

E AND R AMENDMENTS TO LB 600

Introduced by Larson, 40, Chairperson Enrollment and Review

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Sections 1 to 30 of this act shall be  
4 known and may be cited as the Nursing Facility Quality Assurance  
5 Assessment Act.

6           Sec. 2. For purposes of the Nursing Facility Quality  
7 Assurance Assessment Act, the definitions found in sections 3 to 16  
8 of this act apply.

9           Sec. 3. Bed-hold day means a day during which a bed is  
10 kept open pursuant to the bed-hold policy of the nursing facility  
11 or skilled nursing facility which permits a resident to return to  
12 the facility and resume residence in the facility after a transfer  
13 to a hospital or therapeutic leave.

14           Sec. 4. Continuing care retirement community means an  
15 operational entity or related organization which, under a life  
16 care contract, provides a continuum of services, including, but not  
17 limited to, independent living, assisted-living, nursing facility,  
18 and skilled nursing facility services within the same or a  
19 contiguous municipality as defined in section 18-2410.

20           Sec. 5. Department means the Department of Health and  
21 Human Services.

22           Sec. 6. Gross inpatient revenue means the revenue  
23 paid to a nursing facility or skilled nursing facility for

1 inpatient resident care, room, board, and services less contractual  
2 adjustments, bad debt, and revenue from sources other than  
3 operations, including, but not limited to, interest, guest meals,  
4 gifts, and grants.

5 Sec. 7. Hospital has the meaning found in section 71-419.

6 Sec. 8. Life care contract means a contract between  
7 a continuing care retirement community and a resident of such  
8 community or his or her legal representative which:

9 (1) Includes each of the following express promises:

10 (a) The community agrees to provide services at any level  
11 along the continuum of care levels offered by the community;

12 (b) The base room fee will not increase as a resident  
13 transitions among levels of care, excluding any services or items  
14 upon which both parties initially agreed; and

15 (c) If the resident outlives and exhausts resources to  
16 pay for services, the community will continue to provide services  
17 at a reduced price or free of charge to the resident, excluding  
18 any payments from medicare, the medical assistance program, or a  
19 private insurance policy for which the resident is eligible and the  
20 community is certified or otherwise qualified to receive; and

21 (2) Requires the resident to agree to pay an entry fee to  
22 the community and to remain in the community for a minimum length  
23 of time subject to penalties against the entry fee.

24 Sec. 9. Medical assistance program means the medical  
25 assistance program established pursuant to the Medical Assistance  
26 Act.

27 Sec. 10. Medicare day means any day of resident stay

1 funded by medicare as the payment source and includes a day funded  
2 under Medicare Part A, under a Medicare Advantage or special needs  
3 plan, or under medicare hospice.

4           Sec. 11. Medicare upper payment limit means the  
5 limitation established by 42 C.F.R. 447.272 establishing a maximum  
6 amount of payment for services under the medical assistance program  
7 to nursing facilities, skilled nursing facilities, and hospitals.

8           Sec. 12. Nursing facility has the meaning found in  
9 section 71-424.

10           Sec. 13. Quality assurance assessment means the  
11 assessment imposed under section 17 of this act.

12           Sec. 14. Resident day means the calendar day in which  
13 care is provided to an individual resident of a nursing facility  
14 or skilled nursing facility that is not reimbursed under medicare,  
15 including the day of admission but not including the day of  
16 discharge, unless the dates of admission and discharge occur on the  
17 same day, in which case the resulting number of resident days is  
18 one resident day.

19           Sec. 15. Skilled nursing facility has the meaning found  
20 in section 71-429.

21           Sec. 16. Total resident days means the total number  
22 of residents residing in the nursing facility or skilled nursing  
23 facility between July 1 and June 30, multiplied by the number of  
24 days each such resident resided in that nursing facility or skilled  
25 nursing facility. If a resident is admitted and discharged on the  
26 same day, the resident shall be considered to be a resident for  
27 that day.

1           Sec. 17. Except for facilities which are exempt under  
2 section 18 of this act and facilities referred to in section 19  
3 of this act, each nursing facility or skilled nursing facility  
4 licensed under the Health Care Facility Licensure Act shall pay  
5 a quality assurance assessment based on total resident days,  
6 including bed-hold days, less medicare days, for the purpose  
7 of improving the quality of nursing facility or skilled nursing  
8 facility care in this state. The assessment shall be three dollars  
9 and fifty cents for each resident day for the preceding calendar  
10 quarter. The assessment in the aggregate shall not exceed the  
11 amount stated in section 20 of this act.

12           Sec. 18. The department shall exempt the following  
13 providers from the quality assurance assessment:

14           (1) State-operated veterans homes listed in section  
15 80-315;

16           (2) Nursing facilities and skilled nursing facilities  
17 with twenty-six or fewer licensed beds; and

18           (3) Continuing care retirement communities.

19           Sec. 19. The department shall reduce the quality  
20 assurance assessment for either certain high-volume medicaid  
21 nursing facilities or skilled nursing facilities with high patient  
22 volumes to meet the redistribution tests in 42 C.F.R. 433.68(e)(2).  
23 Under this section, the assessment shall be based on total resident  
24 days, including bed-hold days, less medicare days, for the purpose  
25 of improving the quality of nursing facility or skilled nursing  
26 facility care in this state.

27           Sec. 20. The aggregate quality assurance assessment shall

1 not exceed the lower of the amount necessary to accomplish the  
2 uses specified in section 26 of this act or the maximum amount  
3 of gross inpatient revenue that may be assessed pursuant to the  
4 indirect guarantee threshold as established pursuant to 42 C.F.R.  
5 433.68(f)(3)(i). The aggregate quality assurance assessment shall  
6 be imposed on a per-nonmedicare-day basis.

7           Sec. 21. Each nursing facility or skilled nursing  
8 facility shall pay the quality assurance assessment to the  
9 department on a quarterly basis after the medical assistance  
10 payment rates of the facility are adjusted pursuant to section 26  
11 of this act. The department shall prepare and distribute a form  
12 on which a nursing facility or skilled nursing facility shall  
13 calculate and report the quality assurance assessment. A nursing  
14 facility or skilled nursing facility shall submit the completed  
15 form with the quality assurance assessment no later than thirty  
16 days following the end of each calendar quarter.

17           Sec. 22. The department shall collect the quality  
18 assurance assessment and remit the assessment to the State  
19 Treasurer for credit to the Nursing Facility Quality Assurance  
20 Fund. No proceeds from the quality assurance assessment, including  
21 the federal match, shall be placed in the General Fund unless  
22 otherwise provided in the Nursing Facility Quality Assurance  
23 Assessment Act.

24           Sec. 23. A nursing facility or skilled nursing facility  
25 shall report the quality assurance assessment on a separate line  
26 of the medicaid cost report of the nursing facility or skilled  
27 nursing facility. The quality assurance assessment shall be treated

1 as a separate component in developing rates paid to nursing  
2 facilities or skilled nursing facilities and shall not be included  
3 with existing rate components. In developing a rate component for  
4 the quality assurance assessment, the assessment shall be treated  
5 as a direct pass-through to each nursing facility and skilled  
6 nursing facility, retroactive to the operative date of this act.  
7 The quality assurance assessment shall not be subject to any cost  
8 limitation or revenue offset.

9           Sec. 24. If the department determines that a nursing  
10 facility or skilled nursing facility has underpaid or overpaid  
11 the quality assurance assessment, the department shall notify the  
12 nursing facility or skilled nursing facility of the unpaid quality  
13 assurance assessment or refund due. Such payment or refund shall  
14 be due or refunded within thirty days after the issuance of the  
15 notice.

16           Sec. 25. (1) A nursing facility or skilled nursing  
17 facility that fails to pay the quality assurance assessment within  
18 the timeframe specified in section 21 or 24 of this act, whichever  
19 is applicable, shall pay, in addition to the outstanding quality  
20 assurance assessment, a penalty of one and one-half percent of the  
21 quality assurance assessment amount owed for each month or portion  
22 of a month that the assessment is overdue. If the department  
23 determines that good cause is shown for failure to pay the quality  
24 assurance assessment, the department shall waive the penalty or a  
25 portion of the penalty.

26           (2) If a quality assurance assessment has not been  
27 received by the department within thirty days following the quarter

1 for which the assessment is due, the department shall withhold  
2 an amount equal to the quality assurance assessment and penalty  
3 owed from any payment due such nursing facility or skilled nursing  
4 facility under the medical assistance program.

5 (3) The quality assurance assessment shall constitute a  
6 debt due the state and may be collected by civil action, including,  
7 but not limited to, the filing of tax liens, and any other method  
8 provided for by law.

9 (4) The department shall remit any penalty collected  
10 pursuant to this section to the State Treasurer for distribution  
11 in accordance with Article VII, section 5, of the Constitution of  
12 Nebraska.

13 Sec. 26. (1) The Nursing Facility Quality Assurance  
14 Fund is created. Interest and income earned by the fund shall  
15 be credited to the fund. Any money in the fund available for  
16 investment shall be invested by the state investment officer  
17 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
18 State Funds Investment Act.

19 (2) The department shall use the Nursing Facility  
20 Quality Assurance Fund, including the matching federal financial  
21 participation under Title XIX of the federal Social Security  
22 Act, as amended, for the purpose of enhancing rates paid under  
23 the medical assistance program to nursing facilities and skilled  
24 nursing facilities, exclusive of the reimbursement paid under the  
25 medical assistance program, and shall not use the fund to replace  
26 or offset existing state funds paid to nursing facilities and  
27 skilled nursing facilities for providing services under the medical

1 assistance program.

2 (3) The Nursing Facility Quality Assurance Fund shall  
3 also be used as follows:

4 (a) To pay the department a reasonable administrative  
5 fee for enforcing and collecting the quality assurance assessment  
6 out of the Nursing Facility Quality Assurance Fund in addition to  
7 any federal medical assistance matching funds. The State Treasurer  
8 shall credit the state share of the administrative fee out of the  
9 proceeds of the Nursing Facility Quality Assurance Fund to the  
10 Health and Human Services Cash Fund;

11 (b) To pay the share under the medical assistance program  
12 of a quality assurance assessment as an add-on to the rate under  
13 the medical assistance program for costs incurred by a nursing  
14 facility or skilled nursing facility. This rate add-on shall  
15 account for the cost incurred by a nursing facility or skilled  
16 nursing facility in paying the quality assurance assessment but  
17 only with respect to the pro rata portion of the assessment that  
18 correlates with the resident days in the nursing facility or  
19 skilled nursing facility that are attributable to residents funded  
20 by the medical assistance program;

21 (c) To rebase rates under the medical assistance program  
22 in accordance with the medicaid state plan as defined in section  
23 68-907. In calculating rates, the proceeds of the quality assurance  
24 assessments and federal match not utilized under subdivisions  
25 (3) (a) and (b) of this section shall be used to enhance rates by  
26 increasing the annual inflation factor to the extent allowed by  
27 such proceeds and any funds appropriated by the Legislature; and



1           (d) To increase quality assurance payments to fund  
2 covered services to recipients of benefits from the medical  
3 assistance program within medicare upper payment limits as  
4 determined by the department following consultation with nursing  
5 facilities and skilled nursing facilities.

6           Sec. 27. (1) On or before September 30, 2011, or after  
7 that date if allowable by the Centers for Medicare and Medicaid  
8 Services of the United States Department of Health and Human  
9 Services, the Nebraska Department of Health and Human Services  
10 shall submit an application to the Centers for Medicare and  
11 Medicaid Services amending the medicaid state plan as defined in  
12 section 68-907 by requesting a waiver of the uniformity requirement  
13 pursuant to 42 C.F.R. 433.68(e) to exempt certain facilities from  
14 the quality assurance assessment and to permit other facilities to  
15 pay the quality assurance assessment at lower rates.

16           (2) The quality assurance assessment is not due and  
17 payable until an amendment to the medicaid state plan which  
18 increases the rates paid to nursing facilities and skilled nursing  
19 facilities is approved by the Centers for Medicare and Medicaid  
20 Services and the nursing facilities and skilled nursing facilities  
21 have been compensated retroactively for the increased rate for  
22 services pursuant to section 26 of this act.

23           (3) If the waiver requested under this section is not  
24 approved by the Centers for Medicare and Medicaid Services, the  
25 department may resubmit the waiver application to address any  
26 changes required by the Centers for Medicare and Medicaid Services  
27 in the rejection of such application, including the classes of

1 facilities exempt and the rates or amounts for quality assurance  
2 assessments, if such changes do not exceed the authority and  
3 purposes of the Nursing Facility Quality Assurance Assessment Act.

4       Sec. 28. (1) The department shall discontinue collection  
5 of the quality assurance assessments if:

6           (a) The waiver requested pursuant to section 27 of this  
7 act or the medicaid state plan amendment reflecting the payment  
8 rates in section 26 of this act is given final disapproval by the  
9 Centers for Medicare and Medicaid Services of the United States  
10 Department of Health and Human Services;

11           (b) In any fiscal year, the state appropriates funds for  
12 nursing facility or skilled nursing facility rates at an amount  
13 that reimburses nursing facilities or skilled nursing facilities  
14 at a lesser percentage than the median percentage appropriated to  
15 other classes of providers of covered services under the medical  
16 assistance program;

17           (c) If money in the Nursing Facility Quality Assurance  
18 Fund is appropriated, transferred, or otherwise expended for any  
19 use other than uses permitted pursuant to the Nursing Facility  
20 Quality Assurance Assessment Act; or

21           (d) If federal financial participation to match  
22 the quality assurance assessments made under the act becomes  
23 unavailable under federal law. In such case, the department shall  
24 terminate the collection of the quality assurance assessments  
25 beginning on the date the federal statutory, regulatory, or  
26 interpretive change takes effect.

27       (2) If collection of the quality assurance assessment is

1 discontinued as provided in this section, the money in the Nursing  
2 Facility Quality Assurance Fund shall be returned to the nursing  
3 facilities or skilled nursing facilities from which the quality  
4 assurance assessments were collected on the same basis as the  
5 assessments were assessed.

6           Sec. 29. A nursing facility or skilled nursing facility  
7 aggrieved by an action of the department under the Nursing Facility  
8 Quality Assurance Assessment Act may file a petition for hearing  
9 with the director of the Division of Medicaid and Long-Term Care  
10 of the department. The hearing shall be conducted pursuant to  
11 the Administrative Procedure Act and rules and regulations of the  
12 department.

13           Sec. 30. The department may adopt and promulgate rules  
14 and regulations to carry out the Nursing Facility Quality Assurance  
15 Assessment Act.

16           Sec. 31. This act becomes operative on July 1, 2011.

17           Sec. 32. Since an emergency exists, this act takes effect  
18 when passed and approved according to law.