Senate Engrossed House Bill

**FILED**
**KEN BENNETT**
**SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 213

# HOUSE BILL 2526

AN ACT

AMENDING TITLE 36, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; PROVIDING FOR THE DELAYED REPEAL OF TITLE 36, CHAPTER 29, ARTICLE 6, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO NURSING FACILITY PROVIDER ASSESSMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, chapter 29, Arizona Revised Statutes, is amended by adding article 6, to read:

ARTICLE 6. NURSING FACILITY PROVIDER ASSESSMENTS

36-2999.51. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONTINUING CARE RETIREMENT COMMUNITY" MEANS AN ENTITY THAT PROVIDES NURSING FACILITY SERVICES AND ASSISTED LIVING OR INDEPENDENT LIVING SERVICES ON A CONTIGUOUS CAMPUS THAT IS EITHER REGISTERED AS A LIFE CARE FACILITY WITH THE DEPARTMENT OF INSURANCE OR HAS ASSISTED LIVING AND INDEPENDENT LIVING BEDS IN THE AGGREGATE THAT EQUAL AT LEAST TWICE THE NUMBER OF NURSING FACILITY BEDS. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTIGUOUS" MEANS LAND THAT ADJOINS OR TOUCHES THE OTHER PROPERTY HELD BY THE SAME OR A RELATED ORGANIZATION AND LAND DIVIDED BY A PUBLIC ROAD.

2. "FISCAL YEAR" MEANS THE PERIOD BEGINNING ON OCTOBER 1 AND ENDING ON SEPTEMBER 30.

3. "MEDICARE RESIDENT DAYS" MEANS RESIDENT DAYS THAT ARE FUNDED BY THE MEDICARE PROGRAM, A MEDICARE ADVANTAGE OR SPECIAL NEEDS PLAN OR THE MEDICARE HOSPICE PROGRAM.

4. "NET PATIENT SERVICE REVENUE" MEANS GROSS INPATIENT REVENUES FROM SERVICES THAT ARE PROVIDED TO NURSING FACILITY PATIENTS MINUS REDUCTIONS FROM GROSS INPATIENT REVENUE. FOR THE PURPOSES OF THIS PARAGRAPH, INPATIENT REVENUES FROM SERVICES DO NOT INCLUDE NONPATIENT CARE REVENUES SUCH AS BEAUTY AND BARBER INCOME, VENDING INCOME, INTEREST AND CONTRIBUTIONS, REVENUES FROM THE SALE OF MEALS AND ALL OUTPATIENT REVENUES.

5. "NURSING FACILITY" MEANS A HEALTH CARE INSTITUTION THAT PROVIDES INPATIENT BEDS OR RESIDENT BEDS AND NURSING SERVICES TO PERSONS WHO NEED NURSING SERVICES ON A CONTINUING BASIS BUT WHO DO NOT REQUIRE HOSPITAL CARE OR DIRECT DAILY CARE FROM A PHYSICIAN.

6. "REDUCTIONS FROM GROSS INPATIENT REVENUE" INCLUDES BAD DEBTS, CONTRACTUAL ADJUSTMENTS, UNCOMPENSATED CARE, ADMINISTRATIVE, COURTESY AND POLICY DISCOUNTS, ADJUSTMENTS AND OTHER SIMILAR REVENUE DEDUCTIONS.

7. "RESIDENT DAY" MEANS A CALENDAR DAY OF CARE PROVIDED TO A NURSING FACILITY RESIDENT, INCLUDING THE DAY OF ADMISSION AND EXCLUDING THE DAY OF DISCHARGE. RESIDENT DAY INCLUDES A DAY ON WHICH A BED IS HELD FOR A PATIENT AND FOR WHICH THE FACILITY RECEIVES COMPENSATION FOR HOLDING THE BED.

8. "UPPER PAYMENT LIMIT" MEANS THE LIMITATION ESTABLISHED PURSUANT TO 42 CODE OF FEDERAL REGULATIONS SECTION 447.272 THAT DISALLOWS FEDERAL MATCHING FUNDS IF A STATE MEDICAID AGENCY PAYS CERTAIN CLASSES OF NURSING FACILITIES AN AGGREGATE AMOUNT FOR SERVICES THAT WOULD EXCEED THE AMOUNT THAT WOULD BE PAID FOR THE SAME SERVICES FURNISHED BY THAT CLASS OF NURSING FACILITIES UNDER MEDICARE PAYMENT PRINCIPLES.

36-2999.52. Nursing facility quality assessments; calculation; limitation; exceptions

A. BEGINNING OCTOBER 1, 2012, THE ADMINISTRATION SHALL CHARGE A QUALITY ASSESSMENT ON HEALTH CARE ITEMS AND SERVICES PROVIDED BY NURSING FACILITIES IN ORDER TO OBTAIN FEDERAL FINANCIAL PARTICIPATION IN THE SERVICES PROVIDED PURSUANT TO THIS CHAPTER. THE ADMINISTRATION SHALL USE THESE MONIES FOR SUPPLEMENTAL PAYMENTS TO NURSING FACILITIES FOR COVERED MEDICAID EXPENDITURES, NOT TO EXCEED THE MEDICARE UPPER PAYMENT LIMIT PROGRAM REQUIREMENTS.

B. EACH NURSING FACILITY SHALL PAY THE ASSESSMENT PRESCRIBED PURSUANT TO THIS SECTION TO THE DEPARTMENT OF REVENUE FOR DEPOSIT ON A QUARTERLY BASIS IN THE NURSING FACILITY ASSESSMENT FUND ESTABLISHED BY SECTION 36-2999.53.

C. UNLESS OTHERWISE REQUIRED BY LAW, TITLE 42, CHAPTER 5, ARTICLE 1 GOVERNS THE ADMINISTRATION OF THE ASSESSMENT PRESCRIBED PURSUANT TO THIS SECTION EXCEPT THAT:

1. A SEPARATE LICENSE IS NOT REQUIRED FOR THE ASSESSMENT.

2. IF A NURSING FACILITY DOES NOT HAVE A TRANSACTION PRIVILEGE TAX LICENSE, IT SHALL OBTAIN ONE PURSUANT TO SECTION 42-5005.

3. EACH FACILITY SHALL REPORT AND PAY THE ASSESSMENT ON FORMS PRESCRIBED BY THE DEPARTMENT OF REVENUE.

4. A SEPARATE BOND IS NOT REQUIRED OF EMPLOYEES OF THE DEPARTMENT OF REVENUE WHO ADMINISTER THE ASSESSMENT.

5. THE ASSESSMENT MAY BE INCLUDED WITHOUT SEGREGATION IN ANY NOTICE AND LIEN FILED FOR UNPAID TRANSACTION PRIVILEGE TAXES.

D. THE ADMINISTRATION SHALL CALCULATE THE QUALITY ASSESSMENT ON THE NET PATIENT SERVICE REVENUE OF ALL NURSING FACILITIES THAT ARE SUBJECT TO THE QUALITY ASSESSMENT. THE QUALITY ASSESSMENT MAY NOT EXCEED THREE AND ONE-HALF PER CENT OF NET PATIENT SERVICE REVENUE AND SHALL BE CALCULATED AND PAID ON A PER RESIDENT DAY BASIS EXCLUSIVE OF MEDICARE RESIDENT DAYS. EXCEPT AS PRESCRIBED IN THIS SECTION, THE PER RESIDENT DAY ASSESSMENT IS THE SAME AMOUNT FOR EACH AFFECTED FACILITY.

E. PURSUANT TO 42 CODE OF FEDERAL REGULATIONS SECTION 433.68(e)(1) AND (2), THE ADMINISTRATION SHALL REQUEST A WAIVER OF THE BROAD-BASED AND UNIFORM PROVIDER ASSESSMENT REQUIREMENTS OF FEDERAL LAW TO EXCLUDE CERTAIN NURSING FACILITIES FROM THE QUALITY ASSESSMENT AND TO PERMIT CERTAIN HIGH VOLUME MEDICAID NURSING FACILITIES OR FACILITIES WITH A HIGH NUMBER OF TOTAL ANNUAL PATIENT DAYS TO PAY THE QUALITY ASSESSMENT AT A LESSER AMOUNT PER NONMEDICARE RESIDENT DAY.

F. SUBJECT TO FEDERAL APPROVAL PURSUANT TO 42 CODE OF FEDERAL REGULATIONS SECTION 433.68(e)(2), THE FOLLOWING NURSING FACILITY PROVIDERS ARE EXEMPT FROM THE QUALITY ASSESSMENT:

1. CONTINUING CARE RETIREMENT COMMUNITIES.

2. NURSING FACILITIES WITH FIFTY-EIGHT OR FEWER BEDS.

G. THE ADMINISTRATION SHALL LOWER THE QUALITY ASSESSMENT FOR EITHER CERTAIN HIGH VOLUME MEDICAID NURSING FACILITIES OR CERTAIN FACILITIES WITH

HIGH PATIENT VOLUMES TO MEET THE REDISTRIBUTIVE TEST OF 42 CODE OF FEDERAL REGULATIONS SECTION 433.68(e)(2).

36-2999.53. Nursing facility assessment fund

A. THE NURSING FACILITY ASSESSMENT FUND IS ESTABLISHED CONSISTING OF THE FOLLOWING:

1. MONIES RECEIVED BY THE ADMINISTRATION FROM NURSING FACILITY ASSESSMENTS PURSUANT TO THIS ARTICLE.

2. FEDERAL MONIES AND FEDERAL MATCHING MONIES RECEIVED BY THE ADMINISTRATION AS A RESULT OF EXPENDITURES MADE BY THE ADMINISTRATION THAT ARE ATTRIBUTABLE TO MONIES DEPOSITED IN THE FUND.

3. INTEREST OR PENALTIES COLLECTED PURSUANT TO THIS ARTICLE.

4. LEGISLATIVE APPROPRIATIONS.

5. PRIVATE GRANTS, GIFTS, CONTRIBUTIONS AND DEVISES FROM ANY SOURCE RECEIVED TO ASSIST IN CARRYING OUT THE PURPOSES OF THIS ARTICLE.

B. THE ADMINISTRATION SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED.

C. THE ADMINISTRATION SHALL USE FUND MONIES ONLY FOR THE FOLLOWING:

1. TO QUALIFY FOR FEDERAL MATCHING FUNDS FOR SUPPLEMENTAL PAYMENTS FOR NURSING FACILITY SERVICES WITHIN MEDICARE UPPER PAYMENT LIMIT PROGRAM REQUIREMENTS.

2. TO PAY ADMINISTRATIVE EXPENSES INCURRED BY THE ADMINISTRATION OR ITS AGENTS IN PERFORMING THE ACTIVITIES AUTHORIZED BY THIS CHAPTER, PROVIDED THAT THESE EXPENSES MAY NOT EXCEED ONE PER CENT OF THE AGGREGATE ASSESSMENT FUNDS COLLECTED FOR THE FISCAL YEAR.

3. TO REIMBURSE THE MEDICAID SHARER OF THE QUALITY ASSESSMENT.

4. TO PROVIDE MEDICAID SUPPLEMENTAL PAYMENTS TO FUND COVERED SERVICES TO NURSING FACILITY MEDICAID BENEFICIARIES WITHIN MEDICARE UPPER PAYMENT LIMITS.

D. ON NOTICE FROM THE ADMINISTRATION, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

36-2999.54. Assessments; penalty for late payments; waiver

A. EACH NURSING FACILITY SHALL PAY A QUALITY ASSESSMENT AS PRESCRIBED PURSUANT TO THIS ARTICLE. THE ADMINISTRATION SHALL DETERMINE THE ASSESSMENT RATE PROSPECTIVELY FOR THE APPLICABLE FISCAL YEAR ON A PER RESIDENT DAY BASIS, EXCLUSIVE OF MEDICARE RESIDENT DAYS. THE ADMINISTRATION SHALL ADOPT RULES FOR FACILITY REPORTING OF NONMEDICARE RESIDENT DAYS AND FOR PAYMENT OF THE ASSESSMENT.

B. THE NURSING FACILITY ASSESSMENT IS DUE QUARTERLY WITH THE INITIAL PAYMENT DUE WITHIN FORTY-FIVE DAYS AFTER THE STATE PLAN HAS BEEN APPROVED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES. SUBSEQUENT QUARTERLY PAYMENTS ARE DUE NOT LATER THAN FORTY-FIVE DAYS AFTER THE END OF THE CALENDAR QUARTER.

C. A NURSING FACILITY MAY INCREASE ITS CHARGES TO OTHER PAYORS TO INCORPORATE THE ASSESSMENT BUT MAY NOT ESTABLISH A SEPARATE LINE-ITEM CHARGE ON THE BILL REFLECTING THE ASSESSMENT.

D. IF AN ENTITY CONDUCTS, OPERATES OR MAINTAINS MORE THAN ONE NURSING FACILITY, THE ENTITY MUST PAY A QUALITY ASSESSMENT FOR EACH NURSING FACILITY SEPARATELY.

E. IF A NURSING FACILITY DOES NOT PAY THE FULL AMOUNT OF THE ASSESSMENT WHEN DUE, THE DEPARTMENT OF REVENUE SHALL IMPOSE A CIVIL PENALTY OF FIVE PER CENT OF THE AMOUNT OF THE ASSESSMENT. THE DEPARTMENT OF REVENUE SHALL CREDIT SUBSEQUENT PAYMENTS FIRST TO THE UNPAID ASSESSMENT AMOUNTS, RATHER THAN TO PENALTY OR INTEREST AMOUNTS, BEGINNING WITH THE MOST DELINQUENT INSTALLMENT. THE DEPARTMENT OF REVENUE MAY WAIVE A PENALTY FOR GOOD CAUSE SHOWN.

F. IN ADDITION TO A CIVIL PENALTY, THE ADMINISTRATION MAY SEEK ANY OF THE FOLLOWING REMEDIES FOR FAILURE TO PAY AN ASSESSMENT:

1. WITHHOLD ANY MEDICAL ASSISTANCE REIMBURSEMENT PAYMENTS UNTIL THE ASSESSMENT IS PAID IN FULL.

2. SUSPEND OR REVOKE THE NURSING FACILITY'S LICENSE.

3. REQUIRE THE NURSING FACILITY TO PAY ANY DELINQUENT ASSESSMENT IN INSTALLMENTS.

36-2999.55. Adjustment of payments; definition

A. A NURSING FACILITY IS ELIGIBLE FOR QUARTERLY NURSING FACILITY ADJUSTMENTS BASED ON NURSING FACILITY DAYS FROM THE MOST RECENT COST REPORT BEFORE THE START OF THE FISCAL YEAR. IF COST REPORT DATA IS UNAVAILABLE FOR A NURSING FACILITY, THE ADMINISTRATION MAY USE OTHER DATA SOURCES OR REQUEST PATIENT DAY INFORMATION FROM THE FACILITY TO ESTIMATE NURSING FACILITY DAYS.

B. THE ADMINISTRATION SHALL MAKE ADJUSTMENT PAYMENTS ON A QUARTERLY BASIS TO REIMBURSE THE MEDICAID PORTION OF THE ASSESSMENT AND OTHER COVERED MEDICAID EXPENDITURES IN THE AGGREGATE WITHIN THE UPPER PAYMENT LIMIT. EACH QUARTERLY PAYMENT SHALL BE MADE NOT LATER THAN THIRTY DAYS AFTER THE END OF THE CALENDAR QUARTER WITH THE INITIAL ADJUSTMENT PAYMENT DUE WITHIN THIRTY DAYS AFTER APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES OF THE QUALITY ASSESSMENT WAIVER AND STATE PLAN REFLECTING THE NURSING FACILITY ADJUSTED PAYMENTS.

C. FOR THE PURPOSES OF THIS SECTION, "NURSING FACILITY DAYS" MEANS THE DAYS OF NURSING FACILITY SERVICES, INCLUDING BED HOLD DAYS, PAID FOR BY THE ARIZONA MEDICAL ASSISTANCE PROGRAM FOR THE APPLICABLE STATE FISCAL YEAR.

36-2999.56. Modifications

THE ADMINISTRATION MAY MODIFY THE CATEGORIES OF FACILITIES EXEMPT FROM THE QUALITY ASSESSMENT AND THE RATE ADJUSTMENT PROVISIONS OF THIS ARTICLE IF THIS IS NECESSARY TO OBTAIN AND MAINTAIN APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES AND IF THE MODIFICATION IS CONSISTENT WITH PURPOSES OF THIS ARTICLE.

36-2999.57. Discontinuance of assessments

A. THE DEPARTMENT OF REVENUE SHALL DISCONTINUE COLLECTION OF ALL ASSESSMENTS IF ANY OF THE FOLLOWING APPLIES:

1. THE QUALITY ASSESSMENT WAIVER OR THE STATE PLAN AMENDMENT REFLECTING THE QUARTERLY NURSING FACILITY ADJUSTMENT PAYMENTS IS NOT APPROVED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.

2. THE ADMINISTRATION REDUCES FUNDING FOR NURSING FACILITY SERVICES BELOW THE STATE APPROPRIATION IN EFFECT ON THE EFFECTIVE DATE OF THIS ARTICLE.

3. THE ADMINISTRATION OR ANY OTHER STATE AGENCY ATTEMPTS TO USE MONIES IN THE NURSING FACILITY ASSESSMENT FUND ESTABLISHED PURSUANT TO SECTION 36-2999.53 FOR ANY USE OTHER THAN THOSE PERMITTED PURSUANT TO THIS ARTICLE.

4. FEDERAL FINANCIAL PARTICIPATION TO MATCH THE QUALITY ASSESSMENTS MADE PURSUANT TO THIS ARTICLE BECOMES UNAVAILABLE UNDER FEDERAL LAW, IN WHICH CASE THE ADMINISTRATION MUST TERMINATE THE IMPOSITION OF THE ASSESSMENTS BEGINNING ON THE DATE THE FEDERAL STATUTORY, REGULATORY OR INTERPRETIVE CHANGES TAKE EFFECT.

B. IF THE DEPARTMENT OF REVENUE DISCONTINUES COLLECTION OF THE ASSESSMENT PURSUANT TO THIS SECTION, IT SHALL RETURN ALL MONIES IN THE NURSING FACILITY ASSESSMENT FUND ESTABLISHED BY SECTION 36-2999.53 TO THE NURSING FACILITIES FROM WHICH THE ASSESSMENT WAS COLLECTED ON THE SAME BASIS AS THE ASSESSMENTS WERE ASSESSED.

Sec. 2. Delayed repeal

Title 36, chapter 29, article 6, Arizona Revised Statutes, as added by this act, is repealed from and after September 30, 2015.

Sec. 3. Application for federal approval

The Arizona health care cost containment system administration shall seek necessary federal approval in the form of the quality assessment waiver and state plan amendment to implement the provisions of title 36, chapter 29, article 6, Arizona Revised Statutes, as added by this act.

Sec. 4. Requirements for enactment; two-thirds vote

Pursuant to article IX, section 22, Constitution of Arizona, this act is effective only on the affirmative vote of at least two-thirds of the members of each house of the legislature and is effective immediately on the signature of the governor or, if the governor vetoes this act, on the subsequent affirmative vote of at least three-fourths of the members of each house of the legislature.

APPROVED BY THE GOVERNOR APRIL 5, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.

Passed the House March 5, 2012

by the following vote: 42 Ayes,

16 Nays, 2 Not Voting

Article IX, Section 22

Speaker of the House

Chief Clerk of the House

Passed the Senate March 22, 2012

by the following vote: 23 Ayes,

7 Nays, 0 Not Voting

With Art. IX, Sec. 22 Const. of AZ

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2526

**HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE**

April 3, 2012,

by the following vote: 40 Ayes,

18 Nays, 2 Not Voting Article IX, Sec. 22

Speaker of the House

Cheryl Laube

Chief Clerk of the House

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill was received by the Governor this

3 day of April, 2012,

at 12:50 o'clock P M.

Secretary to the Governor

Approved this 5th day of

April, 2012,

at 10:40 o'clock A. M.

Janice K. Brewer

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this 5th day of April, 2012,

at 4:20 o'clock P M.

acting Secretary of State

**H.B. 2526**