

By: Rose, Herrero

H.B. No. 3778

A BILL TO BE ENTITLED

AN ACT

relating to the creation and administration of a quality assurance fee for nursing facilities; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. QUALITY ASSURANCE FEE

Sec. 242.701. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to an institution.

Sec. 242.702. APPLICABILITY. This subchapter does not apply to:

(1) a state-owned veterans' nursing facility; or  
(2) an entity that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing

1 facility care services, and:

2 (A) that operates under a continuing care  
3 retirement community certificate of authority issued by the Texas  
4 Department of Insurance; or

5 (B) in which, during the previous 12 months, the  
6 combined patient days of service provided to independent living and  
7 assisted living residents, excluding services provided to persons  
8 occupying facility beds in a licensed nursing facility, exceeded  
9 the patient days of service provided to nursing facility residents.

10 Sec. 242.703. COMPUTING QUALITY ASSURANCE FEE. (a) A  
11 quality assurance fee is imposed on each institution subject to  
12 this subchapter for which a license fee must be paid under Section  
13 242.034. The quality assurance fee:

14 (1) is an amount established under Subsection (b)  
15 multiplied by the number of patient days as determined in  
16 accordance with Section 242.704;

17 (2) is payable monthly; and

18 (3) is in addition to other fees imposed under this  
19 chapter.

20 (b) The commission shall establish a quality assurance fee  
21 for each patient day in an amount that will produce annual revenues  
22 of not more than 5.5 percent of the institution's total annual gross  
23 receipts in this state. The fee is subject to adjustment as  
24 necessary. The amount of the quality assurance fee may vary  
25 according to the number of patient days provided by an institution  
26 as necessary to obtain a waiver under federal regulations at 42  
27 C.F.R. Section 433.68(e).

1        (c) The amount of the quality assurance fee must be  
2 determined using patient days and gross receipts:

3            (1) reported to the commission or to the department at  
4 the direction of the commission; and

5            (2) covering a period of at least six months.

6        (d) The quality assurance fee is an allowable cost for  
7 reimbursement under the state Medicaid program.

8        (e) A nursing facility may not list the quality assurance  
9 fee as a separate charge on a patient's or resident's billing  
10 statement or otherwise directly or indirectly attempt to charge the  
11 quality assurance fee to a patient or resident.

12        Sec. 242.704. PATIENT DAYS. For each calendar day, an  
13 institution shall determine the number of patient days by adding  
14 the following:

15            (1) the number of patients occupying an institution  
16 bed immediately before midnight of that day plus the number of  
17 patients admitted that day less the number of patients discharged  
18 that day, except that a patient is included in the count under this  
19 subdivision if:

20                    (A) the patient is admitted and discharged on the  
21 same day; or

22                    (B) the patient is discharged that day because of  
23 the patient's death; and

24            (2) the number of beds that are on hold that day and  
25 that have been placed on hold for a period not to exceed three  
26 consecutive calendar days during which a patient is:

27                    (A) in the hospital; or

1                   (B) on therapeutic home leave.

2           Sec. 242.705. REPORTING AND COLLECTION. (a) The  
3 commission or the department as directed by the executive  
4 commissioner shall collect the quality assurance fee.

5           (b) Each institution shall, not later than the 25th day  
6 after the last day of a month:

7                   (1) file with the commission a report stating the  
8 total patient days for the month; and

9                   (2) pay the quality assurance fee.

10          Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The  
11 executive commissioner shall adopt rules for the administration of  
12 this subchapter, including rules related to the imposition and  
13 collection of the quality assurance fee.

14          (b) The executive commissioner may adopt rules granting  
15 exceptions from the quality assurance fee, including an exception  
16 for units of service reimbursed through Medicare Part A, if the  
17 commission obtains all waivers necessary under federal law,  
18 including 42 C.F.R. Section 433.68(e).

19          (c) An administrative penalty assessed under this  
20 subchapter in accordance with Section 242.066 may not exceed  
21 one-half of the amount of the outstanding quality assurance fee or  
22 \$20,000, whichever is greater.

23          Sec. 242.707. NURSING HOME QUALITY ASSURANCE FEE ACCOUNT.

24          (a) The nursing home quality assurance fee account is a dedicated  
25 account in the general revenue fund. Interest earned on money in  
26 the account shall be credited to the account.

27          (b) The comptroller shall deposit money collected under

1 this subchapter to the credit of the account.

2 (c) Subject to legislative appropriation and this  
3 subchapter, money in the account together with federal matching  
4 money shall be used to support or maintain an increase in Medicaid  
5 reimbursement for institutions.

6 Sec. 242.708. REIMBURSEMENT OF INSTITUTIONS. (a) Subject  
7 to legislative appropriation, the commission may use money in the  
8 nursing home quality assurance fee account, together with any  
9 federal money available to match that money, to:

10 (1) offset the institution's allowable expenses under  
11 the state Medicaid program; and

12 (2) increase reimbursement rates paid under the  
13 Medicaid program to institutions.

14 (b) The commission shall devise the formula by which amounts  
15 received under this subchapter increase the reimbursement rates  
16 paid to institutions under the state Medicaid program.

17 Sec. 242.709. INVALIDITY; FEDERAL FUNDS. If any portion of  
18 this subchapter is held invalid by a final order of a court that is  
19 not subject to appeal, or if the commission determines that the  
20 imposition of the fee and the expenditure as prescribed by this  
21 subchapter of amounts collected will not entitle the state to  
22 receive additional federal funds under the Medicaid program, the  
23 commission shall stop collection of the quality assurance fee and,  
24 not later than the 30th day after the date collection is stopped,  
25 shall return to the institutions that paid the fees, in proportion  
26 to the total amount paid by those institutions, any money deposited  
27 to the credit of the nursing home quality assurance fee account but

1 not spent.

2 Sec. 242.710. REVISION IN CASE OF DISAPPROVAL. If the  
3 Centers for Medicare and Medicaid Services disapproves the quality  
4 assurance fee plan established under this subchapter, the  
5 commission shall revise the associated state plan amendments and  
6 waiver requests as necessary to comply with federal regulations  
7 provided by 42 C.F.R. Section 433.68(e). The revisions must be  
8 completed as soon as practicable after the date the commission  
9 receives notice of the disapproval.

10 Sec. 242.711. AUTHORITY TO ACCOMPLISH PURPOSES OF  
11 SUBCHAPTER. The executive commissioner by rule may adopt a  
12 definition, a method of computation, or a rate that differs from  
13 those expressly provided by or expressly authorized by this  
14 subchapter to the extent the difference is necessary to accomplish  
15 the purposes of this subchapter.

16 SECTION 2. (a) Notwithstanding Section 242.703, Health and  
17 Safety Code, as added by this Act, the executive commissioner of the  
18 Health and Human Services Commission shall establish the initial  
19 quality assurance fee imposed under Subchapter P, Chapter 242,  
20 Health and Safety Code, as added by this Act, based on available  
21 revenue and patient day information. The initial quality assurance  
22 fee established under this section remains in effect until the  
23 Health and Human Services Commission obtains the information  
24 necessary to set the fee under Section 242.703, Health and Safety  
25 Code, as added by this Act.

26 (b) As soon as practicable after the effective date of this  
27 Act, the executive commissioner of the Health and Human Services

1 Commission shall adopt rules as necessary to implement Subchapter  
2 P, Chapter 242, Health and Safety Code, as added by this Act.

3 (c) If before implementing any provision of this Act a state  
4 agency determines a waiver or authorization from a federal agency  
5 is necessary for implementation of that provision, the agency  
6 affected by the provision shall request the waiver or authorization  
7 and may delay implementing that provision until the waiver or  
8 authorization is granted.

9 SECTION 3. Notwithstanding any other provision of law, a  
10 quality assurance fee may not be imposed under Section 242.703,  
11 Health and Safety Code, as added by this Act, or collected under  
12 Section 242.705, Health and Safety Code, as added by this Act,  
13 until:

14 (1) the amendment to the state plan for Medicaid that  
15 increases the rates paid to the nursing facilities for providing  
16 services under the state Medicaid program is approved by the  
17 Centers for Medicare and Medicaid Services or another applicable  
18 federal government agency; and

19 (2) nursing facilities have been compensated  
20 retroactively at the increased rate for services provided under the  
21 state Medicaid program for the period beginning with the effective  
22 date of this Act.

23 SECTION 4. This Act takes effect September 1, 2007.