

## No. 2019-19

## AN ACT

SB 695

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," in public assistance, further providing for medical assistance payments for institutional care and for nonemergency medical transportation services and providing for uniform Statewide preferred drug list; in nursing facility assessments, further providing for definitions, for calculation, for remedies, for repayment and for time periods; in intermediate care facilities for persons with an intellectual disability assessments, further providing for definitions and for time periods; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 443.1(7)(iv) of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, is amended to read:

Section 443.1. Medical Assistance Payments for Institutional Care.—The following medical assistance payments shall be made on behalf of eligible persons whose institutional care is prescribed by physicians:

\* \* \*

(7) After June 30, 2007, payments to county and nonpublic nursing facilities enrolled in the medical assistance program as providers of nursing facility services shall be determined in accordance with the methodologies for establishing payment rates for county and nonpublic nursing facilities specified in the department's regulations and the Commonwealth's approved Title XIX State Plan for nursing facility services in effect after June 30, 2007. The following shall apply:

\* \* \*

(iv) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for each fiscal year beginning on or after July 1, 2011, the department shall apply a revenue adjustment neutrality factor to county and nonpublic nursing facility payment rates so that the estimated Statewide day-weighted average payment rate in effect for that fiscal year is limited to the amount permitted by the funds appropriated by the General Appropriation Act for the fiscal year. The revenue adjustment neutrality factor shall remain in effect until the sooner of June 30, [2019] 2022, or the date on which a new rate-setting methodology for medical assistance nursing facility services which replaces the rate-setting methodology codified in 55 Pa. Code Chs. 1187 (relating to nursing facility services) and 1189 (relating to county nursing facility services) takes effect.

\* \* \*

Section 2. Section 443.12 of the act is amended by adding subsections to read:

Section 443.12. Nonemergency Medical Transportation Services.—\* \* \*

*(d) The department may not enter into a contract with a broker under subsection (b) prior to the completion of the analysis required under subsection (e).*

*(e) Prior to the implementation of the full-risk brokerage model, the department, in coordination with the Department of Transportation and the Department of Aging, shall commission an analysis that provides at a minimum the following:*

*(1) An analysis of current Federal and State law, regulations and policies controlling the nonemergency medical transportation and other human services transportation programs administered in the Commonwealth, including the authorized methods of delivery and limitations or restrictions imposed on the methods of delivery.*

*(2) An analysis of the effectiveness and efficiency of the current nonemergency transportation service delivery as it relates to all human service programs in this Commonwealth.*

*(3) A review of other states' models of delivering nonemergency medical and other human services transportation, including the number of other states that utilize a full-risk brokerage model and the effect a brokerage model has had on public transit in those states.*

*(4) An analysis of the positive and negative impact of maintaining the current transportation delivery model versus implementing a full-risk brokerage model as it relates to the State and local government entities, including financial impact.*

*(5) An analysis of the impact on consumers, including an increase or decrease in quality and service availability.*

*(f) The analysis under subsection (e) shall be completed no later than one hundred eighty days from the effective date of this subsection. A preliminary report of the analysis under subsection (e) shall be completed no later than ninety days from the effective date of this subsection. The analysis under subsection (e) and the preliminary report under this subsection shall be delivered to the following:*

*(1) The Secretary of Human Services.*

*(2) The Secretary of Aging.*

*(3) The Secretary of Transportation.*

*(4) The chairperson and minority chairperson of the Appropriations Committee of the Senate.*

*(5) The chairperson and minority chairperson of the Appropriations Committee of the House of Representatives.*

*(6) The chairperson and minority chairperson of the Health and Human Services Committee of the Senate.*

*(7) The chairperson and minority chairperson of the Health Committee of the House of Representatives.*

Section 3. The act is amended by adding a section to read:

*Section 459.1. Uniform Statewide preferred drug list.—(a) The department may not implement a uniform Statewide preferred drug list for the medical assistance managed care organizations until an analysis has been conducted, as commissioned by the department, to determine the projected cost to the medical assistance managed care organization and the*

*projected supplemental rebates that could be obtained by the department through the use of a uniform Statewide preferred drug list.*

*(b) The analysis under subsection (a) shall be completed within sixty days of the effective date of this subsection. The analysis shall be delivered to the following:*

*(1) The chairperson and minority chairperson of the Appropriations Committee of the Senate.*

*(2) The chairperson and minority chairperson of the Appropriations Committee of the House of Representatives.*

*(3) The chairperson and minority chairperson of the Health and Human Services Committee of the Senate.<sup>1</sup>*

*(4) The chairperson and minority chairperson of the Health Committee of the House of Representatives.*

Section 4. The definitions of "county nursing facility," "medical assistance provider" and "nursing facility" in section 801-A of the act are amended and the section is amended by adding a definition to read:

Section 801-A. Definitions.—As used in this article—

\* \* \*

"County nursing facility" means a long-term care nursing facility that is licensed by the Department of Health under the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act," and controlled by the county institution district or county government if no county institution district exists. The term does not include intermediate care facilities for [the mentally retarded] *individuals with an intellectual disability* controlled by the county institution district or county government.

*"Medical assistance managed care organization" means a Medicaid managed care organization as defined in section 1903(m)(1)(A) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(m)(1)(A)) that is a party to a Medicaid managed care contract with the department. The term shall not include a behavioral health managed care organization that is a party to a Medicaid managed care contract with the department.*

"Medical assistance provider" means a person or entity enrolled by the [Department of Human Services] *department* as a provider of services in the medical assistance program.

"Nursing facility" means a non-Federal, nonpublic long-term care nursing facility licensed by the Department of Health pursuant to the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act." The term does not include intermediate care facilities for [the mentally retarded] *individuals with an intellectual disability*.

\* \* \*

Section 5. Sections 807-A, 810-A(3) and 813-A of the act are amended to read:

Section 807-A. [Calculation.—Using the assessment rates implemented by the secretary pursuant to section 805-A(a), each

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<sup>1</sup>(2) The chairperson and minority chairperson of the Health and Human Services Committee of the Senate.

(3) The chairperson and minority chairperson of the Appropriations Committee of the House of Representatives." in enrolled bill.

nursing facility shall calculate the assessment amount it owes for a calendar quarter on a form specified by the department and shall submit the form and the amount owed to the department no later than the last day of that calendar quarter or thirty (30) days from the date of the second notice published pursuant to section 805-A(a), whichever is later. A nursing facility's calculation of the assessment amount owed in any quarter is subject to verification by the department pursuant to section 808-A.] *Assessment Amount and Timing.—Each nursing facility shall remit the assessment amounts due as determined by the department pursuant to section 805-A(a) in periodic submissions, not to exceed five times per year, as specified by the department. A nursing facility shall report and remit the total assessment amount owed electronically on forms and in accordance with instructions and by the due dates prescribed by the department. The prescribed due dates shall be at least thirty (30) days after the date of publication of the second notice under section 805-A(a).*

Section 810-A. Remedies.—In addition to any other remedy provided by law, the department may enforce this article by imposing one or more of the following remedies:

\* \* \*

(3) When a nursing facility that is a medical assistance provider or that is related through common ownership or control as defined in 42 CFR 413.17(b) (relating to cost to related organizations) to a medical assistance provider fails to pay all or part of an assessment or penalty within sixty (60) days of the date that payment is due, the department may deduct *or instruct a medical assistance managed care organization to deduct* the unpaid assessment or penalty and any interest owed thereon from any medical assistance payments due to the nursing facility or to any related medical assistance provider until the full amount is recovered. Any such deduction shall be made only after written notice to the medical assistance provider and may be taken in amounts over a period of time taking into account the financial condition of the medical assistance provider.

\* \* \*

Section 813-A. Repayment.—No nursing facility shall be directly guaranteed a repayment of its assessment in derogation of 42 CFR 433.68(f) (relating to permissible health care-related taxes [after the transition period]):<sup>1</sup> Provided, however, That in each fiscal year in which an assessment is implemented, the department shall use the State revenue collected from the assessment and any Federal funds received by the Commonwealth as a direct result of the assessments to [maintain and increase program payments] *make program payments through fee-for-service or managed care* to medical assistance nursing facility providers to the extent permissible under Federal and State law or regulation and without creating an indirect guarantee to hold harmless, as those terms are used in 42 CFR 433.68(f). If the department implements an assessment on county nursing facilities, the department shall allocate assessment revenues available to [maintain and increase program payments] *make program*

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<sup>1</sup>“(relating to permissible health care-related taxes after the transition period):” in enrolled bill.

*payments through fee-for-service or managed care* to both county and non county nursing facilities in a manner that is consistent with Federal law and without creating a direct or an indirect guarantee to hold any nursing facility harmless. The secretary shall submit any **[State Medicaid plan] Title XIX State Plan** amendments to the United States Department of Health and Human Services that are necessary to make the **[payment increases] payments**.

Section 6. Section 815-A of the act, amended June 30, 2012 (P.L.668, No.80), amendment declared unconstitutional, 188 A.3d 1135 (Pa. 2018), and amended July 8, 2016 (P.L.480, No.76), is reenacted and amended to read:

Section 815-A. Time periods.—The assessment authorized in this article shall **[not be imposed prior to July 1, 2003, or after June 30, 2012] be imposed July 1, 2003, through June 30, 2022**.

Section 7. The definitions of "department" and "secretary" in section 801-C of the act are amended to read:

Section 801-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

**["Department." The Department of Human Services of the Commonwealth.]**

\* \* \*

**["Secretary." The Secretary of Human Services of the Commonwealth.]**

\* \* \*

Section 8. Section 811-C(b) of the act is amended to read:  
Section 811-C. Time periods.

\* \* \*

(b) Cessation.—The assessment authorized under this article shall cease June 30, **[2019] 2024**, or earlier, if required by law.

Section 9. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the reenactment or amendment of sections 801-A, 807-A, 810-A(3), 813-A and 815-A of the act.

(2) Section 1729-E(2)(ii) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

Section 10. This act shall take effect immediately.

APPROVED—The 28th day of June, A.D. 2019

TOM WOLF