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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2067 Session of 2021

INTRODUCED BY GROVE, ZIMMERMAN, GAYDOS, STAMBAUGH, LAWRENCE AND KEEFER, NOVEMBER 9, 2021

REFERRED TO COMMITTEE ON HEALTH, NOVEMBER 9, 2021

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," in general powers and duties of the department, further providing for State participation in cooperative Federal programs; in public assistance, further providing for income for the community spouse, for medical assistance payments for institutional care, for medical assistance payments for home health care, for other medical assistance payments and for medical assistance benefit packages and coverage, copayments, premiums and rates; providing for the Office of Independent Medical Assistance Director; and making an editorial change.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Article II heading and sections 201 and 441.7(a) of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, are amended to read:

ARTICLE II

GENERAL POWERS AND DUTIES

OF THE DEPARTMENT OF [PUBLIC WELFARE] HUMAN SERVICES

Section 201. State Participation in Cooperative Federal Programs.--The department, including through the Office of Independent Medical Assistance Director, shall have the power

and its duties shall be:

(1) With the approval of the Governor, to act as the sole agency of the State when applying for, receiving and using Federal funds for the financing in whole or in part of programs in fields in which the department has responsibility.

(2) With the approval of the Governor, to develop and submit State plans or other proposals to the Federal [government,] Government, except as where limited under paragraph (2.1), to promulgate regulations, establish and enforce standards and to take such other measures as may be necessary to render the Commonwealth eligible for available Federal funds or other assistance. Notwithstanding anything to the contrary in the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the department may omit notice of proposed rulemaking and promulgate regulations as final when a delay of thirty days or less in the final adoption of regulations will result in the loss of Federal funds or when a delay of thirty days or less in adoption would require the replacement of Federal funds with State funds.

(2.1) To develop and submit State plans or other proposals to the Federal Government for medical assistance through the Independent Office of Medical Assistance Director, to promulgate regulations, establish and enforce standards and take other measures as may be necessary to render the Commonwealth eligible for available Federal funds or other assistance. Notwithstanding any provision to the contrary in the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the department may omit notice of proposed rulemaking and promulgate regulations as final when a delay of thirty days or less in the final adoption of regulations will result in the

loss of Federal funds or when a delay of thirty days or less in adoption would require the replacement of Federal funds with State funds.

(3) To make surveys and inventories of existing facilities and services as required in connection with such State plans, and to assess the need for construction, modernization or additional services and to determine priorities with respect thereto.

(4) To conduct investigations of activities related to fraud, misuse or theft of public assistance moneys[, medical assistance moneys or benefits,] or Federal food stamps, committed by any person who is or has been participating in or administering programs of the department, or by persons who aid or abet others in the commission of fraudulent acts affecting welfare programs.

(4.1) To conduct investigations of activities related to fraud, misuse or theft of medical assistance moneys or benefits through the Office of Independent Medical Assistance Director by a person who is or has been participating in or administering medical assistance programs or by a person who aids or abets others in the commission of fraudulent acts affecting medical assistance.

(5) To collect data on its programs and services, including efforts aimed at preventative health care, to provide [the General Assembly with adequate information] to the Office of Independent Medical Assistance Director, who will compile the data for use by the General Assembly, to determine the most cost-effective allocation of resources in the medical assistance program.

(6) To submit on a [biannual] annual basis a report prepared

by the Office of Independent Medical Assistance Director to the General Assembly regarding the medical assistance population, which shall include aggregate figures, delineated on a monthly basis, for the number of individuals to whom services were provided, the type and incidence of services provided by procedure and the cost per service as well as total expenditures by service.

Section 441.7. Income for the Community Spouse.--(a) When a community spouse has income below the monthly maintenance needs allowance as determined under the [department's] regulations [and] adopted by the Office of Independent Medical Assistance Director for the Commonwealth approved State plan under Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.), the institutionalized spouse may transfer additional resources to the community spouse only in accordance with this section.

* * *

Section 2. Section 443.1 of the act, added June 30, 2021 (P.L.256, No.56), is amended to read:

Section 443.1. Medical Assistance Payments for Institutional Care.--The following medical assistance payments shall be made on behalf of eligible persons whose institutional care is prescribed by physicians:

(1) Payments as determined by the [department] Office of Independent Medical Assistance Director for inpatient hospital care consistent with Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.). To be eligible for such payments, a hospital must be qualified to participate under Title XIX of the Social Security Act and have entered into a written agreement with the [department] Office of Independent

Medical Assistance Director regarding matters designated by the secretary as necessary to efficient administration, such as hospital utilization, maintenance of proper cost accounting records and access to patients' records. Such efficient administration shall require the department to permit participating hospitals to utilize the same fiscal intermediary for this Title XIX program as such hospitals use for the Title XVIII program.

(1.1) Subject to section 813-G, for inpatient hospital services provided during a fiscal year in which an assessment is imposed under Article VIII-G, payments under the medical assistance fee-for-service program shall be determined in accordance with the [department's] regulations adopted by the Office of Independent Medical Assistance Director, except as follows:

(i) If the Commonwealth's approved Title XIX State Plan for inpatient hospital services in effect for the period of July 1, 2010, through June 30, 2023, specifies a methodology for calculating payments that is different from the department's regulations or authorizes additional payments not specified in the department's regulations, such as inpatient disproportionate share payments and direct medical education payments, the department shall follow the methodology or make the additional payments as specified in the approved Title XIX State Plan.

(ii) Subject to Federal approval of an amendment to the Commonwealth's approved Title XIX State Plan, in making medical assistance fee-for-service payments to acute care hospitals for inpatient services provided on or after July 1, 2010, the [department] Office of Independent Medical Assistance Director shall use payment methods and standards that provide for all of

the following:

(A) Use of the All Patient Refined-Diagnosis Related Group (APR/DRG) system for the classification of inpatient stays into DRGs.

(B) Calculation of base DRG rates, based upon a Statewide average cost, which are adjusted to account for a hospital's regional labor costs, teaching status, capital and medical assistance patient levels and such other factors as the [department] Office of Independent Medical Assistance Director determines may significantly impact the costs that a hospital incurs in delivering inpatient services and which may be adjusted based on the assessment revenue collected under Article VIII-G.

(C) Adjustments to payments for outlier cases where the costs of the inpatient stays either exceed or are below cost thresholds established by the [department] Office of Independent Medical Assistance Director.

(iii) Notwithstanding subparagraph (i), the [department] Office of Independent Medical Assistance Director may make additional changes to its payment methods and standards for inpatient hospital services consistent with Title XIX of the Social Security Act, including changes to supplemental payments currently authorized in the State plan based on the availability of Federal and State funds.

(1.2) Subject to section 813-G, for inpatient acute care hospital services provided under the physical health medical assistance managed care program during State fiscal year 2010-2011, the following shall apply:

(i) For inpatient hospital services provided under a participation agreement between an inpatient acute care hospital

and a medical assistance managed care organization in effect as of June 30, 2010, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, amounts determined in accordance with the payment terms and rate methodology specified in the agreement and in effect as of June 30, 2010, during the term of that participation agreement. If a participation agreement in effect as of June 30, 2010, uses the [department] fee for service DRG rate methodology in determining payment amounts, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, amounts determined in accordance with the fee for service payment methodology in effect as of June 30, 2010, including, without limitation, continuation of the same grouper, outlier methodology, base rates and relative weights, during the term of that participation agreement.

(ii) Nothing in subparagraph (i) shall prohibit payment rates for inpatient acute care hospital services provided under a participation agreement to change from the rates in effect as of June 30, 2010, if the change in payment rates is authorized by the terms of the participation agreement between the inpatient acute care hospital and the medical assistance managed care organization. For purposes of this act, any contract provision that provides that payment rates and changes to payment rates shall be calculated based upon the department's fee for service DRG payment methodology shall be interpreted to mean the [department's] fee for service medical assistance DRG methodology in place on June 30, 2010.

(iii) If a participation agreement between a hospital and a medical assistance managed care organization terminates during a fiscal year in which an assessment is imposed under Article

VIII-G prior to the expiration of the term of the participation agreement, payment for services, other than emergency services, covered by the medical assistance managed care organization and rendered by the hospital shall be made at the rate in effect as of the termination date, as adjusted in accordance with subparagraphs (i) and (ii), during the period in which the participation agreement would have been in effect had the agreement not terminated. The hospital shall receive the supplemental payment in accordance with subparagraph (v).

(iv) If a hospital and a medical assistance managed care organization do not have a participation agreement in effect as of June 30, 2010, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, for services, other than emergency services, covered by the medical assistance managed care organization and rendered during a fiscal year in which an assessment is imposed under Article VIII-G, an amount equal to the rates payable for the services by the medical assistance fee for service program as of June 30, 2010. The hospital shall receive the supplemental payment in accordance with subparagraph (v).

(v) The [department] Office of Independent Medical Assistance Director shall make enhanced capitation payments to medical assistance managed care organizations, if necessary, exclusively for the purpose of making supplemental payments to hospitals in order to promote continued access to quality care for medical assistance recipients. Medical assistance managed care organizations shall use the enhanced capitation payments received pursuant to this section solely for the purpose of making supplemental payments to hospitals and shall provide documentation to the [department] Office of Independent Medical

Assistance Director certifying that all funds received in this manner are used in accordance with this section. The supplemental payments to hospitals made pursuant to this subsection are in lieu of increased or additional payments for inpatient acute care services from medical assistance managed care organizations resulting from the [department's] Office of Independent Medical Assistance Director's implementation of payments under paragraph (1.1)(ii). Medical assistance managed care organizations shall in no event be obligated under this section to make supplemental or other additional payments to hospitals that exceed the enhanced capitation payments made to the medical assistance managed care organization under this section. Medical assistance managed care organizations shall not be required to advance the supplemental payments to hospitals authorized by this subsection and shall only make the supplemental payments to hospitals once medical assistance managed care organizations have received the enhanced capitation payments from the [department] Office of Independent Medical Assistance Director.

(vi) Nothing in this subsection shall prohibit an inpatient acute care hospital and a medical assistance managed care organization from executing a new participation agreement or amending an existing participation agreement on or after July 1, 2010, in which they agree to payment terms that would result in payments that are different than the payments determined in accordance with subparagraphs (i), (ii), (iii) and (iv).

(1.3) Subject to section 813-G, the [department] Office of Independent Medical Assistance Director may adjust its capitation payments to medical assistance managed care organizations under the physical health medical assistance

managed care program during State fiscal year 2011-2012 to provide additional funds for inpatient hospital services to mitigate the impact, if any, to the managed care organizations that may result from the changes to the [department's] Office of Independent Medical Assistance Director's payment methods and standards specified in paragraph (1.1)(ii). If the [department] Office of Independent Medical Assistance Director adjusts a medical assistance managed care organization's capitation payments pursuant to this paragraph, the following shall apply:

(i) The medical assistance managed care organization shall provide documentation to the [department] Office of Independent Medical Assistance Director identifying how the additional funds received pursuant to this subsection were used by the medical assistance managed care organization.

(ii) If the medical assistance managed care organization uses all of the additional funds received pursuant to this subsection to make additional payments to hospitals, the following shall apply:

(A) For inpatient hospital services provided under a participation agreement between an inpatient acute care hospital and the medical assistance managed care organization in effect as of June 30, 2010, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, amounts determined in accordance with the payment terms and rate methodology specified in the agreement and in effect as of June 30, 2010, during the term of that participation agreement. If a participation agreement in effect as of June 30, 2010, uses the [department] fee-for-service DRG rate methodology in determining payment amounts, the medical assistance managed care organization shall pay, and the hospital shall accept as

payment in full, amounts determined in accordance with the fee-for-service payment methodology in effect as of June 30, 2010, including, without limitation, continuation of the same grouper, outlier methodology, base rates and relative weights during the term of that participation agreement.

(B) Nothing in clause (A) shall prohibit payment rates for inpatient acute care hospital services provided under a participation agreement to change from the rates in effect as of June 30, 2010, if the change in payment rates is authorized by the terms of the participation agreement between the inpatient acute care hospital and the medical assistance managed care organization. For purposes of this act, any contract provision that provides that payment rates and changes to payment rates shall be calculated based upon the [department's] fee-for-service DRG payment methodology shall be interpreted to mean the [department's] fee-for-service medical assistance DRG methodology in place on June 30, 2010.

(C) For an out-of-network inpatient discharge of a recipient enrolled in a medical assistance managed care organization that occurs in State fiscal year 2011-2012, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, the amount that the [department's] fee-for-service program would have paid for the discharge if the recipient were enrolled in the [department's] fee-for-service program and the discharge occurred on June 30, 2010.

(D) Nothing in this subparagraph shall prohibit an inpatient acute care hospital and a medical assistance managed care organization from executing a new participation agreement or amending an existing participation agreement on or after July 1, 2010, in which they agree to payment terms that would result in

payments that are different from the payments determined in accordance with clauses (A), (B) and (C).

(1.4) Subject to section 813-G, for inpatient hospital services provided under the physical health medical assistance managed care program during State fiscal years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018, the following shall apply:

(A) The [department] Office of Independent Medical Assistance Director may adjust its capitation payments to medical assistance managed care organizations to provide additional funds for inpatient and outpatient hospital services.

(B) For an out-of-network inpatient discharge of a recipient enrolled in a medical assistance managed care organization that occurs in State fiscal year 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018, the medical assistance managed care organization shall pay, and the hospital shall accept as payment in full, the amount that the [department's] fee-for-service program would have paid for the discharge if the recipient was enrolled in the [department's] fee-for-service program.

(C) Nothing in this paragraph shall prohibit an inpatient acute care hospital and a medical assistance managed care organization from executing a new participation agreement or amending an existing participation agreement on or after July 1, 2013.

(1.5) As used in paragraphs (1.2), (1.3) and (1.4), the following terms shall have the following meanings:

(i) "Emergency services" means emergency services as defined in section 1932(b) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396u-2(b)(2)(B)). The term shall not include

poststabilization care services as defined in 42 CFR 438.114(a)(1) (relating to emergency and poststabilization services).

(ii) "Medical assistance managed care organization" means a Medicaid managed care organization as defined in section 1903(m)(1)(a) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(m)(1)(a)) that is a party to a Medicaid managed care contract with the [department] Office of Independent Medical Assistance Director, other than a behavioral health managed care organization that is a party to a medical assistance managed care contract with the [department] Office of Independent Medical Assistance Director.

(1.6) Notwithstanding any other provision of law or departmental regulation to the contrary, the [department] Office of Independent Medical Assistance Director shall make separate fee-for-service APR/DRG payments for medically necessary inpatient acute care general hospital services provided for normal newborn care and for mothers' obstetrical delivery.

(2) The cost of skilled nursing and intermediate nursing care in State-owned geriatric centers, institutions for the mentally retarded, institutions for the mentally ill, and the cost of skilled and intermediate nursing care provided prior to June 30, 2004, in county homes which meet the State and Federal requirements for participation under Title XIX of the Social Security Act and which are approved by the [department] Office of Independent Medical Assistance Director. This cost in county homes shall be as specified by the regulations of the [department] Office of Independent Medical Assistance Director adopted under Title XIX of the Social Security Act and certified to the department by the Auditor General; elsewhere the cost shall be determined by the [department] Office of Independent

Medical Assistance Director;

(3) Rates on a cost-related basis established by the department for skilled nursing home or intermediate care in a non-public nursing home, when furnished by a nursing home licensed or approved by the department and qualified to participate under Title XIX of the Social Security Act and provided prior to June 30, 2004;

(4) Payments as determined by the department for inpatient psychiatric care consistent with Title XIX of the Social Security Act. To be eligible for such payments, a hospital must be qualified to participate under Title XIX of the Social Security Act and have entered into a written agreement with the department regarding matters designated by the secretary as necessary to efficient administration, such as hospital utilization, maintenance of proper cost accounting records and access to patients' records. Care in a private mental hospital provided under the fee for service delivery system shall be limited to thirty days in any fiscal year for recipients aged twenty-one years or older who are eligible for medical assistance under Title XIX of the Social Security Act and for recipients aged twenty-one years or older who are eligible for general assistance-related medical assistance. Exceptions to the thirty-day limit may be granted under section 443.3. Only persons aged twenty-one years or under and aged sixty-five years or older shall be eligible for care in a public mental hospital. This cost shall be as specified by regulations of the [department] Office of Independent Medical Assistance Director adopted under Title XIX of the Social Security Act and certified to the department by the Auditor General for county and non-public institutions;

(5) After June 30, 2004, and before June 30, 2007, payments to county and nonpublic nursing facilities enrolled in the medical assistance program as providers of nursing facility services shall be calculated and made as specified in the [department's] Office of Independent Medical Assistance Director's regulations in effect on July 1, 2003, except that if the Commonwealth's approved Title XIX State Plan for nursing facility services in effect for the period of July 1, 2004, through June 30, 2007, specifies a methodology for calculating county and nonpublic nursing facility payment rates that is different than the department's regulations in effect on July 1, 2003, the [department] Office of Independent Medical Assistance Director shall follow the methodology in the Federally approved Title XIX State plan.

(6) For public nursing home care provided on or after July 1, 2005, the [department] Office of Independent Medical Assistance Director may recognize the costs incurred by county nursing facilities to provide services to eligible persons as medical assistance program expenditures to the extent the costs qualify for Federal matching funds and so long as the costs are allowable as determined by the department and reported and certified by the county nursing facilities in a form and manner specified by the department. Expenditures reported and certified by county nursing facilities shall be subject to periodic review and verification by the department or the Auditor General. Notwithstanding this paragraph, county nursing facilities shall be paid based upon rates determined in accordance with paragraphs (5) and (7).

(7) After June 30, 2007, payments to county and nonpublic nursing facilities enrolled in the medical assistance program as

providers of nursing facility services shall be determined in accordance with the methodologies for establishing payment rates for county and nonpublic nursing facilities specified in the [department's] Office of Independent Medical Assistance Director's regulations and the Commonwealth's approved Title XIX State Plan for nursing facility services in effect after June 30, 2007. The following shall apply:

(i) For the fiscal year 2007-2008, the [department] Office of Independent Medical Assistance Director shall apply a revenue adjustment neutrality factor and make adjustments to county and nonpublic nursing facility payment rates for medical assistance nursing facility services. The revenue adjustment factor shall limit the estimated aggregate increase in the Statewide day-weighted average payment rate over the three-year period commencing July 1, 2005, and ending June 30, 2008, from the Statewide day-weighted average payment rate for medical assistance nursing facility services in fiscal year 2004-2005 to 6.912% plus any percentage rate of increase permitted by the amount of funds appropriated for nursing facility services in the General Appropriation Act of 2007. Application of the revenue adjustment neutrality factor shall be subject to Federal approval of any amendments as may be necessary to the Commonwealth's approved Title XIX State Plan for nursing facility services.

(ii) The [department] Office of Independent Medical Assistance Director may make additional changes to its methodologies for establishing payment rates for county and nonpublic nursing facilities enrolled in the medical assistance program consistent with Title XIX of the Social Security Act, except that if during a fiscal year an assessment is implemented

under Article VIII-A, the department shall not make a change under this subparagraph unless it adopts regulations as provided under section 814-A.

(iii) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, the department shall do all of the following:

(A) For each fiscal year between July 1, 2008, and June 30, 2011, the department shall apply a revenue adjustment neutrality factor to county and nonpublic nursing facility payment rates. For each such fiscal year, the revenue adjustment neutrality factor shall limit the estimated aggregate increase in the Statewide day-weighted average payment rate so that the aggregate percentage rate of increase for the period that begins on July 1, 2005, and ends on the last day of the fiscal year is limited to the amount permitted by the funds appropriated by the General Appropriations Act for those fiscal years.

(B) In calculating rates for nonpublic nursing facilities for fiscal year 2008-2009, the department shall continue to include costs incurred by county nursing facilities in the rate-setting database, as specified in the department's regulations in effect on July 1, 2007.

(C) The department shall propose regulations that phase out the use of county nursing facility costs as an input in the process of setting payment rates of nonpublic nursing facilities. The final regulations shall be effective July 1, 2009, and shall phase out the use of these costs in rate-setting over a period of three rate years, beginning fiscal year 2009-2010 and ending on June 30, 2012.

(D) The department shall propose regulations that establish minimum occupancy requirements as a condition for bed-hold

payments. The final regulations shall be effective July 1, 2009, and shall phase in these requirements over a period of two rate years, beginning fiscal year 2009-2010.

(iv) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for each fiscal year beginning on or after July 1, 2011, the [department] Office of Independent Medical Assistance Director shall apply a revenue adjustment neutrality factor to county and nonpublic nursing facility payment rates so that the estimated Statewide day-weighted average payment rate in effect for that fiscal year is limited to the amount permitted by the funds appropriated by the General Appropriation Act for the fiscal year. The revenue adjustment neutrality factor shall remain in effect until the sooner of June 30, 2022, or the date on which a new rate-setting methodology for medical assistance nursing facility services which replaces the rate-setting methodology codified in 55 Pa. Code Chs. 1187 (relating to nursing facility services) and 1189 (relating to county nursing facility services) takes effect.

(v) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for fiscal year 2013-2014, the [department] Office of Independent Medical Assistance Director shall make quarterly medical assistance day-one incentive payments to qualified nonpublic nursing facilities. The [department] Office of Independent Medical Assistance Director shall determine the nonpublic nursing facilities that qualify for the quarterly medical assistance day-one incentive payments and calculate the payments using the total Pennsylvania medical assistance (PA MA) days and total resident days as reported by nonpublic nursing

facilities under Article VIII-A. The [department's] Office of Independent Medical Assistance Director's determination and calculations under this subparagraph shall be based on the nursing facility assessment quarterly resident day reporting forms available on October 31, January 31, April 30 and July 31. The [department] Office of Independent Medical Assistance Director shall not retroactively revise a medical assistance day-one incentive payment amount based on a nursing facility's late submission or revision of its report after these dates. The [department] Office of Independent Medical Assistance Director, however, may recoup payments based on an audit of a nursing facility's report. The following shall apply:

(A) A nonpublic nursing facility shall meet all of the following criteria to qualify for a medical assistance day-one incentive payment:

(I) The nursing facility shall have an overall occupancy rate of at least 85% during the resident day quarter. For purposes of determining a nursing facility's overall occupancy rate, a nursing facility's total resident days, as reported by the facility under Article VIII-A, shall be divided by the product of the facility's licensed bed capacity, at the end of the quarter, multiplied by the number of calendar days in the quarter.

(II) The nursing facility shall have a medical assistance occupancy rate of at least 65% during the resident day quarter. For purposes of determining a nursing facility's medical assistance occupancy rate, the nursing facility's total PA MA days shall be divided by the nursing facility's total resident days, as reported by the facility under Article VIII-A.

(III) The nursing facility shall be a nonpublic nursing

facility for a full resident day quarter prior to the applicable quarterly reporting due dates of October 31, January 31, April 30 and July 31.

(B) The [department] Office of Independent Medical Assistance Director shall calculate a qualified nonpublic nursing facility's medical assistance day-one incentive quarterly payment as follows:

(I) The total funds appropriated for payments under this subparagraph shall be divided by four.

(II) To establish the quarterly per diem rate, the amount under subclause (I) shall be divided by the total PA MA days, as reported by all qualifying nonpublic nursing facilities under Article VIII-A.

(III) To determine a qualifying nonpublic nursing facility's quarterly medical assistance day-one incentive payment, the quarterly per diem rate shall be multiplied by a nonpublic nursing facility's total PA MA days, as reported by the facility under Article VIII-A.

(C) For fiscal year 2013-2014, the State funds available for the nonpublic nursing facility medical assistance day-one incentive payments shall equal eight million dollars ($8,000,000).

(vi) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for fiscal years 2015-2016, 2016-2017, 2018-2019, and 2019-2020, the [department] Office of Independent Medical Assistance Director shall make up to four medical assistance day-one incentive payments to qualified nonpublic nursing facilities. The department shall determine the nonpublic nursing facilities that qualify for the medical assistance day-one

incentive payments and calculate the payments using the total Pennsylvania medical assistance (PA MA) days and total resident days as reported by nonpublic nursing facilities under Article VIII-A. The department's determination and calculations under this subparagraph shall be based on the nursing facility assessment quarterly resident day reporting forms, as determined by the department. The department shall not retroactively revise a medical assistance day-one incentive payment amount based on a nursing facility's late submission or revision of the department's report after the dates designated by the department. The department, however, may recoup payments based on an audit of a nursing facility's report. The following shall apply:

(A) A nonpublic nursing facility shall meet all of the following criteria to qualify for a medical assistance day-one incentive payment:

(I) The nursing facility shall have an overall occupancy rate of at least eighty-five percent during the resident day quarter. For purposes of determining a nursing facility's overall occupancy rate, a nursing facility's total resident days, as reported by the facility under Article VIII-A, shall be divided by the product of the facility's licensed bed capacity, at the end of the quarter, multiplied by the number of calendar days in the quarter.

(II) The nursing facility shall have a medical assistance occupancy rate of at least sixty-five percent during the resident day quarter. For purposes of determining a nursing facility's medical assistance occupancy rate, the nursing facility's total PA MA days shall be divided by the nursing facility's total resident days, as reported by the facility

under Article VIII-A.

(III) The nursing facility shall be a nonpublic nursing facility for a full resident day quarter prior to the applicable quarterly reporting due dates, as determined by the department.

(B) The department shall calculate a qualified nonpublic nursing facility's medical assistance day-one incentive payment as follows:

(I) The total funds appropriated for payments under this subparagraph shall be divided by the number of payments, as determined by the department.

(II) To establish the per diem rate for a payment, the amount under subclause (I) shall be divided by the total PA MA days, as reported by all qualifying nonpublic nursing facilities under Article VIII-A for that payment.

(III) To determine a qualifying nonpublic nursing facility's medical assistance day-one incentive payment, the per diem rate calculated for the payment shall be multiplied by a nonpublic nursing facility's total PA MA days, as reported by the facility under Article VIII-A for the payment.

(C) The following shall apply:

(I) For fiscal years 2015-2016, 2016-2017 and 2018-2019, the State funds available for the nonpublic nursing facility medical assistance day-one incentive payments shall equal eight million dollars ($8,000,000).

(II) For fiscal years 2019-2020, the State funds available for the nonpublic nursing facility medical assistance day-one incentive payments shall equal sixteen million dollars ($16,000,000).

(vii) For each fiscal year beginning on or after fiscal year 2020-2021, an additional annual payment equal to one hundred

thirty dollars ($130) per eligible Medicaid ventilator or tracheostomy day shall be paid to qualified medical assistance nonpublic and county nursing facilities on a quarterly basis. The [department] Office of Independent Medical Assistance Director will obtain all necessary approvals and take all steps required to ensure the distribution of these payments to all qualifying nursing facilities under both the fee-for-service program and the managed long-term services and supports program. The following shall apply:

(A) A nonpublic or county nursing facility will qualify for the payment if, during any quarter of the year, the facility had:

(I) a minimum of ten medical assistance recipient residents who received medically necessary ventilator care or tracheostomy care according to the most recently available Picture Date CMI Report; and

(II) at least seventeen percent of the facility's medical assistance recipient resident population receiving medically necessary ventilator care or tracheostomy care according to at least one of the three most recently available medical assistance Picture Date CMI Reports.

(B) The [department] Office of Independent Medical Assistance Director shall calculate a qualified nonpublic or county nursing facility's payment as follows:

(I) The determination of medically necessary ventilator care is based on whether there is a positive response to MDS 3.0 Section O0100F1 or O0100F2 on the MDS assessment identified on the Picture Date CMI Report. The determination of medically necessary tracheostomy care is based on whether there is a positive response to MDS 3.0 Section O0100E1 or O0100E2 on the

MDS assessment identified on the Picture Date CMI Report.

(II) The quarterly payment shall equal the additional supplemental ventilator care and tracheostomy care per diem described in unit (a) multiplied by the number of eligible days described in unit (b) as follows:

(a) The additional supplemental ventilator care and tracheostomy care per diem shall equal the number of MA-recipient residents who receive necessary ventilator care or tracheostomy care/total MA-recipient residents x $130 as identified in the facility's most recently available Picture Date CMI Report.

(b) The facility's eligible days for the quarter are the facility's paid MA facility days and therapeutic leave days; if the facility does not meet the criteria of clause (A)(I) during the payment quarter, the facility's eligible days for the quarter are zero.

(C) The [department] Office of Independent Medical Assistance Director shall publish on a quarterly basis the information contained in the Supplemental Ventilator Care and Tracheostomy Care Payments file currently published on the department's publicly accessible Internet website.

(8) As a condition of participation in the medical assistance program, before any county or nonpublic nursing facility increases the number of medical assistance certified beds in its facility or in the medical assistance program, whether as a result of an increase in beds in an existing facility or the enrollment of a new provider, the facility must seek and obtain advance written approval of the increase in certified beds from the department. The following shall apply:

(i) Before July 1, 2009, the department shall propose

regulations that would establish the process and criteria to be used to review and respond to requests for increases in medical assistance certified beds, including whether an increase in the number of certified beds is necessary to assure that long-term living care and services under the medical assistance program will be provided in a manner consistent with applicable Federal and State law, including Title XIX of the Social Security Act.

(ii) Pending adoption of regulations, a nursing facility's request for advance written approval for an increase in medical assistance certified beds shall be submitted and reviewed in accordance with the process and guidelines contained in the statement of policy published in 28 Pa.B. 138.

(iii) The [department] Office of Independent Medical Assistance Director may publish amendments to the statement of policy if the department determines that changes to the process and guidelines for reviewing and responding to requests for approval of increases in medical assistance certified beds will facilitate access to medically necessary nursing facility services or are required to assure that long-term living care and services under the medical assistance program will be provided in a manner consistent with applicable Federal and State law, including Title XIX of the Social Security Act. The [department] Office of Independent Medical Assistance Director shall publish the proposed amendments in the Pennsylvania Bulletin and solicit public comments for thirty days. After consideration of the comments it receives, the [department] Office of Independent Medical Assistance Director may proceed to adopt the amendments by publishing an amended statement of policy in the Pennsylvania Bulletin which shall include its responses to the public comments that it received concerning the

proposed amendments.

Section 3. Sections 443.2, 443.3 and 454(a) and (c) of the act are amended to read:

Section 443.2. Medical Assistance Payments for Home Health Care.--The following medical assistance payments shall be made in behalf of eligible persons whose care in the home has been prescribed by a physician, chiropractor or podiatrist:

(1) Rates established by the [department] Office of Independent Medical Assistance Director for post-hospital home care, as specified by regulations of the [department] Office of Independent Medical Assistance Director adopted under Title XIX of the Federal Social Security Act for not more than one hundred eighty days following a period of hospitalization, if such care is related to the reason the person was hospitalized and if given by a hospital as comprehensive, hospital type care in a patient's home;

(2) Rates established by the [department] Office of Independent Medical Assistance Director for home health care services if such services are furnished by a voluntary or governmental health agency.

Section 443.3. Other Medical Assistance Payments.--(a) Payments on behalf of eligible persons shall be made for other services, as follows:

(1) Rates established by the [department] Office of Independent Medical Assistance Director for outpatient services as specified by regulations of the department adopted under Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.) consisting of preventive, diagnostic, therapeutic, rehabilitative or palliative services; furnished by or under the direction of a physician, chiropractor or podiatrist, by a

hospital or outpatient clinic which qualifies to participate under Title XIX of the Social Security Act, to a patient to whom such hospital or outpatient clinic does not furnish room, board and professional services on a continuous, twenty-four hour a day basis.

(1.1) Rates established by the [department] Office of Independent Medical Assistance Director for observation services provided by or furnished under the direction of a physician and furnished by a hospital. Payment for observation services shall be made in an amount specified by the [department] Office of Independent Medical Assistance Director by notice in the Pennsylvania Bulletin and shall be effective for dates of service on or after July 1, 2016. Payment for observation services shall be subject to conditions specified in the [department's] Office of Independent Medical Assistance Director regulations, including regulations adopted by the [department] Office of Independent Medical Assistance Director to implement this paragraph. Pending adoption of regulations implementing this paragraph, the conditions for payment of observation services shall be specified in a medical assistance bulletin.

(2) Rates established by the [department] Office of Independent Medical Assistance Director for (i) other laboratory and X-ray services prescribed by a physician, chiropractor or podiatrist and furnished by a facility other than a hospital which is qualified to participate under Title XIX of the Social Security Act, (ii) physician's services consisting of professional care by a physician, chiropractor or podiatrist in his office, the patient's home, a hospital, a nursing facility or elsewhere, (iii) the first three pints of whole blood, (iv) remedial eye care, as provided in Article VIII consisting of

medical or surgical care and aids and services and other vision care provided by a physician skilled in diseases of the eye or by an optometrist which are not otherwise available under this Article, (v) special medical services for school children, as provided in the Public School Code of 1949, consisting of medical, dental, vision care provided by a physician skilled in diseases of the eye or by an optometrist or surgical care and aids and services which are not otherwise available under this article.

(3) Notwithstanding any other provision of law, for recipients aged twenty-one years or older receiving services under the fee for service delivery system who are eligible for medical assistance under Title XIX of the Social Security Act and for recipients aged twenty-one years or older receiving services under the fee-for-service delivery system who are eligible for general assistance-related categories of medical assistance, the following medically necessary services:

(i) Psychiatric outpatient clinic services not to exceed five hours or ten one-half-hour sessions per thirty consecutive day period.

(ii) Psychiatric partial hospitalization not to exceed five hundred forty hours per fiscal year.

(b) The [department] Office of Independent Medical Assistance Director may grant exceptions to the limits specified in this section, section 443.1(4) or the department's regulations when any of the following circumstances applies:

(1) The [department] Office of Independent Medical Assistance Director determines that the recipient has a serious chronic systemic illness or other serious health condition and denial of the exception will jeopardize the life of or result in

the rapid, serious deterioration of the health of the recipient.

(2) The [department] Office of Independent Medical Assistance Director determines that granting a specific exception to a limit is a cost-effective alternative for the medical assistance program.

(3) The [department] Office of Independent Medical Assistance Director determines that granting an exception to a limit is necessary in order to comply with Federal law.

(c) The [Secretary of Public Welfare] Office of Independent Medical Assistance Director shall promulgate regulations pursuant to section 204(1)(iv) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, to implement this section. Notwithstanding any other provision of law, the promulgation of regulations under this subsection shall, until December 31, 2005, be exempt from all of the following:

(1) Section 205 of the Commonwealth Documents Law.

(2) Section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act."

(3) The act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

Section 454. Medical Assistance Benefit Packages; Coverage, Copayments, Premiums and Rates.--(a) Notwithstanding any other provision of law to the contrary, the [department] Office of Independent Medical Assistance Director shall promulgate regulations as provided in subsection (b) to establish provider payment rates; the benefit packages and any copayments for adults eligible for medical assistance under Title XIX of the Social Security Act (49 Stat 620, 42 U.S.C. § 1396 et seq.) and adults eligible for medical assistance in general assistance-

related categories; and the premium or copayment requirements for disabled children whose family income is above two hundred percent of the Federal poverty income limit. Subject to such Federal approval as may be necessary, the regulations shall authorize and describe the available benefit packages and any copayments and premiums, except that the [department] Office of Independent Medical Assistance Director shall set forth the copayment and premium schedule for disabled children whose family income is above two hundred percent of the Federal poverty income limit by publishing a notice in the Pennsylvania Bulletin. The [department] Office of Independent Medical Assistance Director may adjust such copayments and premiums for disabled children by notice published in the Pennsylvania Bulletin. The regulations shall also specify the effective date for provider payment rates.

* * *

(c) The [department] Office of Independent Medical Assistance Director is authorized to grant exceptions to any limits specified in the benefit packages adopted under this section or when any of the following circumstances applies:

(1) The [department] Office of Independent Medical Assistance Director determines the recipient has a serious chronic systemic illness or other serious health condition and denial of the exception will jeopardize the life of or result in the rapid, serious deterioration of the health of the recipient.

(2) The [department] Office of Independent Medical Assistance Director determines that granting a specific exception to a limit is a cost-effective alternative for the medical assistance program.

(3) The department determines that granting an exception to

a limit is necessary in order to comply with Federal law.

* * *

Section 4. The act is amended by adding an article to read:

ARTICLE IV-A

OFFICE OF INDEPENDENT MEDICAL ASSISTANCE DIRECTOR

Section 401-A. Declaration of purpose.

The General Assembly finds and declares that the intent of this article is to ensure that the Commonwealth's current medical assistance programs provide all of the following:

(1) Budget stability and predictability through defined outcomes, performance and accountability.

(2) A balance of quality, patient satisfaction, financial measures and self-sufficiency.

(3) The most efficient and cost-effective services, administrative systems and structures.

(4) A sustainable and uniform delivery system across the Commonwealth's departments and agencies.

(5) The offering of services to assist recipients to attain independence or self-care.

Section 402-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commonwealth agency." A State agency, department, board, office, bureau, division, committee or council.

"Director." The Director of the Office of Independent Medical Assistance Director.

Section 403-A. Office of Independent Medical Assistance Director.

(a) Establishment.--The Office of Independent Medical

Assistance Director is established within the department for budgetary purposes.

(b) Employees.--Employees of any Commonwealth agency who operate and administer medical assistance programs prior to the effective date of this section shall be transferred to the Office of Independent Medical Assistance Director at the discretion of the director. The funds that pay for the salaries of the employees transferred under this section shall be paid out of the encumbered funds of the agency from which the employee was transferred.

(c) Funding.--All funding from any Federal or State sources regarding the operation of the Commonwealth's medical assistance programs shall be transferred into a restricted account in the General Fund in accordance with the following:

(1) Money from the restricted account may be transferred only upon the approval of the director or the director's designee, as prescribed under this article.

(2) The director shall coordinate payments from the Commonwealth's medical assistance programs with the State Treasurer to optimize the Commonwealth's cash flow within the General Fund and total operating budget.

Section 404-A. Director of the Office of Independent Medical Assistance Director.

(a) Appointment.--The Governor shall appoint the director from the list submitted by the Selection and Organization Committee under subsection (c) for a term of six years and subject to confirmation by the Senate. The initial term of office for the director shall commence upon confirmation by the Senate and shall expire June 30, 2026. After June 30, 2026, the term of office for the director shall be six years and shall

commence on July 1 after the date of confirmation. A director may serve more than one term if selected by the Selection and Organization Committee.

(b) Committee.--The Selection and Organization Committee is established for the purpose of comprising a list of potential nominees for director. The committee shall consist of the following:

(1) The President pro tempore of the Senate and the Speaker of the House of Representatives.

(2) The Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives.

(3) The chair and minority chair of the Appropriations Committee of the Senate and the chair and minority chair of the Appropriations Committee of the House of Representatives.

(4) The chair and minority chair of the Health and Human Services Committee of the Senate and the chair and minority chair of the Health Committee of the House of Representatives.

(c) Nomination.--The following shall apply:

(1) The Selection and Organization Committee shall submit no more than three potential nominees for director to the Governor within 30 days of a vacancy.

(2) The Governor shall select one of the nominees under paragraph (1) and submit the nominee to the Senate for confirmation no later than May 1 of the year when the term of office expires.

(3) If the Governor fails to submit a nominee under paragraph (2) by May 1 of the year when the term of office expires, the President pro tempore of the Senate and the

Speaker of the House of Representatives shall jointly submit a nominee to the Senate on or before May 15 of the same year by resolution. The resolution shall include all of the following:

(i) The name of the nominee.

(ii) The effective date of the appointment.

(iii) The date of expiration of the term of office.

(iv) The residence of the nominee.

(v) A clause providing that the nominee is submitted upon joint recommendation of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(4) If a nominee for director is not confirmed within 30 days of submission to the Senate, a new nominee for director shall be submitted to the Senate.

(d) Vacancy.--The following shall apply if the position of director is vacant:

(1) If the vacancy occurs before the director's term of office expires, the Governor shall select one of the nominees under subsection (c)(1) and submit the nominee to the Senate no later than 60 days after the vacancy occurs.

(2) If the vacancy occurs when the General Assembly is not in session, the Governor shall appoint an acting director until such time as the General Assembly has reconvened. An acting director may not serve for more than three months.

(3) If no director has been approved within three months of a vacancy, a new director shall be appointed in accordance with paragraph (1).

(e) Removal.--The Governor may remove the director only if the director has committed a breach of public trust or violated

the laws of this Commonwealth.

Section 405-A. Powers and duties of director.

The director shall have the following powers and duties:

(1) Administering medical assistance programs in a manner in which the total expenditures, net of agency receipts, do not exceed the authorized budget for the medical assistance programs.

(2) Employing clerical and professional staff for the Office of Independent Medical Assistance Director, including consultants, actuaries and legal counsel, for the purpose of administering medical assistance programs. The director may offer employment contracts for specified terms and set compensation for the employees, which may include performance-based bonuses based on meeting budget or other targets.

(3) Notwithstanding any other provisions of law, entering into and managing contracts for the administration of medical assistance programs, which shall include all of the following:

(i) Expected outcomes to improve the health and well-being of residents of this Commonwealth.

(ii) Value-based purchasing.

(iii) The use of evidence-based programs.

(iv) The development of medical homes.

(v) Uniformed coordination of services.

(vi) Cost-containment provisions.

(vii) Maximizing the amount of Federal funds.

(viii) Recommendations for identifying cost savings within medical assistance programs.

(4) Establishing and adjusting all components of

medical assistance programs within the appropriated and allocated budget.

(5) Adopting rules and regulations relating to medical assistance programs in accordance with Executive Order 1996-1.

(6) Developing mid-year budget correction plans and strategies and taking mid-year budget corrective actions as necessary to keep medical assistance programs within budget.

(7) Approving or disapproving and overseeing all expenditures to be allocated to medical assistance programs.

(8) Developing and providing to the Office of the Budget, the Appropriations Committee of the Senate, the Appropriations Committee of the House of Representatives and the Independent Fiscal Office by January 1, 2022, and each year thereafter, the following information about medical assistance programs:

(i) A detailed four-year forecast of expected changes to enrollment growth and enrollment demographics.

(ii) Changes that will be implemented by the department in order to stay within the existing budget based on the next fiscal year's forecasted enrollment growth and enrollment demographics.

(iii) The cost to maintain the current level of services based on the next fiscal year's forecasted enrollment growth and enrollment demographics.

(9) Creating a publicly accessible Internet website for the Office of Independent Medical Assistance Director and updating the website on at least a monthly basis with the following information about the medical assistance programs:

(i) Enrollment by medical assistance program aid

category by county.

(ii) Per member, per month spending by category of service.

(iii) Spending and receipts by fund, including a detailed variance analysis.

(iv) A comparison of the figures specified under subparagraphs (i), (ii) and (iii) to the amounts forecasted and budgeted for the corresponding time period.

(10) Developing performance measures and outcomes for programs under the director's jurisdiction and programs which are billed against medical assistance programs.

(11) Making annual recommendations to the Governor and the General Assembly to streamline programs to provide better services for residents of this Commonwealth at a lower cost to taxpayers who reside within this Commonwealth.

(12) Serving at the pleasure of the residents of this Commonwealth in an independent manner.

(13) Developing and implementing policies to address excessive utilization of health care services.

(14) Ensuring that services are coordinated throughout Commonwealth agencies, including physical health, behavioral health, long-term services and supports and third-party insurances.

Section 406-A. Amendments to State plan for medical assistance programs.

(a) Authority.--The director shall have the sole authority to manage all medical assistance programs in the Commonwealth, including, but not limited to, being the sole authority for submitting an amendment to the State's plan under Title XIX of

the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.) to the Centers for Medicare and Medicaid services offered under any of the Commonwealth's medical assistance programs.

(b) Amendments.--The director may take all necessary action to amend the State plan for medical assistance programs in order to keep medical assistance programs within the certified budget, including State plan amendments, waivers and waiver amendments.

(c) Submission.--An amendment to the State plan for medical assistance programs shall be submitted by the director in accordance with the following:

(1) A law of this Commonwealth mandating that the director submit an amendment to the State plan for medical assistance programs.

(2) A law of this Commonwealth which changes medical assistance programs and requires approval from the Federal Government.

(3) A change in Federal law which requires an amendment to the State plan for medical assistance programs.

(4) An order of a court of competent jurisdiction if the amendment to the State plan for medical assistance programs is necessary to implement the order.

(5) In a manner as required to maintain Federal funding for medical assistance programs.

(d) Notice.--No less than 30 days before submitting an amendment to the State plan for medical assistance programs to the Federal Government, the director shall post the amendment on the Office of Independent Medical Assistance Director's publicly accessible Internet website and notify the members of the General Assembly and the Independent Fiscal Office that the amendment has been posted. The notice requirement under this

subsection shall not apply to a draft or proposed amendment submitted to the Federal Government for comments and not for approval.

Section 407-A. Use of funds.

The Office of Independent Medical Assistance Director shall use encumbered funds appropriated to the department to implement this article.

Section 408-A. Legislative oversight powers.

The Appropriations Committee of the Senate and the Appropriations Committee of House of Representatives, while in discharge of official duties, shall have access to any document and may compel the attendance of an employee or secure any evidence.

Section 409-A. Duties of Commonwealth agencies.

The following shall apply:

(1) A Commonwealth agency shall not interfere with the duties of the director or withhold information requested by the director.

(2) A Commonwealth agency shall coordinate with the director to ensure that the residents of this Commonwealth have a continuity of care.

Section 410-A. Regulations.

The Office of Independent Medical Assistance Director shall have the authority to promulgate regulations as necessary.

Section 411-A. Construction.

Nothing in this article may be construed to limit the budget authority of the Office of the Budget under Article VI of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 5. All acts and parts of acts are repealed insofar

as they are inconsistent with this act.

Section 6. This act shall take effect immediately.