS COMMONWEALTH THAT RECEIVE FUNDS FROM~~
21 ~~THE DEPARTMENT OR FROM A COUNTY TO PROVIDE SERVICES TO MEDICAL~~
22 ~~ASSISTANCE RECIPIENTS. COPIES OF ALL AUDITS MADE BY THE~~
23 ~~DEPARTMENT OF THE AUDITOR GENERAL SHALL BE PROMPTLY SUBMITTED TO~~
24 ~~THE PRESIDENT PRO TEMPORE OF THE SENATE, THE SPEAKER OF THE~~
25 ~~HOUSE OF REPRESENTATIVES, THE MINORITY LEADER OF THE SENATE AND~~
26 ~~THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.~~

27 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

28 SECTION 459.1. UNIFORM STATEWIDE PREFERRED DRUG LIST.-- (A)
29 THE DEPARTMENT MAY NOT IMPLEMENT A UNIFORM STATEWIDE PREFERRED
30 DRUG LIST FOR THE MEDICAL ASSISTANCE MANAGED CARE ORGANIZATIONS

1 UNTIL AN ANALYSIS HAS BEEN CONDUCTED, AS COMMISSIONED BY THE
2 DEPARTMENT, TO DETERMINE THE PROJECTED COST TO THE MEDICAL
3 ASSISTANCE MANAGED CARE ORGANIZATION AND THE PROJECTED
4 SUPPLEMENTAL REBATES THAT COULD BE OBTAINED BY THE DEPARTMENT
5 THROUGH THE USE OF A UNIFORM STATEWIDE PREFERRED DRUG LIST.

6 (B) THE ANALYSIS UNDER SUBSECTION (A) SHALL BE COMPLETED
7 WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION. THE
8 ANALYSIS SHALL BE DELIVERED TO THE FOLLOWING:

9 (1) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE
10 APPROPRIATIONS COMMITTEE OF THE SENATE.

11 (2) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE HEALTH
12 AND HUMAN SERVICES COMMITTEE OF THE SENATE.

13 (3) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE
14 APPROPRIATIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

15 (4) THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE HEALTH
16 COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

17 SECTION 4. THE DEFINITIONS OF "COUNTY NURSING FACILITY,"
18 "MEDICAL ASSISTANCE PROVIDER" AND "NURSING FACILITY" IN SECTION
19 801-A OF THE ACT ARE AMENDED AND THE SECTION IS AMENDED BY
20 ADDING A DEFINITION TO READ:

21 SECTION 801-A. DEFINITIONS.--AS USED IN THIS ARTICLE--

22 * * *

23 "COUNTY NURSING FACILITY" MEANS A LONG-TERM CARE NURSING
24 FACILITY THAT IS LICENSED BY THE DEPARTMENT OF HEALTH UNDER THE
25 ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE "HEALTH CARE
26 FACILITIES ACT," AND CONTROLLED BY THE COUNTY INSTITUTION
27 DISTRICT OR COUNTY GOVERNMENT IF NO COUNTY INSTITUTION DISTRICT
28 EXISTS. THE TERM DOES NOT INCLUDE INTERMEDIATE CARE FACILITIES
29 FOR [THE MENTALLY RETARDED] INDIVIDUALS WITH AN INTELLECTUAL
30 DISABILITY CONTROLLED BY THE COUNTY INSTITUTION DISTRICT OR

1 COUNTY GOVERNMENT.

2 "MEDICAL ASSISTANCE MANAGED CARE ORGANIZATION" MEANS A
3 MEDICAID MANAGED CARE ORGANIZATION AS DEFINED IN SECTION 1903(M)
4 (1) (A) OF THE SOCIAL SECURITY ACT (49 STAT. 620, 42 U.S.C. §
5 1396B(M) (1) (A)) THAT IS A PARTY TO A MEDICAID MANAGED CARE
6 CONTRACT WITH THE DEPARTMENT. THE TERM SHALL NOT INCLUDE A
7 BEHAVIORAL HEALTH MANAGED CARE ORGANIZATION THAT IS A PARTY TO A
8 MEDICAID MANAGED CARE CONTRACT WITH THE DEPARTMENT.

9 "MEDICAL ASSISTANCE PROVIDER" MEANS A PERSON OR ENTITY
10 ENROLLED BY THE [DEPARTMENT OF HUMAN SERVICES] DEPARTMENT AS A
11 PROVIDER OF SERVICES IN THE MEDICAL ASSISTANCE PROGRAM.

12 "NURSING FACILITY" MEANS A NON-FEDERAL, NONPUBLIC LONG-TERM
13 CARE NURSING FACILITY LICENSED BY THE DEPARTMENT OF HEALTH
14 PURSUANT TO THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS
15 THE "HEALTH CARE FACILITIES ACT." THE TERM DOES NOT INCLUDE
16 INTERMEDIATE CARE FACILITIES FOR [THE MENTALLY RETARDED]
17 INDIVIDUALS WITH AN INTELLECTUAL DISABILITY.

18 * * *

19 SECTION 5. SECTIONS 807-A, 810-A(3) AND 813-A OF THE ACT ARE
20 AMENDED TO READ:

21 SECTION 807-A. [CALCULATION.--USING THE ASSESSMENT RATES
22 IMPLEMENTED BY THE SECRETARY PURSUANT TO SECTION 805-A(A), EACH
23 NURSING FACILITY SHALL CALCULATE THE ASSESSMENT AMOUNT IT OWES
24 FOR A CALENDAR QUARTER ON A FORM SPECIFIED BY THE DEPARTMENT AND
25 SHALL SUBMIT THE FORM AND THE AMOUNT OWED TO THE DEPARTMENT NO
26 LATER THAN THE LAST DAY OF THAT CALENDAR QUARTER OR THIRTY (30)
27 DAYS FROM THE DATE OF THE SECOND NOTICE PUBLISHED PURSUANT TO
28 SECTION 805-A(A), WHICHEVER IS LATER. A NURSING FACILITY'S
29 CALCULATION OF THE ASSESSMENT AMOUNT OWED IN ANY QUARTER IS
30 SUBJECT TO VERIFICATION BY THE DEPARTMENT PURSUANT TO SECTION

1 808-A.] ASSESSMENT AMOUNT AND TIMING.--EACH NURSING FACILITY
2 SHALL REMIT THE ASSESSMENT AMOUNTS DUE AS DETERMINED BY THE
3 DEPARTMENT PURSUANT TO SECTION 805-A(A) IN PERIODIC SUBMISSIONS,
4 NOT TO EXCEED FIVE TIMES PER YEAR, AS SPECIFIED BY THE
5 DEPARTMENT. A NURSING FACILITY SHALL REPORT AND REMIT THE TOTAL
6 ASSESSMENT AMOUNT OWED ELECTRONICALLY ON FORMS AND IN ACCORDANCE
7 WITH INSTRUCTIONS AND BY THE DUE DATES PRESCRIBED BY THE
8 DEPARTMENT. THE PRESCRIBED DUE DATES SHALL BE AT LEAST THIRTY
9 (30) DAYS AFTER THE DATE OF PUBLICATION OF THE SECOND NOTICE
10 UNDER SECTION 805-A(A).

11 SECTION 810-A. REMEDIES.--IN ADDITION TO ANY OTHER REMEDY
12 PROVIDED BY LAW, THE DEPARTMENT MAY ENFORCE THIS ARTICLE BY
13 IMPOSING ONE OR MORE OF THE FOLLOWING REMEDIES:

14 * * *

15 (3) WHEN A NURSING FACILITY THAT IS A MEDICAL ASSISTANCE
16 PROVIDER OR THAT IS RELATED THROUGH COMMON OWNERSHIP OR CONTROL
17 AS DEFINED IN 42 CFR 413.17(B) (RELATING TO COST TO RELATED
18 ORGANIZATIONS) TO A MEDICAL ASSISTANCE PROVIDER FAILS TO PAY ALL
19 OR PART OF AN ASSESSMENT OR PENALTY WITHIN SIXTY (60) DAYS OF
20 THE DATE THAT PAYMENT IS DUE, THE DEPARTMENT MAY DEDUCT OR
21 INSTRUCT A MEDICAL ASSISTANCE MANAGED CARE ORGANIZATION TO
22 DEDUCT THE UNPAID ASSESSMENT OR PENALTY AND ANY INTEREST OWED
23 THEREON FROM ANY MEDICAL ASSISTANCE PAYMENTS DUE TO THE NURSING
24 FACILITY OR TO ANY RELATED MEDICAL ASSISTANCE PROVIDER UNTIL THE
25 FULL AMOUNT IS RECOVERED. ANY SUCH DEDUCTION SHALL BE MADE ONLY
26 AFTER WRITTEN NOTICE TO THE MEDICAL ASSISTANCE PROVIDER AND MAY
27 BE TAKEN IN AMOUNTS OVER A PERIOD OF TIME TAKING INTO ACCOUNT
28 THE FINANCIAL CONDITION OF THE MEDICAL ASSISTANCE PROVIDER.

29 * * *

30 SECTION 813-A. REPAYMENT.--NO NURSING FACILITY SHALL BE

1 DIRECTLY GUARANTEED A REPAYMENT OF ITS ASSESSMENT IN DEROGATION
2 OF 42 CFR 433.68 (F) (RELATING TO PERMISSIBLE HEALTH CARE-RELATED
3 TAXES AFTER THE TRANSITION PERIOD): PROVIDED, HOWEVER, THAT IN
4 EACH FISCAL YEAR IN WHICH AN ASSESSMENT IS IMPLEMENTED, THE
5 DEPARTMENT SHALL USE THE STATE REVENUE COLLECTED FROM THE
6 ASSESSMENT AND ANY FEDERAL FUNDS RECEIVED BY THE COMMONWEALTH AS
7 A DIRECT RESULT OF THE ASSESSMENTS TO [MAINTAIN AND INCREASE
8 PROGRAM PAYMENTS] MAKE PROGRAM PAYMENTS THROUGH FEE-FOR-SERVICE
9 OR MANAGED CARE TO MEDICAL ASSISTANCE NURSING FACILITY PROVIDERS
10 TO THE EXTENT PERMISSIBLE UNDER FEDERAL AND STATE LAW OR
11 REGULATION AND WITHOUT CREATING AN INDIRECT GUARANTEE TO HOLD
12 HARMLESS, AS THOSE TERMS ARE USED IN 42 CFR 433.68 (F). IF THE
13 DEPARTMENT IMPLEMENTS AN ASSESSMENT ON COUNTY NURSING
14 FACILITIES, THE DEPARTMENT SHALL ALLOCATE ASSESSMENT REVENUES
15 AVAILABLE TO [MAINTAIN AND INCREASE PROGRAM PAYMENTS] MAKE
16 PROGRAM PAYMENTS THROUGH FEE-FOR-SERVICE OR MANAGED CARE TO BOTH
17 COUNTY AND NON COUNTY NURSING FACILITIES IN A MANNER THAT IS
18 CONSISTENT WITH FEDERAL LAW AND WITHOUT CREATING A DIRECT OR AN
19 INDIRECT GUARANTEE TO HOLD ANY NURSING FACILITY HARMLESS. THE
20 SECRETARY SHALL SUBMIT ANY [STATE MEDICAID PLAN] TITLE XIX STATE
21 PLAN AMENDMENTS TO THE UNITED STATES DEPARTMENT OF HEALTH AND
22 HUMAN SERVICES THAT ARE NECESSARY TO MAKE THE [PAYMENT
23 INCREASES] PAYMENTS.

24 SECTION 6. SECTION 815-A OF THE ACT, AMENDED JUNE 30, 2012
25 (P.L.668, NO.80), AMENDMENT DECLARED UNCONSTITUTIONAL, 188 A.3D
26 1135 (PA. 2018), AND AMENDED JULY 8, 2016 (P.L.480, NO.76), IS
27 REENACTED AND AMENDED TO READ:

28 Section 815-A. Time periods.--The assessment authorized in
29 this article shall [not be imposed prior to July 1, 2003, or <--
30 after June 30, †2012] BE IMPOSED JULY 1, 2003, THROUGH JUNE 30, <--

1 2022.

2 SECTION 7. THE DEFINITIONS OF "DEPARTMENT" AND "SECRETARY" <--
3 IN SECTION 801-C OF THE ACT ARE AMENDED TO READ:

4 SECTION 801-C. DEFINITIONS.

5 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE
6 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
7 CONTEXT CLEARLY INDICATES OTHERWISE:

8 * * *

9 ["DEPARTMENT." THE DEPARTMENT OF HUMAN SERVICES OF THE
10 COMMONWEALTH.]

11 * * *

12 ["SECRETARY." THE SECRETARY OF HUMAN SERVICES OF THE
13 COMMONWEALTH.]

14 * * *

15 SECTION 8. SECTION 811-C(B) ~~AND 808 E(A) OF THE ACT ARE OF~~ <--
16 THE ACT IS AMENDED TO READ:

17 Section 811-C. Time periods.

18 * * *

19 (b) Cessation.--The assessment authorized under this article
20 shall cease June 30, [2019] ~~2022~~ 2024, or earlier, if required <--
21 by law.

22 ~~Section 808 E. Time period.~~ <--

23 ~~(a) Cessation. The assessment authorized under this article~~
24 ~~shall cease June 30, [2019] 2022.~~

25 * * *

26 SECTION 9. REPEALS ARE AS FOLLOWS: <--

27 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
28 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE REENACTMENT OR
29 AMENDMENT OF SECTIONS 801-A, 807-A, 810-A(3), 813-A AND 815-A
30 OF THE ACT.

1 (2) SECTION 1729-E(2)(II) OF THE ACT OF APRIL 9, 1929
2 (P.L.343, NO.176), KNOWN AS THE FISCAL CODE, IS REPEALED.
3 Section ~~2~~ 10. This act shall take effect immediately. <--