**A** **BILL**

TO AMEND ARTICLE 2, CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAID NURSING HOME PERMITS, TO DEFINE “MEDICAID PERMIT DAY”, TO SPECIFY THE MANNER IN WHICH ADDITIONAL MEDICAID PERMIT DAYS ARE ALLOCATED, TO SET FORTH COMPLIANCE STANDARDS AND PENALTIES FOR VIOLATIONS, AND TO PROVIDE CERTAIN REPORTING REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 2, Chapter 7, Title 44 of the 1976 Code is amended to read:

“Article 2

Medicaid Nursing Home Permits

Section 44‑7‑80. For the purposes of this article:

(1) ‘Nursing home’ means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours, which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled nursing care for persons who are not in need of hospital care. Rehabilitative therapies may be provided on an outpatient basis.

(2) ‘Medicaid nursing home permit’ means a permit to serve Medicaid patients in an appropriately certified nursing home.

(3) ‘Medicaid patient’ means a person who is eligible for Medicaid (Title XIX) sponsored long‑term care services.

(4) ‘Medicaid patient day’ means a day of nursing home care for which a nursing home receives Medicaid reimbursement.

(5) ‘Medicaid permit day’ means a day of service provided to a Medicaid patient in a Medicaid certified nursing home which holds a Medicaid days permit.

(6) ‘Department’ means the Department of Health and Environmental Control.

Section 44‑7‑82. No nursing home may provide care to Medicaid patients without first obtaining a permit in the manner provided in this article.

Section 44‑7‑84. (A) In the annual appropriations act, the General Assembly shall establish the maximum number of Medicaid patient days for which the department is authorized to issue Medicaid nursing home permits. The State Department of Health and Human Services shall provide the number of Medicaid patient days available to the department within thirty days after the effective date of the annual appropriations act.

(B) Based on a method the department develops for determining the need for nursing home care for Medicaid patients in each area of the State, the department shall determine the distribution of Medicaid patient days for which Medicaid nursing home permits can be issued. Nursing homes holding a Medicaid nursing home permit must be allocated Medicaid days based on their current allocation and available funds. Requests for days must be submitted to the department no later than June fifteenth each year. The department shall issue permits to the facilities by August first of each year. The application must state the specific number of Medicaid patient days the nursing home will provide. If a nursing home requests fewer days than the previous year, or is permitted fewer days, those days first must be offered to the facilities within the same county currently holding a Medicaid nursing home permit. However, if Medicaid patient days remain available after being offered to those nursing homes currently holding a Medicaid patient days permit in that county, then existing nursing homes with a restricted Certificate of Need, within the same county, may apply for a Medicaid nursing home permit to receive the Medicaid ~~patient~~ permit days remaining available. Following the initial allocation of Medicaid patient days, any additional Medicaid ~~patient~~ permit days ~~available~~ must be credited to a statewide pool and the days must be ~~available~~ allocated to those counties showing the greatest need based on the ~~percent~~ average number of ~~need indicated~~ fully eligible Medicaid nursing facility applicants by county ~~by~~ in the Community Long Term Care ~~waiting list~~ awaiting placement reports for the past twelve months. The Department of Health and Human Services shall provide this information to the department no later than July fifteenth of each year. The Medicaid permit days must be proportionately allocated to each facility within the county that currently holds a Medicaid permit and is currently in compliance with its Medicaid permit. A facility is deemed to be in compliance for allocation of these additional Medicaid permit days if it has not exceeded its stated Medicaid permit by more than seven percent. In addition, a nursing home that provides less than ninety percent of the stated Medicaid permit in any fiscal year may not apply for additional Medicaid permit days in the next fiscal year. If a nursing home ~~has provided fewer~~ fails to provide ninety percent of the stated Medicaid ~~patient days than allowable under the Medicaid nursing home~~ permit ~~program~~ number for two consecutive fiscal years, the department may issue a Medicaid nursing home permit for fewer days than requested in order to ensure that the nursing home will serve the minimum number of Medicaid patients and that the State will optimize the available Medicaid days. If a nursing home has its Medicaid patient days reduced, the freed days first must be offered to other facilities in the same county before being offered to other nursing homes in the State. ~~In addition, a nursing home that fails to provide at least ten percent fewer days than the number stated in its permit is not eligible to receive additional Medicaid patient days the next year.~~ The department shall analyze the performance of nursing homes that are under the permit minimum or exceed the permit maximum for a fiscal year, including utilization data from the State Department of Health and Human Services, anticipated back days, delayed payments, CLTC waiting list, and other factors considered significant by the department. ~~Based on this analysis, if the department determines that the nursing home remains out of compliance, the nursing home must be fined by the same percentages as provided for in Section 44‑7‑90 and is subject to having its Medicaid patient days reduced.~~ A nursing home which terminates its Medicaid contract must not be penalized for not meeting the requirements of this section if the nursing home was in compliance with its permit at the time of the cancellation. ~~However, if the maximum number of~~ Facilities designated as Special Focus Facilities may not be issued additional Medicaid ~~patient~~ permit days ~~authorized by the General Assembly is decreased, the nursing home may be required to absorb a proportionate decrease in its Medicaid patient days’ allocation~~ while they remain on the Special Focus list.

(C) If the Department of Health and Human Services or the General Assembly decreases the number of Medicaid patient days available to the department, the department shall proportionately decrease the authorized Medicaid patient days for each nursing home. If additional Medicaid patient days are authorized in the following year, they must be restored proportionately to each nursing home in accordance with subsection (B).

Section 44‑7‑88. Nursing home patients may not be involuntarily discharged or transferred due to ~~their~~ the Medicaid status. If no Medicaid patients are waiting for admission to the nursing home, or if for some other reason a nursing home anticipates the possibility that the home cannot satisfy the Medicaid nursing home permit requirements, the home may request a waiver of the Medicaid permit requirements from the department.

Section 44‑7‑90. (A) Based on reports from the State Department of Health and Human Services, the department shall determine each nursing home’s compliance with its Medicaid nursing home permit. Violations of this article include:

(1) a nursing home exceeding by more than ~~ten~~ five percent the number of Medicaid patient days stated in its permit;

(2) ~~a nursing home failing to provide at least ten percent fewer days than the number stated in its permit;~~

~~(3)~~ the provisions of any Medicaid patient days by a home without a Medicaid nursing home permit.

(B) ~~Each Medicaid patient day above or below the allowable range is considered a separate violation. Fines for nursing homes out of compliance with their Medicaid Nursing Home Permit for years before July 1, 1995 are waived. After June 30, 1995, a nursing home that exceeds by more than ten percent the number of~~ A nursing home which exceeds its Medicaid patient days stated in its permit ~~must~~ may be fined ~~based~~ on the number of Medicaid patient days exceeding the permit days ~~times their~~ multiplied by its daily Medicaid per diem ~~times thirty percent~~. ~~A nursing home that fails to provide at least ten percent fewer days than the number stated in its~~ Medicaid permit days provided to Complex Care residents, as certified by the Department of Health and Human Services, must not be counted against the facility’s Medicaid permit ~~must be fined based on the number of~~ for the first six months of their care. Any complex care provided after six months must be counted toward the facility’s Medicaid ~~patient days under the~~ permit ~~days times their daily Medicaid per diem times thirty percent~~ day allocation. Complex Care reimbursement must not be used in the fine calculation. A facility may be fined incrementally for exceeding its Medicaid permit. Violations above five and up to ten percent of the stated permit may be fined at thirty percent of its Medicaid per diem rate times the number of excess Medicaid permit days. A facility may be fined fifty percent of its Medicaid per diem rate for each day above ten and up to fifteen percent of its Medicaid permit. A facility may be fined seventy percent of its Medicaid per diem rate for each day in excess of fifteen percent of its stated Medicaid permit. A facility may appeal to the department any fine for days over its permit based on the facilities inability to discharge a resident based on the requirements of Section 44‑7‑88 if the facility can prove:

(1) the resident’s primary pay source upon admission was not Medicaid;

(2) the resident did not convert to Medicaid within twenty days of being admitted as a Medicare or Medicaid replacement policy resident;

(3) the resident did not convert to Medicaid within thirty days of being admitted as a private pay resident; and

(4) the facility will not exceed its Medicaid permit by more than ten percent.

(C) In the event of a voluntary or involuntary discontinuation of participation of a nursing facility in the Medicaid program, the State must ensure that the facility provides for patient safety and freedom of choice. The Department of Health and Environmental Control and the Department of Health and Human Services must determine the availability of existing patient days statewide for the purpose of relocating these patients. Based upon this determination, the department, at its discretion, may reallocate the patient days from a facility discontinuing its Medicaid participation to a facility that participates in the Medicaid program and agrees to accept the residents from the facility that is discontinuing Medicaid participation. The Medicaid permit day shall permanently remain with the facility accepting the resident. In the allocation of patient days from the facility discontinuing Medicaid participation, the department must give first priority to restoring a county’s allocation where a facility holding a permit closes, or discontinues participation in Medicaid. A nursing home receiving beds under the provisions of this subsection must not be a Special Focus Facility at the time of allocation.

(D) Effective July 1, 2013, all nursing facility providers holding a Medicaid permit must report their daily Medicaid resident census information to the South Carolina Department of Health and Human Services or its contractor for the purpose of maintaining a statewide bed locator and permit day tracking system.

(E) Each Medicaid day above the allowable range is considered a separate violation. A fine assessed against a nursing home must be deducted from the nursing home’s Medicaid reimbursement. ~~Appeals from this action must comply with the appropriate provisions of Chapter 23 of Title 1.~~”

SECTION 2. This act takes effect upon approval by the Governor.

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