

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)

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

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

4 ARTICLE 6. NURSING FACILITY PROVIDER ASSESSMENTS

5 36-2999.51. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

37 8. "UPPER PAYMENT LIMIT" MEANS THE LIMITATION ESTABLISHED PURSUANT TO
38 42 CODE OF FEDERAL REGULATIONS SECTION 447.272 THAT DISALLOWS FEDERAL
39 MATCHING FUNDS IF A STATE MEDICAID AGENCY PAYS CERTAIN CLASSES OF NURSING
40 FACILITIES AN AGGREGATE AMOUNT FOR SERVICES THAT WOULD EXCEED THE AMOUNT THAT
41 WOULD BE PAID FOR THE SAME SERVICES FURNISHED BY THAT CLASS OF NURSING
42 FACILITIES UNDER MEDICARE PAYMENT PRINCIPLES.

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

3 36-2999.53. Nursing facility assessment fund

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

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

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

11 3. INTEREST OR PENALTIES COLLECTED PURSUANT TO THIS ARTICLE.

12 4. LEGISLATIVE APPROPRIATIONS.

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

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

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

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

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

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

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

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

32 36-2999.54. Assessments; penalty for late payments; waiver

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

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

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

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

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

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

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

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

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

18 36-2999.55. Adjustment of payments; definition

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

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

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

35 36-2999.56. Modifications

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

41 36-2999.57. Discontinuance of assessments

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

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

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

4 3. THE ADMINISTRATION OR ANY OTHER STATE AGENCY ATTEMPTS TO USE MONIES
5 IN THE NURSING FACILITY ASSESSMENT FUND ESTABLISHED PURSUANT TO SECTION
6 36-2999.53 FOR ANY USE OTHER THAN THOSE PERMITTED PURSUANT TO THIS ARTICLE.

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

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

17 Sec. 2. Delayed repeal

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

20 Sec. 3. Application for federal approval

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

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

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

APPROVED BY THE GOVERNOR APRIL 5, 2012.

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