

HOUSE BILL NO. 481
INTRODUCED BY LEWIS, E. CLARK

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A UTILIZATION FEE ON HOSPITAL FACILITIES FOR ACUTE INPATIENT BED DAYS; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT AND DEPOSIT FEES IN A STATE SPECIAL REVENUE ACCOUNT FOR FUNDING INCREASES IN MEDICAID PAYMENTS TO HOSPITALS; PROVIDING FOR ASSESSMENT, COLLECTION, AND ADJUSTMENT OF THE FEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, A TERMINATION DATE, AND A CONTINGENT VOIDNESS PROVISION."

WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO FULLY FUND THE COST OF HOSPITAL CARE FOR MEDICAID BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY PRIVATELY FOR HOSPITAL CARE BY SHIFTING COST FROM MEDICAID TO NON-MEDICAID PATIENTS IN THE STATE'S HOSPITALS; AND

WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL PARTICIPATION IN THE COST OF PROGRAMS WHENEVER POSSIBLE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE UTILIZATION FEE ESTABLISHED IN THIS ACT AS A MEANS OF PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO HOSPITALS; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT ADDITIONAL MEDICAID REIMBURSEMENTS TO HOSPITALS EXCEED THE COST OF THE ASSESSMENT AND THAT THE UTILIZATION FEE NOT BE PLACED ON PATIENTS' BILLS; AND

WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING PATIENTS IN HOSPITALS FROM THE BURDEN OF COSTS SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL FUNDING OF THIS PROGRAM.

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

NEW SECTION. **Section 1. Definitions.** For purposes of [sections 1 through 13], the following definitions apply:

- (1) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5.
- (b) The term does not include Montana state hospital.

(2) (a) "Inpatient bed day" means a day of ~~acute~~; inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 216 of the centers for medicaid and medicare services publication 10, the Hospital Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in [section 3].

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in [section 2].

NEW SECTION. Section 2. Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee in the amount of:

(a) \$32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003; and

(b) \$19.43 for each inpatient bed day between January 1, 2004, and June 30, 2005.

(2) ~~(A) All proceeds from the collection of utilization fees, including penalties and interest, must be deposited to the credit of the department of public health and human services in a state special revenue fund as provided in [section 14] for the purpose of funding increases in medicaid payments to hospitals.~~

~~(B) A HOSPITAL MAY NOT PLACE A FEE CREATED IN [SECTIONS 1 THROUGH 13] ON A PATIENT'S BILL.~~

NEW SECTION. Section 3. Reporting and collection of fee. (1) (a) On or before January 31, 2004, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during the 6-month period beginning July 1, 2003, and ending December 31, 2003. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(a)].

(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003.

(2) (a) Except as provided in subsection (1), on or before January 31 of each year, a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding year beginning January 1 and ending December 31. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(b)].

(b) Except as provided in subsection (1), on or before January 31 of each year, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the preceding year beginning January 1 and ending December 31.

NEW SECTION. Section 4. Audit -- records. (1) The department may audit the records and other documents of any hospital to ensure that the proper utilization fee has been collected.

(2) The department may require the hospital to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A hospital shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of inpatient bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due.

NEW SECTION. Section 5. Periods of limitation. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the ~~quarter~~ YEAR for which a report is filed unless the notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the hospital consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the hospital files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the hospital has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund is allowed if a claim is not filed is automatically extended.

NEW SECTION. Section 6. Penalty and interest for delinquent fees -- waiver. If the fee for any hospital is not paid on or before the due date of the report as provided in [section 3], penalty and interest, as provided in 15-1-216, must be added to the fee.

NEW SECTION. Section 7. Estimated fee on failure to file. For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of inpatient bed day use of any hospital for which information has been obtained, the department may:

- (1) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;
- (2) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and
- (3) take testimony and require production of any other material for its information.

NEW SECTION. Section 8. Deficiency assessment -- hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the hospital a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the hospital may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the hospital has requested, shall grant the hospital an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the hospital.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand for payment to the hospital, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Any deficiency assessment bears interest from the date specified in [section 3] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notice.

NEW SECTION. Section 9. Closing agreements. (1) The director of the department or any person authorized in writing by the director may enter into an agreement with a hospital relating to the liability of the

hospital with respect to the fees imposed by [sections 1 through 13] for any period.

(2) An agreement under this section is final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) in a case involving the agreement, the agreement may not be reopened as to matters agreed upon or modified by any officer, employee, or agent of this state; and

(b) the agreement may not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding concerning the agreement or concerning any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement.

NEW SECTION. Section 10. Credit for overpayment -- interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest due for any period is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest due from the hospital at that time and the balance must be refunded to the hospital or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the hospital to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$1.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 11. Warrant for distraint. If the utilization fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

NEW SECTION. **Section 12. Relation to other taxes and fees.** The utilization fee imposed under [section 2] is in addition to any other taxes and fees required to be paid by hospitals.

NEW SECTION. **Section 13. Rulemaking.** The department may adopt rules necessary to implement and administer [sections 1 through 13].

NEW SECTION. **Section 14. State special revenue fund account -- administration.** (1) There is a hospital medicaid reimbursement account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under [section 2] must be deposited in the account.

(3) Money in the account must be used by the department of public health and human services to provide funding for increases in medicaid payments to hospitals AND FOR THE COSTS OF COLLECTION OF THE FEE AND OTHER ADMINISTRATIVE ACTIVITIES ASSOCIATED WITH THE IMPLEMENTATION OF INCREASES IN THE MEDICAID PAYMENTS TO HOSPITALS.

NEW SECTION. **Section 15. Appropriation.** (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund created in [section 14] to fund increases in medicaid payments to hospitals:

Fiscal Year 2004

State special revenue fund	\$ 6,918,556 <u>\$ 7,225,925</u>
Federal special revenue fund	\$18,592,344 <u>\$19,418,341</u>
Total funds	\$25,510,900 <u>\$26,644,266</u>

Fiscal Year 2005

State special revenue fund	\$ 8,364,189 <u>\$ 8,732,387</u>
Federal special revenue fund	\$21,973,821 <u>\$22,941,125</u>
Total funds	\$30,338,010 <u>\$31,673,512</u>

(2) The ~~appropriated~~ increases to medicaid payments must be distributed no later than February 28 of each fiscal year.

NEW SECTION. **Section 16. Codification instruction.** (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions

of Title 53, chapter 6, apply to [section 14].

NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 18. Contingent voidness -- payment of fees. (1) If federal law or policy is amended so that the utilization fees collected pursuant to [sections 1 through 13] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [sections 1 through 13] are void as of the effective date of the change in federal law or policy.

(2) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to hospitals on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [sections 1 through 13] are void as of the date of receipt by the department of public health and human services of notice of an official determination of any refusal or denial.

(3) IF THE FEDERAL GOVERNMENT DETERMINES THAT A PART OF [SECTIONS 1 THROUGH 13] VIOLATES FEDERAL LAW OR REGULATIONS, THAT PART IS VOID AS OF THE DATE OF RECEIPT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION BY THE FEDERAL GOVERNMENT. ALL VALID PARTS OF [SECTIONS 1 THROUGH 13] REMAIN IN EFFECT. IF THE FEDERAL GOVERNMENT DETERMINES THAT A PART OF [SECTIONS 1 THROUGH 13] VIOLATES FEDERAL LAW OR REGULATIONS IN ONE OR MORE OF ITS APPLICATIONS, THEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT ADMINISTER [SECTIONS 1 THROUGH 13] IN A MANNER THAT VIOLATES THE PERTINENT FEDERAL LAW OR REGULATIONS AFTER THE DATE OF RECEIPT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION BY THE FEDERAL GOVERNMENT. ALL VALID APPLICATIONS REMAIN IN EFFECT.

(3)(4) If [sections 1 through 13] ~~become~~ OR ANY PART OF [SECTIONS 1 THROUGH 13] IMPOSING A FEE ON A SPECIFIC FACILITY BECOMES void under the provisions of this section, all fees due, received, or collected by the department of revenue prior to the date upon which [sections 1 through 13] ~~become~~ OR ANY PART OF [SECTIONS 1 THROUGH 13] BECOMES void must be paid and deposited in accordance with [section 2] and a person or party may not receive a refund of any fees received or collected by the department of revenue prior to the date upon which [sections 1 through 13] ~~become~~ OR ANY PART OF [SECTIONS 1 THROUGH 13] BECOMES void. ANY FEES OWING AS OF THE DATE ON WHICH [SECTIONS 1 THROUGH 13] BECOMES VOID ARE CONSIDERED WAIVED.

(4)(5) The department of public health and human services shall notify the code commissioner of the

occurrence of any determination made pursuant to subsection (1) or (2) and the date of the occurrence.

NEW SECTION. **Section 19. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 20. Termination.** [This act] terminates June 30, 2005.

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