

By: Rose

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) a continuing care retirement community.

Sec. 242.703. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each institution subject to

1 this subchapter for which a license fee must be paid under Section
2 242.034. The quality assurance fee:

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

6 (2) is payable monthly; and

7 (3) is in addition to other fees imposed under this
8 chapter.

9 (b) The commission shall establish a quality assurance fee
10 for each patient day in an amount that will produce annual revenues
11 of not more than six percent of the institution's total annual gross
12 receipts in this state. The fee is subject to adjustment as
13 necessary. The amount of the quality assurance fee may vary
14 according to the number of patient days provided by an institution
15 as necessary to obtain a waiver under federal regulations at 42
16 C.F.R. Section 433.68(e).

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

19 (1) reported to the commission or to the department at
20 the direction of the commission; and

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

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

24 (e) A nursing facility may not list the quality assurance
25 fee as a separate charge on a patient's or resident's billing
26 statement or otherwise directly or indirectly attempt to charge the
27 quality assurance fee to a patient or resident.

1 Sec. 242.704. PATIENT DAYS. For each calendar day, an
2 institution shall determine the number of patient days by adding
3 the following:

4 (1) the number of patients occupying an institution
5 bed immediately before midnight of that day plus the number of
6 patients admitted that day less the number of patients discharged
7 that day, except that a patient is included in the count under this
8 subdivision if:

9 (A) the patient is admitted and discharged on the
10 same day; or

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

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

16 (A) in the hospital; or

17 (B) on therapeutic home leave.

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

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

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

25 (2) pay the quality assurance fee.

26 Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The
27 executive commissioner shall adopt rules for the administration of

1 this subchapter, including rules related to the imposition and
2 collection of the quality assurance fee.

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

8 (c) An administrative penalty assessed under this
9 subchapter in accordance with Section 242.066 may not exceed
10 one-half of the amount of the outstanding quality assurance fee or
11 \$20,000, whichever is greater.

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

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

16 (b) The comptroller shall deposit money collected under
17 this subchapter to the credit of the account.

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

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

26 (1) offset allowable expenses under the state Medicaid
27 program; or

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

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

6 Sec. 242.709. INVALIDITY; FEDERAL FUNDS. If any portion of
7 this subchapter is held invalid by a final order of a court that is
8 not subject to appeal, or if the commission determines that the
9 imposition of the fee and the expenditure as prescribed by this
10 subchapter of amounts collected will not entitle the state to
11 receive additional federal funds under the Medicaid program, the
12 commission shall stop collection of the quality assurance fee and,
13 not later than the 30th day after the date collection is stopped,
14 shall return to the institutions that paid the fees, in proportion
15 to the total amount paid by those institutions, any money deposited
16 to the credit of the nursing home quality assurance fee account but
17 not spent.

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

26 Sec. 242.711. AUTHORITY TO ACCOMPLISH PURPOSES OF
27 SUBCHAPTER. The executive commissioner by rule may adopt a

1 definition, a method of computation, or a rate that differs from
2 those expressly provided by or expressly authorized by this
3 subchapter to the extent the difference is necessary to accomplish
4 the purposes of this subchapter.

5 SECTION 2. (a) Notwithstanding Section 242.703, Health and
6 Safety Code, as added by this Act, the executive commissioner of the
7 Health and Human Services Commission shall establish the initial
8 quality assurance fee imposed under Subchapter P, Chapter 242,
9 Health and Safety Code, as added by this Act, based on available
10 revenue and patient day information. The initial quality assurance
11 fee established under this section remains in effect until the
12 Health and Human Services Commission obtains the information
13 necessary to set the fee under Section 242.703, Health and Safety
14 Code, as added by this Act.

15 (b) As soon as practicable after the effective date of this
16 Act, the executive commissioner of the Health and Human Services
17 Commission shall adopt rules as necessary to implement Subchapter
18 P, Chapter 242, Health and Safety Code, as added by this Act.

19 (c) If before implementing any provision of this Act a state
20 agency determines a waiver or authorization from a federal agency
21 is necessary for implementation of that provision, the agency
22 affected by the provision shall request the waiver or authorization
23 and may delay implementing that provision until the waiver or
24 authorization is granted.

25 SECTION 3. This Act takes effect September 1, 2007.