COMMITTEE REPORT

April 12, 2012

**H. 5028**

Introduced by Reps. G.M. Smith and White

S. Printed 4/12/12--S.

Read the first time March 27, 2012.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Joint Resolution (H. 5028) to direct the Department of Health and Environmental Control for Fiscal Year 2012‑2013 to temporarily suspend enforcement of certain provisions of the Medicaid nursing home permit, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. (A) In order to meet appropriations for Medicaid nursing home service for Fiscal Year 2012‑2013, the Department of Health and Environmental Control must not:

(1) penalize or fine a nursing home facility, as defined by Section 44‑7‑80 of the 1976 Code, that has provided fewer Medicaid patient days than allowable under the Medicaid Nursing Home Permit Program provided in Section 44-7-84 of the 1976 Code.

(2) transfer or add additional Medicaid patient days to an individual facility except as provided in this joint resolution.

(B) If the Department of Health and Human Services decreases the number of Medicaid patient days available to the Department of Health and Environmental Control, the Department of Health and Environmental Control shall proportionately decrease the authorized Medicaid patient days for each nursing home. If additional Medicaid patient days are authorized, they must be restored proportionately to each nursing home in accordance with subsection (D).

(C) Notwithstanding the provisions of Section 44-7-90, after June 30, 2012, a nursing home that exceeds its Medicaid patient days stated in its permit must be fined based on the number of Medicaid patient days exceeding the permit days multiplied by its daily Medicaid per diem. A facility must be fined incrementally for exceeding its Medicaid permit. Violations above five and up to ten percent of the stated permit must be fined at thirty percent of its Medicaid per diem rate times the number of excess Medicaid permit days. A facility must be fined an additional twenty percent or fifty percent of its Medicaid per diem rate for each excess day above ten and up to fifteen percent of its stated Medicaid permit. A facility must be fined an additional twenty percent or seventy percent of its Medicaid per diem rate for each day in excess of fifteen percent of its stated Medicaid permit. A facility may appeal a fine based on circumstances relating to a patient converting from Medicare to Medicaid and a facility’s inability to discharge residents based on federal mandates.

(D) The allocation of additional Medicaid permit days must be based on the average number of fully eligible Medicaid nursing facility applicants by county in the Community Long Term Care nursing facility awaiting placement reports for the quarter ending June 30, 2012. The Department of Health and Human Services shall provide this information to the Department of Health and Environmental Control no later than July 15, 2012. The Medicaid permit days must be proportionally allocated to each facility within the county that currently holds a Medicaid permit and is currently in compliance with its Medicaid permit. A facility is deemed to be in compliance if it has not exceeded its stated Medicaid permit plus five percent. If a facility currently holding a Medicaid permit declines additional Medicaid permit days, those facilities within the county currently holding a Medicaid permit who are in compliance with their Medicaid permit will be proportionally allocated the additional days. No permit days may be issued to a facility that does not currently have a Medicaid permit. At no time may a facility be issued more permit days than the number of days on its permit for Fiscal Year 2010‑2011.

(E) In the event of a voluntary or involuntary discontinuation of participation of a nursing facility in the Medicaid program, the State must ensure that the facility provides for patient safety and freedom of choice. The Department of Health and Environmental Control (DHEC) and the Department of Health and Human Services (DHHS) must determine the availability of existing patient days statewide for the purpose of relocating these patients. Based upon this determination, DHEC, at its discretion, may reallocate the patient days from a facility discontinuing its Medicaid participation to a facility that participates in the Medicaid program and agrees to accept the residents from the facility that is discontinuing Medicaid participation. In the allocation of patient days from the facility discontinuing Medicaid participation, DHEC must give first priority to restoring a county’s allocation where a facility holding a permit closes, or discontinues participation in Medicaid.

(F) Effective July 1, 2012, all nursing facility providers will be required to report their daily Medicaid resident census information to the South Carolina Department of Health and Human Services or its contractor for the purpose of maintaining a statewide bed locator and permit day tracking system.

SECTION 2. (A) For Fiscal Year 2012‑2013, a nursing home must:

(1) provide a minimum of one and sixty-three hundredths (1.63) hours of direct care per resident per day from the nonlicensed nursing staff; and

(2) maintain at least one licensed nurse per shift for each staff work area.

(B) All other staffing standards and nonstaffing standards established in Standards for Licensing Nursing Homes: R. 61‑17, Code of State Regulations, must be enforced.

(C) The Department of Health and Environmental Control regularly shall report to the chairmen of the Finance and Medical Affairs Committees of the Senate and the chairmen of the Ways and Means and Medical, Military and Municipal Affairs Committees of the House of Representatives changes in nursing home performance. These changes must also be posted on the department’s Medicare Nursing Home Compare website.

SECTION 3. This joint resolution takes effect upon approval by the Governor and applies to Fiscal Year 2012‑2013 only. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **JOINT RESOLUTION**

TO DIRECT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL FOR FISCAL YEAR 2012‑2013 TO TEMPORARILY SUSPEND ENFORCEMENT OF CERTAIN PROVISIONS OF THE MEDICAID NURSING HOME PERMIT LAW AND TO SET CERTAIN NURSING HOME STAFFING STANDARDS IN ORDER TO MEET APPROPRIATIONS.

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

SECTION 1. (A) In order to meet appropriations for Medicaid nursing home service for Fiscal Year 2012‑2013, the Department of Health and Environmental Control must not enforce the following provisions of the Medicaid Nursing Home Permit Law as required by Sections 44‑7‑84 and 44‑7‑90 of the 1976 Code:

(1) The department must not penalize or fine a nursing home facility, as defined by Section 44‑7‑80 of the 1976 Code, that has provided fewer Medicaid patient days than allowable under the Medicaid Permit Program.

(2) The department must not transfer or add additional Medicaid patient days to an individual facility except as provided in this section.

(3) If the Department of Health and Human Services decreases the number of Medicaid patient days available to the Department of Health and Environmental Control, the Department of Health and Environmental Control shall proportionately decrease the authorized Medicaid patient days for each nursing home. If additional Medicaid patient days are authorized, they must be restored proportionately to each nursing home in accordance with item (5).

(4) After June 30, 2012, a nursing home that exceeds its Medicaid patient days stated in its permit must be fined based on the number of Medicaid patient days exceeding the permit days multiplied by its daily Medicaid per diem. A facility must be fined incrementally for violations of its Medicaid permit. Violations from five to ten percent of the stated permit must be fined at thirty percent of its Medicaid per diem rate times the number of excess Medicaid permit days. A facility must be fined an additional twenty percent or fifty percent of its Medicaid per diem rate for each excess day between ten and fifteen percent of its stated Medicaid permit. A facility must be fined an additional twenty percent or seventy percent of its Medicaid per diem rate for each day in excess of fifteen percent of its stated Medicaid permit. A facility may appeal a fine based on circumstances relating to a patient converting from Medicare to Medicaid and a facility’s inability to discharge residents based on federal mandates.

(5) The allocation of additional Medicaid permit days must be based on the average number of fully eligible Medicaid nursing facility applicants by county in the Community Long Term Care nursing facility awaiting placement reports for the quarter ending June 30, 2012. The Department of Health and Human Services shall provide this information to the Department of Health and Environmental Control no later than July 15, 2012. The Medicaid permit days must be proportionally allocated to each facility within the county that currently holds a Medicaid permit and is currently in compliance with its Medicaid permit. A facility is deemed to be in compliance if it has not exceeded its stated Medicaid permit plus five percent. If a facility currently holding a Medicaid permit declines additional Medicaid permit days, those facilities within the county currently holding a Medicaid permit who are in compliance with their Medicaid permit will be proportionally allocated the additional days. No permit days may be issued to a facility that does not currently have a Medicaid permit. At no time may a facility be issued more permit days than the number of days on its permit for Fiscal Year 2010‑2011.

(B) Effective July 1, 2012, all nursing facility providers will be required to report their daily Medicaid resident census information to the South Carolina Department of Health and Human Services or its contractor for the purpose of maintaining a statewide bed locator and permit day tracking system.

SECTION 2. (A) For Fiscal Year 2012‑2013, a nursing home shall:

(1) provide a minimum of one and sixty‑three hundredths (1.63) hours of direct care per resident per day from the nonlicensed nursing staff; and

(2) maintain at least one licensed nurse per shift for each staff work area.

(B) All other staffing standards and nonstaffing standards established in Standards for Licensing Nursing Homes: R. 61‑17, Code of State Regulations, must be enforced.

(C) The Department of Health and Environmental Control regularly shall report to the General Assembly changes in nursing home performance and to the public on the Medicare Nursing Home Compare website.

SECTION 3. This joint resolution takes effect upon approval by the Governor and applies to Fiscal Year 2012‑2013 only.

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