

## HOUSE BILL NO. 722

INTRODUCED BY E. CLARK, COBB

BY REQUEST OF THE HOUSE JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A UTILIZATION FEE ON RESIDENT BED DAYS OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE FEE AND DEPOSIT 70% OF THE FEE IN A STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES; PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THE FEE IN THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the mentally retarded [licensed pursuant to section 5 of Senate Bill No. 113].

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

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

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section

242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in [section 2].

**NEW SECTION. Section 2. Utilization fee for resident bed days.** (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is ~~5-5%~~ 5% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of 15-1-501, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to [section 14] to the credit of the department of public health and human services to finance, administer, and provide health and human services.

**NEW SECTION. Section 3. Reporting, collection, and deposit of fee.** (1) An intermediate care facility shall report to the department, following the end of each calendar quarter, the facility's quarterly revenue and the number of resident bed days in the facility during the quarter. The report, in a form prescribed by the department, is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the utilization fee required to be paid under [section 2]. The department shall deposit the utilization fee pursuant to [section 2(3)].

(2) At the end of each calendar quarter, the department of public health and human services shall provide the department with a list of intermediate care facilities.

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

(2) The department may require an intermediate care facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify that the proper amount of the utilization fee has been paid.

(3) An intermediate care facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of resident bed days in the facility. The facility shall maintain these records for a period of at least 5 years from the date a report is due.

**NEW SECTION. Section 5. Statute of limitations.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional utilization fee 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 utilization fee, the intermediate care facility consents in writing to an assessment after the 5-year period, the utilization 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 calendar quarter 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 intermediate care facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the intermediate care facility 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 in the event a claim is filed is automatically extended.

**NEW SECTION. Section 6. Penalty and interest for delinquent fee.** If the fee for any intermediate care facility 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.** (1) For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of resident bed day use of any intermediate care facility about which information has been obtained, the department may:

(a) 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;

(b) 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

(c) take testimony and require production of any other material for its information.

(2) Based on the information provided for in subsection (1), the department shall calculate a fee to be imposed on a facility and shall notify the facility of the amount of the fee pursuant to [section 8].

**NEW SECTION. Section 8. Deficiency assessment.** (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 intermediate care facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the intermediate care facility 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 fee 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 intermediate care facility has requested it, shall grant the intermediate care facility 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 intermediate care facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the intermediate care facility and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment accrues 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 notices.

**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 any intermediate care facility relating to the liability of the intermediate care facility 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, malfeasance, or misrepresentation of a material fact:

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

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be

annulled, modified, set aside, or disregarded.

**NEW SECTION. Section 10. Credit for overpayment -- interest.** (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the intermediate care facility and the balance must be refunded to the intermediate care facility 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 in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the intermediate care facility 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 \$5.

(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 by law to be paid by an intermediate care facility.

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

**NEW SECTION. Section 14. State special revenue account.** There is a ~~health and human services~~

~~payment PREVENTION AND STABILIZATION~~ account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department of public health and human service to finance, administer, and provide health and human services.

~~NEW SECTION. Section 15. Appropriation. For fiscal year 2003, there is appropriated \$297,829 in state special revenue funds from the account created in [section 14] and \$804,138 in federal special revenue funds in state fiscal year 2003 for the purpose of financing, administering, and providing health and human services.~~

NEW SECTION. SECTION 15. APPROPRIATION. THE FOLLOWING MONEY IS APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES:

(1) FROM THE GENERAL FUND FOR THE PAYMENT OF THE UTILIZATION FEES CREATED IN [SECTION 2]:

|                         |                  |
|-------------------------|------------------|
| <u>FISCAL YEAR 2003</u> | <u>\$426,018</u> |
| <u>FISCAL YEAR 2004</u> | <u>\$917,585</u> |
| <u>FISCAL YEAR 2005</u> | <u>\$922,466</u> |

(2) FROM THE STATE SPECIAL REVENUE ACCOUNT IN [SECTION 14] FOR THE PURPOSES OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES:

|                         |                  |
|-------------------------|------------------|
| <u>FISCAL YEAR 2003</u> | <u>\$298,213</u> |
| <u>FISCAL YEAR 2004</u> | <u>\$642,039</u> |
| <u>FISCAL YEAR 2005</u> | <u>\$645,726</u> |

(3) FROM FEDERAL SPECIAL REVENUE FOR THE PURPOSES OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES:

|                         |                    |
|-------------------------|--------------------|
| <u>FISCAL YEAR 2003</u> | <u>\$1,114,118</u> |
| <u>FISCAL YEAR 2004</u> | <u>\$2,364,548</u> |
| <u>FISCAL YEAR 2005</u> | <u>\$2,394,823</u> |

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. Contingent voidness.** (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, then [this act] is 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 intermediate care facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, then [this act] is void as of the date of receipt by the department of public health and human services of notice of an official determination of the refusal or denial.

(3) If [this act] becomes void under the provisions of this section, all fees due or received or collected by the department of revenue prior to the date upon which the act 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 [this act] becomes void.

(4) The department of revenue or the department of public health and human services, as appropriate, shall notify the code commissioner of the occurrence of any of the contingencies provided for in subsections (1) through (3) and the effective date of the contingency.

**NEW SECTION. Section 18. Coordination instruction.** (1) If Senate Bill No. 113 is passed and approved, then the code commissioner shall change the reference to "immediate care facility for the mentally retarded" in [this act] to "immediate care facility for the developmentally disabled".

(2) If Senate Bill No. 113 is not passed and approved, then the bracketed language in [this act] is void.

**NEW SECTION. Section 19. 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 20. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 21. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

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