**South Carolina General Assembly**

120th Session, 2013-2014

**A152, R161, H3978**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. White and G.M. Smith

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Introduced in the House on April 17, 2013

Introduced in the Senate on May 1, 2013

Last Amended on February 27, 2014

Passed by the General Assembly on March 20, 2014

Governor's Action: April 7, 2014, Signed

Summary: Medicaid Nursing Home Permits

**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](file:///H:\HJ%20Archive\2013\04-17-13.docx))

4/17/2013 House Referred to Committee on **Ways and Means** ([House Journal‑page 55](file:///H:\HJ%20Archive\2013\04-17-13.docx))

4/24/2013 House Committee report: Favorable with amendment **Ways and Means** ([House Journal‑page 55](file:///H:\HJ%20Archive\2013\04-24-13.docx))

4/30/2013 House Amended ([House Journal‑page 54](file:///H:\HJ%20Archive\2013\04-30-13.docx))

4/30/2013 House Read second time ([House Journal‑page 54](file:///H:\HJ%20Archive\2013\04-30-13.docx))

4/30/2013 House Roll call Yeas‑107 Nays‑0 ([House Journal‑page 55](file:///H:\HJ%20Archive\2013\04-30-13.docx))

5/1/2013 House Read third time and sent to Senate ([House Journal‑page 7](file:///H:\HJ%20Archive\2013\05-01-13.docx))

5/1/2013 Senate Introduced and read first time ([Senate Journal‑page 7](file:///H:\SJ%20Archive\2013\05-01-13.docx))

5/1/2013 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 7](file:///H:\SJ%20Archive\2013\05-01-13.docx))

2/18/2014 Senate Committee report: Favorable with amendment **Medical Affairs** ([Senate Journal‑page 6](file:///H:\SJ%20Archive\2014\02-18-14.docx))

2/27/2014 Senate Committee Amendment Adopted ([Senate Journal‑page 34](file:///H:\SJ%20Archive\2014\02-27-14.docx))

3/5/2014 Senate Read second time ([Senate Journal‑page 43](file:///H:\SJ%20Archive\2014\03-05-14.docx))

3/5/2014 Senate Roll call Ayes‑44 Nays‑0 ([Senate Journal‑page 43](file:///H:\SJ%20Archive\2014\03-05-14.docx))

3/6/2014 Senate Read third time and returned to House with amendments ([Senate Journal‑page 13](file:///H:\SJ%20Archive\2014\03-06-14.docx))

3/19/2014 House Debate adjourned until Thur., 3‑20‑14 ([House Journal‑page 19](file:///H:\HJ%20Archive\2014\03-19-14.docx))

3/20/2014 House Concurred in Senate amendment and enrolled ([House Journal‑page 32](file:///H:\HJ%20Archive\2014\03-20-14.docx))

3/20/2014 House Roll call Yeas‑102 Nays‑0 ([House Journal‑page 32](file:///H:\HJ%20Archive\2014\03-20-14.docx))

4/3/2014 Ratified R 161

4/7/2014 Signed By Governor

4/9/2014 Effective date 04/07/14

4/14/2014 Act No. 152

**VERSIONS OF THIS BILL**

[4/17/2013](file:///p:\pprever\2013-14\3978_20130417.docx)

[4/24/2013](file:///p:\pprever\2013-14\3978_20130424.docx)

[4/30/2013](file:///p:\pprever\2013-14\3978_20130430.docx)

[2/18/2014](file:///p:\pprever\2013-14\3978_20140218.docx)

[2/27/2014](file:///p:\pprever\2013-14\3978_20140227.docx)

(A152, R161, H3978)

**AN ACT TO AMEND ARTICLE 2, CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAID NURSING HOME PERMITS, SO AS 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.**

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

**Medicaid permit day, allocation of days, penalties**

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

“Article 2

Medicaid Nursing Home Permits

Section 44‑7‑80. For the purposes of this article:

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

(2) ‘Medicaid nursing home permit’ means a permit to serve Medicaid patients in an appropriately certified nursing home.

(3) ‘Medicaid patient’ means a person who is eligible for Medicaid (Title XIX) sponsored long‑term care services.

(4) ‘Medicaid patient day’ means a day of nursing home care for which a nursing home receives Medicaid reimbursement.

(5) ‘Medicaid permit day’ means a day of service provided to a Medicaid patient in a Medicaid‑certified nursing home which holds a Medicaid days permit.

(6) ‘Department’ means the Department of Health and Environmental Control.

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

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

(B) Based on a method the department develops for determining the need for nursing home care for Medicaid patients in each area of the State, the department shall determine the distribution of Medicaid patient days for which Medicaid nursing home permits can be issued. Nursing homes holding a Medicaid nursing home permit must be allocated Medicaid days based on their current allocation and available funds. Requests for days must be submitted to the department no later than June fifteenth each year. The department shall issue permits to the facilities by August first of each year. The application must state the specific number of Medicaid patient days the nursing home will provide. If a nursing home requests fewer days than the previous year, or is permitted fewer days, those days first must be offered to the facilities within the same county currently holding a Medicaid nursing home permit. However, if Medicaid patient days remain available after being offered to those nursing homes currently holding a Medicaid patient days permit in that county, then existing nursing homes with a restricted Certificate of Need, within the same county, may apply for a Medicaid nursing home permit to receive the Medicaid permit days remaining available. Following the initial allocation of Medicaid patient days, any additional Medicaid permit days must be credited to a statewide pool and the days must be allocated to those counties showing the greatest need based on the average number of fully eligible Medicaid nursing facility applicants by county in the Community Long Term Care awaiting placement reports for the past twelve months. The Department of Health and Human Services shall provide this information to the department no later than July fifteenth of each year. The Medicaid permit days must be proportionately 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 for allocation of these additional Medicaid permit days if it has not exceeded its stated Medicaid permit by more than seven percent. In addition, a nursing home that provides less than ninety percent of the stated Medicaid permit in any fiscal year may not apply for additional Medicaid permit days in the next fiscal year. If a nursing home fails to provide ninety percent of the stated Medicaid permit days for two consecutive fiscal years, the department may issue a Medicaid nursing home permit for fewer days than requested in order to ensure that the nursing home will serve the minimum number of Medicaid patients and that the State will optimize the available Medicaid days. If a nursing home has its Medicaid patient days reduced, the freed days first must be offered to other facilities in the same county before being offered to other nursing homes in the State. The department shall analyze the performance of nursing homes that are under the permit minimum or exceed the permit maximum for a fiscal year, including utilization data from the State Department of Health and Human Services, anticipated back days, delayed payments, CLTC waiting list, and other factors considered significant by the department. A nursing home which terminates its Medicaid contract must not be penalized for not meeting the requirements of this section if the nursing home was in compliance with its permit at the time of the cancellation. Facilities designated as Special Focus Facilities may not be issued additional Medicaid permit days while they remain on the Special Focus list.

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

Section 44‑7‑88. Nursing home patients may not be involuntarily discharged or transferred due to the Medicaid status. If no Medicaid patients are waiting for admission to the nursing home, or if for some other reason a nursing home anticipates the possibility that the home cannot satisfy the Medicaid nursing home permit requirements, the home may request a waiver of the Medicaid permit requirements from the department.

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

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

(2) the provisions of any Medicaid patient days by a home without a Medicaid nursing home permit.

(B) A nursing home which exceeds its Medicaid patient days stated in its permit may be fined on the number of Medicaid patient days exceeding the permit days multiplied by its daily Medicaid per diem. Medicaid permit days provided to Complex Care residents, as certified by the Department of Health and Human Services, must not be counted against the facility’s Medicaid permit for the first six months of their care. Any complex care provided after six months must be counted toward the facility’s Medicaid patient days under the permit days times their daily Medicaid per diem rate less the statewide average patient per diem recurring income times thirty percent. Complex Care reimbursement must not be used in the fine calculation. A facility may be fined incrementally for exceeding its Medicaid permit. Violations above five and up to ten percent of the stated permit may be fined at thirty percent of its Medicaid per diem rate less the statewide average patient per diem recurring income times the number of excess Medicaid permit days. A facility may be fined fifty percent of its Medicaid per diem rate less the statewide average patient per diem recurring income for each day above ten and up to fifteen percent of its Medicaid permit. A facility may be fined seventy percent of its Medicaid per diem rate less the statewide average patient per diem recurring income for each day in excess of fifteen percent of its stated Medicaid permit. A facility may appeal to the department any fine for days over its permit based on the 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; and

(3) the resident did not convert to Medicaid within thirty days of being admitted as a private pay resident.

(C) 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 and the Department of Health and Human Services must determine the availability of existing patient days statewide for the purpose of relocating these patients. Based upon this determination, the department, 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. The Medicaid permit day shall permanently remain with the facility accepting the resident. In the allocation of patient days from the facility discontinuing Medicaid participation, the department must give first priority to restoring a county’s allocation where a facility holding a permit closes, or discontinues participation in Medicaid. A nursing home receiving beds under the provisions of this subsection must not be a Special Focus Facility at the time of allocation.

(D) Effective July 1, 2014, all nursing facility providers holding a Medicaid permit must 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.

(E) Each Medicaid day above the allowable range is considered a separate violation. A fine assessed against a nursing home must be deducted from the nursing home’s Medicaid reimbursement.”

**Time effective**

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

Ratified the 3rd day of April, 2014.

Approved the 7th day of April, 2014.

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