

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: S3/2/09

# A Bill

SENATE BILL 354

5 By: Senators Laverty, Altes, G. Baker, Bookout, Broadway, Bryles, Capps, Faris, Horn, G. Jeffress, J.  
6 Jeffress, B. Johnson, D. Johnson, J. Key, Miller, Salmon, T. Smith, Steele, Teague, R. Thompson, Trusty,  
7 Wilkinson, D. Wyatt

8 By: Representatives Saunders, Harrelson, T. Rogers, *Abernathy, Adcock, Allen, T. Baker, Betts, Blount,*  
9 *T. Bradford, J. Brown, M. Burris, Carnine, Cash, Cooper, D. Creekmore, Davis, J. Dickinson, Dunn,*  
10 *Everett, Gaskill, George, R. Green, Hardy, Hawkins, House, Hoyt, D. Hutchinson, Kerr, Kidd, Lea,*  
11 *Lovell, Lowery, Maloch, Maxwell, McCrary, McLean, Moore, Nix, Overbey, Perry, Pierce, Powers,*  
12 *Ragland, Rainey, Reep, J. Roebuck, J. Rogers, Sample, Shelby, G. Smith, L. Smith, Stewart, Tyler, Webb,*  
13 *Wells, B. Wilkins, Williams, Wills, Word*

## For An Act To Be Entitled

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16 *AN ACT TO ESTABLISH A PROVIDER FEE FOR*  
17 *INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH*  
18 *DEVELOPMENTAL DISABILITIES; AND FOR OTHER*  
19 *PURPOSES.*

### Subtitle

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22 *AN ACT TO ESTABLISH A PROVIDER FEE FOR*  
23 *INTERMEDIATE CARE FACILITIES FOR*  
24 *INDIVIDUALS WITH DEVELOPMENTAL*  
25 *DISABILITIES.*

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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29  
30 *SECTION 1. Arkansas Code Title 20, Chapter 48 is amended to add an*  
31 *additional subchapter to read as follows:*

32 *20-48-901. Definitions.*

33 *As used in this subchapter:*

34 *(1)(A) "Gross receipts" means all compensation paid to*  
35 *intermediate care facilities for individuals with developmental disabilities*  
36 *for services provided to residents including, without limitation, client*



1 participation.

2 (B) "Gross receipts" does not include charitable  
3 contributions;

4 (2)(A) "Intermediate care facility for individuals with  
5 developmental disabilities" means a residential institution maintained for  
6 the care and training of persons with developmental disabilities, including  
7 without limitation mental retardation;

8 (B) "Intermediate care facility for individuals with  
9 developmental disabilities" has the same meaning as "intermediate care  
10 facility for the mentally retarded" or "ICF/MR" under federal law.

11 (C) "Intermediate care facility for individuals with  
12 developmental disabilities" does not include:

13 (i) Offices of private physicians and surgeons;

14 (ii) Residential care facilities;

15 (iii) Assisted living facilities;

16 (iv) Hospitals;

17 (v) Institutions operated by the federal government;

18 (vi) Life care facilities;

19 (vii) Nursing facilities; or

20 (viii) A facility which is conducted by and for  
21 those who rely exclusively upon treatment by prayer for healing in accordance  
22 with tenets or practices of a recognized religious denomination; and

23 (3) "Medicaid" means the medical assistance program established  
24 by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it  
25 existed on January 1, 2009, and administered by the Division of Medical  
26 Services of the Department of Human Services.

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28 20-48-902. Calculation of provider fee.

29 (a)(1) There is levied a provider fee on intermediate care facilities  
30 for individuals with developmental disabilities to be calculated in  
31 accordance with this section.

32 (2)(A) The provider fee shall be an amount calculated by the  
33 Division of Medical Services of the Department of Human Services to produce  
34 an aggregate provider fee payment equal to six percent (6%) of the aggregate  
35 gross receipts of all intermediate care facilities for individuals with  
36 developmental disabilities.

1 (B) Aggregate provider fees shall not equal or exceed an  
2 amount measured on a state fiscal year basis that may cause a reduction in  
3 federal financial participation in Medicaid.

4 (b)(1)(A) The provider fee of an intermediate facility for individuals  
5 with developmental disabilities shall be payable in monthly payments.

6 (B) Each monthly payment shall be due and payable for the  
7 previous month by the thirtieth day of each month.

8 (2) The Division of Medical Services of the Department of Human  
9 Services shall seek approval from the Centers for Medicare and Medicaid  
10 Services to treat the provider fee of an intermediate care facility for  
11 individuals with developmental disabilities as an allowable cost for Medicaid  
12 reimbursement purposes.

13 (c) No intermediate care facility for individuals with developmental  
14 disabilities shall be guaranteed, expressly or otherwise, that any additional  
15 moneys paid to the intermediate care facility for individuals with  
16 developmental disabilities will equal or exceed the amount of its provider  
17 fee.

18 (d)(1) The Division of Medical Services of the Department of Human  
19 Services shall insure that the rate of assessment of the provider fee  
20 established in this section maximizes federal funding to the fullest extent  
21 possible.

22 (2) If the division determines that the rate of assessment of  
23 the provider fee established in this section equals or exceeds the maximum  
24 rate of assessment that federal law allows without reduction in federal  
25 financial participation in Medicaid, the division shall lower the rate of  
26 assessment of the provider fee to a rate that maximizes federal funding to  
27 the fullest extent possible.

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29 20-49-903. Administration.

30 (a) The Director of the Division of Medical Services of the Department  
31 of Human Services shall administer this subchapter and shall be subject to  
32 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

33 (b)(1) In accordance with the Arkansas Administrative Procedure Act, §  
34 25-15-201 et seq., the Division of Medical Services of the Department of  
35 Human Services shall promulgate rules and prescribe forms for:

36 (A) The proper imposition and collection of the provider

1 fee;

2 (B)(i) The enforcement of the subchapter, including  
3 without limitation license or certification nonrenewal, letters of caution,  
4 sanctions, or fines.

5 (ii)(a) The fine for failure to comply with payment  
6 and reporting requirements shall be at least one thousand dollars (\$1,000)  
7 but no more than one thousand five hundred dollars (\$1,500).

8 (b) The fine and if applicable, the  
9 outstanding balance of the provider fee, shall accrue interest at the maximum  
10 rate permitted by law from the date the fine and, if applicable, the provider  
11 fee, is due until payment of the outstanding balance of the fine and if  
12 applicable, the provider fee;

13 (C) The format for reporting gross receipts; and

14 (D) The administration of this subchapter.

15 (2) The rules shall not grant any exceptions to, or exceptions  
16 from, the provider fee.

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18 20-49-904. Use of funds.

19 (a)(1) The provider fee assessed and collected under this subchapter  
20 shall be deposited in a designated account within the Arkansas Medicaid  
21 Program Trust Fund.

22 (2) The designated account shall be separate and distinct from  
23 the general fund and shall be supplementary to the Arkansas Medicaid Program  
24 Trust Fund.

25 (3) The designated account moneys in the trust fund and the  
26 matching federal financial participation under Title XIX of the Social  
27 Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009,  
28 shall be used only for:

29 (A) Continued operation of and rate increases for:

30 (i) Intermediate care facilities for individuals  
31 with developmental disabilities;

32 (ii) Developmental Day Treatment Clinic Services  
33 provided to persons with developmental disabilities by providers licensed by  
34 the Division of Developmental Disabilities of the Department of Human  
35 Services under § 20-48-101 et seq.; and

36 (iii) Services provided to persons with

1 developmental disabilities under the Alternative Community Services Waiver  
2 Program by providers certified to provide waiver services by the Division of  
3 Developmental Disabilities of the Department of Human Services;

4 (B) Expansion of the Alternative Community Services Waiver  
5 Program to serve more persons with developmental disabilities than is  
6 approved under the waiver program as of March 1, 2009;

7 (C) The Division of Medical Services of the Department of  
8 Human Services; and

9 (D) Public guardianship of adults.

10 (b)(1) The designated account moneys in the trust fund from the  
11 provider fee on intermediate care facilities for individuals with  
12 developmental disabilities that are unused at the end of a fiscal year shall  
13 be carried forward.

14 (2) The designated account moneys in the trust fund from the  
15 provider fee on intermediate care facilities for individuals with  
16 developmental disabilities may not be used to supplant other local, state, or  
17 federal funds.

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