

**142.361 Provider assessment on nursing facility services -- Disposition of revenues -- Administrative regulations -- Application to amend waiver -- Circumstances rendering provisions void.**

- (1) (a) A provider assessment is hereby imposed on nursing facility services as provided in this subsection.
- (b) The base for the assessment shall be determined on July 1 of each year, beginning on July 1, 2004, by dividing total gross revenues received by all nursing facilities for nursing facility services during the prior fiscal year by the total patient days for all nursing facilities attributable to nursing facility services during the prior fiscal year. The resulting amount shall be the base for the assessment imposed under this subsection, and shall be called the "average daily revenue per patient bed."
- (c) The assessment shall be imposed as follows:
  1. a. At a uniform rate per non-Medicare patient day of up to one percent (1%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility on or after July 1, 2004, for the provision of nursing facility services that are provided at a non-hospital based facility:
    - i. Containing licensed intermediate care facility beds as of September 1, 2005; and
    - ii. With a facility total bed capacity of sixty (60) or fewer beds.
  - b. This rate shall apply for qualifying providers beginning July 1, 2004. Any tax liability for tax periods beginning on or after July 1, 2004, attributable to the imposition of the levy under KRS 142.307 or the levy imposed by 2004 Ky. Acts ch. 142, sec. 1, shall be retroactively recalculated at the rate provided in this subsection, and no penalties or interest shall apply to any outstanding amounts.
  2. At a uniform rate per non-Medicare patient day of up to two percent (2%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility on or after July 1, 2004, for the provision of nursing facility services that are provided at a hospital-based nursing facilities; and
  3. At a rate per non-Medicare patient day not to exceed six percent (6%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility on or after July 1, 2004. This rate shall not apply to any provider assessed under subparagraphs 1. or 2. of this paragraph.
  4. Notwithstanding the provisions of subparagraphs 1. to 3. of this paragraph, no provider assessment shall be levied under this subsection on a state veterans' nursing home on or after July 1, 2004.
- (d) The rates established by paragraph (c) of this subsection are maximum rates. The rates may be adjusted annually on July 1 of each year by the Department for Medicaid Services. Notification of any rate change shall be provided to the Department of Revenue and to taxpayers in writing at least thirty (30) days prior to the new rate going into effect.

- (2) The assessment imposed under subparagraph 3. of paragraph (c) of subsection (1) of this section is not required to be uniform, and the rate of assessment per non-Medicare day may be variable based upon a facility's total annual census days if deemed an acceptable waived class by the Centers for Medicare and Medicaid Services.
- (3) All revenues collected pursuant to subsection (1) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.
- (4) The Department for Medicaid Services shall promulgate administrative regulations to ensure that a portion of the revenues generated from the assessment imposed by subsection (1) of this section and federal matching funds be used to increase reimbursement rates for nursing facilities. The regulations shall, at a minimum:
  - (a) Provide that the rate increases shall be used to fully phase in those providers whose current rates are less than the Medicaid price-based rates;
  - (b) Correct for inflation adjustments for the past two (2) years; and
  - (c) Re-base the rates to recognize current wage and benefit levels in the industry.
- (5) The remaining revenue generated by the assessments levied under subsection (1) of this section and federal matching funds shall be used to supplement the medical assistance related general fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (6)
  - (a) On or before July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Federal Centers for Medicare and Medicaid Services to request a waiver of the uniformity tax requirement pursuant to 42 C.F.R. sec. 433.68(e)(2). If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.
  - (b) On or before July 1, 2005, the Cabinet for Health and Family Services, Department for Medicaid Services, shall submit an application to the Federal Centers for Medicare and Medicaid Services to amend the waiver of the uniformity tax requirement granted in 2004. If the application to Centers for Medicare and Medicaid Services for an amendment to the previously granted waiver is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved amendment to the waiver.
- (7) Assessments imposed pursuant to this section shall begin on July 1, 2004, but are not due and payable until rates are increased as provided in subsection (5) of this section.
- (8) The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 73, sec. 3, effective June 20, 2005. -- Created 2004 Ky. Acts ch. 142, sec. 1, effective April 21, 2004.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.