

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 579

Representatives Slesnick, Boyd

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A B I L L

To amend sections 3721.50 and 3721.53 of the Revised Code, to amend Section 309.30.25 of Am. Sub. H.B. 1 of the 128th General Assembly, as subsequently amended, and to repeal Section 309.30.70 of Am. Sub. H.B. 1 of the 128th General Assembly to revise the law governing the nursing home and hospital long-term care unit franchise permit fee and to revise the law governing fiscal year 2011 Medicaid payments to nursing facilities and intermediate care facilities for the mentally retarded.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3721.50 and 3721.53 of the Revised Code be amended to read as follows:

Sec. 3721.50. As used in sections 3721.50 to 3721.58 of the Revised Code:

(A) "Franchise permit fee rate" means ~~the amount determined as follows:~~

~~(1) Determine the difference between the following:~~

~~(a) The total net patient revenue, less medicaid per diem~~

~~payments, of all nursing homes and hospital long term care units 20
as shown on cost reports filed under section 5111.26 of the 21
Revised Code for the calendar year immediately preceding the 22
fiscal year for which the franchise permit fee is assessed under 23
section 3721.51 of the Revised Code; 24~~

~~(b) The total net patient revenue, less medicaid per diem 25
payments, of all nursing homes and hospital long term care units 26
as shown on cost reports filed under section 5111.26 of the 27
Revised Code for the calendar year immediately preceding the 28
calendar year that immediately precedes the fiscal year for which 29
the franchise permit fee is assessed under section 3721.51 of the 30
Revised Code. 31~~

~~(2) Multiply the amount determined under division (A)(1) of 32
this section by five and five tenths per cent; 33~~

~~(3) Divide the amount determined under division (A)(2) of 34
this section by the total number of days in the fiscal year for 35
which the franchise permit fee is assessed under section 3721.51 36
of the Revised Code; 37~~

~~(4) Subtract eleven dollars and ninety five cents from the 38
amount determined under division (A)(3) of this section; 39~~

~~(5) Add eleven dollars and ninety five cents to the amount 40
determined under division (A)(4) of this section six dollars and 41
twenty-five cents. 42~~

~~(B) "Hospital" has the same meaning as in section 3727.01 of 43
the Revised Code. 44~~

~~(C) "Hospital long-term care unit" means any distinct part of 45
a hospital in which any of the following beds are located: 46~~

~~(1) Beds registered pursuant to section 3701.07 of the 47
Revised Code as skilled nursing facility beds or long-term care 48
beds; 49~~

(2) Beds licensed as nursing home beds under section 3721.02 50
or 3721.09 of the Revised Code. 51

(D) "Inpatient days" means all days during which a resident 52
of a nursing facility, regardless of payment source, occupies a 53
bed in the nursing facility that is included in the facility's 54
certified capacity under Title XIX. Therapeutic or hospital leave 55
days for which payment is made under section 5111.26 of the 56
Revised Code are considered inpatient days proportionate to the 57
percentage of the facility's per resident per day rate paid for 58
those days. 59

(E) "Medicaid" has the same meaning as in section 5111.01 of 60
the Revised Code. 61

(F) "Medicaid day" means all days during which a resident who 62
is a medicaid recipient occupies a bed in a nursing facility that 63
is included in the facility's certified capacity under Title XIX. 64
Therapeutic or hospital leave days for which payment is made under 65
section 5111.26 of the Revised Code are considered medicaid days 66
proportionate to the percentage of the nursing facility's per 67
resident per day rate for those days. 68

(G) "Medicare" means the program established by Title XVIII. 69

(H) "Nursing facility" has the same meaning as in section 70
5111.20 of the Revised Code. 71

(I)(1) "Nursing home" means all of the following: 72

(a) A nursing home licensed under section 3721.02 or 3721.09 73
of the Revised Code, including any part of a home for the aging 74
licensed as a nursing home; 75

(b) A facility or part of a facility, other than a hospital, 76
that is certified as a skilled nursing facility under Title XVIII; 77

(c) A nursing facility, other than a portion of a hospital 78
certified as a nursing facility. 79

(2) "Nursing home" does not include any of the following:	80
(a) A county home, county nursing home, or district home operated pursuant to Chapter 5155. of the Revised Code;	81 82
(b) A nursing home maintained and operated by the department of veterans services under section 5907.01 of the Revised Code;	83 84
(c) A nursing home or part of a nursing home licensed under section 3721.02 or 3721.09 of the Revised Code that is certified as an intermediate care facility for the mentally retarded under Title XIX.	85 86 87 88
(J) "Title XIX" means Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended.	89 90
(K) "Title XVIII" means Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as amended.	91 92
Sec. 3721.53. (A) Not later than the fifteenth day of September <u>August</u> of each year, the department of job and family services shall determine the annual franchise permit fee for each nursing home and hospital in accordance with section 3721.51 of the Revised Code and any adjustments made in accordance with sections 3721.512 and 3721.513 of the Revised Code.	93 94 95 96 97 98
(B) Not later than the first day of October <u>September</u> of each year, the department shall mail to each nursing home and hospital notice of the amount of the franchise permit fee that has been determined for the nursing home or hospital.	99 100 101 102
(C) Each nursing home and hospital shall pay its fee under section 3721.51 of the Revised Code, as adjusted in accordance with sections 3721.512 and 3721.513 of the Revised Code, to the department in four installment payments not later than forty-five days after the last day of each October <u>September</u> , December, March, and June.	103 104 105 106 107 108
(D) No nursing home or hospital shall directly bill its	109

residents for the fee paid under this section, or otherwise 110
directly pass the fee through to its residents. 111

Section 2. That existing sections 3721.50 and 3721.53 of the 112
Revised Code are hereby repealed. 113

Section 3. That Section 309.30.25 of Am. Sub. H.B. 1 of the 114
128th General Assembly, as amended by Sub. H.B. 198 of the 128th 115
General Assembly, be amended to read as follows: 116

Sec. 309.30.25. FISCAL YEAR 2011 MEDICAID REIMBURSEMENT 117
SYSTEM FOR NURSING FACILITIES 118

(A) As used in this section: 119

"Fiscal year 2010 partial rate" means the total rate a 120
provider of a nursing facility is paid for nursing facility 121
services the nursing facility provides on June 30, 2010, less the 122
portion of that total rate that equals the sum of the workforce 123
development incentive payment and consolidated services rate 124
included in the total rate pursuant to divisions (D) and (E) of 125
Section 309.30.20 of Am. Sub. H.B. 1 of the 128th General 126
Assembly. 127

"Franchise permit fee," "inpatient days," "Medicaid days," 128
"nursing facility," and "provider" have the same meanings as in 129
section 5111.20 of the Revised Code. 130

"Nursing facility services" means nursing facility services 131
covered by the Medicaid program that a nursing facility provides 132
to a resident of the nursing facility who is a Medicaid recipient 133
eligible for Medicaid-covered nursing facility services. 134

(B) Except as otherwise provided by this section, the 135
provider of a nursing facility that has a valid Medicaid provider 136
agreement on June 30, 2010, and a valid Medicaid provider 137
agreement during fiscal year 2011 shall be paid, for nursing 138

facility services the nursing facility provides during fiscal year 139
2011, the rate calculated for the nursing facility under sections 140
5111.20 to 5111.33 of the Revised Code with the following 141
adjustments: 142

(1) The cost per ~~case-mix unit~~ case-mix unit calculated under 143
section 5111.231 of the Revised Code, the rate for ancillary and 144
support costs calculated under section 5111.24 of the Revised 145
Code, the rate for tax costs calculated under section 5111.242 of 146
the Revised Code, and the rate for capital costs calculated under 147
section 5111.25 of the Revised Code shall each be adjusted as 148
follows: 149

(a) Increase the cost and rates so calculated by two per 150
cent; 151

(b) Increase the cost and rates determined under division 152
(B)(1)(a) of this section by two per cent; 153

(c) Increase the cost and rates determined under division 154
(B)(1)(b) of this section by one per cent. 155

(2) The mean payment used in the calculation of the quality 156
incentive payment made under section 5111.244 of the Revised Code 157
shall be, weighted by Medicaid days, three dollars and three cents 158
per Medicaid day. 159

~~(3) The rate, after the adjustments under divisions (B)(1) 160
and (2) of this section are made, shall be further adjusted by a 161
percentage that the Department of Job and Family Services shall 162
determine in consultation with the Ohio Health Care Association; 163
Ohio Academy of Nursing Homes; and the Association of Ohio 164
Philanthropic Homes, Housing, and Services for the Aging. The 165
percentage shall be based on expending an amount equal to the 166
amount determined as follows: 167~~

~~(a) Determine how much of the revenue to be generated under 168
section 3721.51 of the Revised Code for fiscal year 2011 reflects 169~~

~~the calculations made under divisions (A)(1) to (4) of section 170
3721.50 of the Revised Code; 171~~

~~(b) From the amount determined under division (B)(3)(a) of 172
this section, subtract the portion of the amount to be expended 173
under division (F) of this section that reflects the part of the 174
calculation made under division (F)(2) of this section. 175~~

(C) Except as provided in division ~~(G)~~(F) of this section, if 176
the rate determined for a nursing facility under division (B) of 177
this section for nursing facility services provided during fiscal 178
year 2011 is more than one hundred two and twenty-five hundredths 179
per cent of the nursing facility's fiscal year 2010 partial rate, 180
the Department of Job and Family Services shall reduce the nursing 181
facility's rate determined under division (B) of this section for 182
fiscal year 2011 so that the rate is not more than one hundred two 183
and twenty-five hundredths per cent of the nursing facility's 184
fiscal year 2010 partial rate. Except as provided in division 185
~~(G)~~(F) of this section, if the rate determined for a nursing 186
facility under division (B) of this section for nursing facility 187
services provided during fiscal year 2011 is less than ninety-nine 188
per cent of the nursing facility's fiscal year 2010 partial rate, 189
the Department shall increase the nursing facility's rate 190
determined under division (B) of this section for fiscal year 2011 191
so that the rate is not less than ninety-nine per cent of the 192
nursing facility's fiscal year 2010 partial rate. 193

(D) After the adjustments under divisions (B) and (C) of this 194
section are made to a nursing facility's fiscal year 2011 rate, 195
the Department of Job and Family Services shall increase the 196
nursing facility's fiscal year 2011 rate by the amount of real 197
estate taxes reported on the nursing facility's cost report for 198
calendar year 2004 divided by the number of inpatient days 199
reported on that cost report if the nursing facility had a credit 200
regarding its real estate taxes reflected on its cost report for 201

calendar year 2003. 202

(E) After the adjustments under divisions (B), (C), and (D) 203
of this section are made to a nursing facility's fiscal year 2011 204
rate, the Department of Job and Family Services shall increase the 205
nursing facility's fiscal year 2011 rate by ~~five~~ three dollars and 206
~~seventy ninety-one~~ cents per Medicaid day. This increase shall be 207
known as the ~~workforce development incentive payment~~ consolidated 208
services rate. The total amount of workforce development incentive 209
payments paid to providers of nursing facilities shall be used to 210
improve nursing facilities' employee retention and direct care 211
staffing levels, including by increasing wages paid to nursing 212
facilities' direct care staff. Not later than September 30, 2012, 213
the Department shall submit a report to the Governor and, in 214
accordance with section 101.68 of the Revised Code, the General 215
Assembly detailing the impact that the workforce development 216
incentive payments have on nursing facilities' employee retention, 217
direct care staffing levels, and direct care staff wages. 218

~~(F) After the adjustment under division (E) of this section 219
is made to a nursing facility's fiscal year 2011 rate, the 220
Department of Job and Family Services shall increase the nursing 221
facility's fiscal year 2011 rate by the consolidated services rate 222
per Medicaid day. The consolidated services rate shall equal the 223
sum of the following: 224~~

~~(1) Three dollars and ninety one cents; 225~~

~~(2) The amount calculated under divisions (A)(1) to (4) of 226
section 3721.50 of the Revised Code for fiscal year 2011. 227~~

~~(G)(F) If the fiscal year 2010 rate for a nursing facility as 228
initially determined under division (B) of Section 309.30.20 of 229
Am. Sub. H.B. 1 of the 128th General Assembly is not subject to an 230
adjustment under division (C) of that section, the nursing 231
facility's fiscal year 2011 rate as initially determined under 232~~

division (B) of this section shall not be subject to an adjustment 233
under division (C) of this section regardless of whether the 234
nursing facility's fiscal year 2011 rate as initially determined 235
under division (B) of this section would, if not for this 236
division, be subject to the adjustment. 237

If the fiscal year 2011 rate for a nursing facility as 238
initially determined under division (B) of this section is not 239
subject to an adjustment under division (C) of this section, the 240
nursing facility's rate shall not be subject to an adjustment 241
under that division for the remainder of fiscal year 2011 242
regardless of any other adjustment made to the nursing facility's 243
fiscal year 2011 rate under sections 5111.20 to 5111.33 of the 244
Revised Code. 245

~~(H) Not later than October 1, 2010, the Department of Job and 246
Family Services shall determine the rates to be paid providers of 247
nursing facilities under this section. Until the rates are 248
determined, the Department shall continue to pay a provider the 249
rate the provider is paid for nursing facility services the 250
provider's nursing facility provides on June 30, 2010. When the 251
Department determines the rates to be paid under this section, the 252
Department shall pay the rates retroactive to July 1, 2010. 253~~

~~(I)~~(G) If the United States Centers for Medicare and Medicaid 254
Services requires that the franchise permit fee be reduced or 255
eliminated, the Department of Job and Family Services shall reduce 256
the amount it pays providers of nursing facility services under 257
this section as necessary to reflect the loss to the state of the 258
revenue and federal financial participation generated from the 259
franchise permit fee. 260

~~(J)~~(H) The Department of Job and Family Services shall follow 261
this section in determining the rate to be paid to the provider of 262
a nursing facility that has a valid Medicaid provider agreement on 263
June 30, 2010, and a valid Medicaid provider agreement during 264

fiscal year 2011 notwithstanding anything to the contrary in 265
sections 5111.20 to 5111.33 of the Revised Code. 266

Section 4. That existing Section 309.30.25 of Am. Sub. H.B. 1 267
of the 128th General Assembly, as amended by Sub. H.B. 198 of the 268
128th General Assembly, is hereby repealed. 269

Section 5. That Section 309.30.70 of Am. Sub. H.B. 1 of the 270
128th General Assembly is hereby repealed. 271

Section 6. (A) As used in this section: 272

"ICF/MR" means an intermediate care facility for the mentally 273
retarded as defined in section 5111.20 of the Revised Code. 274

"ICF/MR services" means services covered by the Medicaid 275
program that an ICF/MR provides to a Medicaid recipient who is 276
eligible for the services. 277

"Provider" and "provider agreement" have the same meanings as 278
in section 5111.20 of the Revised Code. 279

(B) The provider of an ICF/MR shall be paid the amount 280
determined for the ICF/MR under sections 5111.20 to 5111.34 of the 281
Revised Code for each month during fiscal year 2011 for which the 282
provider has a valid provider agreement for the ICF/MR and during 283
which the ICF/MR provides ICF/MR services. During fiscal year 284
2011, the Department of Job and Family Services shall make each 285
monthly payment that is due a provider under this section. 286

(C) If, pursuant to former Section 309.30.70 of Am. Sub. H.B. 287
1 of the 128th General Assembly, a provider of an ICF/MR was paid 288
an amount for providing ICF/MR services during a month occurring 289
in fiscal year 2011 and the amount that was paid is less than the 290
amount the provider is to be paid pursuant to division (B) of this 291
section, the Department of Job and Family Services shall pay the 292
provider the difference between the amount that was paid and the 293

amount that is to be paid. 294

Section 7. (A) As used in this section: 295

(1) "Franchise permit fee" means the fee imposed by sections 296
3721.50 to 3721.58 of the Revised Code. 297

(2) "Hospital" and "nursing home" have the same meanings as 298
in section 3721.50 of the Revised Code. 299

(B) The Department of Job and Family Services shall 300
redetermine each nursing home's and hospital's franchise permit 301
fee for the last quarter of fiscal year 2010 using a franchise 302
permit fee rate of six dollars and twenty-five cents. The 303
Department shall mail to each nursing home and hospital notice of 304
the redetermination. If, before the effective date of this 305
section, a nursing home or hospital has already paid its franchise 306
permit fee for the last quarter of fiscal year 2010 and the amount 307
the nursing home or hospital paid is higher than the amount 308
redetermined for the nursing home or hospital, the Department 309
shall reimburse the nursing home or hospital the amount of the 310
difference. 311