

AN ACT

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2006 Spring  
Supp.

West Group  
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 47 of the District of Columbia Official Code to implement an Intermediate Care Facility for the Mentally Retarded provider tax and establish a fund designated as the Stevie Sellows Quality Improvement Fund, which shall be separate from the General Fund of the District of Columbia and shall be used for quality improvement at these facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Stevie Sellows Intermediate Care Facility for the Mentally Retarded Quality Improvement Act of 2005".

Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for the title is amended by adding a new chapter heading to read as follows:

"12D. Stevie Sellows Quality Improvement Fund; ICF-MR Assessment . . . . 47-1270".

New Chapter  
12D  
New §§ 47-  
1270 - 47-  
1278

(b) A new Chapter 12D is added to read as follows:

“Chapter 12D

“Stevie Sellows Quality Improvement Fund; ICF-MR Assessment.

“Section

“47-1270. Definitions.

“47-1271. ICF-MR Quality Improvement Fund.

“47-1272. Qualified Facility; eligibility; inspection by the MAA; fund recovery; adverse action prohibition.

“47-1273. ICF-MR assessment.

“47-1274. Interest and penalties.

“47-1275. Confidentiality; audit; determination or redetermination of assessment.

“47-1276. Appeals.

“47-1277. Rules.

“47-1278. Federal determinations; suspension and termination of assessment.

"§ 47-1270. Definitions.

"For the purposes of this chapter, the term:

"(1) "Fund" means the Stevie Sellows Quality Improvement Fund established by this chapter.

"(2) "Gross revenue" means the sum of revenue for provisions of services to consumers with developmental disabilities. For purposes of this chapter, gross revenues does not include charitable contributions or interest income.

"(3) "Intermediate care facility for the mentally retarded" and "ICF-MR" have the same meaning as under section 1905(d) of the Social Security Act (42 U.S.C.S. § 1396d(d)), but does not include a facility operated by the federal government.

"(4) "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 section 1 of An Act To enable the District of Columbia to receive Federal financial assistance under title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), and administered by the Department of Health.

"(5) "Quality of care improvements" means improving the quality of care for consumers with developmental disabilities by efforts to reduce turnover and increase the qualifications of the employees, excluding managers, administrators, and contract employees, such as an increase in salaries or benefits, or an increase in training and educational opportunities.

"(6) "Resident" means a person receiving services in an ICF-MR.

"(7) "Reimbursement methodology" means the prospective Medicaid payment rate system for intermediate care facilities for the mentally retarded.

"§ 47-1271. ICF-MR Quality Improvement Fund.

"(a) There is established a fund designated as the Stevie Sellows Quality Improvement Fund ("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, and any and all interest and penalties collected under § 47-1274, 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.

"(b) The Fund shall be used to:

"(1) Fund quality of care improvements for those facilities who meet the requirements of § 47-1272 of up to \$2.50 per hour; and

"(2) Cover administrative costs of the Medical Assistance Administration ("MAA") in administering the Fund, which these costs shall not be more than 5% of the Fund's total revenues for a fiscal year.

“(c) Amounts remaining in the Fund after the disbursements required by subsection (b) of this section shall be used for an increase in the Medicaid per diem reimbursement rate for each ICF-MR above the fiscal year 2006 rate.

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

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

“§ 47-1272. Qualified Facility; eligibility; inspection by the MAA; fund recovery; adverse action prohibition.

“(a) To be eligible to receive payments from the Fund for a fiscal year, an ICF-MR shall submit the following to the MAA by June 30 of the prior fiscal year:

“(1) Proof of a legally binding written commitment to fund quality of care improvements as defined in § 47-1270;

“(2) Proof of an enforcement mechanism of the written commitment to fund quality of care improvements, such as arbitration, that is:

“(A) Expeditious;

“(B) Uses a neutral decision maker;

“(C) Economical for the employees; and

“(D) Available to the employees or their representatives; and

“(3) Proof that the facility has provided written notice of the terms of the commitment and the availability of the enforcement mechanism to the relevant employees or their recognized representatives.

“(b) The MAA shall terminate the quality improvement funding for a facility if it finds the binding written commitment has expired and does not otherwise remain enforceable.

“(c) The MAA may inspect relevant payroll and personnel records of facilities receiving funds pursuant to this section to ensure that the quality of care improvements provided for in this section have been implemented.

“(d) In addition to the remedies provided in § 47-1274, the Department of Health may retroactively recover funds provided to a facility for quality of care improvements incurred after expiration of the commitment or if a facility has failed to maintain the commitment.

“(e) Enforcement or attempted enforcement of the written commitment pursuant to § 47-1272 shall not constitute a basis for adverse action by a facility against an employee.

“(f) Documents submitted by the ICF-MR to show its compliance with § 47-1272 shall be available for public review.

§ 47-1273. Assessments on ICF-MRs.

“(a) Except as provided in § 47-1278(d), each ICF-MR in the District of Columbia shall pay an assessment of 1.5% per annum of gross revenue.

“(b) The Mayor shall provide notice to each ICF-MR of the amount of the assessment for the ensuing fiscal year no later than September 1.

“(c) Each ICF-MR shall pay the assessment required by subsection (a) of this section in quarterly installments.

“(d) Each ICF-MR shall report gross resident revenue for the period upon which the assessment for a fiscal year is to be determined by submitting an audited financial statement and other information for that period as the Mayor may prescribe by rules issued pursuant to § 47-1277.

“(e) If the total amount of the assessments to be collected for a fiscal year is inadequate to cover disbursements required under § 47-1271(b), the Mayor may raise the assessment up to the maximum allowed under federal law.

“§ 47-1274. Interest and penalties.

“(a)(1) If an ICF-MR fails to pay the full amount of an assessment by the date required by this chapter, or by rules issued pursuant to § 47-1277, 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.

“(2) The Chief Financial Officer of the District of Columbia may arrange a payment plan for the amount of the assessment and interest in arrears.

“(b) If an ICF-MR fails to file a report required under this chapter, or by rules issued pursuant to § 47-1277, it shall be subject to an administrative penalty equal to 5% of the monthly assessment for each month, or any fraction thereof, that the failure to file continues; except, that the total administrative penalty shall not exceed 25% of the ICF-MR's annual assessment.

“(c)(1) If an ICF-MR that knowingly provides false information in a report required by this chapter, or by rules issued pursuant to § 47-1277, it shall be subject to a penalty of up to \$10,000.

“(2) Any action brought to enforce this subsection 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.

“(d) The District of Columbia shall have:

“(1) A lien upon the real and personal property located in the District of Columbia of the ICF-MR for any assessments, interest, or administrative penalties that are due under this chapter, or rules issued pursuant to § 47-1277; and

“(2) The priority of a secured creditor.

“§ 47-1275. Confidentiality; audit; determination of assessment.

“(a) Unless otherwise provided by law or necessary to carry out the provisions of this chapter, proprietary information submitted by an ICF-MR under this chapter is confidential and shall not be disclosed.

“(b) The Mayor may audit the information required to be reported by an ICF-MR under this chapter, or any rules issued pursuant to § 47-1277, and may use the audited information to determine, or redetermine, the amount of an assessment due under this chapter.

“(c)(1) The Mayor may summon any person to appear to give testimony or answer

interrogatories, or to produce books, records, or other information relating to matters subject to an audit.

“(2) The summons shall be served by a member of the Metropolitan Police Department or by registered mail or certified mail addressed to the person at the last known dwelling place or principal place of business.

“(3) 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.

“§ 47-1276. Appeals.

“(a) An ICF-MR may contest the amount of an assessment, including any interest or administrative penalties, imposed under this chapter, or by rules issued pursuant to § 47-1277, by filing a notice of appeal with the Office of Administrative Hearings within 60 days after the date of the notice of:

“(1) An annual assessment under § 47-1273;

“(2) A determination or redetermination of an assessment based on an audit of information under § 47-1275; or

“(3) An imposition of interest or administrative penalties under § 47-1274.

“(b) The Office of Administrative Hearings shall conduct a hearing on the appeal filed under subsection (a) of this section subject to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and pursuant to the rules of the Office of Administrative Hearings.

“(c) Before filing an appeal pursuant to subsection (a) of this section, the ICF-MR shall pay 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.

“§ 47-1277. Rules.

“The Mayor, in consultation with the Department of Health and ICF-MR and employee representatives, shall issue rules to implement the provisions of this chapter.

“§ 47-1278. Federal determinations; suspension and termination of assessment.

“(a) If the federal government determines that an assessment imposed on an ICF-MR 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 and the assessment shall be null and void.

“(b)(1) An determination adverse to the District under subsection (a) of this section with respect to an assessment imposed on one or more, but not all ICF-MRs pursuant to this chapter shall not affect the validity, amount, applicable rate, or any other terms of an assessment on other facilities imposed by this chapter.

“(2) 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 ICF-MRs 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 § 47-1273 shall not be due at the time required by this chapter, or by rules issued pursuant to § 47-1277, if the Department of Health suspends or postpones regular Medicaid payment to ICF-MRs beyond the regular monthly payment cycle, but shall be due when the regular monthly payment cycle resumes.

“(e) The assessment imposed under § 47-1273 shall be null and void if either of the following occurs:

“(1) The rate methodology for ICF-MRs is altered or amended such that the overall average Medicaid per diem rate for ICF-MRs is decreased or on, an overall average per diem basis, the altered or amended rates are less than they would have been if the reimbursement methodology had not been changed; or

“(2) Following fiscal year 2006, general funding levels for Medicaid rates for ICF-MRs fall below the fiscal year 2006 level of funding, on a per-Medicaid-resident, per-day basis.”.

Sec. 3. Applicability.

Implementation of this act shall be subject to appropriations.

Note,  
§ 47-1270

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

**ENROLLED ORIGINAL**

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

---

Chairman  
Council of the District of Columbia

---

Mayor  
District of Columbia