

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 47.
TAXATION, LICENSING, PERMITS,
ASSESSMENTS, AND FEES.

CHAPTER 12C.
NURSING FACILITY QUALITY OF CARE FUND;
NURSING FACILITY ASSESSMENT.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 12C. NURSING FACILITY QUALITY OF
CARE FUND; NURSING FACILITY ASSESSMENT.

TABLE OF CONTENTS

[§ 47-1261. Definitions.](#)

[§ 47-1262. Nursing Facility Quality of Care Fund.](#)

[§ 47-1263. Assessments on nursing facilities.](#)

[§ 47-1264. Interest and penalties.](#)

[§ 47-1265. Confidentiality; audit; determination or redetermination of assessment.](#)

[§ 47-1266. Appeals.](#)

[§ 47-1267. Rules.](#)

[§ 47-1268. Federal determinations; suspension and termination of assessment.](#)

[§ 47-1269. Applicability.](#)

CHAPTER 12C. NURSING FACILITY QUALITY OF CARE FUND; NURSING FACILITY ASSESSMENT.

§ 47-1261. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Case mix reimbursement methodology" means a prospective Medicaid payment rate system for nursing facilities that includes:

- (A) A point-of-sale prescription system;
- (B) A resident classification system based on resident acuity and needs; and
- (C) The following 3 peer groupings for rate purposes:
 - (i) All freestanding nursing facilities, except those owned by the District of Columbia;
 - (ii) All hospital-based nursing facilities; and
 - (iii) All nursing facilities owned by the District of Columbia.

(2) "Fiscal year" means the 12-month accounting period of the District of Columbia beginning on October 1 and ending on September 30 of the next year.

(3) "Fund" means the Nursing Facility Quality of Care Fund established by this chapter.

(4) "Gross resident revenue" means the sum of resident charges, ancillary service charges, and other charges related to the provision of services to residents.

(5) "Medicaid" means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), and by [§ 1-307.02], and administered by the Department of Health.

(6) "Net resident revenue" means gross resident revenue less deductions resulting from a nursing facility's inability to collect full payment of its established charges to residents. The deductions include:

- (A) Bad debts;
- (B) Contractual adjustments, including the difference between the amount that would be realized at the nursing facility's established charges and the amount actually received pursuant to contractual agreements entered into to receive Medicare payments, Medicaid payments, Blue Cross or Blue Shield plan payments, or other third-party payments;
- (C) Uncompensated or charity care; and
- (D) Administrative, courtesy, and policy discounts and adjustments.

(7) "Nursing facility" means a health care facility as defined in and codified at § 44-501(a)(3), but does not include a health care facility operated by the federal government.

(8) "Quality of care initiatives" means initiatives that include a case mix reimbursement methodology, reimbursement of the costs of the audit required by § 47-1262(d), and, to the extent that amounts in the Fund remain, other programs designed to promote and foster the improved care, safety, and health of residents in Medicaid-certified nursing facilities.

(9) "Resident" means a person receiving services in a nursing facility.

(10) "Superior Court" means the Superior Court of the District of Columbia.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Miscellaneous Notes

Short title of subtitle B of title V of Law 15-205: Section 5201 of D.C. Law 15-205 provided that subtitle B of title V of the act may be cited as the Nursing Facility Quality of Care Act of 2004.

§ 47-1262. NURSING FACILITY QUALITY OF CARE FUND.

(a) There is established a fund designated as the Nursing Facility Quality of Care Fund, which shall be separate from the General Fund of the District of Columbia and shall be used for the purposes set forth in subsection (b) of this section. All assessments collected under this chapter, any and all interest earned on those assessments, any and all interest and penalties collected under § 47-1264, and any and all matching federal funds on those amounts, shall be deposited into the Fund, and shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress in an appropriations act.

(b) No less than 90% of the Fund shall be used solely to fund quality of care initiatives.

(c) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Fund.

(d) The Mayor shall audit all income and expenses of the Fund annually and provide the annual report to the Council.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-192, § 5082, 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 211, 56 DCR 1117.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-192 rewrote subsec. (b) which had read as follows:

"(b) The Fund shall be used solely to fund quality of care initiatives."

D.C. Law 17-353 deleted "ninety" following "less than".

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 5082 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5082 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5082 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

For Law 16-192, see notes following § 47-340.23.

For Law 17-353, see notes following § 47-308.

Miscellaneous Notes

Short title: Section 5081 of D.C. Law 16-192 provided that subtitle H of title V of the act may be cited as the

§ 47-1263. ASSESSMENTS ON NURSING FACILITIES.

(a) Except as provided in paragraph (1) of this subsection, each nursing facility in the District of Columbia shall pay to the Mayor an assessment of up to 6% per annum of net resident revenue. The assessment shall be a uniform amount per licensed bed, and the amount shall be determined as follows:

(1) For fiscal year 2005, the assessment shall be \$3,600 per licensed bed annually, or the appropriate pro-rata amount based upon that total if the assessment is in effect for less than the entire fiscal year.

(2) For fiscal year 2006 and each succeeding fiscal year, the Mayor shall determine the uniform amount per licensed bed by rules issued pursuant to § 47-1267.

(b) Except for fiscal year 2005, the Mayor shall require each nursing facility to provide to the Office of Tax and Revenue a self-assessment of the amount owed based on net resident revenue as provided in subsection (a) of this section for the ensuing fiscal year of the District no later than September 1.

(c) Each nursing facility shall pay the assessment required by subsection (a) of this section to the Mayor in equal monthly installments.

(d) Each nursing facility shall report net resident revenue for the period upon which the assessment for a fiscal year is to be determined under subsection (a)(2) of this section by submitting an audited financial statement and other information for that period as the Mayor may prescribe by rules issued pursuant to § 47-1267.

(e) The Chief Financial Officer may determine the manner in which payments are made under this chapter, including whether payments owed by each nursing facility under subsection (a) of this section shall be paid electronically.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 1242(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(h), 53 DCR 6794; Aug. 16, 2008, D.C. Law 17-219, § 5027, 55 DCR 7598.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-33, rewrote subsec. (b) and added subsec. (e). Prior to amendment, subsec. (b) read as follows:

"(b) Except for fiscal Year 2005, the Mayor shall provide notice to each nursing facility of the amount of the assessment for the ensuing fiscal year no later than September 1."

Law 16-191 validated a previously made change in the designation of subsec. (e).

D.C. Law 17-219, in the lead-in language, inserted "up to" preceding "6%"; and rewrote par. (2), which had read as follows:

"(2) For fiscal year 2006 and each succeeding fiscal year, the Mayor shall determine the uniform amount per licensed bed that will equal 6% per annum of net resident revenue by rules issued pursuant to § 47-1267."

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 1242(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment, see § 5027 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

For Law 16-33, see notes following § 47-308.01.

For Law 16-191, see notes following § 47-318.01a.

For Law 17-219, see notes following § 47-318.05a.

Miscellaneous Notes

Short title of subtitle CC of title I of Law 16-33: Section 1241 of D.C. Law 16-33 provided that subtitle CC of title I of the act may be cited as the Nursing Home Provider Tax Technical Amendments Act of 2005.

Short title: Section 5026 of D.C. Law 17-219 provided that subtitle K of title V of the act may be cited as the "Nursing Facility Quality of Care Act of 2008".

§ 47-1264. INTEREST AND PENALTIES.

(a) When a nursing facility fails to pay the full amount of an assessment by the date required by this chapter, or by rules issued pursuant to § 47-1267, the unpaid balance shall accrue interest at the rate of 1.5% per month or any fraction thereof, which shall be added to the unpaid balance.

(b) A nursing facility that fails to file a report required under this chapter, or by rules issued pursuant to § 47-1267, shall pay an administrative penalty equal to 5% of the monthly assessment for each month, or any fraction thereof, that the failure to file continues. The total administrative penalty shall not exceed 25% of the nursing facility's annual assessment.

(c) A nursing facility that knowingly provides false information in a report required by this chapter, or by rules issued pursuant to § 47-1267, shall be subject to a penalty equal to the tax owed.

(d) The District of Columbia shall have a lien upon the real and personal property located in the District of Columbia of the nursing facility for any assessments, interest, or administrative penalties that are due under this chapter, or rules issued pursuant to § 47-1267. The District of Columbia shall have the priority of a secured creditor.

(e) Any action brought to enforce the provisions of subsection (c) of this section shall be brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia in the name of the District of Columbia.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 1242(b), 52 DCR 7503.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-33, in subsec. (a), deleted the second sentence, which had read as follows: "The Chief Financial Officer may arrange a payment plan for the amount of the assessment and interest in arrears."; and, in subsec. (c), substituted "equal to the tax owed." for "of not more than \$1,000".

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 1242(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

For Law 16-33, see notes following § 47-308.01.

§ 47-1265. CONFIDENTIALITY; AUDIT; DETERMINATION OR REDETERMINATION OF ASSESSMENT.

(a) Unless otherwise provided by law or necessary to carry out the provisions of this chapter, proprietary information submitted by a nursing facility under this chapter is confidential and shall not be disclosed by the Mayor.

(b) The Mayor may audit the information required to be reported by a nursing facility under this chapter, or any rules issued pursuant to § 47-1267, and may use the audited information to determine or redetermine the amount of the assessment due under this chapter.

(c) The Mayor may summon any person to appear before the Mayor to give testimony or answer interrogatories, or to produce books, records, or other pertinent information relating to matters subject to an audit. The summons may be served by a member of the Metropolitan Police Department or by registered mail or certified mail addressed to the person at the person's last dwelling place or principal place of business. A verified return by the person serving the summons, or, in the case of service by registered or certified mail, the return post office receipt signed by the person served, shall be proof of service.

(d) The Mayor may report a person who, having been served pursuant to subsection (c) of this section, neglects or refuses to obey the summons, to the Superior Court of the District of Columbia. The Superior

Court may compel obedience to the summons to the same extent as witnesses may be compelled to obey subpoenas of the Superior Court.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

§ 47-1266. APPEALS.

(a)(1) A nursing facility may contest the amount of an assessment, including any interest or administrative penalties, imposed under this chapter, or by rules issued pursuant to § 47-1267, by filing a notice of appeal with the Office of Administrative Hearings within 60 days after the date of the notice of:

(A) An annual assessment under § 47-1263(a);

(B) A determination or redetermination of an assessment based on an audit of information under § 47-1265(b); or

(C) An imposition of interest or administrative penalties under § 47-1264.

(b) The Office of Administrative Hearings shall conduct a hearing on the appeal filed under subsection (a) of this section subject to the provisions of subchapter 1 of Chapter 5 of Title 2 governing adjudication of contested cases, and pursuant to the rules of the Office of Administrative Hearings.

(c) Before filing an appeal pursuant to subsection (a) of this section, the nursing facility shall first pay to the Mayor the assessment, together with any administrative penalties and interest due on the assessment. In no case shall the filing of a notice of appeal act as a stay on the payment of the assessment, interest, or administrative penalties.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

§ 47-1267. RULES.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

§ 47-1268. FEDERAL DETERMINATIONS; SUSPENSION AND TERMINATION OF ASSESSMENT.

(a) If the federal government determines that an assessment imposed on nursing facilities pursuant to this chapter does not satisfy the requirements for federal financial participation set forth in section 1903(w) of the Social Security Act, approved July 30, 1965 (70 Stat. 349; 42 U.S.C. § 1396b(w)), monies collected pursuant to the assessment shall be refunded to the nursing facilities that paid the assessment and the assessment shall be null and void as of the effective date of the federal determination.

(b) An adverse determination under subsection (a) of this section with respect to an assessment imposed on one or more, but not all nursing facilities pursuant to this chapter shall not affect the validity, amount, applicable rate, or any other terms of an assessment on other nursing facilities imposed by this chapter. An adverse determination with respect to all assessments imposed by this chapter shall be governed by subsection (a) of this section.

(c) Notwithstanding any other provision of this chapter, if the federal government determines that any exclusions from nursing facilities specified under this chapter would prevent an assessment imposed by this chapter from qualifying as a broad-based health care related tax, as that term is defined in section 1903(w)(3)(B) of the Social Security Act, approved July 30, 1965 (79 Stat. 349; 42 U.S.C. § 1396b(w)(3)(B)), the exclusions shall not be made.

(d) The assessment imposed under § 47-1263(a) shall not be due at the time required by this chapter, or by rules issued pursuant to § 47-1267, if the Department suspends or postpones regular Medicaid payment to nursing facilities beyond the regular monthly payment cycle, but shall be due when the regular monthly payment cycle resumes.

(e)(1) The assessment imposed under § 47-1263(a) shall be null and void if either of the following occurs:

(A) The case mix rate methodology for nursing facilities is altered or amended in a way that has the effect of reducing or adversely affecting the Medicaid rates for nursing facilities; or

(B) In subsequent fiscal years, general funding levels for Medicaid rates for nursing facilities fall below the fiscal year 2005 level of funding, on a per-Medicaid-resident, per-day basis.

(2) For purposes of this subsection, the term "effect of reducing or adversely affecting the Medicaid rates" means the overall average Medicaid per diem rate for nursing facilities is decreased or the altered or amended Medicaid rates, on an overall average per diem basis, are less than they would have been if the case mix reimbursement methodology had not been changed.

(f) If the assessment imposed under § 47-1263(a) becomes null and void, for any reason, the Mayor may seek to amend the State Medicaid plan to adjust the case mix reimbursement methodology.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.

§ 47-1269. APPLICABILITY.

This chapter shall apply as of the effective date of final rules implementing a case mix reimbursement methodology issued pursuant to [§ 4-204.62(b)], or as of April 1, 2005, whichever is later.

(Dec. 7, 2004, D.C. Law 15-205, § 5202(c), 51 DCR 8441.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5202(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative History of Laws

For Law 15-205, see notes following § 47-1261.