

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 433 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/2/09

A Bill

SENATE BILL 354

5 By: Senators Laverty, Altes, G. Baker, Bookout, Broadway, Bryles, Capps, Faris, Horn, G. Jeffress, J.
6 Jeffress, B. Johnson, D. Johnson, J. Key, Miller, Salmon, T. Smith, Steele, Teague, R. Thompson, Trusty,
7 Wilkinson, D. Wyatt

8 By: Representatives Saunders, Harrelson, T. Rogers, *Abernathy, Adcock, Allen, T. Baker, Betts, Blount,*
9 *T. Bradford, J. Brown, M. Burris, Carnine, Cash, Cooper, D. Creekmore, Davis, J. Dickinson, Dunn,*
10 *Everett, Gaskill, George, R. Green, Hardy, Hawkins, House, Hoyt, D. Hutchinson, Kerr, Kidd, Lea,*
11 *Lovell, Lowery, Maloch, Maxwell, McCrary, McLean, Moore, Nix, Overbey, Perry, Pierce, Powers,*
12 *Ragland, Rainey, Reep, J. Roebuck, J. Rogers, Sample, Shelby, G. Smith, L. Smith, Stewart, Tyler, Webb,*
13 *Wells, B. Wilkins, Williams, Wills, Word*

For An Act To Be Entitled

14
15
16 *AN ACT TO ESTABLISH A PROVIDER FEE FOR*
17 *INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH*
18 *DEVELOPMENTAL DISABILITIES; AND FOR OTHER*
19 *PURPOSES.*

Subtitle

20
21
22 *AN ACT TO ESTABLISH A PROVIDER FEE FOR*
23 *INTERMEDIATE CARE FACILITIES FOR*
24 *INDIVIDUALS WITH DEVELOPMENTAL*
25 *DISABILITIES.*

26
27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 *SECTION 1. Arkansas Code Title 20, Chapter 48 is amended to add an*
31 *additional subchapter to read as follows:*

32 *20-48-901. Definitions.*

33 *As used in this subchapter:*

34 *(1)(A) "Gross receipts" means all compensation paid to*
35 *intermediate care facilities for individuals with developmental disabilities*



1 for services provided to residents including, without limitation, client
 2 participation.

3 (B) "Gross receipts" does not include charitable
 4 contributions;

5 (2)(A) "Intermediate care facility for individuals with
 6 developmental disabilities" means a residential institution maintained for
 7 the care and training of persons with developmental disabilities, including
 8 without limitation mental retardation;

9 (B) "Intermediate care facility for individuals with
 10 developmental disabilities" has the same meaning as "intermediate care
 11 facility for the mentally retarded" or "ICF/MR" under federal law.

12 (C) "Intermediate care facility for individuals with
 13 developmental disabilities" does not include:

14 (i) Offices of private physicians and surgeons;

15 (ii) Residential care facilities;

16 (iii) Assisted living facilities;

17 (iv) Hospitals;

18 (v) Institutions operated by the federal government;

19 (vi) Life care facilities;

20 (vii) Nursing facilities; or

21 (viii) A facility which is conducted by and for

22 those who rely exclusively upon treatment by prayer for healing in accordance
 23 with tenets or practices of a recognized religious denomination; and

24 (3) "Medicaid" means the medical assistance program established
 25 by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it
 26 existed on January 1, 2009, and administered by the Division of Medical
 27 Services of the Department of Human Services.

28
 29 20-48-902. Calculation of provider fee.

30 (a)(1) There is levied a provider fee on intermediate care facilities
 31 for individuals with developmental disabilities to be calculated in
 32 accordance with this section.

33 (2)(A) The provider fee shall be an amount calculated by the
 34 Division of Medical Services of the Department of Human Services to produce
 35 an aggregate provider fee payment equal to six percent (6%) of the aggregate
 36 gross receipts of all intermediate care facilities for individuals with

1 developmental disabilities.

2 (B) Aggregate provider fees shall not equal or exceed an
3 amount measured on a state fiscal year basis that may cause a reduction in
4 federal financial participation in Medicaid.

5 (b)(1)(A) The provider fee of an intermediate facility for individuals
6 with developmental disabilities shall be payable in monthly payments.

7 (B) Each monthly payment shall be due and payable for the
8 previous month by the thirtieth day of each month.

9 (2) The Division of Medical Services of the Department of Human
10 Services shall seek approval from the Centers for Medicare and Medicaid
11 Services to treat the provider fee of an intermediate care facility for
12 individuals with developmental disabilities as an allowable cost for Medicaid
13 reimbursement purposes.

14 (c) No intermediate care facility for individuals with developmental
15 disabilities shall be guaranteed, expressly or otherwise, that any additional
16 moneys paid to the intermediate care facility for individuals with
17 developmental disabilities will equal or exceed the amount of its provider
18 fee.

19 (d)(1) The Division of Medical Services of the Department of Human
20 Services shall insure that the rate of assessment of the provider fee
21 established in this section maximizes federal funding to the fullest extent
22 possible.

23 (2) If the division determines that the rate of assessment of
24 the provider fee established in this section equals or exceeds the maximum
25 rate of assessment that federal law allows without reduction in federal
26 financial participation in Medicaid, the division shall lower the rate of
27 assessment of the provider fee to a rate that maximizes federal funding to
28 the fullest extent possible.

29
30 20-49-903. Administration.

31 (a) The Director of the Division of Medical Services of the Department
32 of Human Services shall administer this subchapter and shall be subject to
33 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

34 (b)(1) In accordance with the Arkansas Administrative Procedure Act, §
35 25-15-201 et seq., the Division of Medical Services of the Department of
36 Human Services shall promulgate rules and prescribe forms for:

1 (A) The proper imposition and collection of the provider
2 fee;

3 (B)(i) The enforcement of the subchapter, including
4 without limitation license or certification nonrenewal, letters of caution,
5 sanctions, or fines.

6 (ii)(a) The fine for failure to comply with payment
7 and reporting requirements shall be at least one thousand dollars (\$1,000)
8 but no more than one thousand five hundred dollars (\$1,500).

9 (b) The fine and if applicable, the
10 outstanding balance of the provider fee, shall accrue interest at the maximum
11 rate permitted by law from the date the fine and, if applicable, the provider
12 fee, is due until payment of the outstanding balance of the fine and if
13 applicable, the provider fee;

14 (C) The format for reporting gross receipts; and

15 (D) The administration of this subchapter.

16 (2) The rules shall not grant any exceptions to, or exceptions
17 from, the provider fee.

18
19 20-49-904. Use of funds.

20 (a)(1) The provider fee assessed and collected under this subchapter
21 shall be deposited in a designated account within the Arkansas Medicaid
22 Program Trust Fund.

23 (2) The designated account shall be separate and distinct from
24 the general fund and shall be supplementary to the Arkansas Medicaid Program
25 Trust Fund.

26 (3) The designated account moneys in the trust fund and the
27 matching federal financial participation under Title XIX of the Social
28 Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009,
29 shall be used only for:

30 (A) Continued operation of and rate increases for:

31 (i) Intermediate care facilities for individuals
32 with developmental disabilities;

33 (ii) Developmental Day Treatment Clinic Services
34 provided to persons with developmental disabilities by providers licensed by
35 the Division of Developmental Disabilities of the Department of Human
36 Services under § 20-48-101 et seq.; and

1 (iii) Services provided to persons with
2 developmental disabilities under the Alternative Community Services Waiver
3 Program by providers certified to provide waiver services by the Division of
4 Developmental Disabilities of the Department of Human Services;

5 (B) Expansion of the Alternative Community Services Waiver
6 Program to serve more persons with developmental disabilities than is
7 approved under the waiver program as of March 1, 2009;

8 (C) The Division of Medical Services of the Department of
9 Human Services; and

10 (D) Public guardianship of adults.

11 (b)(1) The designated account moneys in the trust fund from the
12 provider fee on intermediate care facilities for individuals with
13 developmental disabilities that are unused at the end of a fiscal year shall
14 be carried forward.

15 (2) The designated account moneys in the trust fund from the
16 provider fee on intermediate care facilities for individuals with
17 developmental disabilities may not be used to supplant other local, state, or
18 federal funds.

19
20 /s/ Laverty

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22 **APPROVED: 3/16/2009**