

**REPORT OF THE
REVENUE POLICY SUBCOMMITTEE**
(White, J.R. Smith, Bingham, Herbkersman & Pitts - Staff Contact: Rena N. Grant)

HOUSE BILL 3978

H. 3978 -- Reps. White and G.M. Smith: A BILL TO AMEND ARTICLE 2, CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAID NURSING HOME PERMITS, TO DEFINE "MEDICAID PERMIT DAY", TO SPECIFY THE MANNER IN WHICH ADDITIONAL MEDICAID PERMIT DAYS ARE ALLOCATED, TO SET FORTH COMPLIANCE STANDARDS AND PENALTIES FOR VIOLATIONS, AND TO PROVIDE CERTAIN REPORTING REQUIREMENTS.

Summary of Bill:

The bill makes the following revisions to the Medicaid Nursing Home Permit Law:

- A facility is deemed to be in compliance for any allocation additional permit days if it has not exceeded its permit day allocation by more than 7%.
- A nursing home that utilizes less than 90% of its permit allocation in any fiscal year may not apply for additional Medicaid permit days in the next fiscal year. If it fails to do so for two consecutive years then, the department may issue a Medicaid nursing home permit for fewer days than requested.
- Changes the requirement for the imposition of fines from *must* to *may*.
- Provides appeal criteria for a facility's inability to discharge a resident based on the requirements of Section 44-7-88 if the facility can prove:
 - (1) the resident's primary pay source upon admission was not Medicaid;
 - (2) the resident did not convert to Medicaid within twenty days of being admitted as a Medicare or Medicaid replacement policy resident;
 - (3) the resident did not convert to Medicaid within thirty days of being admitted as a private pay resident; *and*
 - (4) the facility cannot exceed its Medicaid permit by more than 10%.
- Nursing home patients may not be involuntarily discharged or transferred due to their Medicaid status.

Introduced: 04/17/2013

Received by Ways and Means: 04/17/2013

Estimated Fiscal Impact:

The official impact remains pending, but the bill should have no impact on state or local funds.

Subcommittee Recommendation:

Favorable

Full Committee Recommendation:

Pending

Other Notes/Comments:

Should this bill, or any other bill not pass the General Assembly, and absent a budget proviso the fines would be levied according to the original statute.

South Carolina General Assembly
120th Session, 2013-2014

H. 3978

STATUS INFORMATION

General Bill

Sponsors: Reps. White and G.M. Smith

Document Path: I:\council\bills\nl\13206dg13.docx

Introduced in the House on April 17, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: Not yet available

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/17/2013	House	Introduced and read first time (House Journal-page 55)
4/17/2013	House	Referred to Committee on Ways and Means (House Journal-page 55)

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VERSIONS OF THIS BILL

[4/17/2013](#)

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9 **A BILL**

10
11 TO AMEND ARTICLE 2, CHAPTER 7, TITLE 44, CODE OF
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO
13 MEDICAID NURSING HOME PERMITS, TO DEFINE
14 "MEDICAID PERMIT DAY", TO SPECIFY THE MANNER IN
15 WHICH ADDITIONAL MEDICAID PERMIT DAYS ARE
16 ALLOCATED, TO SET FORTH COMPLIANCE STANDARDS
17 AND PENALTIES FOR VIOLATIONS, AND TO PROVIDE
18 CERTAIN REPORTING REQUIREMENTS.

19
20 Be it enacted by the General Assembly of the State of South
21 Carolina:

22
23 SECTION 1. Article 2, Chapter 7, Title 44 of the 1976 Code is
24 amended to read:

25
26 "Article 2

27
28 Medicaid Nursing Home Permits

29
30 Section 44-7-80. For the purposes of this article:

31 (1) 'Nursing home' means a facility with an organized
32 nursing staff to maintain and operate organized facilities and
33 services to accommodate two or more unrelated persons over a
34 period exceeding twenty-four hours, which is operated either in
35 connection with a hospital or as a freestanding facility for the
36 express or implied purpose of providing intermediate or skilled
37 nursing care for persons who are not in need of hospital care.
38 Rehabilitative therapies may be provided on an outpatient basis.

39 (2) 'Medicaid nursing home permit' means a permit to serve
40 Medicaid patients in an appropriately certified nursing home.

41 (3) 'Medicaid patient' means a person who is eligible for
42 Medicaid (Title XIX) sponsored long-term care services.

1 (4) 'Medicaid patient day' means a day of nursing home care
2 for which a nursing home receives Medicaid reimbursement.

3 (5) 'Medicaid permit day' means a day of service provided
4 to a Medicaid patient in a Medicaid certified nursing home which
5 holds a Medicaid days permit.

6 (6) 'Department' means the Department of Health and
7 Environmental Control.

8
9 Section 44-7-82. No nursing home may provide care to
10 Medicaid patients without first obtaining a permit in the manner
11 provided in this article.

12
13 Section 44-7-84. (A) In the annual appropriations act, the
14 General Assembly shall establish the maximum number of
15 Medicaid patient days for which the department is authorized to
16 issue Medicaid nursing home permits. The State Department of
17 Health and Human Services shall provide the number of Medicaid
18 patient days available to the department within thirty days after the
19 effective date of the annual appropriations act.

20 (B) Based on a method the department develops for
21 determining the need for nursing home care for Medicaid patients
22 in each area of the State, the department shall determine the
23 distribution of Medicaid patient days for which Medicaid nursing
24 home permits can be issued. Nursing homes holding a Medicaid
25 nursing home permit must be allocated Medicaid days based on
26 their current allocation and available funds. Requests for days
27 must be submitted to the department no later than June fifteenth
28 each year. The department shall issue permits to the facilities by
29 August first of each year. The application must state the specific
30 number of Medicaid patient days the nursing home will provide. If
31 a nursing home requests fewer days than the previous year, or is
32 permitted fewer days, those days first must be offered to the
33 facilities within the same county currently holding a Medicaid
34 nursing home permit. However, if Medicaid patient days remain
35 available after being offered to those nursing homes currently
36 holding a Medicaid patient days permit in that county, then
37 existing nursing homes with a restricted Certificate of Need, within
38 the same county, may apply for a Medicaid nursing home permit to
39 receive the Medicaid ~~patient permit~~ days remaining available.
40 Following the initial allocation of Medicaid patient days, any
41 additional Medicaid ~~patient permit~~ days ~~available~~ must be credited
42 to a statewide pool and the days must be ~~available~~ allocated to
43 those counties showing the greatest need based on the ~~percent~~

1 ~~average number of need-indicated~~ fully eligible Medicaid nursing
2 ~~facility applicants by county by in~~ the Community Long Term
3 ~~Care waiting list awaiting~~ placement reports for the past twelve
4 ~~months.~~ The Department of Health and Human Services shall
5 ~~provide this information to the department no later than July~~
6 ~~fifteenth of each year.~~ The Medicaid permit days must be
7 ~~proportionately allocated to each facility within the county that~~
8 ~~currently holds a Medicaid permit and is currently in compliance~~
9 ~~with its Medicaid permit.~~ A facility is deemed to be in compliance
10 ~~for allocation of these additional Medicaid permit days if it has not~~
11 ~~exceeded its stated Medicaid permit by more than seven percent.~~
12 ~~In addition, a nursing home that provides less than ninety percent~~
13 ~~of the stated Medicaid permit in any fiscal year may not apply for~~
14 ~~additional Medicaid permit days in the next fiscal year.~~ If a
15 ~~nursing home has provided fewer~~ fails to provide ninety percent of
16 ~~the stated Medicaid patient days than allowable under the~~
17 ~~Medicaid nursing home permit program number for two~~
18 ~~consecutive fiscal years,~~ the department may issue a Medicaid
19 nursing home permit for fewer days than requested in order to
20 ensure that the nursing home will serve the minimum number of
21 Medicaid patients and that the State will optimize the available
22 Medicaid days. If a nursing home has its Medicaid patient days
23 reduced, the freed days first must be offered to other facilities in
24 the same county before being offered to other nursing homes in the
25 State. ~~In addition, a nursing home that fails to provide at least ten~~
26 ~~percent fewer days than the number stated in its permit is not~~
27 ~~eligible to receive additional Medicaid patient days the next year.~~
28 The department shall analyze the performance of nursing homes
29 that are under the permit minimum or exceed the permit maximum
30 for a fiscal year, including utilization data from the State
31 Department of Health and Human Services, anticipated back days,
32 delayed payments, CLTC waiting list, and other factors considered
33 significant by the department. ~~Based on this analysis, if the~~
34 ~~department determines that the nursing home remains out of~~
35 ~~compliance, the nursing home must be fined by the same~~
36 ~~percentages as provided for in Section 44-7-90 and is subject to~~
37 ~~having its Medicaid patient days reduced.~~ A nursing home which
38 terminates its Medicaid contract must not be penalized for not
39 meeting the requirements of this section if the nursing home was in
40 compliance with its permit at the time of the cancellation.
41 ~~However, if the maximum number of Facilities designated as~~
42 ~~Special Focus Facilities may not be issued additional Medicaid~~
43 ~~patient permit days authorized by the General Assembly is~~

1 decreased, the nursing home may be required to absorb a
2 proportionate decrease in its Medicaid patient days' allocation
3 while they remain on the Special Focus list.

4 (C) If the Department of Health and Human Services or the
5 General Assembly decreases the number of Medicaid patient days
6 available to the department, the department shall proportionately
7 decrease the authorized Medicaid patient days for each nursing
8 home. If additional Medicaid patient days are authorized in the
9 following year, they must be restored proportionately to each
10 nursing home in accordance with subsection (B).

11
12 Section 44-7-88. Nursing home patients may not be
13 involuntarily discharged or transferred due to ~~their~~ the Medicaid
14 status. If no Medicaid patients are waiting for admission to the
15 nursing home, or if for some other reason a nursing home
16 anticipates the possibility that the home cannot satisfy the
17 Medicaid nursing home permit requirements, the home may
18 request a waiver of the Medicaid permit requirements from the
19 department.

20
21 Section 44-7-90. (A) Based on reports from the State
22 Department of Health and Human Services, the department shall
23 determine each nursing home's compliance with its Medicaid
24 nursing home permit. Violations of this article include:

25 (1) a nursing home exceeding by more than ~~ten~~ five percent
26 the number of Medicaid patient days stated in its permit;

27 (2) ~~a nursing home failing to provide at least ten percent~~
28 ~~fewer days than the number stated in its permit;~~

29 (3) ~~the provisions of any Medicaid patient days by a home~~
30 ~~without a Medicaid nursing home permit.~~

31 (B) ~~Each Medicaid patient day above or below the allowable~~
32 ~~range is considered a separate violation. Fines for nursing homes~~
33 ~~out of compliance with their Medicaid Nursing Home Permit for~~
34 ~~years before July 1, 1995 are waived. After June 30, 1995, a~~
35 ~~nursing home that exceeds by more than ten percent the number of~~
36 A nursing home which exceeds its Medicaid patient days stated in
37 its permit must may be fined based on the number of Medicaid
38 patient days exceeding the permit days times their multiplied by its
39 daily Medicaid per diem times thirty percent. A nursing home that
40 fails to provide at least ten percent fewer days than the number
41 stated in its Medicaid permit days provided to Complex Care
42 residents, as certified by the Department of Health and Human
43 Services, must not be counted against the facility's Medicaid

1 ~~permit must be fined based on the number of~~ for the first six
2 ~~months of their care. Any complex care provided after six months~~
3 ~~must be counted toward the facility's Medicaid patient days under~~
4 ~~the permit days times their daily Medicaid per diem times thirty~~
5 ~~percent day allocation. Complex Care reimbursement must not be~~
6 ~~used in the fine calculation. A facility may be fined incrementally~~
7 ~~for exceeding its Medicaid permit. Violations above five and up to~~
8 ~~ten percent of the stated permit may be fined at thirty percent of its~~
9 ~~Medicaid per diem rate times the number of excess Medicaid~~
10 ~~permit days. A facility may be fined fifty percent of its Medicaid~~
11 ~~per diem rate for each day above ten and up to fifteen percent of its~~
12 ~~Medicaid permit. A facility may be fined seventy percent of its~~
13 ~~Medicaid per diem rate for each day in excess of fifteen percent of~~
14 ~~its stated Medicaid permit. A facility may appeal to the~~
15 ~~department any fine for days over its permit based on the facilities~~
16 ~~inability to discharge a resident based on the requirements of~~
17 ~~Section 44-7-88 if the facility can prove:~~

18 (1) ~~the resident's primary pay source upon admission was~~
19 ~~not Medicaid;~~

20 (2) ~~the resident did not convert to Medicaid within twenty~~
21 ~~days of being admitted as a Medicare or Medicaid replacement~~
22 ~~policy resident;~~

23 (3) ~~the resident did not convert to Medicaid within thirty~~
24 ~~days of being admitted as a private pay resident; and~~

25 (4) ~~the facility will not exceed its Medicaid permit by more~~
26 ~~than ten percent.~~

27 (C) ~~In the event of a voluntary or involuntary discontinuation of~~
28 ~~participation of a nursing facility in the Medicaid program, the~~
29 ~~State must ensure that the facility provides for patient safety and~~
30 ~~freedom of choice. The Department of Health and Environmental~~
31 ~~Control and the Department of Health and Human Services must~~
32 ~~determine the availability of existing patient days statewide for the~~
33 ~~purpose of relocating these patients. Based upon this~~
34 ~~determination, the department, at its discretion, may reallocate the~~
35 ~~patient days from a facility discontinuing its Medicaid~~
36 ~~participation to a facility that participates in the Medicaid program~~
37 ~~and agrees to accept the residents from the facility that is~~
38 ~~discontinuing Medicaid participation. The Medicaid permit day~~
39 ~~shall permanently remain with the facility accepting the resident.~~
40 ~~In the allocation of patient days from the facility discontinuing~~
41 ~~Medicaid participation, the department must give first priority to~~
42 ~~restoring a county's allocation where a facility holding a permit~~
43 ~~closes, or discontinues participation in Medicaid. A nursing home~~

1 receiving beds under the provisions of this subsection must not be
2 a Special Focus Facility at the time of allocation.

3 (D) Effective July 1, 2013, all nursing facility providers holding
4 a Medicaid permit must report their daily Medicaid resident census
5 information to the South Carolina Department of Health and
6 Human Services or its contractor for the purpose of maintaining a
7 statewide bed locator and permit day tracking system.

8 (E) Each Medicaid day above the allowable range is considered
9 a separate violation. A fine assessed against a nursing home must
10 be deducted from the nursing home's Medicaid reimbursement.
11 Appeals from this action must comply with the appropriate
12 provisions of Chapter 23 of Title 1."

13
14 SECTION 2. This act takes effect upon approval by the Governor.

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