ASSEMBLY BILL NO. 197–ASSEMBLYMAN ORENTLICHER

FEBRUARY 20, 2023

Referred to Committee on Health and Human Services

SUMMARY—Authorizes an assessment on certain health care providers for an account to fund Medicaid. (BDR 38-167)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[**~~omitted material~~**]** is material to be omitted.

AN ACT relating to health care; authorizing the Division of Health Care Financing and Policy of the Department of Health and Human Services to impose an assessment on certain health care providers; creating the Account to Improve Health Care Quality and Access for Patients of Certain Providers; prescribing the authorized uses of the revenue generated by the assessment; requiring the Division to adopt regulations establishing administrative penalties against a health care provider who does not pay an assessment in a timely manner; authorizing the Division to take certain measures to collect an unpaid assessment or administrative penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Division of Health Care Financing and Policy of the Department of Health and Human Services to impose an assessment on agencies to provide personal care services in the home or medical facilities that are required to obtain a certain type of license after obtaining the approval of at least 67 percent of the operators of such agencies or facilities. (NRS 422.3794) Existing law requires the Division to expend the revenue generated from the assessment to: (1) provide supplemental payments and enhanced ratio of reimbursements to operators of agencies to provide personal care in the home and operators of medical facilities for services rendered to recipients of Medicaid; and (2) pay administrative costs. (NRS 422.37945) **Sections 2-8** of this bill authorize the imposition of a similar assessment on groups of health care providers, other than hospitals or physicians, who provide similar services or practice in a specialty area. **Sections 3-5** of this bill define necessary terms. **Section 6** of this bill provides for the imposition of the

assessment upon the affirmative vote of at least 67 percent of the affected providers.

Section 7 of this bill creates the Account to Improve Health Care Quality and Access for Patients of Certain Providers and requires the Division to administer the Account and deposit the proceeds from the assessment into the Account. **Section 7** authorizes the Division to use the money in the Account to: (1) increase the rates of reimbursement of providers in the assessed group receive from Medicaid to rates equal to certain benchmarks prescribed in federal law; and (2) pay administrative costs related to the assessment. If the Legislature authorizes the money in the Account for any other purpose, **section 7** requires the Division to poll each provider group against which an assessment is currently being imposed concerning the continued imposition of the assessment. If the poll does not receive an affirmative vote from at least 67 percent of the affected providers, **section 7:** (1) requires that the Division cease imposing the assessment; and (2) provides that the regulations adopted to impose the assessment are void.

Section 8 of this bill requires the Division to adopt regulations establishing administrative penalties against a health care provider who fails to pay an assessment in a timely manner. **Section 8** also authorizes the Division, after notifying the provider, to deduct the amount of an unpaid assessment or administrative penalty from future payments owed to the provider under the State Plan for Medicaid. Finally, **section 8** authorizes the Division to negotiate a payment plan with a health care provider before making such deductions.

Section 9 of this bill makes a conforming change to indicate the proper placement of **sections 2-8** in the Nevada Revised Statutes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 422 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive of this act.

Sec. 2. ***As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 5, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Account" means the Account to Improve Health Care Quality and Access for Patients of Certain Providers created by section 7 of this act.***

Sec. 4. ***"Health care provider" has the meaning ascribed to it in 42 C.F.R. § 433.52, except that the term does not include a hospital or a physician.***

Sec. 4.5. ***"Hospital" has the meaning ascribed to it in NRS 449.012.***

Sec. 5. ***"Provider group":***

1. Except as otherwise provided in subsection 3, means all health care providers who provide a class of health care items or services listed in 42 C.F.R. § 433.56(a) or who are otherwise eligible to be subject to an assessment under 42 C.F.R. § 433.68.

2. Includes, without limitation, a group described in subsection 1 that includes health care providers who practice in only one specialty area or in different specialty areas.

3. Does not include hospitals, providers of physician services or physicians acting in any other capacity.

Sec. 6. *1. Except as otherwise provided in this section, after polling the health care providers in a provider group and receiving an affirmative vote from at least 67 percent of the health care providers in that provider group, the Division may impose by regulation, against each health care provider in the provider group, an assessment in an amount equal to a percentage of the net revenue generated by the health care provider from providing care in this State during a calendar or fiscal year. The Division shall adopt:*

(a) Regulations prescribing the percentage that must be used to calculate the amount of the assessment, the date on which the assessment is due and the manner in which the assessment must be paid; and

(b) Any other regulations necessary or convenient to carry out the provisions of this section.

2. The revenue from an assessment imposed pursuant to subsection 1 must be deposited in the Account.

3. An assessment imposed pursuant to subsection 1 must comply with the provisions of 42 C.F.R. § 433.68. An assessment must not be imposed pursuant to subsection 1 if federal law or regulations prohibit using the revenue generated by the assessment for the purposes prescribed in section 7 of this act. If new federal law or regulations imposing such a prohibition are enacted or adopted, as applicable:

(a) An assessment must not be collected after the effective date of the law or regulations; and

(b) Any money collected during the calendar or fiscal year, as applicable, in which the federal law or regulations become effective must be returned to the health care providers from whom it was collected.

4. A health care provider shall submit to the Division any information requested by the Division for the purposes of carrying out the provisions of this section.

Sec. 7. *1. The Account to Improve Health Care Quality and Access for Patients of Certain Providers is hereby created in the State General Fund. The Division shall administer the Account. The revenue from assessments and penalties imposed on the health care providers in each provider group pursuant to section 6 of this act must be accounted for separately in the Account.*

2. The interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account.

3. The money in the Account must be expended to:

(a) Increase the rates of reimbursement that health care providers in the provider group upon whom an assessment is imposed would otherwise receive under the State Plan for Medicaid to rates that are equal to:

(1) The upper payment limit for the relevant services established pursuant to 42 C.F.R. § 447.272 or 447.321, as applicable; or

(2) If no upper payment limit has been established for the relevant services, the average commercial rate for the relevant services, as calculated in accordance with the guidance prescribed by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; and

(b) Administer the provisions of sections 2 to 8, inclusive, of this act.

4. Money in the Account must not be expended to replace money that would otherwise be used to provide reimbursement under the State Plan for Medicaid to health care providers in a provider group upon whom an assessment is imposed.

5. Any money remaining in the Account at the end of a fiscal year does not revert to the State General Fund, and the balance of the Account must be carried forward to the next fiscal year.

6. If the Legislature authorizes money in the Account to be used for any purpose other than those authorized by subsection 3, the Division shall poll the health care providers in each provider group against which an assessment is being imposed pursuant to section 6 of this act concerning the continued imposition of the assessment. If the poll does not receive an affirmative vote from at least 67 percent of the health care providers in that provider group:

(a) The Division shall cease imposing the assessment against the provider group; and

(b) The regulations adopted to impose the assessment pursuant to section 6 of this act against the provider group are void.

Sec. 8. *1. The Division shall adopt regulations that establish administrative penalties for failure to timely pay an assessment imposed pursuant to section 6 of this act. Any money collected from such a penalty must be deposited in the Account.*

2. If a health care provider fails to remit to the Division any penalty imposed pursuant to this section or any assessment imposed pursuant to section 6 of this act within 30 days after the date on which the penalty or assessment is due, the Division may

deduct the amount of the assessment or penalty, as applicable, from future payments owed to the health care provider under the State Plan for Medicaid. Before doing so, the Division:

(a) Shall notify the health care provider of the intended deduction; and

(b) May negotiate a payment plan with the health care provider.

Sec. 9. NRS 232.320 is hereby amended to read as follows:

232.320 1. The Director:

(a) Shall appoint, with the consent of the Governor, administrators of the divisions of the Department, who are respectively designated as follows:

(1) The Administrator of the Aging and Disability Services Division;

(2) The Administrator of the Division of Welfare and Supportive Services;

(3) The Administrator of the Division of Child and Family Services;

(4) The Administrator of the Division of Health Care Financing and Policy; and

(5) The Administrator of the Division of Public and Behavioral Health.

(b) Shall administer, through the divisions of the Department, the provisions of chapters 63, 424, 425, 427A, 432A to 442, inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, ***and sections 2 to 8, inclusive, of this act,*** 422.580, 432.010 to 432.133, inclusive, 432B.6201 to 432B.626, inclusive, 444.002 to 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all other provisions of law relating to the functions of the divisions of the Department, but is not responsible for the clinical activities of the Division of Public and Behavioral Health or the professional line activities of the other divisions.

(c) Shall administer any state program for persons with developmental disabilities established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.

(d) Shall, after considering advice from agencies of local governments and nonprofit organizations which provide social services, adopt a master plan for the provision of human services in this State. The Director shall revise the plan biennially and deliver a copy of the plan to the Governor and the Legislature at the beginning of each regular session. The plan must:

(1) Identify and assess the plans and programs of the Department for the provision of human services, and any duplication of those services by federal, state and local agencies;

(2) Set forth priorities for the provision of those services;

(3) Provide for communication and the coordination of those services among nonprofit organizations, agencies of local government, the State and the Federal Government;

(4) Identify the sources of funding for services provided by the Department and the allocation of that funding;

(5) Set forth sufficient information to assist the Department in providing those services and in the planning and budgeting for the future provision of those services; and

(6) Contain any other information necessary for the Department to communicate effectively with the Federal Government concerning demographic trends, formulas for the distribution of federal money and any need for the modification of programs administered by the Department.

(e) May, by regulation, require nonprofit organizations and state and local governmental agencies to provide information regarding the programs of those organizations and agencies, excluding detailed information relating to their budgets and payrolls, which the Director deems necessary for the performance of the duties imposed upon him or her pursuant to this section.

(f) Has such other powers and duties as are provided by law.

2. Notwithstanding any other provision of law, the Director, or the Director's designee, is responsible for appointing and removing subordinate officers and employees of the Department.

Sec. 10. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 9, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

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