

ARKANSAS REGISTER

Transmittal Sheet

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For Office
Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Medical Services

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Statutory Authority for Promulgating Rules Arkansas Code Annotated 20-76-201

Rule Title: Administrative Procedures of Nursing Home Quality Assurance Fee

Intended Effective Date
(Check One)

Date

<input type="checkbox"/> Emergency (ACA 25-15-204)	Legal Notice Published	<u>N/A</u>
<input type="checkbox"/> 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	<u>N/A</u>
<input checked="" type="checkbox"/> Other <u>January 1, 2020</u> <small>(Must be more than 10 days after filing date.)</small>	Reviewed by Legislative Council	<u>N/A</u>
	Adopted by State Agency	<u>12/11/2019</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Thomas Herndon Thomas.Herndon@dhs.arkansas.gov 12/11/2019
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

(501) 320.6270 Janet.Mann@dhs.arkansas.gov
Phone Number E-mail Address

Director of the Division of Medical Services

Title

12/11/2019

Date

ADMINISTRATIVE PROCEDURES OF NURSING HOME QUALITY ASSURANCE FEE

DEFINITIONS

- A. "Director" means the director of the division.
- B. "Division" means the Division of Medical Services of the Department of Human Services;
- C. "Medicaid" means the Medical Assistance Program established by Title XIX of the Social Security Act, as existing on January 1, 2001 and administered by the division;
- D. "Gross Receipts" means gross receipts paid as compensations for services provided to residents of nursing facilities, including but not limited to, client participation. Gross receipts does not mean charitable contributions;
- E. "Midnight census" means the count of:
 - 1. Each patient occupying a nursing facility bed at midnight of each day;
 - 2. Those beds placed on hold during a period of time not to exceed five consecutive calendar days during which a patient is in a hospital bed; and
 - 3. Those beds placed on hold during a period of time not to exceed fourteen (14) consecutive calendar days during which a patient is on therapeutic home leave.
- F. "Multiplier" means the fixed dollar amount used to calculate the quality assurance fee.
- G. "Nursing facilities" means any building, structure, agency, institution, or other place which requires payment for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals who due to a physical or mental infirmity, are unable to care for themselves. Nursing facilities does not mean offices of private physicians and surgeons, boarding homes, residential care facilities, intermediate care facilities for the mentally retarded, hospitals, institutions operated by the federal government or licensed by the Division of Developmental Disabilities Services of the Department of Human Services, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of any recognized religious denomination;

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- H. "Patient days" means the number of patients in a nursing facility as determined by the midnight census.

- I. "Accounts Receivable" means the Accounts Receivable unit of Division of Fiscal Management of the Department of Human Services.

PATIENT REVENUES

All nursing facilities shall report their patient revenues on a monthly basis on a form prescribed by the Division of Medical Services for the specific purpose of reporting patient revenue.

FEE ASSESSMENT, BILLING, COLLECTION

Each nursing facility shall file a report with the Department of Human Services by the 10th of each month for the preceding month, listing the patient midnight census as required by rules promulgated by the Division of Medical Services.

Accounts Receivable will calculate the quality assurance fee by multiplying patient midnight census as reported by the facilities for the previous month by the appropriate rate per period. Billing will be sent no later than the 15th of each month. A copy of the Patient Census Report and statement will be forwarded to Division of Medical Services.

The fee shall then be due and payable for the previous month by the 30th of the month.

From the effective date of the act, March 9, 2001, to June 30, 2001 the rate shall be set at \$5.25 multiplied by the midnight census count for of all nursing facilities in this state, for each month of this period.

Failure of any nursing facility to file required reports and/or pay fees on a timely basis may result in the withholding of Medicaid reimbursement, license nonrenewal, letters of caution, sanctions and/or fines. The fine shall be at least ten thousand dollars (\$10,000) but no more than twenty thousand dollars (\$20,000). The fine and outstanding quality assurance fee shall accrue interest at the maximum rate permitted by law from the date the quality assurance fee is due until payment of the quality assurance fee and the fine. Accounts Receivable will initiate the collection process on the 1st of the month following the due date for payments not postmarked by close of business on 30th of the month.

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Outstanding accounts report will be forwarded to Division of Medical Services for determination of further action.

CHANGE OF OWNERSHIP OR MANAGEMENT

The liability for any amount owed the Division in connection with the quality assurance fee is joint and several as between or among the original obligor and any successor licensees.

ADMINISTRATION OF FEES

Fees assessed and collected will be deposited in a designated account within the Arkansas Medicaid Program Trust Fund as established under Arkansas Code Annotated 19-5-985.

No nursing facility shall be guaranteed, expressly or otherwise, that any additional monies paid to the nursing facility will equal or exceed the amount of its quality assurance fee.

SANCTIONS

Sanctions will be assessed by the Division on all Nursing Facilities that fail to comply with the provisions of the Quality Assurance Act of 2001 (the "Act"), as implemented by these rules. Any fee or fine imposed under these rules, as authorized by the Act, shall accrue interest at the rate of ten percent (10%) per annum from the date the fee or fine is imposed until the Nursing Facility pays the fee or fine. For the purposes of this section, "postmarked" shall mean dated for delivery to the Division and submitted to the appropriate carrier by whatever means designated by the Division including electronic or other means. The procedures for suspension and reinstatement of a license set forth in this section shall only apply to violations of these rules.

A. Midnight Census Data

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Should a Nursing Facility fail to submit Midnight Census data to the Division within the time specified in the Act, the following sanctions shall be imposed:

1. If the Midnight Census data is not received within ten (10) days after the date on which the data must be postmarked for transmission to the Division, the Division shall issue a letter of caution to the Nursing Facility.

2. If the Midnight Census data is not received within twenty (20) days after the date on which the data must be postmarked for transmission to the Division, the Nursing Facility shall be deemed to be in non-compliance with the Act and the Nursing Facility shall be fined at least ten thousand dollars (\$10,000) but no more than twenty thousand dollars (\$20,000), such amount to be dependent upon the number of times the Nursing Facility has been found to be in non-compliance with the Midnight Census data reporting requirement of the Act within the twelve (12) months immediately preceding the date of noncompliance:
 - a. First finding of non-compliance: \$10,000
 - b. Second finding of non-compliance: \$15,000
 - c. Third finding of non-compliance: \$20,000

3. Failure to provide Midnight Census data on four (4) or more occasions within any twelve (12) month period will result in the Division directing the Office of Long Term Care to suspend a Nursing Facility's license to operate for a period of not less than thirty (30) days and not more than ninety (90) days, such period to be determined by the Director.

B. Gross Receipts Data

Should a Nursing Facility fail to submit Gross Receipts data to the Division within the time specified in the Act, the following sanctions shall be imposed:

1. If the Gross Receipts data is not received within ten (10) days after the date on which the data must be postmarked for transmission to the Division, the Division shall issue a letter of caution to the Nursing Facility.

2. If the Gross Receipts data is not received within twenty (20) days after the date on which the data must be postmarked for transmission to the Division, the Nursing Facility shall be deemed to be in non-compliance with the Act and the Nursing Facility shall be fined at least ten thousand dollars (\$10,000) but no more than twenty thousand dollars (\$20,000),

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such amount to be dependent upon the number of times the Nursing Facility has been found to be in non-compliance with the Gross Receipts data reporting requirement of the Act within the twelve (12) months immediately preceding the date of non-compliance:

- a. First finding of non-compliance: \$10,000
- b. Second finding of non-compliance: \$15,000
- c. Third finding of non-compliance: \$20,000

- 3. Failure to provide Gross Receipts data on four (4) or more occasions within any twelve (12) month period will result in the Division directing the Office of Long Terms Care to suspend a Nursing Facility's license to operate for a period of not less than thirty (30) days and not more than ninety (90) days, such period to be determined by the Director.

C. Payment of Quality Assurance Fee

Should a Nursing Facility fail to pay any Quality Assurance fee to the Division, the following sanctions shall be imposed upon that Nursing Facility:

- 1. If the Quality Assurance fee is not received within ten (10) days of the date it is due to the Division, the nursing home shall be deemed to be in non-compliance with the Act. The Department will assess a fine on any Nursing Facility found to be in non-compliance with its obligation to remit this fee to the Division, and the Nursing Facility shall be fined at least ten thousand dollars (\$10,000) but no more than twenty thousand dollars (\$20,000), such amount to be dependent upon the number of times the Nursing Facility has been found to be in non-compliance with the obligation to remit imposed fees to the Division within the twelve (12) months immediately preceding the date of non-compliance:
 - a. First finding of non-compliance: \$10,000
 - b. Second finding of non-compliance: \$15,000
 - c. Third finding of non-compliance: \$20,000
- 2. Failure to pay the Quality Assurance fee within the time specified by these rules on four (4) or more occasions within any twelve (12) month period will result in the Division directing the Office of Long Term Care to suspend a Nursing Facility's license to operate for a period of not less than thirty (30) days and not more than ninety (90) days, such period to be determined by the Director.

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D. Procedures for Reinstatement of License

Should a license for a Nursing Facility be suspended under the terms of these rules, except for those suspensions provided for in Part E of this section, the license will be reinstated upon full payment of all fines, fees, interest or other charges imposed by the Division, along with a showing, to the Division's satisfaction, that measures are in place to ensure future compliance with the Act.

E. Procedures for Chronic Violations

Any facility that is in non-compliance on six (6) or more occasion in any twelve (12) month period with any obligation imposed by the Act, as implemented in these rules, shall be deemed to be a chronic violator of the Act and a threat to the safety of Arkansans in nursing facilities. Any Nursing Facility found to a chronic violator of the Act shall have its license suspended by the Office of Long Term Care and such license will be reinstated only after the Nursing Facility complies with the Act's requirements, including payment of all applicable fees, fines, interest or other sanction and adopts measures that, to the satisfaction of the Division, will ensure future compliance with the Act. After the adoption of these measures and satisfaction of all sanctions, the license for the Nursing Facility shall be reinstated. Any subsequent violation of the Act by a Nursing Facility within twelve (12) months after its license is reinstated pursuant to the procedures set forth in this part of this section, will result in a suspension of the Nursing Facility's license by the Office of Long Term Care for a period of not less than ninety (90) days and no more than one hundred eighty (180) days, such duration to be determined by the Director, and such license shall be reinstated only for good cause shown.

F. Period of Suspension

Any period of suspension of a Nursing Facility's license to operate under this section shall extend from the end of any appeal made by that Nursing Facility that is resolved in favor of the Division.

G. Recoupment Provisions

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The Division may withhold from a licensee's vendor payment any amount owed the Medicaid program as a result of an imposed fine for noncompliance as detailed in sections A, B, C, above, or any quality assurance fee not paid by the due date. For purposes of this paragraph, a fine is considered imposed once the Division notifies the licensee of the fine and the licensee has an opportunity to appeal the fine.

APPEAL PROCEDURES

Appeal procedures for nursing facilities are outlined in Section 1-10 of the Department of Human Services Medical Assistance Program Manual of Cost Reimbursement Rules For Long Term Care Facilities. Providers can obtain a copy of these procedures by contacting the Provider Reimbursement Unit at (501) 682-8366.

Reference: **Act 635 of 2001**, An Act to Levy a Quality Assurance Fee.
Effective: March 9, 2001