

HOUSE BILL NO. 93

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

IN THE HOUSE

JANUARY 1, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON HUMAN SERVICES & AGING.

JANUARY 7, 1991                   FIRST READING.

MARCH 27, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 28, 1991                   PRINTING REPORT.

APRIL 3, 1991                   SECOND READING, DO PASS.  
  
ON MOTION, SEGREGATED FROM COMMITTEE  
OF WHOLE REPORT AND REREFERRED TO COMMITTEE  
ON APPROPRIATIONS.

APRIL 4, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.  
  
SECOND READING, DO PASS AS AMENDED.  
  
ON MOTION, RULES SUSPENDED. BILL  
PLACED ON THIRD READING.  
  
THIRD READING, PASSED.  
AYES, 60; NOES, 38.

APRIL 5, 1991                   ENGROSSING REPORT.  
  
TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 5, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON TAXATION.  
  
FIRST READING.

APRIL 13, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 16, 1991 SECOND READING, CONCURRED IN.  
APRIL 17, 1991 THIRD READING, CONCURRED IN.  
AYES, 46; NOES, 3.  
RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 17, 1991 RECEIVED FROM SENATE.  
APRIL 18, 1991 SECOND READING, AMENDMENTS NOT  
CONCURRED IN.  
APRIL 19, 1991 ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1991 ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1991 CONFERENCE COMMITTEE REPORTED.  
APRIL 24, 1991 ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.  
ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 24, 1991 ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.  
ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 24, 1991 FREE CONFERENCE COMMITTEE REPORTED.  
APRIL 25, 1991 SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT REJECTED.  
ON MOTION, PREVIOUS ACTION  
RECONSIDERED.  
SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 25, 1991

FREE CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE HOUSE

APRIL 25, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 93  
 2 INTRODUCED BY COBB  
 3 BY REQUEST OF THE DEPARTMENT OF SOCIAL  
 4 AND REHABILITATION SERVICES  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION  
 7 FEE ON EACH NURSING FACILITY FOR EACH BED DAY BEGINNING IN  
 8 FISCAL YEAR 1993; TO AUTHORIZE THE DEPARTMENT OF REVENUE TO  
 9 COLLECT THE FEE; TO REQUIRE PROCEEDS FROM THE FEE TO BE  
 10 DEPOSITED IN THE GENERAL FUND; AND PROVIDING EFFECTIVE  
 11 DATES."

12  
 13 STATEMENT OF INTENT  
 14 A statement of intent is required for this bill because  
 15 [section 10] grants the department of revenue authority to  
 16 adopt rules necessary to implement and administer [sections  
 17 1 through 10].

18 It is the intent of the legislature that, in adopting  
 19 rules, the department:

- 20 (1) provide procedures and forms for reporting bed days
- 21 that are subject to payment of the utilization fee imposed
- 22 in [section 2];
- 23 (2) establish requirements for the maintenance of
- 24 records and other documents required to ensure proper
- 25 payment of the utilization fee;

- 1 (3) develop a process for the estimation and collection
- 2 of delinquent or unpaid fees;
- 3 (4) provide a process for the reconciliation of
- 4 disputes relating to the payment of utilization fees; and
- 5 (5) establish other procedures for the efficient
- 6 administration of the utilization fee.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. **Section 1.** Definitions. For purposes of  
 10 [sections 1 through 10], unless the context requires  
 11 otherwise, the following definitions apply:

12 (1) "Bed day" means each whole 24-hour period that a  
 13 resident of a nursing facility is present in the facility  
 14 and receiving skilled nursing care, intermediate nursing  
 15 care, or intermediate developmental disability care or in  
 16 which a bed is held for a resident while he is on temporary  
 17 leave from the facility, regardless of the source of payment  
 18 for the resident's care. The term also includes the day of a  
 19 resident's admission to a nursing facility and the day of  
 20 the resident's death, even though the resident is present  
 21 less than a whole 24-hour period on these days.

22 (2) "Calendar quarter" means the period of 3  
 23 consecutive months ending March 31, June 30, September 30,  
 24 or December 31.

25 (3) "Nursing facility" or "facility" means a health



1 care facility licensed by the department of health and  
2 environmental sciences as a long-term care facility to  
3 provide skilled nursing care, intermediate nursing care, or  
4 intermediate developmental disability care. The term  
5 includes all nursing facilities, whether they are:

6 (a) operated as nonprofit or for-profit facilities;

7 (b) freestanding or part of another health care  
8 facility, or

9 (c) publicly or privately operated.

10 (4) "Skilled nursing care", "intermediate nursing  
11 care", and "intermediate developmental disability care" have  
12 the same meaning as those terms are defined in 50-5-101.

13 (5) "Report" means the report of bed days required in  
14 [section 3].

15 (6) "Utilization fee" or "fee" means the fee required  
16 to be paid for each bed day in a nursing facility, as  
17 provided in [section 2].

18 NEW SECTION. Section 2. Utilization fee for bed days  
19 in nursing facilities. A nursing facility in the state shall  
20 pay to the department of revenue a utilization fee in the  
21 amount of \$1 for each bed day in the facility.

22 NEW SECTION. Section 3. Reporting and collection of  
23 fee. A nursing facility shall report to the department of  
24 revenue, following the end of each calendar quarter, the  
25 number of bed days in the facility during the quarter. The

1 report must be in the form prescribed by the department and  
2 is due within 30 days following the end of each calendar  
3 quarter. The report must be accompanied by a payment in an  
4 amount equal to the fee required to be paid under [section  
5 2].

6 NEW SECTION. Section 4. Audit -- records. (1) The  
7 department of revenue may audit the records and other  
8 documents of any nursing facility to ensure that the proper  
9 utilization fee has been collected.

10 (2) The department may require the facility to provide  
11 records and other documentation, including books, ledgers,  
12 and registers, necessary for the department to verify the  
13 proper amount of the utilization fee paid.

14 (3) A facility shall maintain and make available for  
15 inspection sufficient records and other documentation to  
16 demonstrate the number of bed days in the facility subject  
17 to the utilization fee. The facility shall maintain these  
18 records for a period of at least 5 years from the date the  
19 report is due.

20 (4) The amount of the fee due based on a report must be  
21 determined by the department within 5 years after the date  
22 the report is due. Except in the case of a facility that  
23 purposely and knowingly files a false report with the intent  
24 to evade payment of the fee, the department is barred after  
25 the 5-year period from revising the report or recomputing

1 the amount of the utilization fee owed. A proceeding for the  
2 collection of unpaid fees may not be instituted unless  
3 notice for collection of the unpaid fee is provided within  
4 the 5-year period after the report is due.

5 (5) A nursing facility may file an application with the  
6 department to revise a report if the application is filed  
7 within 5 years from the date the report was due.

8 NEW SECTION. Section 5. Penalty and interest for  
9 delinquent fees -- waiver. (1) Utilization fees are  
10 delinquent if they are not paid within the time specified in  
11 [section 3]. The department shall assess a penalty of 10% of  
12 the amount of delinquent fees plus interest at the rate of  
13 1% a month computed on the total of fees and penalty due.  
14 Interest is computed from the date the fees were due to the  
15 date of payment.

16 (2) The penalty provided for in subsection (1) may be  
17 waived by the department if the facility demonstrates to the  
18 department reasonable cause for the failure to file the  
19 report or to pay the fee within the time specified in  
20 [section 3].

21 NEW SECTION. Section 6. Estimation of fee upon failure  
22 to file a report or pay the fee -- notice. (1) If a nursing  
23 facility fails or refuses to file the report or pay the fee  
24 within the time specified in [section 3], the department of  
25 revenue shall estimate the total number of bed days in the

1 facility during the calendar quarter and calculate the  
2 amount of the fee due.

3 (2) The department shall mail to the facility described  
4 in subsection (1) a notice stating the basis and amount of  
5 the fee and demanding payment of the fee, including  
6 penalties and interest. The notice must advise the facility  
7 that if payment is not made, a warrant for distraint may be  
8 filed.

9 NEW SECTION. Section 7. Warrant for distraint. If the  
10 utilization fee is not paid when due, the department of  
11 revenue may issue a warrant for distraint as provided in  
12 Title 15, chapter 1, part 7. The resulting lien has  
13 precedence over any claim, lien, or demand filed and  
14 recorded after the lien under the warrant is perfected.

15 NEW SECTION. Section 8. Disposition of fee. All  
16 proceeds from the collection of utilization fees, including  
17 penalties and interest, must be deposited in the state  
18 general fund.

19 NEW SECTION. Section 9. Relation to other taxes and  
20 fees. The utilization fee imposed under [section 3] is in  
21 addition to any other taxes and fees required by law to be  
22 paid by nursing facilities.

23 NEW SECTION. Section 10. Rulemaking authority. The  
24 department of revenue may adopt rules necessary to implement  
25 and administer [sections 1 through 10].

1        NEW SECTION.    **Section 11.**    Codification        instruction.

2        [Sections 1 through 10] are intended to be codified as an  
3        integral part of Title 15, and the provisions of Title 15  
4        apply to [sections 1 through 10].

5        NEW SECTION.    **Section 12.**    Effective        dates        --

6        applicability. (1) [Sections 10, 11, and this section] are  
7        effective October 1, 1991.

8        (2) [Sections 1 through 9] are effective July 1, 1992,  
9        and apply to all bed days on or after July 1, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0093, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to impose a utilization fee on each nursing facility for each bed day beginning in fiscal year 1993; to authorize the Department of Revenue to collect the fee; to require proceeds from the fee to be deposited in the general fund; and providing effective dates.

ASSUMPTIONS:


1. There are 98 licensed nursing facilities in Montana with a total of 7,016 licensed beds (Department of Social and Rehabilitation Services).
2. The average bed daily occupancy rate is 92% (SRS).
3. The fee is not applicable to Intermediate Care Facilities for the Mentally Retarded (SRS).
4. The fee will be collected quarterly. The Department of Health will notify the Department of Revenue quarterly of facilities subject to the fee.
5. The fee will only generate three quarters of collections in FY 1993.
6. Only summary management reports will be required.
7. On-line input will be required.
8. The proposed legislation will require a new 0.25 FTE, grade 8, beginning April 1, 1992, plus related operating expenses and computer equipment to carry out tax processing.
9. The proposed legislation will generate approximately \$1,767,000 in FY93 and \$2,356,000 annually thereafter. All revenue from the fee will be deposited in the state general fund.

FISCAL IMPACT:

Department of Revenue:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0	0.06	0.06	0	0.25	0.25
Personal Services	0	287	287	0	3,898	3,898
Operating Expenses	0	585	585	0	355	355
Equipment	0	4,430	4,430	0	0	0
Total	0	5,302	5,302	0	4,253	4,253
<u>Funding:</u>						
General Fund	0	5,302	5,302	0	4,253	4,253

(continued on page 2)

 1-10-91  
 ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
 Office of Budget and Program Planning

  
 JOHN COBB, PRIMARY SPONSOR                      DATE

Fiscal Note for HB0093, as introduced

**HB 93**



Fiscal Note Request HR0093, as introduced

Form BD-15

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Revenues:

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Nursing Facility Utilization Fee	0	0	0	0	1,767,000	1,767,000
Net General Fund	0	(5,302)	(5,302)	0	1,767,000	1,767,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Annual operating costs will be approximately \$4,250 in future years. Net general fund revenue will be approximately \$2,351,750 per annum beginning in FY94.

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0093, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to impose a utilization fee on nursing facilities for bed days reimbursed by third-party payors beginning in fiscal year 1992; to authorize the Department of Revenue to collect the fee; to provide for the assessment, collection, and refund of the fee; to require proceeds from the fee to be used for certain medicaid reimbursements.

ASSUMPTIONS:

1. There are 98 licensed facilities in Montana with a total of 7,194 licensed beds (SRS).
2. The average bed daily occupancy rate is 90% (SRS).
3. Approximately 69% of all nursing facility patients' costs are paid by a third party (SRS).
4. The fee does not apply to facilities licensed to provide intermediate developmental disability care.
5. The utilization fee is \$1.25 per third-party payor bed day in FY92 and \$1.50 during FY93.

FISCAL IMPACT:

Department of Revenue

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	0.06	0.06	0.00	0.25	0.25
Personal Services	0	287	287	0	3,898	3,898
Equipment Costs	0	4,430	4,430	0	0	0
Operating Costs	0	585	585	0	355	355
Total	0	5,302	5,302	0	4,253	4,253
<u>Funding</u>						
General Fund	0	5,302	5,302	0	4,253	4,253

Department of Social and Rehabilitation Services

Benefits & Claims	0	3,264,849	3,264,849	0	5,214,594	5,214,594
<u>Funding:</u>						
Utilization fee (02)	0	923,626	923,626	0	1,465,301	1,465,301
Federal Funds	0	2,341,223	2,341,223	0	3,749,293	3,749,293
Total	0	3,264,849	3,264,849	0	5,214,594	5,214,594

Revenues:

Nursing Fac. Util. Fee (02)	0	2,038,000	2,038,000	0	2,446,000	2,446,000
Excess Fee to General Fund			1,114,374			980,699
Net Impact to General Fund (Increase)			1,109,072			976,446

Rod Sundsted by RB 4/13/91  
ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

John Cobb  
JOHN COBB, PRIMARY SPONSOR

Fiscal Note for HB0093, third reading

take out of HB2

4/15/91  
DATE

HB 93-#2

APPROVED BY COMM. ON HUMAN SERVICES AND AGING

HOUSE BILL NO. 93

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION FEE ON EACH-NURSING-FACILITY NURSING FACILITIES FOR EACH-BED DAY BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN FISCAL YEAR 1993 1992; TO AUTHORIZE THE DEPARTMENT OF REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT, COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM THE FEE TO BE DEPOSITED-IN-THE-GENERAL-FUND USED FOR CERTAIN MEDICAID REIMBURSEMENTS; TO PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO FULLY FUND THE COST OF NURSING HOME CARE FOR MEDICAID BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY PRIVATELY FOR NURSING HOME CARE BY SHIFTING COST FROM MEDICAID TO NON-MEDICAID RESIDENTS IN OUR STATE'S NURSING HOMES; AND

WHEREAS, THE STATE HAS THE POTENTIAL OF FACING A LAWSUIT FROM NURSING HOMES IF THE LEGISLATURE FAILS TO FULLY FUND THE COST OF NURSING HOME CARE; AND

WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL PARTICIPATION IN THE COST OF PROGRAMS WHEREVER POSSIBLE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE UTILIZATION FEE ESTABLISHED IN THIS BILL AS A MEANS OF PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO NURSING HOMES; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT NURSING HOMES CAREFULLY CONSIDER THE INCREASED MEDICAID REVENUES MADE AVAILABLE BY THIS LEGISLATION WHEN DETERMINING REASONABLE RATES TO BE CHARGED TO NON-MEDICAID PATIENTS IN THEIR FACILITIES; AND

WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING INDIVIDUALS IN NURSING HOMES FROM THE BURDEN OF COSTS SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL FUNDING OF THIS PROGRAM.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section # 15] grants the department of revenue authority to adopt rules necessary to implement and administer



1 [sections 1 through ~~to~~ 15].

2 It is the intent of the legislature that, in adopting  
3 rules, the department:

4 (1) provide procedures and forms for reporting bed days  
5 that are subject to payment of the utilization fee imposed  
6 in [section 2];

7 (2) establish requirements for the maintenance of  
8 records and other documents required to ensure proper  
9 payment of the utilization fee;

10 (3) develop a process for the estimation and collection  
11 of delinquent or unpaid fees;

12 (4) provide a process for the reconciliation of  
13 disputes relating to the payment of utilization fees; and

14 (5) establish other procedures for the efficient  
15 administration of the utilization fee.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Definitions. For purposes of  
19 [sections 1 through ~~to~~ 15], unless the context requires  
20 otherwise, the following definitions apply:

21 (1) "Bed day" means each whole 24-hour period that a  
22 resident of a nursing facility is present in the facility  
23 and receiving skilled nursing care, OR intermediate nursing  
24 care, ~~or intermediate developmental disability care~~ or in  
25 which a bed is held for a resident while he is on temporary

1 leave from the facility, ~~regardless of the source of payment~~  
2 ~~for the resident's care. THE TERM INCLUDES ALL PERIODS FOR~~  
3 ~~WHICH THE NURSING FACILITY IS REIMBURSED BY A THIRD-PARTY~~  
4 ~~PAYOR, INCLUDING BUT NOT LIMITED TO A PRIVATE OR~~  
5 ~~GOVERNMENTAL INSURER OR PUBLIC ASSISTANCE PROGRAM, BUT IT~~  
6 ~~DOES NOT INCLUDE ANY PERIOD FOR WHICH THE NURSING FACILITY~~  
7 ~~MAY BE REIMBURSED ONLY BY THE RESIDENT, A FRIEND OF THE~~  
8 ~~RESIDENT, OR A MEMBER OF THE RESIDENT'S FAMILY.~~ The term  
9 also includes the day of a resident's admission to a nursing  
10 facility and the day of the resident's death, even though  
11 the resident is present less than a whole 24-hour period on  
12 these days.

13 (2) "Calendar quarter" means the period of 3  
14 consecutive months ending March 31, June 30, September 30,  
15 or December 31.

16 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

17 ~~(3)~~(4) "Nursing facility" or "facility" means a health  
18 care facility licensed by the department of health and  
19 environmental sciences as a ~~long-term-care~~ NURSING facility  
20 to provide skilled nursing care, OR intermediate nursing  
21 care, ~~or intermediate developmental disability care.~~ The  
22 term includes ~~all~~ nursing facilities, whether they are:

- 23 (a) operated as nonprofit or for-profit facilities;
- 24 (b) freestanding or part of another health care  
25 facility; or

1 (c) publicly or privately operated.  
 2 ~~††(5)~~ "Skilled nursing care", AND "intermediate  
 3 nursing care"~~and--"intermediate--developmental--disability~~  
 4 ~~care"~~ have the same meaning as those terms are defined in  
 5 50-5-101.

6 ~~†(6)~~ "Report" means the report of bed days required  
 7 in [section 3].

8 ~~†(7)~~ "Utilization fee" or "fee" means the fee  
 9 required to be paid for each bed day in a nursing facility,  
 10 as provided in [section 2].

11 NEW SECTION. Section 2. Utilization fee for bed days  
 12 in nursing facilities. A nursing facility in the state shall  
 13 pay to the department of revenue a utilization fee in the  
 14 amount of ~~†~~ \$1.25 for each bed day in the facility DURING  
 15 FISCAL YEAR 1992 AND \$1.50 FOR EACH BED DAY IN THE FACILITY  
 16 DURING FISCAL YEAR 1993.

17 NEW SECTION. Section 3. Reporting and collection of  
 18 fee. (1) A nursing facility shall report to the department  
 19 of revenue, following the end of each calendar quarter, the  
 20 number of bed days in the facility during the quarter. The  
 21 report must be in the form prescribed by the department and  
 22 is due ~~within--30--days--following--the--end~~ ON OR BEFORE THE  
 23 LAST DAY OF THE MONTH FOLLOWING THE CLOSE of each calendar  
 24 quarter. The report must be accompanied by a payment in an  
 25 amount equal to the fee required to be paid under [section

1 2).

2 (2) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
 3 SHALL PROVIDE THE DEPARTMENT AT THE END OF EACH CALENDAR  
 4 QUARTER WITH A LIST OF FACILITIES AS DEFINED IN [SECTION  
 5 1(4)].

6 NEW SECTION. Section 4. Audit -- records. (1) The  
 7 department of revenue may audit the records and other  
 8 documents of any nursing facility to ensure that the proper  
 9 utilization fee has been collected.

10 (2) The department may require the facility to provide  
 11 records and other documentation, including books, ledgers,  
 12 and registers, necessary for the department to verify the  
 13 proper amount of the utilization fee paid.

14 (3) A facility shall maintain and make available for  
 15 inspection BY THE DEPARTMENT sufficient records and other  
 16 documentation to demonstrate the number of bed days in the  
 17 facility subject to the utilization fee. The facility shall  
 18 maintain these records for a period of at least 5 years from  
 19 the date the report is due.

20 ~~††--The amount of the fee due based on a report must be~~  
 21 ~~determined--by--the department within 5 years after the date~~  
 22 ~~the report is due. Except in the case of a facility that~~  
 23 ~~purposely and knowingly files a false report with the intent~~  
 24 ~~to evade payment of the fee, the department is barred after~~  
 25 ~~the 5-year period from revising the report or recomputing~~

~~the amount of the utilization fee owed. A proceeding for the collection of unpaid fees may not be instituted unless notice for collection of the unpaid fee is provided within the 5-year period after the report is due.~~

~~{5} A nursing facility may file an application with the department to revise a report if the application is filed within 5 years from the date the report was due.~~

NEW SECTION. SECTION 5. PERIODS OF LIMITATION. (1)  
EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DEFICIENCY MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE QUARTER FOR WHICH A REPORT IS FILED UNLESS THE NOTICE OF ADDITIONAL FEES PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM THE DATE THE REPORT WAS FILED. FOR THE PURPOSES OF THIS SECTION, A REPORT FILED BEFORE THE LAST DAY PRESCRIBED FOR FILING IS CONSIDERED FILED ON THE LAST DAY. IF, BEFORE THE EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT OF THE FEE, THE FACILITY CONSENTS IN WRITING TO AN ASSESSMENT AFTER THE 5-YEAR PERIOD, THE FEE MAY BE ASSESSED AT ANY TIME PRIOR TO THE EXPIRATION OF THE PERIOD AGREED UPON.

(2) A REFUND OR CREDIT MAY NOT BE PAID OR ALLOWED WITH RESPECT TO THE YEAR FOR WHICH A REPORT IS FILED AFTER 5 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE REPORT OR AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT, WHICHEVER PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION OF THE PERIOD, THE FACILITY FILES A CLAIM OR THE DEPARTMENT HAS

DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED THE REFUND OR CREDIT. IF THE FACILITY HAS AGREED IN WRITING UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE TIME WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN ADDITIONAL ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR REFUND OR CREDIT IS FILED OR A CREDIT OR REFUND ALLOWED IN THE EVENT NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

NEW SECTION. Section 6. Penalty and interest for delinquent fees -- waiver. {1} Utilization fees are delinquent if they are not paid within the time specified in {section 3}. The department shall assess a penalty of 10% of the amount of delinquent fees plus interest at the rate of 1% a month computed on the total of fees and penalty due. Interest is computed from the date the fees were due to the date of payment.

{2} The penalty provided for in subsection {1} may be waived by the department if the facility demonstrates to the department reasonable cause for the failure to file the report or to pay the fee within the time specified in {section 3}. (1) IF THE FEE FOR ANY FACILITY IS NOT PAID ON OR BEFORE THE DUE DATE OF THE REPORT AS PROVIDED IN [SECTION 3(1)], A PENALTY OF 10% OF THE AMOUNT OF THE FEE DUE MUST BE ASSESSED UNLESS IT IS SHOWN THAT THE FAILURE WAS DUE TO REASONABLE CAUSE AND NOT NEGLIGENCE.

(2) IF ANY FEE DUE UNDER [SECTION 2] IS NOT PAID WHEN

1 DUE, INTEREST IS ADDED TO THE TAX DUE AT THE RATE OF 12% A  
 2 YEAR FROM THE DUE DATE UNTIL PAID.

3 NEW SECTION. Section 6. Estimation of fee upon failure  
 4 to file a report or pay the fee --- notice -- (1) if a nursing  
 5 facility fails or refuses to file the report or pay the fee  
 6 within the time specified in {section 3}, the department of  
 7 revenue shall estimate the total number of bed days in the  
 8 facility during the calendar quarter and calculate the  
 9 amount of the fee due.

10 (2) The department shall mail to the facility described  
 11 in subsection (1) a notice stating the basis and amount of  
 12 the fee and demanding payment of the fee, including  
 13 penalties and interest. The notice must advise the facility  
 14 that if payment is not made, a warrant for distraint may be  
 15 filed.

16 NEW SECTION. SECTION 7. ESTIMATED FEE ON FAILURE TO  
 17 FILE. (1) IF A FACILITY FAILS TO FILE THE REPORT AS  
 18 REQUIRED, THE DEPARTMENT IS AUTHORIZED TO MAKE AN ESTIMATE  
 19 OF THE FEES DUE FROM THE FACILITY FROM ANY INFORMATION IN  
 20 ITS POSSESSION.

21 (2) FOR THE PURPOSE OF ASCERTAINING THE CORRECTNESS OF  
 22 ANY REPORT OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF BED  
 23 DAY USE OF ANY FACILITY WHERE INFORMATION HAS BEEN OBTAINED,  
 24 THE DEPARTMENT MAY:

25 (A) EXAMINE OR CAUSE TO HAVE EXAMINED BY ANY DESIGNATED

1 AGENT OR REPRESENTATIVE ANY BOOKS, PAPERS, RECORDS, OR  
 2 MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED  
 3 IN THE REPORT;

4 (B) REQUIRE THE ATTENDANCE OF ANY OFFICER OR EMPLOYEE  
 5 OF THE FACILITY RENDERING THE REPORT OR THE ATTENDANCE OF  
 6 ANY OTHER PERSON IN THE PREMISES HAVING RELEVANT KNOWLEDGE;  
 7 AND

8 (C) TAKE TESTIMONY AND REQUIRE PRODUCTION OF ANY OTHER  
 9 MATERIAL FOR ITS INFORMATION.

10 NEW SECTION. SECTION 8. DEFICIENCY ASSESSMENT --  
 11 HEARING. (1) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
 12 FEES DUE ARE GREATER THAN THE AMOUNT DISCLOSED BY THE  
 13 REPORT, IT SHALL MAIL TO THE FACILITY A NOTICE OF THE  
 14 ADDITIONAL FEES PROPOSED TO BE ASSESSED, WITHIN 30 DAYS  
 15 AFTER THE MAILING OF THE NOTICE, THE FACILITY MAY FILE WITH  
 16 THE DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED  
 17 ADDITIONAL FEES, SETTING FORTH THE GROUNDS UPON WHICH THE  
 18 PROTEST IS BASED, AND MAY REQUEST IN ITS PROTEST AN ORAL  
 19 HEARING OR AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE  
 20 RELATING TO ITS FEES LIABILITY. IF NO PROTEST IS FILED, THE  
 21 AMOUNT OF THE ADDITIONAL FEES PROPOSED TO BE ASSESSED  
 22 BECOMES FINAL UPON THE EXPIRATION OF THE 30-DAY PERIOD. IF  
 23 SUCH PROTEST IS FILED, THE DEPARTMENT SHALL RECONSIDER THE  
 24 PROPOSED ASSESSMENT AND, IF THE FACILITY HAS SO REQUESTED,  
 25 SHALL GRANT THE FACILITY AN ORAL HEARING. AFTER

1 CONSIDERATION OF THE PROTEST AND THE EVIDENCE PRESENTED IN  
2 THE EVENT OF AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
3 THE PROTEST IS FINAL WHEN IT MAI LS NOTICE OF ITS ACTION TO  
4 THE FACILITY.

5 (2) WHEN A DEFICIENCY IS DETERMINED AND THE FEES BECOME  
6 FINAL, THE DEPARTMENT SHALL MAIL NOTICE AND DEMAND TO THE  
7 FACILITY FOR PAYMENT, AND THE FEES BECOME DUE AND PAYABLE AT  
8 THE EXPIRATION OF 10 DAYS FROM THE DATE OF THE NOTICE AND  
9 DEMAND. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST  
10 FROM THE DATE SPECIFIED IN [SECTION 5] FOR PAYMENT OF THE  
11 FEES. A CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE  
12 NOTICES SPECIFIED IN THIS SECTION IS PRIMA FACIE EVIDENCE OF  
13 THE COMPUTATION AND LEVY OF THE DEFICIENCY IN THE FEES AND  
14 OF THE GIVING OF THE NOTICES.

15 NEW SECTION. SECTION 9. CLOSING AGREEMENTS. (1) THE  
16 DIRECTOR OF THE DEPARTMENT OR ANY PERSON AUTHORIZED IN  
17 WRITING BY HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH  
18 ANY FACILITY RELATING TO THE LIABILITY OF THE FACILITY IN  
19 RESPECT TO THE FEES IMPOSED BY [SECTIONS 1 THROUGH 15] FOR  
20 ANY PERIOD.

21 (2) AN AGREEMENT UNDER THIS SECTION IS FINAL AND  
22 CONCLUSIVE, AND EXCEPT UPON A SHOWING OF FRAUD OR  
23 MALFEASANCE OR MISREPRESENTATION OF A MATERIAL FACT:

24 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED  
25 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR

1 AGENT OF THIS STATE; AND

2 (B) IN ANY SUIT, ACTION, OR PROCEEDING UNDER THE  
3 AGREEMENT OR ANY DETERMINATION, ASSESSMENT, COLLECTION,  
4 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE  
5 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,  
6 MODIFIED, SET ASIDE, OR DISREGARDED.

7 NEW SECTION. SECTION 10. CREDIT FOR OVERPAYMENT --  
8 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT DETERMINES  
9 THAT THE AMOUNT OF FEES, PENALTY, OR INTEREST DUE FOR ANY  
10 YEAR IS LESS THAN THE AMOUNT PAID, THE AMOUNT OF THE  
11 OVERPAYMENT MUST BE CREDITED AGAINST ANY FEES, PENALTY, OR  
12 INTEREST THEN DUE FROM THE FACILITY AND THE BALANCE MUST BE  
13 REFUNDED TO THE FACILITY OR ITS SUCCESSOR THROUGH  
14 REORGANIZATION, MERGER, OR CONSOLIDATION OR TO ITS  
15 SHAREHOLDERS UPON DISSOLUTION.

16 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(A) AND  
17 (2)(B), INTEREST IS ALLOWED ON OVERPAYMENTS AT THE SAME RATE  
18 AS IS CHARGED ON DELINQUENT FEES DUE FROM THE DUE DATE OF  
19 THE REPORT OR FROM THE DATE OF OVERPAYMENT, WHICHEVER DATE  
20 IS LATER, TO THE DATE THE DEPARTMENT APPROVES REFUNDING OR  
21 CREDITING OF THE OVERPAYMENT. INTEREST DOES NOT ACCRUE  
22 DURING ANY PERIOD DURING WHICH THE PROCESSING OF A CLAIM FOR  
23 REFUND IS DELAYED MORE THAN 30 DAYS BY REASON OF FAILURE OF  
24 THE FACILITY TO FURNISH INFORMATION REQUESTED BY THE  
25 DEPARTMENT FOR THE PURPOSE OF VERIFYING THE AMOUNT OF THE



1 OVERPAYMENT. NO INTEREST IS ALLOWED:

2 (A) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM  
3 THE DATE THE REPORT IS DUE OR FROM THE DATE THE RETURN IS  
4 FILED, WHICHEVER IS LATER; OR

5 (B) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

6 (3) A PAYMENT NOT MADE INCIDENT TO A DISCHARGE OF  
7 ACTUAL UTILIZATION FEE LIABILITY OR A PAYMENT REASONABLY  
8 ASSUMED TO BE IMPOSED BY [SECTIONS 1 THROUGH 15] IS NOT  
9 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS  
10 ALLOWABLE.

11 NEW SECTION. SECTION 11. APPLICATION FOR REFUND --  
12 APPEAL FROM DENIAL. IF THE DEPARTMENT DISALLOWS A CLAIM FOR  
13 REFUND, IT SHALL NOTIFY THE FACILITY. AT THE EXPIRATION OF  
14 30 DAYS FROM THE MAILING OF THE NOTICE, THE DEPARTMENT'S  
15 ACTION BECOMES FINAL UNLESS WITHIN THE 30-DAY PERIOD THE  
16 FACILITY APPEALS IN WRITING FROM THE ACTION OF THE  
17 DEPARTMENT TO THE STATE TAX APPEAL BOARD. IF AN APPEAL IS  
18 MADE, THE BOARD SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
19 AFTER CONSIDERATION OF THE APPEAL AND EVIDENCE PRESENTED,  
20 THE BOARD SHALL MAIL NOTICE TO THE TAXPAYER OF ITS  
21 DETERMINATION. THE BOARD'S DETERMINATION IS FINAL WHEN IT  
22 MAILS NOTICE OF ITS ACTION TO THE TAXPAYER.

23 NEW SECTION. Section 12. Warrant for distraint. If the  
24 utilization fee is not paid when due, the department of  
25 revenue may issue a warrant for distraint as provided in

1 Title 15, chapter 1, part 7. ~~The resulting lien has~~  
2 ~~precedence over any claim, lien, or demand filed and~~  
3 ~~recorded after the lien under the warrant is perfected.~~

4 NEW SECTION. Section 13. Disposition of fee. All  
5 proceeds from the collection of utilization fees, including  
6 penalties and interest, must be deposited in the state  
7 general fund AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO  
8 BE USED FOR MEDICAID REIMBURSEMENT TO NURSING FACILITIES.

9 NEW SECTION. Section 14. Relation to other taxes and  
10 fees. The utilization fee imposed under [section 3 2] is in  
11 addition to any other taxes and fees required by law to be  
12 paid by nursing facilities.

13 NEW SECTION. Section 15. Rulemaking authority. The  
14 department of revenue may adopt rules necessary to implement  
15 and administer [sections 1 through 15].

16 NEW SECTION. SECTION 16. APPROPRIATION. THE FOLLOWING  
17 MONEY IS APPROPRIATED FROM THE ACCOUNT ESTABLISHED IN  
18 [SECTION 13] TO THE DEPARTMENT OF SOCIAL AND REHABILITATION  
19 SERVICES TO FUND INCREASES IN MEDICAID RATES TO NURSING  
20 FACILITIES:

21 FISCAL YEAR 1992

22	<u>STATE SPECIAL REVENUE FUNDS</u>	<u>\$ 923,626</u>
23	<u>FEDERAL FUNDS</u>	<u>2,341,223</u>
24	<u>TOTAL FUNDS</u>	<u>\$ 3,264,849</u>

25 FISCAL YEAR 1993

1	<u>STATE SPECIAL REVENUE FUNDS</u>	<u>\$ 1,465,300</u>
2	<u>FEDERAL FUNDS</u>	<u>3,749,294</u>
3	<u>TOTAL FUNDS</u>	<u>\$ 5,214,594</u>

4 NEW SECTION. Section 17. Codification instruction.  
 5 [Sections 1 through ~~10~~ 15] are intended to be codified as an  
 6 integral part of Title 15, and the provisions of Title 15  
 7 apply to [sections 1 through ~~10~~ 15].

8 NEW SECTION. SECTION 18. CONTINGENT VOIDNESS. (1) IF  
 9 FEDERAL LAW OR POLICY IS AMENDED TO ALLOW A NURSING FACILITY  
 10 TO BILL A PERSON RECEIVING NURSING CARE FOR WHICH THE  
 11 FACILITY IS BEING REIMBURSED BY MEDICARE OR MEDICAID FOR THE  
 12 UTILIZATION FEE PROVIDED IN [SECTION 2], [THIS ACT] IS VOID  
 13 AS OF THE EFFECTIVE DATE OF THE CHANGE IN FEDERAL LAW OR  
 14 POLICY.

15 (2) IF FEDERAL LAW OR POLICY IS AMENDED SO THAT THE  
 16 UTILIZATION FEES COLLECTED PURSUANT TO [THIS ACT] MAY NOT BE  
 17 CONSIDERED AS THE STATE'S SHARE IN CLAIMING FEDERAL  
 18 FINANCIAL PARTICIPATION UNDER THE MEDICAID PROGRAM, [THIS  
 19 ACT] IS VOID AS OF THE EFFECTIVE DATE OF THE CHANGE IN  
 20 FEDERAL LAW OR POLICY.

21 (3) IF THE FEDERAL GOVERNMENT REFUSES TO PARTICIPATE IN  
 22 OR DENIES APPROVAL OF ANY PLAN FOR MEDICAID PAYMENTS TO  
 23 NURSING FACILITIES ON GROUNDS THAT IT CONSIDERS THE PAYMENTS  
 24 TO BE REIMBURSEMENT TO FACILITIES FOR PAYMENT OF THE  
 25 UTILIZATION FEES, [THIS ACT] IS VOID AS OF THE DATE OF

1 RECEIPT BY THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 2 SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION OF SUCH  
 3 REFUSAL OR DENIAL.

4 (4) IF [THIS ACT] BECOMES VOID UNDER THE PROVISIONS OF  
 5 THIS SECTION, ALL FEES RECEIVED OR COLLECTED BY THE  
 6 DEPARTMENT PRIOR TO THE DATE UPON WHICH THE ACT BECOMES VOID  
 7 MUST BE DEPOSITED IN ACCORDANCE WITH [SECTION 13] AND A  
 8 PERSON OR PARTY MAY NOT RECEIVE A REFUND OF ANY FEES  
 9 RECEIVED OR COLLECTED BY THE DEPARTMENT PRIOR TO THE DATE  
 10 UPON WHICH [THIS ACT] BECOMES VOID.

11 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
 12 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
 13 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
 14 THEN THE LANGUAGE CONTAINED IN [SECTIONS 7(1) AND 11 OF THIS  
 15 ACT] IS VOID AND THE PROVISIONS OF SENATE BILL NO. 445  
 16 GOVERN THE APPEAL PROCEDURES.

17 NEW SECTION. SECTION 20. SEVERABILITY. IF A PART OF  
 18 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 19 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 20 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
 21 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
 22 SEVERABLE FROM THE INVALID APPLICATIONS.

23 NEW SECTION. SECTION 21. NONAPPLICABILITY. [SECTIONS 1  
 24 THROUGH 15] AND THE FEE ESTABLISHED UNDER [SECTION 2] DO NOT  
 25 APPLY TO FACILITIES LICENSED TO PROVIDE INTERMEDIATE

1 DEVELOPMENTAL DISABILITY CARE AND FACILITIES REIMBURSED AS  
2 INSTITUTIONS FOR MENTAL DISEASE UNDER THE MEDICAID PROGRAM.

3 NEW SECTION. Section 22. Effective dates --  
4 applicability. (1) [Sections ~~107-11~~ 15, 17 THROUGH 21, 23,  
5 and this section] are effective ~~October-17-1991~~ ON PASSAGE  
6 AND APPROVAL.

7 (2) [Sections 1 through 9 14 AND 16] are effective July  
8 1, ~~1992~~ 1991, and apply to all bed days on or after July 1,  
9 ~~1992~~ 1991.

10 NEW SECTION. SECTION 23. TERMINATION. [THIS ACT]  
11 TERMINATES JUNE 30, 1993.

-End-

HOUSE BILL NO. 93

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION  
FEE ON EACH-NURSING-FACILITY NURSING FACILITIES FOR EACH-BED  
DAY BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN  
FISCAL YEAR 1992; TO AUTHORIZE THE DEPARTMENT OF  
REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT,  
COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM  
THE FEE TO BE DEPOSITED IN THE GENERAL FUND; TO  
MEDICAID-REIMBURSEMENTS DEPOSITED IN THE GENERAL FUND; TO  
PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND  
AN APPLICABILITY DATE AND A TERMINATION DATE."

WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO  
FULLY FUND THE COST OF NURSING HOME CARE FOR MEDICAID  
BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY  
PRIVATELY FOR NURSING HOME CARE BY SHIFTING COST FROM  
MEDICAID TO NON-MEDICAID RESIDENTS IN OUR STATE'S NURSING  
HOMES; AND

WHEREAS, THE STATE HAS THE POTENTIAL OF FACING A LAWSUIT  
FROM NURSING HOMES IF THE LEGISLATURE FAILS TO FULLY FUND  
THE COST OF NURSING HOME CARE; AND

WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE  
COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING  
IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND  
CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL  
PARTICIPATION IN THE COST OF PROGRAMS WHEREVER POSSIBLE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE  
UTILIZATION FEE ESTABLISHED IN THIS BILL AS A MEANS OF  
PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO NURSING  
HOMES; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT  
NURSING HOMES CAREFULLY CONSIDER THE INCREASED MEDICAID  
REVENUES MADE AVAILABLE BY THIS LEGISLATION WHEN DETERMINING  
REASONABLE RATES TO BE CHARGED TO NON-MEDICAID PATIENTS IN  
THEIR FACILITIES; AND

WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING  
LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING  
INDIVIDUALS IN NURSING HOMES FROM THE BURDEN OF COSTS  
SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL  
FUNDING OF THIS PROGRAM.

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 10 15] grants the department of revenue authority  
to adopt rules necessary to implement and administer

1 [sections 1 through ~~10~~ 15].

2 It is the intent of the legislature that, in adopting  
3 rules, the department:

4 (1) provide procedures and forms for reporting bed days  
5 that are subject to payment of the utilization fee imposed  
6 in [section 2];

7 (2) establish requirements for the maintenance of  
8 records and other documents required to ensure proper  
9 payment of the utilization fee;

10 (3) develop a process for the estimation and collection  
11 of delinquent or unpaid fees;

12 (4) provide a process for the reconciliation of  
13 disputes relating to the payment of utilization fees; and

14 (5) establish other procedures for the efficient  
15 administration of the utilization fee.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Definitions. For purposes of  
19 [sections 1 through ~~10~~ 15], unless the context requires  
20 otherwise, the following definitions apply:

21 (1) "Bed day" means each whole 24-hour period that a  
22 resident of a nursing facility is present in the facility  
23 and receiving skilled nursing care, OR intermediate nursing  
24 care, ~~or intermediate developmental disability care~~ or in  
25 which a bed is held for a resident while he is on temporary

1 leave from the facility, ~~regardless of the source of payment~~  
2 ~~for the resident's care.~~ THE TERM INCLUDES ALL PERIODS FOR  
3 WHICH THE NURSING FACILITY IS REIMBURSED BY A THIRD-PARTY  
4 PAYOR, INCLUDING BUT NOT LIMITED TO A PRIVATE OR  
5 GOVERNMENTAL INSURER OR PUBLIC ASSISTANCE PROGRAM, BUT IT  
6 DOES NOT INCLUDE ANY PERIOD FOR WHICH THE NURSING FACILITY  
7 MAY BE REIMBURSED ONLY BY THE RESIDENT, A FRIEND OF THE  
8 RESIDENT, OR A MEMBER OF THE RESIDENT'S FAMILY. The term  
9 also includes the day of a resident's admission to a nursing  
10 facility and the day of the resident's death, even though  
11 the resident is present less than a whole 24-hour period on  
12 these days.

13 (2) "Calendar quarter" means the period of 3  
14 consecutive months ending March 31, June 30, September 30,  
15 or December 31.

16 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

17 ~~{3}~~(4) "Nursing facility" or "facility" means a health  
18 care facility licensed by the department of health and  
19 environmental sciences as a long-term-care NURSING facility  
20 to provide skilled nursing care, OR intermediate nursing  
21 care, ~~or intermediate developmental disability care.~~ The  
22 term includes ~~all~~ nursing facilities, whether they are:

- 23 (a) operated as nonprofit or for-profit facilities;  
24 (b) freestanding or part of another health care  
25 facility; or

1 (c) publicly or privately operated.  
 2 ~~†4†~~(5) "Skilled nursing care"; AND "intermediate  
 3 nursing care"; ~~and--"intermediate--developmental--disability~~  
 4 ~~care"~~ have the same meaning as those terms are defined in  
 5 50-5-101.  
 6 ~~†5†~~(6) "Report" means the report of bed days required  
 7 in [section 3].  
 8 ~~†6†~~(7) "Utilization fee" or "fee" means the fee  
 9 required to be paid for each bed day in a nursing facility,  
 10 as provided in [section 2].  
 11 NEW SECTION. Section 2. Utilization fee for bed days  
 12 in nursing facilities. A nursing facility in the state shall  
 13 pay to the department of revenue a utilization fee in the  
 14 amount of \$1.25 for each bed day in the facility DURING  
 15 FISCAL YEAR 1992 AND \$1.50 FOR EACH BED DAY IN THE FACILITY  
 16 DURING FISCAL YEAR 1993 AND EACH YEAR THEREAFTER.  
 17 NEW SECTION. Section 3. Reporting and collection of  
 18 fee. (1) A nursing facility shall report to the department  
 19 of revenue, following the end of each calendar quarter, the  
 20 number of bed days in the facility during the quarter. The  
 21 report must be in the form prescribed by the department and  
 22 is due within--30--days--following--the--end ON OR BEFORE THE  
 23 LAST DAY OF THE MONTH FOLLOWING THE CLOSE of each calendar  
 24 quarter. The report must be accompanied by a payment in an  
 25 amount equal to the fee required to be paid under [section

1 2].  
 2 (2) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
 3 SHALL PROVIDE THE DEPARTMENT AT THE END OF EACH CALENDAR  
 4 QUARTER WITH A LIST OF FACILITIES AS DEFINED IN [SECTION  
 5 1(4)].  
 6 NEW SECTION. Section 4. Audit -- records. (1) The  
 7 department of revenue may audit the records and other  
 8 documents of any nursing facility to ensure that the proper  
 9 utilization fee has been collected.  
 10 (2) The department may require the facility to provide  
 11 records and other documentation, including books, ledgers,  
 12 and registers, necessary for the department to verify the  
 13 proper amount of the utilization fee paid.  
 14 (3) A facility shall maintain and make available for  
 15 inspection BY THE DEPARTMENT sufficient records and other  
 16 documentation to demonstrate the number of bed days in the  
 17 facility subject to the utilization fee. The facility shall  
 18 maintain these records for a period of at least 5 years from  
 19 the date the report is due.  
 20 ~~†4†--The-amount-of-the-fee-due-based-on-a-report-must-be~~  
 21 ~~determined--by--the-department-within-5-years-after-the-date~~  
 22 ~~the-report-is-due--Except-in-the-case--of--a--facility--that~~  
 23 ~~purposely-and-knowingly-files-a-false-report-with-the-intent~~  
 24 ~~to--evade-payment-of-the-fee,--the-department-is-barred-after~~  
 25 ~~the-5-year-period-from-revising-the--report--or--recomputing~~

1 ~~the amount of the utilization fee owed; a proceeding for the~~  
 2 ~~collection of unpaid fees may not be instituted unless~~  
 3 ~~notice for collection of the unpaid fee is provided within~~  
 4 ~~the 5-year period after the report is due;~~

5 ~~(5) A nursing facility may file an application with the~~  
 6 ~~department to revise a report if the application is filed~~  
 7 ~~within 5 years from the date the report was due;~~

8 NEW SECTION. SECTION 5. PERIODS OF LIMITATION. (1)  
 9 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DEFICIENCY  
 10 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE QUARTER  
 11 FOR WHICH A REPORT IS FILED UNLESS THE NOTICE OF ADDITIONAL  
 12 FEES PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM  
 13 THE DATE THE REPORT WAS FILED. FOR THE PURPOSES OF THIS  
 14 SECTION, A REPORT FILED BEFORE THE LAST DAY PRESCRIBED FOR  
 15 FILING IS CONSIDERED FILED ON THE LAST DAY. IF, BEFORE THE  
 16 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT OF THE  
 17 FEE, THE FACILITY CONSENTS IN WRITING TO AN ASSESSMENT AFTER  
 18 THE 5-YEAR PERIOD, THE FEE MAY BE ASSESSED AT ANY TIME PRIOR  
 19 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

20 (2) A REFUND OR CREDIT MAY NOT BE PAID OR ALLOWED WITH  
 21 RESPECT TO THE YEAR FOR WHICH A REPORT IS FILED AFTER 5  
 22 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE REPORT OR  
 23 AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT, WHICHEVER  
 24 PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION OF THE  
 25 PERIOD, THE FACILITY FILES A CLAIM OR THE DEPARTMENT HAS

1 DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED  
 2 THE REFUND OR CREDIT. IF THE FACILITY HAS AGREED IN WRITING  
 3 UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE TIME  
 4 WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN ADDITIONAL  
 5 ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR REFUND OR  
 6 CREDIT IS FILED OR A CREDIT OR REFUND ALLOWED IN THE EVENT  
 7 NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

8 NEW SECTION. Section 6. Penalty and interest for  
 9 delinquent fees -- waiver. (1) Utilization fees are  
 10 delinquent if they are not paid within the time specified in  
 11 {section 3}. The department shall assess a penalty of 10% of  
 12 the amount of delinquent fees plus interest at the rate of  
 13 1% a month computed on the total of fees and penalty due.  
 14 Interest is computed from the date the fees were due to the  
 15 date of payment.

16 (2) The penalty provided for in subsection (1) may be  
 17 waived by the department if the facility demonstrates to the  
 18 department reasonable cause for the failure to file the  
 19 report or to pay the fee within the time specified in  
 20 {section 3}. (1) IF THE FEE FOR ANY FACILITY IS NOT PAID ON  
 21 OR BEFORE THE DUE DATE OF THE REPORT AS PROVIDED IN {SECTION  
 22 3(1)}, A PENALTY OF 10% OF THE AMOUNT OF THE FEE DUE MUST BE  
 23 ASSESSED UNLESS IT IS SHOWN THAT THE FAILURE WAS DUE TO  
 24 REASONABLE CAUSE AND NOT NEGLECT.

25 (2) IF ANY FEE DUE UNDER {SECTION 2} IS NOT PAID WHEN

1 DUE, INTEREST IS ADDED TO THE TAX DUE AT THE RATE OF 12% A  
 2 YEAR FROM THE DUE DATE UNTIL PAID.

3 ~~NEW SECTION. --Section 6. --Estimation of fee upon failure~~  
 4 ~~to file a report or pay the fee --- notice -- (1) if a nursing~~  
 5 ~~facility -- fails or refuses to file the report or pay the fee~~  
 6 ~~within the time specified in {section 3}, the department -- of~~  
 7 ~~revenue -- shall -- estimate the total number of bed days in the~~  
 8 ~~facility during -- the -- calendar -- quarter -- and -- calculate -- the~~  
 9 ~~amount of the fee due.~~

10 ~~(2) -- The department shall mail to the facility described~~  
 11 ~~in -- subsection -- (1) -- a notice stating the basis and amount of~~  
 12 ~~the -- fee -- and -- demanding -- payment -- of -- the -- fee -- including~~  
 13 ~~penalties -- and -- interest. -- The notice must advise the facility~~  
 14 ~~that if payment is not made, a warrant for distraint may be~~  
 15 ~~filed.~~

16 NEW SECTION. SECTION 7. ESTIMATED FEE ON FAILURE TO  
 17 FILE. (1) IF A FACILITY FAILS TO FILE THE REPORT AS  
 18 REQUIRED, THE DEPARTMENT IS AUTHORIZED TO MAKE AN ESTIMATE  
 19 OF THE FEES DUE FROM THE FACILITY FROM ANY INFORMATION IN  
 20 ITS POSSESSION.

21 (2) FOR THE PURPOSE OF ASCERTAINING THE CORRECTNESS OF  
 22 ANY REPORT OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF BED  
 23 DAY USE OF ANY FACILITY WHERE INFORMATION HAS BEEN OBTAINED,  
 24 THE DEPARTMENT MAY:

25 (A) EXAMINE OR CAUSE TO HAVE EXAMINED BY ANY DESIGNATED

1 AGENT OR REPRESENTATIVE ANY BOOKS, PAPERS, RECORDS, OR  
 2 MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED  
 3 IN THE REPORT;

4 (B) REQUIRE THE ATTENDANCE OF ANY OFFICER OR EMPLOYEE  
 5 OF THE FACILITY RENDERING THE REPORT OR THE ATTENDANCE OF  
 6 ANY OTHER PERSON IN THE PREMISES HAVING RELEVANT KNOWLEDGE;  
 7 AND

8 (C) TAKE TESTIMONY AND REQUIRE PRODUCTION OF ANY OTHER  
 9 MATERIAL FOR ITS INFORMATION.

10 NEW SECTION. SECTION 8. DEFICIENCY ASSESSMENT --  
 11 HEARING. (1) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
 12 FEES DUE ARE GREATER THAN THE AMOUNT DISCLOSED BY THE  
 13 REPORT, IT SHALL MAIL TO THE FACILITY A NOTICE OF THE  
 14 ADDITIONAL FEES PROPOSED TO BE ASSESSED. WITHIN 30 DAYS  
 15 AFTER THE MAILING OF THE NOTICE, THE FACILITY MAY FILE WITH  
 16 THE DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED  
 17 ADDITIONAL FEES, SETTING FORTH THE GROUNDS UPON WHICH THE  
 18 PROTEST IS BASED, AND MAY REQUEST IN ITS PROTEST AN ORAL  
 19 HEARING OR AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE  
 20 RELATING TO ITS FEES LIABILITY. IF NO PROTEST IS FILED, THE  
 21 AMOUNT OF THE ADDITIONAL FEES PROPOSED TO BE ASSESSED  
 22 BECOMES FINAL UPON THE EXPIRATION OF THE 30-DAY PERIOD. IF  
 23 SUCH PROTEST IS FILED, THE DEPARTMENT SHALL RECONSIDER THE  
 24 PROPOSED ASSESSMENT AND, IF THE FACILITY HAS SO REQUESTED,  
 25 SHALL GRANT THE FACILITY AN ORAL HEARING. AFTER



1 CONSIDERATION OF THE PROTEST AND THE EVIDENCE PRESENTED IN  
 2 THE EVENT OF AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 3 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 4 THE FACILITY.

5 (2) WHEN A DEFICIENCY IS DETERMINED AND THE FEES BECOME  
 6 FINAL, THE DEPARTMENT SHALL MAIL NOTICE AND DEMAND TO THE  
 7 FACILITY FOR PAYMENT, AND THE FEES BECOME DUE AND PAYABLE AT  
 8 THE EXPIRATION OF 10 DAYS FROM THE DATE OF THE NOTICE AND  
 9 DEMAND. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST  
 10 FROM THE DATE SPECIFIED IN [SECTION 5] FOR PAYMENT OF THE  
 11 FEES. A CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE  
 12 NOTICES SPECIFIED IN THIS SECTION IS PRIMA FACIE EVIDENCE OF  
 13 THE COMPUTATION AND LEVY OF THE DEFICIENCY IN THE FEES AND  
 14 OF THE GIVING OF THE NOTICES.

15 NEW SECTION. SECTION 9. CLOSING AGREEMENTS. (1) THE  
 16 DIRECTOR OF THE DEPARTMENT OR ANY PERSON AUTHORIZED IN  
 17 WRITING BY HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH  
 18 ANY FACILITY RELATING TO THE LIABILITY OF THE FACILITY IN  
 19 RESPECT TO THE FEES IMPOSED BY [SECTIONS 1 THROUGH 15] FOR  
 20 ANY PERIOD.

21 (2) AN AGREEMENT UNDER THIS SECTION IS FINAL AND  
 22 CONCLUSIVE, AND EXCEPT UPON A SHOWING OF FRAUD OR  
 23 MALFEASANCE OR MISREPRESENTATION OF A MATERIAL FACT:

24 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED  
 25 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR

1 AGENT OF THIS STATE; AND

2 (B) IN ANY SUIT, ACTION, OR PROCEEDING UNDER THE  
 3 AGREEMENT OR ANY DETERMINATION, ASSESSMENT, COLLECTION,  
 4 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE  
 5 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,  
 6 MODIFIED, SET ASIDE, OR DISREGARDED.

7 NEW SECTION. SECTION 10. CREDIT FOR OVERPAYMENT --  
 8 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT DETERMINES  
 9 THAT THE AMOUNT OF FEES, PENALTY, OR INTEREST DUE FOR ANY  
 10 YEAR IS LESS THAN THE AMOUNT PAID, THE AMOUNT OF THE  
 11 OVERPAYMENT MUST BE CREDITED AGAINST ANY FEES, PENALTY, OR  
 12 INTEREST THEN DUE FROM THE FACILITY AND THE BALANCE MUST BE  
 13 REFUNDED TO THE FACILITY OR ITS SUCCESSOR THROUGH  
 14 REORGANIZATION, MERGER, OR CONSOLIDATION OR TO ITS  
 15 SHAREHOLDERS UPON DISSOLUTION.

16 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(A) AND  
 17 (2)(B), INTEREST IS ALLOWED ON OVERPAYMENTS AT THE SAME RATE  
 18 AS IS CHARGED ON DELINQUENT FEES DUE FROM THE DUE DATE OF  
 19 THE REPORT OR FROM THE DATE OF OVERPAYMENT, WHICHEVER DATE  
 20 IS LATER, TO THE DATE THE DEPARTMENT APPROVES REFUNDING OR  
 21 CREDITING OF THE OVERPAYMENT. INTEREST DOES NOT ACCRUE  
 22 DURING ANY PERIOD DURING WHICH THE PROCESSING OF A CLAIM FOR  
 23 REFUND IS DELAYED MORE THAN 30 DAYS BY REASON OF FAILURE OF  
 24 THE FACILITY TO FURNISH INFORMATION REQUESTED BY THE  
 25 DEPARTMENT FOR THE PURPOSE OF VERIFYING THE AMOUNT OF THE

1 OVERPAYMENT. NO INTEREST IS ALLOWED:  
 2 (A) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM  
 3 THE DATE THE REPORT IS DUE OR FROM THE DATE THE RETURN IS  
 4 FILED, WHICHEVER IS LATER; OR  
 5 (B) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.  
 6 (3) A PAYMENT NOT MADE INCIDENT TO A DISCHARGE OF  
 7 ACTUAL UTILIZATION FEE LIABILITY OR A PAYMENT REASONABLY  
 8 ASSUMED TO BE IMPOSED BY [SECTIONS 1 THROUGH 15] IS NOT  
 9 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS  
 10 ALLOWABLE.

11 NEW SECTION. SECTION 11. APPLICATION FOR REFUND --  
 12 APPEAL FROM DENIAL. IF THE DEPARTMENT DISALLOWS A CLAIM FOR  
 13 REFUND, IT SHALL NOTIFY THE FACILITY. AT THE EXPIRATION OF  
 14 30 DAYS FROM THE MAILING OF THE NOTICE, THE DEPARTMENT'S  
 15 ACTION BECOMES FINAL UNLESS WITHIN THE 30-DAY PERIOD THE  
 16 FACILITY APPEALS IN WRITING FROM THE ACTION OF THE  
 17 DEPARTMENT TO THE STATE TAX APPEAL BOARD. IF AN APPEAL IS  
 18 MADE, THE BOARD SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 19 AFTER CONSIDERATION OF THE APPEAL AND EVIDENCE PRESENTED,  
 20 THE BOARD SHALL MAIL NOTICE TO THE TAXPAYER OF ITS  
 21 DETERMINATION. THE BOARD'S DETERMINATION IS FINAL WHEN IT  
 22 MAILS NOTICE OF ITS ACTION TO THE TAXPAYER.

23 NEW SECTION. Section 12. warrant for distraint. If the  
 24 utilization fee is not paid when due, the department of  
 25 revenue may issue a warrant for distraint as provided in

1 Title 15, chapter 1, part 7. The--resulting--lien--has  
 2 precedence--over--any--claim,--lien,--or--demand--filed--and  
 3 recorded--after--the--lien--under--the--warrant--is--perfected.

4 NEW SECTION. Section 13. Disposition of fee. All  
 5 proceeds from the collection of utilization fees, including  
 6 penalties and interest, must be deposited in the--state  
 7 general fund ~~AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO~~  
 8 ~~BE USED FOR MEDICAID REIMBURSEMENT TO NURSING FACILITIES~~ THE  
 9 STATE GENERAL FUND.

10 NEW SECTION. Section 14. Relation to other taxes and  
 11 fees. The utilization fee imposed under [section 3 2] is in  
 12 addition to any other taxes and fees required by law to be  
 13 paid by nursing facilities.

14 NEW SECTION. Section 15. Rulemaking authority. The  
 15 department of revenue may adopt rules necessary to implement  
 16 and administer [sections 1 through 10 15].

17 NEW SECTION. SECTION 16. APPROPRIATION. THE FOLLOWING  
 18 MONEY IS APPROPRIATED FROM--THE--ACCOUNT--ESTABLISHED--IN  
 19 {SECTION--13} TO THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 20 SERVICES TO FUND INCREASES IN MEDICAID RATES TO NURSING  
 21 FACILITIES:  
 22 FISCAL YEAR 1992  
 23 STATE-SPECIAL-REVENUE-FUNDS-----\$-923,626  
 24 STATE GENERAL FUND \$ 508,576  
 25 FEDERAL FUNDS 2,341,223 1,289,147

1	<u>TOTAL FUNDS</u>	<u>\$-372647849</u>	<u>\$1,797,723</u>
2	<u>FISCAL YEAR 1993</u>		
3	<u>STATE-SPECIAL-REVENUE-FUNDS-----</u>	<u>-\$1,465,300</u>	
4	<u>STATE GENERAL FUND</u>	<u>\$ 618,316</u>	
5	<u>FEDERAL FUNDS</u>	<u>377497294</u>	<u>1,582,096</u>
6	<u>TOTAL FUNDS</u>	<u>\$-572147594</u>	<u>\$2,200,412</u>

7 NEW SECTION. Section 17. Codification instruction.  
 8 [Sections 1 through 10 15] are intended to be codified as an  
 9 integral part of Title 15, and the provisions of Title 15  
 10 apply to [sections 1 through 10 15].

11 NEW SECTION. SECTION 18. CONTINGENT VOIDNESS. (1) IF  
 12 FEDERAL LAW OR POLICY IS AMENDED TO ALLOW A NURSING FACILITY  
 13 TO BILL A PERSON RECEIVING NURSING CARE FOR WHICH THE  
 14 FACILITY IS BEING REIMBURSED BY MEDICARE OR MEDICAID FOR THE  
 15 UTILIZATION FEE PROVIDED IN [SECTION 2], [THIS ACT] IS VOID  
 16 AS OF THE EFFECTIVE DATE OF THE CHANGE IN FEDERAL LAW OR  
 17 POLICY.

18 (2) IF FEDERAL LAW OR POLICY IS AMENDED SO THAT THE  
 19 UTILIZATION FEES COLLECTED PURSUANT TO [THIS ACT] MAY NOT BE  
 20 CONSIDERED AS THE STATE'S SHARE IN CLAIMING FEDERAL  
 21 FINANCIAL PARTICIPATION UNDER THE MEDICAID PROGRAM, [THIS  
 22 ACT] IS VOID AS OF THE EFFECTIVE DATE OF THE CHANGE IN  
 23 FEDERAL LAW OR POLICY.

24 (3) IF THE FEDERAL GOVERNMENT REFUSES TO PARTICIPATE IN  
 25 OR DENIES APPROVAL OF ANY PLAN FOR MEDICAID PAYMENTS TO

1 NURSING FACILITIES ON GROUNDS THAT IT CONSIDERS THE PAYMENTS  
 2 TO BE REIMBURSEMENT TO FACILITIES FOR PAYMENT OF THE  
 3 UTILIZATION FEES, [THIS ACT] IS VOID AS OF THE DATE OF  
 4 RECEIPT BY THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 5 SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION OF SUCH  
 6 REFUSAL OR DENIAL.

7 (4) IF [THIS ACT] BECOMES VOID UNDER THE PROVISIONS OF  
 8 THIS SECTION, ALL FEES RECEIVED OR COLLECTED BY THE  
 9 DEPARTMENT PRIOR TO THE DATE UPON WHICH THE ACT BECOMES VOID  
 10 MUST BE DEPOSITED IN ACCORDANCE WITH [SECTION 13] AND A  
 11 PERSON OR PARTY MAY NOT RECEIVE A REFUND OF ANY FEES  
 12 RECEIVED OR COLLECTED BY THE DEPARTMENT PRIOR TO THE DATE  
 13 UPON WHICH [THIS ACT] BECOMES VOID.

14 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
 15 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
 16 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
 17 THEN THE LANGUAGE CONTAINED IN [SECTIONS 7(1) AND 11 OF THIS  
 18 ACT] IS VOID AND THE PROVISIONS OF SENATE BILL NO. 445  
 19 GOVERN THE APPEAL PROCEDURES.

20 NEW SECTION. SECTION 20. SEVERABILITY. IF A PART OF  
 21 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 22 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 23 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
 24 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
 25 SEVERABLE FROM THE INVALID APPLICATIONS.

1        NEW SECTION. SECTION 21. NONAPPLICABILITY. [SECTIONS 1  
2 THROUGH 15] AND THE FEE ESTABLISHED UNDER [SECTION 2] DO NOT  
3 APPLY TO FACILITIES LICENSED TO PROVIDE INTERMEDIATE  
4 DEVELOPMENTAL DISABILITY CARE AND FACILITIES REIMBURSED AS  
5 INSTITUTIONS FOR MENTAL DISEASE UNDER THE MEDICAID PROGRAM.

6        NEW SECTION. Section 22. Effective dates --  
7 applicability. (1) [Sections ~~10, 11~~ 15, 17 THROUGH 21, 23,  
8 and this section] are effective ~~October 1, 1991~~ ON PASSAGE  
9 AND APPROVAL.

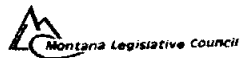
10        (2) [Sections 1 through 9 ~~14 AND 16~~] are effective July  
11 1, ~~1992~~ 1991, and apply to all bed days on or after July 1,  
12 ~~1992~~ 1991.

13        ~~NEW SECTION. SECTION 23. TERMINATION. [THIS ACT]~~  
14 ~~TERMINATES JUNE 30, 1993.~~

-End-

1 HOUSE BILL NO. 93  
 2 INTRODUCED BY COBB  
 3 BY REQUEST OF THE DEPARTMENT OF SOCIAL  
 4 AND REHABILITATION SERVICES  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION  
 7 FEE ON ~~EACH-NURSING-FACILITY~~ NURSING FACILITIES FOR EACH-BED  
 8 DAY BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN  
 9 FISCAL YEAR ~~1993~~ 1992; TO AUTHORIZE THE DEPARTMENT OF  
 10 REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT,  
 11 COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM  
 12 THE FEE TO BE DEPOSITED-IN-THE-GENERAL-FUND USED-FOR-CERTAIN  
 13 MEDICAID-REIMBURSEMENTS DEPOSITED-IN-THE-GENERAL--FUND USED  
 14 FOR CERTAIN MEDICAID REIMBURSEMENTS; TO PROVIDE AN  
 15 APPROPRIATION; AND PROVIDING EFFECTIVE DATES, AND, AN  
 16 APPLICABILITY DATE,---AND---A---TERMINATION--DATE, AND A  
 17 TERMINATION DATE."  
 18  
 19 WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO  
 20 FULLY FUND THE COST OF NURSING HOME CARE FOR MEDICAID  
 21 BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY  
 22 PRIVATELY FOR NURSING HOME CARE BY SHIFTING COST FROM  
 23 MEDICAID TO NON-MEDICAID RESIDENTS IN OUR STATE'S NURSING  
 24 HOMES; AND  
 25 WHEREAS, THE STATE HAS THE POTENTIAL OF FACING A LAWSUIT

1 FROM NURSING HOMES IF THE LEGISLATURE FAILS TO FULLY FUND  
 2 THE COST OF NURSING HOME CARE; AND  
 3 WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE  
 4 COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING  
 5 IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND  
 6 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND  
 7 CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL  
 8 PARTICIPATION IN THE COST OF PROGRAMS WHEREVER POSSIBLE; AND  
 9 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE  
 10 UTILIZATION FEE ESTABLISHED IN THIS BILL AS A MEANS OF  
 11 PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO NURSING  
 12 HOMES; AND  
 13 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT  
 14 NURSING HOMES CAREFULLY CONSIDER THE INCREASED MEDICAID  
 15 REVENUES MADE AVAILABLE BY THIS LEGISLATION WHEN DETERMINING  
 16 REASONABLE RATES TO BE CHARGED TO NON-MEDICAID PATIENTS IN  
 17 THEIR FACILITIES; AND  
 18 WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING  
 19 LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING  
 20 INDIVIDUALS IN NURSING HOMES FROM THE BURDEN OF COSTS  
 21 SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL  
 22 FUNDING OF THIS PROGRAM.  
 23  
 24 STATEMENT OF INTENT  
 25 A statement of intent is required for this bill because



1 [section ~~10~~ 15] grants the department of revenue authority  
2 to adopt rules necessary to implement and administer  
3 [sections 1 through ~~10~~ 15].

4 It is the intent of the legislature that, in adopting  
5 rules, the department:

6 (1) provide procedures and forms for reporting bed days  
7 that are subject to payment of the utilization fee imposed  
8 in [section 2];

9 (2) establish requirements for the maintenance of  
10 records and other documents required to ensure proper  
11 payment of the utilization fee;

12 (3) develop a process for the estimation and collection  
13 of delinquent or unpaid fees;

14 (4) provide a process for the reconciliation of  
15 disputes relating to the payment of utilization fees; and

16 (5) establish other procedures for the efficient  
17 administration of the utilization fee.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** For purposes of  
21 [sections 1 through ~~10~~ 15], unless the context requires  
22 otherwise, the following definitions apply:

23 (1) "Bed day" means each whole 24-hour period that a  
24 resident of a nursing facility is present in the facility  
25 and receiving skilled nursing care, OR intermediate nursing

1 ~~care, or intermediate developmental disability care~~ or in  
2 which a bed is held for a resident while he is on temporary  
3 leave from the facility, ~~regardless of the source of payment~~  
4 ~~for the resident's care.~~ THE TERM INCLUDES ALL PERIODS FOR  
5 WHICH THE NURSING FACILITY IS REIMBURSED BY A THIRD-PARTY  
6 PAYOR, INCLUDING BUT NOT LIMITED TO A PRIVATE OR  
7 GOVERNMENTAL INSURER OR PUBLIC ASSISTANCE PROGRAM, BUT IT  
8 DOES NOT INCLUDE ANY PERIOD FOR WHICH THE NURSING FACILITY  
9 MAY BE REIMBURSED ONLY BY THE RESIDENT, A FRIEND OF THE  
10 RESIDENT, OR A MEMBER OF THE RESIDENT'S FAMILY. The term  
11 also includes the day of a resident's admission to a nursing  
12 facility and the day of the resident's death, even though  
13 the resident is present less than a whole 24-hour period on  
14 these days.

15 (2) "Calendar quarter" means the period of 3  
16 consecutive months ending March 31, June 30, September 30,  
17 or December 31.

18 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

19 (4) "Nursing facility" or "facility" means a health  
20 care facility licensed by the department of health and  
21 environmental sciences as a long-term-care NURSING facility  
22 to provide skilled nursing care, OR intermediate nursing  
23 ~~care, or intermediate developmental disability care.~~ The  
24 term includes all nursing facilities, whether they are:

25 (a) operated as nonprofit or for-profit facilities;

1 (b) freestanding or part of another health care  
2 facility; or

3 (c) publicly or privately operated.

4 ~~†4~~(5) "Skilled nursing care" AND "intermediate  
5 nursing care"~~7-and--"intermediate--developmental--disability~~  
6 care" have the same meaning as those terms are defined in  
7 50-5-101.

8 ~~†5~~(6) "Report" means the report of bed days required  
9 in [section 3].

10 ~~†6~~(7) "Utilization fee" or "fee" means the fee  
11 required to be paid for each bed day in a nursing facility,  
12 as provided in [section 2].

13 NEW SECTION. Section 2. Utilization fee for bed days  
14 in nursing facilities. A nursing facility in the state shall  
15 pay to the department of revenue a utilization fee in the  
16 amount of ~~9~~ \$1.25 for each bed day in the facility DURING  
17 FISCAL YEAR 1992 AND \$1.50 FOR EACH BED DAY IN THE FACILITY  
18 DURING FISCAL YEAR 1993 AND EACH YEAR THEREAFTER.

19 NEW SECTION. Section 3. Reporting and collection of  
20 fee. (1) A nursing facility shall report to the department  
21 of revenue, following the end of each calendar quarter, the  
22 number of bed days in the facility during the quarter. The  
23 report must be in the form prescribed by the department and  
24 is due ~~within--30--days--following--the--end~~ ON OR BEFORE THE  
25 LAST DAY OF THE MONTH FOLLOWING THE CLOSE of each calendar

1 quarter. The report must be accompanied by a payment in an  
2 amount equal to the fee required to be paid under [section  
3 2].

4 (2) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
5 SHALL PROVIDE THE DEPARTMENT AT THE END OF EACH CALENDAR  
6 QUARTER WITH A LIST OF FACILITIES AS DEFINED IN [SECTION  
7 1(4)].

8 NEW SECTION. Section 4. Audit -- records. (1) The  
9 department of revenue may audit the records and other  
10 documents of any nursing facility to ensure that the proper  
11 utilization fee has been collected.

12 (2) The department may require the facility to provide  
13 records and other documentation, including books, ledgers,  
14 and registers, necessary for the department to verify the  
15 proper amount of the utilization fee paid.

16 (3) A facility shall maintain and make available for  
17 inspection BY THE DEPARTMENT sufficient records and other  
18 documentation to demonstrate the number of bed days in the  
19 facility subject to the utilization fee. The facility shall  
20 maintain these records for a period of at least 5 years from  
21 the date the report is due.

22 ~~†4--The-amount-of-the-fee-due-based-on-a-report-must-be~~  
23 ~~determined--by--the-department-within-5-years-after-the-date~~  
24 ~~the-report-is-due--Except-in-the-case--of--a--facility--that~~  
25 ~~purposefully-and-knowingly-files-a-false-report-with-the-intent~~

1 ~~to evade payment of the fee, the department is barred after~~  
 2 ~~the 5-year period from revising the report or recomputing~~  
 3 ~~the amount of the utilization fee owed. A proceeding for the~~  
 4 ~~collection of unpaid fees may not be instituted unless~~  
 5 ~~notice for collection of the unpaid fee is provided within~~  
 6 ~~the 5-year period after the report is due.~~

7 ~~(5) A nursing facility may file an application with the~~  
 8 ~~department to revise a report if the application is filed~~  
 9 ~~within 5 years from the date the report was due.~~

10 NEW SECTION. SECTION 5. PERIODS OF LIMITATION. (1)  
 11 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DEFICIENCY  
 12 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE QUARTER  
 13 FOR WHICH A REPORT IS FILED UNLESS THE NOTICE OF ADDITIONAL  
 14 FEEES PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM  
 15 THE DATE THE REPORT WAS FILED. FOR THE PURPOSES OF THIS  
 16 SECTION, A REPORT FILED BEFORE THE LAST DAY PRESCRIBED FOR  
 17 FILING IS CONSIDERED FILED ON THE LAST DAY. IF, BEFORE THE  
 18 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT OF THE  
 19 FEE, THE FACILITY CONSENTS IN WRITING TO AN ASSESSMENT AFTER  
 20 THE 5-YEAR PERIOD, THE FEE MAY BE ASSESSED AT ANY TIME PRIOR  
 21 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

22 (2) A REFUND OR CREDIT MAY NOT BE PAID OR ALLOWED WITH  
 23 RESPECT TO THE YEAR FOR WHICH A REPORT IS FILED AFTER 5  
 24 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE REPORT OR  
 25 AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT, WHICHEVER

1 PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION OF THE  
 2 PERIOD, THE FACILITY FILES A CLAIM OR THE DEPARTMENT HAS  
 3 DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED  
 4 THE REFUND OR CREDIT. IF THE FACILITY HAS AGREED IN WRITING  
 5 UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE TIME  
 6 WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN ADDITIONAL  
 7 ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR REFUND OR  
 8 CREDIT IS FILED OR A CREDIT OR REFUND ALLOWED IN THE EVENT  
 9 NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

10 NEW SECTION. Section 6. Penalty and interest for  
 11 delinquent fees -- waiver. (1) Utilization fees are  
 12 delinquent if they are not paid within the time specified in  
 13 (section 3). The department shall assess a penalty of 10% of  
 14 the amount of delinquent fees plus interest at the rate of  
 15 1% a month computed on the total of fees and penalty due.  
 16 Interest is computed from the date the fees were due to the  
 17 date of payment.

18 (2) The penalty provided for in subsection (1) may be  
 19 waived by the department if the facility demonstrates to the  
 20 department reasonable cause for the failure to file the  
 21 report or to pay the fee within the time specified in  
 22 (section 3). (1) IF THE FEE FOR ANY FACILITY IS NOT PAID ON  
 23 OR BEFORE THE DUE DATE OF THE REPORT AS PROVIDED IN [SECTION  
 24 3(1)], A PENALTY OF 10% OF THE AMOUNT OF THE FEE DUE MUST BE  
 25 ASSESSED UNLESS IT IS SHOWN THAT THE FAILURE WAS DUE TO



1 REASONABLE CAUSE AND NOT NEGLECT.

2 (2) IF ANY FEE DUE UNDER {SECTION 2} IS NOT PAID WHEN  
3 DUE, INTEREST IS ADDED TO THE TAX DUE AT THE RATE OF 12% A  
4 YEAR FROM THE DUE DATE UNTIL PAID.

5 NEW-SECTION:--Section-6:--Estimation-of-fee-upon-failure  
6 to-file-a-report-or-pay-the-fee---notice:-(i)-if-a--nursing  
7 facility--fails-or-refuses-to-file-the-report-or-pay-the-fee  
8 within-the-time-specified-in-(section-3);-the-department--of  
9 revenue--shall--estimate-the-total-number-of-bed-days-in-the  
10 facility-during--the--calendar--quarter--and--calculate--the  
11 amount-of-the-fee-due-

12 (2)--The-department-shall-mail-to-the-facility-described  
13 in--subsection--(i)-a-notice-stating-the-basis-and-amount-of  
14 the--fee--and--demanding--payment--of--the--fee,---including  
15 penalties--and-interest.-The-notice-must-advise-the-facility  
16 that-if-payment-is-not-made,-a-warrant-for-distrain-may-be  
17 filed-

18 NEW SECTION. SECTION 7. ESTIMATED FEE ON FAILURE TO  
19 FILE. (1) IF A FACILITY FAILS TO FILE THE REPORT AS  
20 REQUIRED, THE DEPARTMENT IS AUTHORIZED TO MAKE AN ESTIMATE  
21 OF THE FEES DUE FROM THE FACILITY FROM ANY INFORMATION IN  
22 ITS POSSESSION.

23 (2) FOR THE PURPOSE OF ASCERTAINING THE CORRECTNESS OF  
24 ANY REPORT OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF 9ED  
25 DAY USE OF ANY FACILITY WHERE INFORMATION HAS BEEN OBTAINED,

1 THE DEPARTMENT MAY:

2 (A) EXAMINE OR CAUSE TO HAVE EXAMINED BY ANY DESIGNATED  
3 AGENT OR REPRESENTATIVE ANY BOOKS, PAPERS, RECORDS, OR  
4 MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED  
5 IN THE REPORT;

6 (B) REQUIRE THE ATTENDANCE OF ANY OFFICER OR EMPLOYEE  
7 OF THE FACILITY RENDERING THE REPORT OR THE ATTENDANCE OF  
8 ANY OTHER PERSON IN THE PREMISES HAVING RELEVANT KNOWLEDGE;  
9 AND

10 (C) TAKE TESTIMONY AND REQUIRE PRODUCTION OF ANY OTHER  
11 MATERIAL FOR ITS INFORMATION.

12 NEW SECTION. SECTION 8. DEFICIENCY ASSESSMENT --  
13 HEARING. (1) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
14 FEES DUE ARE GREATER THAN THE AMOUNT DISCLOSED BY THE  
15 REPORT, IT SHALL MAIL TO THE FACILITY A NOTICE OF THE  
16 ADDITIONAL FEES PROPOSED TO BE ASSESSED. WITHIN 30 DAYS  
17 AFTER THE MAILING OF THE NOTICE, THE FACILITY MAY FILE WITH  
18 THE DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED  
19 ADDITIONAL FEES, SETTING FORTH THE GROUNDS UPON WHICH THE  
20 PROTEST IS BASED, AND MAY REQUEST IN ITS PROTEST AN ORAL  
21 HEARING OR AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE  
22 RELATING TO ITS FEES LIABILITY. IF NO PROTEST IS FILED, THE  
23 AMOUNT OF THE ADDITIONAL FEES PROPOSED TO BE ASSESSED  
24 BECOMES FINAL UPON THE EXPIRATION OF THE 30-DAY PERIOD. IF  
25 SUCH PROTEST IS FILED, THE DEPARTMENT SHALL RECONSIDER THE

1 PROPOSED ASSESSMENT AND, IF THE FACILITY HAS SO REQUESTED,  
 2 SHALL GRANT THE FACILITY AN ORAL HEARING. AFTER  
 3 CONSIDERATION OF THE PROTEST AND THE EVIDENCE PRESENTED IN  
 4 THE EVENT OF AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 5 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 6 THE FACILITY.

7 (2) WHEN A DEFICIENCY IS DETERMINED AND THE FEES BECOME  
 8 FINAL, THE DEPARTMENT SHALL MAIL NOTICE AND DEMAND TO THE  
 9 FACILITY FOR PAYMENT, AND THE FEES BECOME DUE AND PAYABLE AT  
 10 THE EXPIRATION OF 10 DAYS FROM THE DATE OF THE NOTICE AND  
 11 DEMAND. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST  
 12 FROM THE DATE SPECIFIED IN [SECTION 5] FOR PAYMENT OF THE  
 13 FEES. A CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE  
 14 NOTICES SPECIFIED IN THIS SECTION IS PRIMA FACIE EVIDENCE OF  
 15 THE COMPUTATION AND LEVY OF THE DEFICIENCY IN THE FEES AND  
 16 OF THE GIVING OF THE NOTICES.

17 NEW SECTION. SECTION 9. CLOSING AGREEMENTS. (1) THE  
 18 DIRECTOR OF THE DEPARTMENT OR ANY PERSON AUTHORIZED IN  
 19 WRITING BY HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH  
 20 ANY FACILITY RELATING TO THE LIABILITY OF THE FACILITY IN  
 21 RESPECT TO THE FEES IMPOSED BY [SECTIONS 1 THROUGH 15] FOR  
 22 ANY PERIOD.

23 (2) AN AGREEMENT UNDER THIS SECTION IS FINAL AND  
 24 CONCLUSIVE, AND EXCEPT UPON A SHOWING OF FRAUD OR  
 25 MALFEASANCE OR MISREPRESENTATION OF A MATERIAL FACT:

1 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED  
 2 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR  
 3 AGENT OF THIS STATE; AND

4 (B) IN ANY SUIT, ACTION, OR PROCEEDING UNDER THE  
 5 AGREEMENT OR ANY DETERMINATION, ASSESSMENT, COLLECTION,  
 6 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE  
 7 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,  
 8 MODIFIED, SET ASIDE, OR DISREGARDED.

9 NEW SECTION. SECTION 10. CREDIT FOR OVERPAYMENT --  
 10 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT DETERMINES  
 11 THAT THE AMOUNT OF FEES, PENALTY, OR INTEREST DUE FOR ANY  
 12 YEAR IS LESS THAN THE AMOUNT PAID, THE AMOUNT OF THE  
 13 OVERPAYMENT MUST BE CREDITED AGAINST ANY FEES, PENALTY, OR  
 14 INTEREST THEN DUE FROM THE FACILITY AND THE BALANCE MUST BE  
 15 REFUNDED TO THE FACILITY OR ITS SUCCESSOR THROUGH  
 16 REORGANIZATION, MERGER, OR CONSOLIDATION OR TO ITS  
 17 SHAREHOLDERS UPON DISSOLUTION.

18 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(A) AND  
 19 (2)(B), INTEREST IS ALLOWED ON OVERPAYMENTS AT THE SAME RATE  
 20 AS IS CHARGED ON DELINQUENT FEES DUE FROM THE DUE DATE OF  
 21 THE REPORT OR FROM THE DATE OF OVERPAYMENT, WHICHEVER DATE  
 22 IS LATER, TO THE DATE THE DEPARTMENT APPROVES REFUNDING OR  
 23 CREDITING OF THE OVERPAYMENT. INTEREST DOES NOT ACCRUE  
 24 DURING ANY PERIOD DURING WHICH THE PROCESSING OF A CLAIM FOR  
 25 REFUND IS DELAYED MORE THAN 30 DAYS BY REASON OF FAILURE OF

1 THE FACILITY TO FURNISH INFORMATION REQUESTED BY THE  
 2 DEPARTMENT FOR THE PURPOSE OF VERIFYING THE AMOUNT OF THE  
 3 OVERPAYMENT. NO INTEREST IS ALLOWED:

4 (A) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM  
 5 THE DATE THE REPORT IS DUE OR FROM THE DATE THE RETURN IS  
 6 FILED, WHICHEVER IS LATER; OR

7 (B) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

8 (3) A PAYMENT NOT MADE INCIDENT TO A DISCHARGE OF  
 9 ACTUAL UTILIZATION FEE LIABILITY OR A PAYMENT REASONABLY  
 10 ASSUMED TO BE IMPOSED BY [SECTIONS 1 THROUGH 15] IS NOT  
 11 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS  
 12 ALLOWABLE.

13 NEW SECTION. SECTION 11. APPLICATION FOR REFUND --  
 14 APPEAL FROM DENIAL. IF THE DEPARTMENT DISALLOWS A CLAIM FOR  
 15 REFUND, IT SHALL NOTIFY THE FACILITY. AT THE EXPIRATION OF  
 16 30 DAYS FROM THE MAILING OF THE NOTICE, THE DEPARTMENT'S  
 17 ACTION BECOMES FINAL UNLESS WITHIN THE 30-DAY PERIOD THE  
 18 FACILITY APPEALS IN WRITING FROM THE ACTION OF THE  
 19 DEPARTMENT TO THE STATE TAX APPEAL BOARD. IF AN APPEAL IS  
 20 MADE, THE BOARD SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 21 AFTER CONSIDERATION OF THE APPEAL AND EVIDENCE PRESENTED,  
 22 THE BOARD SHALL MAIL NOTICE TO THE TAXPAYER OF ITS  
 23 DETERMINATION. THE BOARD'S DETERMINATION IS FINAL WHEN IT  
 24 MAILS NOTICE OF ITS ACTION TO THE TAXPAYER.

25 NEW SECTION. Section 12. Warrant for distraint. If the

1 utilization fee is not paid when due, the department of  
 2 revenue may issue a warrant for distraint as provided in  
 3 Title 15, chapter 1, part 7. ~~The resulting lien has~~  
 4 ~~precedence over any claim, lien, or demand filed and~~  
 5 ~~recorded after the lien under the warrant is perfected.~~

6 NEW SECTION. Section 13. Disposition of fee. All  
 7 proceeds from the collection of utilization fees, including  
 8 penalties and interest, must be deposited in the state  
 9 general fund AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO  
 10 BE USED FOR MEDICAID REIMBURSEMENT TO NURSING FACILITIES THE  
 11 STATE GENERAL FUND AN ACCOUNT IN THE STATE SPECIAL REVENUE  
 12 FUND TO BE USED FOR MEDICAID REIMBURSEMENT TO NURSING  
 13 FACILITIES.

14 NEW SECTION. Section 14. Relation to other taxes and  
 15 fees. The utilization fee imposed under [section 9 2] is in  
 16 addition to any other taxes and fees required by law to be  
 17 paid by nursing facilities.

18 NEW SECTION. Section 15. Rulemaking authority. The  
 19 department of revenue may adopt rules necessary to implement  
 20 and administer [sections 1 through 15].

21 NEW SECTION. SECTION 16. APPROPRIATION. THE FOLLOWING  
 22 MONEY IS APPROPRIATED FROM THE ACCOUNT ESTABLISHED IN  
 23 [SECTION 13] FROM THE ACCOUNT ESTABLISHED IN [SECTION 13] TO  
 24 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO FUND  
 25 INCREASES IN MEDICAID RATES TO NURSING FACILITIES:

1	<u>FISCAL YEAR 1992</u>	
2	<u>STATE-SPECIAL-REVENUE-FUNDS-----</u>	<u>\$-923,626</u>
3	<u>STATE-GENERAL-FUND-----</u>	<u>\$--508,576</u>
4	<u>STATE SPECIAL REVENUE FUNDS</u>	<u>\$ 923,626</u>
5	<u>FEDERAL FUNDS</u>	<u>2,341,223 1,289,147 2,341,223</u>
6	<u>TOTAL FUNDS</u>	<u>9-3,264,849 \$1,797,723 \$3,264,849</u>
7	<u>FISCAL YEAR 1993</u>	
8	<u>STATE-SPECIAL-REVENUE-FUNDS-----</u>	<u>\$-1,465,388</u>
9	<u>STATE-GENERAL-FUND-----</u>	<u>\$--618,316</u>
10	<u>STATE SPECIAL REVENUE FUNDS</u>	<u>\$ 1,465,300</u>
11	<u>FEDERAL FUNDS</u>	<u>3,749,294 1,758,096 3,749,294</u>
12	<u>TOTAL FUNDS</u>	<u>9-5,214,594 \$2,200,412 \$5,214,594</u>

13 NEW SECTION. SECTION 17. Codification instruction.  
 14 [Sections 1 through 15] are intended to be codified as an  
 15 integral part of Title 15, and the provisions of Title 15  
 16 apply to [sections 1 through 15].

17 NEW SECTION. SECTION 18. CONTINGENT VOIDNESS. (1) IF  
 18 FEDERAL LAW OR POLICY IS AMENDED TO ALLOW A NURSING FACILITY  
 19 TO BILL A PERSON RECEIVING NURSING CARE FOR WHICH THE  
 20 FACILITY IS BEING REIMBURSED BY MEDICARE OR MEDICAID FOR THE  
 21 UTILIZATION FEE PROVIDED IN [SECTION 2], [THIS ACT] IS VOID  
 22 AS OF THE EFFECTIVE DATE OF THE CHANGE IN FEDERAL LAW OR  
 23 POLICY.

24 (2) IF FEDERAL LAW OR POLICY IS AMENDED SO THAT THE  
 25 UTILIZATION FEES COLLECTED PURSUANT TO [THIS ACT] MAY NOT BE

1 CONSIDERED AS THE STATE'S SHARE IN CLAIMING FEDERAL  
 2 FINANCIAL PARTICIPATION UNDER THE MEDICAID PROGRAM, [THIS  
 3 ACT] IS VOID AS OF THE EFFECTIVE DATE OF THE CHANGE IN  
 4 FEDERAL LAW OR POLICY.

5 (3) IF THE FEDERAL GOVERNMENT REFUSES TO PARTICIPATE IN  
 6 OR DENIES APPROVAL OF ANY PLAN FOR MEDICAID PAYMENTS TO  
 7 NURSING FACILITIES ON GROUNDS THAT IT CONSIDERS THE PAYMENTS  
 8 TO BE REIMBURSEMENT TO FACILITIES FOR PAYMENT OF THE  
 9 UTILIZATION FEES, [THIS ACT] IS VOID AS OF THE DATE OF  
 10 RECEIPT BY THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 11 SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION OF SUCH  
 12 REFUSAL OR DENIAL.

13 (4) IF [THIS ACT] BECOMES VOID UNDER THE PROVISIONS OF  
 14 THIS SECTION, ALL FEES RECEIVED OR COLLECTED BY THE  
 15 DEPARTMENT PRIOR TO THE DATE UPON WHICH THE ACT BECOMES VOID  
 16 MUST BE DEPOSITED IN ACCORDANCE WITH [SECTION 13] AND A  
 17 PERSON OR PARTY MAY NOT RECEIVE A REFUND OF ANY FEES  
 18 RECEIVED OR COLLECTED BY THE DEPARTMENT PRIOR TO THE DATE  
 19 UPON WHICH [THIS ACT] BECOMES VOID.

20 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
 21 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
 22 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
 23 THEN THE LANGUAGE CONTAINED IN [SECTIONS 7(1) AND 11 OF THIS  
 24 ACT] IS VOID AND THE PROVISIONS OF SENATE BILL NO. 445  
 25 GOVERN THE APPEAL PROCEDURES.

1        NEW SECTION. SECTION 20. SEVERABILITY. IF A PART OF  
2 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
3 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
4 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
5 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
6 SEVERABLE FROM THE INVALID APPLICATIONS.

7        NEW SECTION. SECTION 21. NONAPPLICABILITY. [SECTIONS 1  
8 THROUGH 15] AND THE FEE ESTABLISHED UNDER [SECTION 2] DO NOT  
9 APPLY TO FACILITIES LICENSED TO PROVIDE INTERMEDIATE  
10 DEVELOPMENTAL DISABILITY CARE AND FACILITIES REIMBURSED AS  
11 INSTITUTIONS FOR MENTAL DISEASE UNDER THE MEDICAID PROGRAM.

12        NEW SECTION. Section 22. Effective        dates        --  
13 applicability. (1) [Sections ~~107-11~~ 15, 17 THROUGH 21, 23,  
14 and this section] are effective ~~October-17-1991~~ ON PASSAGE  
15 AND APPROVAL.

16        (2) [Sections 1 through 9 14 AND 16] are effective July  
17 1, 1992 1991, and apply to all bed days on or after July 1,  
18 1992 1991.

19        ~~NEW SECTION--SECTION 23--TERMINATION--[THIS--ACT]~~  
20 ~~TERMINATES JUNE 30, 1993.~~

21        NEW SECTION. SECTION 23. TERMINATION. [THIS ACT]  
22 TERMINATES JUNE 30, 1993.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 13, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 93 (third reading copy -- blue), respectfully report that House Bill No. 93 be amended and as so amended be concurred in:

1. Title, lines 13 and 14.

Strike: "USED" on line 13 through "REIMBURSEMENTS" on line 14

Insert: "DEPOSITED IN THE GENERAL FUND"

2. Title, line 15.

Following: "AND"

Strike: "1"

Insert: "AND"

3. Title, lines 16 and 17.

Following: "DATE" on line 16

Strike: remainder of line 16 through "DATE" on line 17

4. Page 14, lines 11 through 13.

Strike: "AN" on line 11 through "FACILITIES" on line 13

Insert: "the state general fund"

5. Page 14, line 23.

Strike: "FROM" through "1"

6. Page 15, line 4.

Strike: "STATE SPECIAL REVENUE FUNDS"

Insert: "state general fund"

7. Page 15, line 10.

Strike: "STATE SPECIAL REVENUE FUNDS"

Insert: "state general fund"

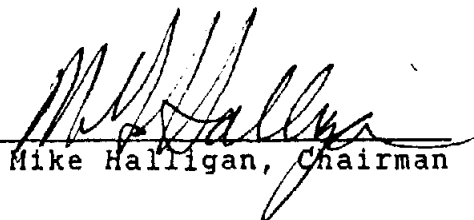
8. Page 17, line 13.

Strike: "1, 23"

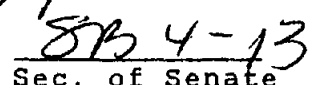
9. Page 17, lines 21 and 22.

Strike: section 23 in its entirety

Signed: \_\_\_\_\_

  
Mike Halligan, Chairman

  
Amd. Coord.

  
Sec. of Senate

SENATE  
HB 93

1 HOUSE BILL NO. 93  
 2 INTRODUCED BY COBB  
 3 BY REQUEST OF THE DEPARTMENT OF SOCIAL  
 4 AND REHABILITATION SERVICES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION  
 7 FEE ON ~~EACH-NURSING-PACILITY~~ NURSING FACILITIES FOR EACH-BED  
 8 DAY BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN  
 9 FISCAL YEAR ~~1993~~ 1992; TO AUTHORIZE THE DEPARTMENT OF  
 10 REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT,  
 11 COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM  
 12 ~~THE FEE TO BE DEPOSITED-IN-THE-GENERAL-FUND USED-FOR-CERTAIN~~  
 13 ~~MEDICAID-REIMBURSEMENTS DEPOSITED-IN-THE-GENERAL--FUND USED~~  
 14 ~~FOR-CERTAIN-MEDICAID-REIMBURSEMENTS DEPOSITED IN THE GENERAL~~  
 15 FUND; TO PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE  
 16 DATES, AND AN APPLICABILITY DATE,--AND--A--TERMINATION  
 17 DATE,--AND--A--TERMINATION-DATE."

18  
 19 WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO  
 20 FULLY FUND THE COST OF NURSING HOME CARE FOR MEDICAID  
 21 BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY  
 22 PRIVATELY FOR NURSING HOME CARE BY SHIFTING COST FROM  
 23 MEDICAID TO NON-MEDICAID RESIDENTS IN OUR STATE'S NURSING  
 24 HOMES; AND

25 WHEREAS, THE STATE HAS THE POTENTIAL OF FACING A LAWSUIT

1 FROM NURSING HOMES IF THE LEGISLATURE FAILS TO FULLY FUND  
 2 THE COST OF NURSING HOME CARE; AND

3 WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE  
 4 COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING  
 5 IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND

6 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND  
 7 CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL  
 8 PARTICIPATION IN THE COST OF PROGRAMS WHEREVER POSSIBLE; AND

9 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE  
 10 UTILIZATION FEE ESTABLISHED IN THIS BILL AS A MEANS OF  
 11 PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO NURSING  
 12 HOMES; AND

13 WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT  
 14 NURSING HOMES CAREFULLY CONSIDER THE INCREASED MEDICAID  
 15 REVENUES MADE AVAILABLE BY THIS LEGISLATION WHEN DETERMINING  
 16 REASONABLE RATES TO BE CHARGED TO NON-MEDICAID PATIENTS IN  
 17 THEIR FACILITIES; AND

18 WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING  
 19 LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING  
 20 INDIVIDUALS IN NURSING HOMES FROM THE BURDEN OF COSTS  
 21 SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL  
 22 FUNDING OF THIS PROGRAM.

23  
 24 STATEMENT OF INTENT  
 25 A statement of intent is required for this bill because



1 [section ~~10~~ 15] grants the department of revenue authority  
2 to adopt rules necessary to implement and administer  
3 [sections 1 through ~~10~~ 15].

4 It is the intent of the legislature that, in adopting  
5 rules, the department:

6 (1) provide procedures and forms for reporting bed days  
7 that are subject to payment of the utilization fee imposed  
8 in [section 2];

9 (2) establish requirements for the maintenance of  
10 records and other documents required to ensure proper  
11 payment of the utilization fee;

12 (3) develop a process for the estimation and collection  
13 of delinquent or unpaid fees;

14 (4) provide a process for the reconciliation of  
15 disputes relating to the payment of utilization fees; and

16 (5) establish other procedures for the efficient  
17 administration of the utilization fee.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** For purposes of  
21 [sections 1 through ~~10~~ 15], unless the context requires  
22 otherwise, the following definitions apply:

23 (1) "Bed day" means each whole 24-hour period that a  
24 resident of a nursing facility is present in the facility  
25 and receiving skilled nursing care, OR intermediate nursing

1 ~~care,--or--intermediate--developmental--disability--care~~ or in  
2 which a bed is held for a resident while he is on temporary  
3 leave from the facility, ~~regardless-of-the-source-of-payment~~  
4 ~~for--the--resident's-care.~~ THE TERM INCLUDES ALL PERIODS FOR  
5 WHICH THE NURSING FACILITY IS REIMBURSED BY A THIRD-PARTY  
6 PAYOR, INCLUDING BUT NOT LIMITED TO A PRIVATE OR  
7 GOVERNMENTAL INSURER OR PUBLIC ASSISTANCE PROGRAM, BUT IT  
8 DOES NOT INCLUDE ANY PERIOD FOR WHICH THE NURSING FACILITY  
9 MAY BE REIMBURSED ONLY BY THE RESIDENT, A FRIEND OF THE  
10 RESIDENT, OR A MEMBER OF THE RESIDENT'S FAMILY. The term  
11 also includes the day of a resident's admission to a nursing  
12 facility and the day of the resident's death, even though  
13 the resident is present less than a whole 24-hour period on  
14 these days.

15 (2) "Calendar quarter" means the period of 3  
16 consecutive months ending March 31, June 30, September 30,  
17 or December 31.

18 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

19 ~~3~~(4) "Nursing facility" or "facility" means a health  
20 care facility licensed by the department of health and  
21 environmental sciences as a ~~long-term-care~~ NURSING facility  
22 to provide skilled nursing care, OR intermediate nursing  
23 ~~care,--or--intermediate--developmental--disability--care.~~ The  
24 term includes ~~all~~ nursing facilities, whether they are:

25 (a) operated as nonprofit or for-profit facilities;



1 (b) freestanding or part of another health care  
2 facility; or

3 (c) publicly or privately operated.

4 ~~(4)~~(5) "Skilled nursing care", AND "intermediate  
5 nursing care", ~~and~~ ~~intermediate-developmental-disability~~  
6 ~~care~~ have the same meaning as those terms are defined in  
7 50-5-101.

8 ~~(5)~~(6) "Report" means the report of bed days required  
9 in [section 3].

10 ~~(6)~~(7) "Utilization fee" or "fee" means the fee  
11 required to be paid for each bed day in a nursing facility,  
12 as provided in [section 2].

13 NEW SECTION. Section 2. Utilization fee for bed days  
14 in nursing facilities. A nursing facility in the state shall  
15 pay to the department of revenue a utilization fee in the  
16 amount of \$1.25 for each bed day in the facility DURING  
17 FISCAL YEAR 1992 AND \$1.50 FOR EACH BED DAY IN THE FACILITY  
18 DURING FISCAL YEAR 1993 AND EACH YEAR THEREAFTER.

19 NEW SECTION. Section 3. Reporting and collection of  
20 fee. (1) A nursing facility shall report to the department  
21 of revenue, following the end of each calendar quarter, the  
22 number of bed days in the facility during the quarter. The  
23 report must be in the form prescribed by the department and  
24 is due within 30 days following the end ON OR BEFORE THE  
25 LAST DAY OF THE MONTH FOLLOWING THE CLOSE of each calendar

1 quarter. The report must be accompanied by a payment in an  
2 amount equal to the fee required to be paid under [section  
3 2].

4 (2) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
5 SHALL PROVIDE THE DEPARTMENT AT THE END OF EACH CALENDAR  
6 QUARTER WITH A LIST OF FACILITIES AS DEFINED IN [SECTION  
7 1(4)].

8 NEW SECTION. Section 4. Audit -- records. (1) The  
9 department of revenue may audit the records and other  
10 documents of any nursing facility to ensure that the proper  
11 utilization fee has been collected.

12 (2) The department may require the facility to provide  
13 records and other documentation, including books, ledgers,  
14 and registers, necessary for the department to verify the  
15 proper amount of the utilization fee paid.

16 (3) A facility shall maintain and make available for  
17 inspection BY THE DEPARTMENT sufficient records and other  
18 documentation to demonstrate the number of bed days in the  
19 facility subject to the utilization fee. The facility shall  
20 maintain these records for a period of at least 5 years from  
21 the date the report is due.

22 ~~(4) The amount of the fee due based on a report must be~~  
23 ~~determined by the department within 5 years after the date~~  
24 ~~the report is due. Except in the case of a facility that~~  
25 ~~purposefully and knowingly files a false report with the intent~~

1 ~~to evade payment of the fee, the department is barred after~~  
 2 ~~the 5-year period from revising the report or recomputing~~  
 3 ~~the amount of the utilization fee owed. A proceeding for the~~  
 4 ~~collection of unpaid fees may not be instituted unless~~  
 5 ~~notice for collection of the unpaid fee is provided within~~  
 6 ~~the 5-year period after the report is due.~~

7 ~~(5) A nursing facility may file an application with the~~  
 8 ~~department to revise a report if the application is filed~~  
 9 ~~within 5 years from the date the report was due.~~

10 NEW SECTION. SECTION 5. PERIODS OF LIMITATION. (1)  
 11 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DEFICIENCY  
 12 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE QUARTER  
 13 FOR WHICH A REPORT IS FILED UNLESS THE NOTICE OF ADDITIONAL  
 14 FEES PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM  
 15 THE DATE THE REPORT WAS FILED. FOR THE PURPOSES OF THIS  
 16 SECTION, A REPORT FILED BEFORE THE LAST DAY PRESCRIBED FOR  
 17 FILING IS CONSIDERED FILED ON THE LAST DAY. IF, BEFORE THE  
 18 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT OF THE  
 19 FEE, THE FACILITY CONSENTS IN WRITING TO AN ASSESSMENT AFTER  
 20 THE 5-YEAR PERIOD, THE FEE MAY BE ASSESSED AT ANY TIME PRIOR  
 21 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

22 (2) A REFUND OR CREDIT MAY NOT BE PAID OR ALLOWED WITH  
 23 RESPECT TO THE YEAR FOR WHICH A REPORT IS FILED AFTER 5  
 24 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE REPORT OR  
 25 AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT, WHICHEVER

1 PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION OF THE  
 2 PERIOD, THE FACILITY FILES A CLAIM OR THE DEPARTMENT HAS  
 3 DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED  
 4 THE REFUND OR CREDIT. IF THE FACILITY HAS AGREED IN WRITING  
 5 UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE TIME  
 6 WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN ADDITIONAL  
 7 ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR REFUND OR  
 8 CREDIT IS FILED OR A CREDIT OR REFUND ALLOWED IN THE EVENT  
 9 NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

10 NEW SECTION. Section 6. Penalty and interest for  
 11 delinquent fees -- waiver. (1) Utilization fees are  
 12 delinquent if they are not paid within the time specified in  
 13 {section 3}. The department shall assess a penalty of 10% of  
 14 the amount of delinquent fees plus interest at the rate of  
 15 1% a month computed on the total of fees and penalty due.  
 16 Interest is computed from the date the fees were due to the  
 17 date of payment.

18 (2) The penalty provided for in subsection (1) may be  
 19 waived by the department if the facility demonstrates to the  
 20 department reasonable cause for the failure to file the  
 21 report or to pay the fee within the time specified in  
 22 {section 3}. (1) IF THE FEE FOR ANY FACILITY IS NOT PAID ON  
 23 OR BEFORE THE DUE DATE OF THE REPORT AS PROVIDED IN [SECTION  
 24 3(1)], A PENALTY OF 10% OF THE AMOUNT OF THE FEE DUE MUST BE  
 25 ASSESSED UNLESS IT IS SHOWN THAT THE FAILURE WAS DUE TO

1 REASONABLE CAUSE AND NOT NEGLECT.

2 (2) IF ANY FEE DUE UNDER [SECTION 2] IS NOT PAID WHEN  
3 DUE, INTEREST IS ADDED TO THE TAX DUE AT THE RATE OF 12% A  
4 YEAR FROM THE DUE DATE UNTIL PAID.

5 NEW SECTION. Section 6. Estimation of fee upon failure  
6 to file a report or pay the fee. (1) If a nursing  
7 facility fails or refuses to file the report or pay the fee  
8 within the time specified in [section 3], the department of  
9 revenue shall estimate the total number of bed days in the  
10 facility during the calendar quarter and calculate the  
11 amount of the fee due.

12 (2) The department shall mail to the facility described  
13 in subsection (1) a notice stating the basis and amount of  
14 the fee and demanding payment of the fee, including  
15 penalties and interest. The notice must advise the facility  
16 that if payment is not made, a warrant for distraint may be  
17 filed.

18 NEW SECTION. SECTION 7. ESTIMATED FEE ON FAILURE TO  
19 FILE. (1) IF A FACILITY FAILS TO FILE THE REPORT AS  
20 REQUIRED, THE DEPARTMENT IS AUTHORIZED TO MAKE AN ESTIMATE  
21 OF THE FEES DUE FROM THE FACILITY FROM ANY INFORMATION IN  
22 ITS POSSESSION.

23 (2) FOR THE PURPOSE OF ASCERTAINING THE CORRECTNESS OF  
24 ANY REPORT OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF BED  
25 DAY USE OF ANY FACILITY WHERE INFORMATION HAS BEEN OBTAINED,

1 THE DEPARTMENT MAY:

2 (A) EXAMINE OR CAUSE TO HAVE EXAMINED BY ANY DESIGNATED  
3 AGENT OR REPRESENTATIVE ANY BOOKS, PAPERS, RECORDS, OR  
4 MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED  
5 IN THE REPORT;

6 (B) REQUIRE THE ATTENDANCE OF ANY OFFICER OR EMPLOYEE  
7 OF THE FACILITY RENDERING THE REPORT OR THE ATTENDANCE OF  
8 ANY OTHER PERSON IN THE PREMISES HAVING RELEVANT KNOWLEDGE;  
9 AND

10 (C) TAKE TESTIMONY AND REQUIRE PRODUCTION OF ANY OTHER  
11 MATERIAL FOR ITS INFORMATION.

12 NEW SECTION. SECTION 8. DEFICIENCY ASSESSMENT --  
13 HEARING. (1) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
14 FEES DUE ARE GREATER THAN THE AMOUNT DISCLOSED BY THE  
15 REPORT, IT SHALL MAIL TO THE FACILITY A NOTICE OF THE  
16 ADDITIONAL FEES PROPOSED TO BE ASSESSED. WITHIN 30 DAYS  
17 AFTER THE MAILING OF THE NOTICE, THE FACILITY MAY FILE WITH  
18 THE DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED  
19 ADDITIONAL FEES, SETTING FORTH THE GROUNDS UPON WHICH THE  
20 PROTEST IS BASED, AND MAY REQUEST IN ITS PROTEST AN ORAL  
21 HEARING OR AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE  
22 RELATING TO ITS FEES LIABILITY. IF NO PROTEST IS FILED, THE  
23 AMOUNT OF THE ADDITIONAL FEES PROPOSED TO BE ASSESSED  
24 BECOMES FINAL UPON THE EXPIRATION OF THE 30-DAY PERIOD. IF  
25 SUCH PROTEST IS FILED, THE DEPARTMENT SHALL RECONSIDER THE

1 PROPOSED ASSESSMENT AND, IF THE FACILITY HAS SO REQUESTED,  
 2 SHALL GRANT THE FACILITY AN ORAL HEARING. AFTER  
 3 CONSIDERATION OF THE PROTEST AND THE EVIDENCE PRESENTED IN  
 4 THE EVENT OF AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 5 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 6 THE FACILITY.

7 (2) WHEN A DEFICIENCY IS DETERMINED AND THE FEES BECOME  
 8 FINAL, THE DEPARTMENT SHALL MAIL NOTICE AND DEMAND TO THE  
 9 FACILITY FOR PAYMENT, AND THE FEES BECOME DUE AND PAYABLE AT  
 10 THE EXPIRATION OF 10 DAYS FROM THE DATE OF THE NOTICE AND  
 11 DEMAND. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST  
 12 FROM THE DATE SPECIFIED IN [SECTION 5] FOR PAYMENT OF THE  
 13 FEES. A CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE  
 14 NOTICES SPECIFIED IN THIS SECTION IS PRIMA FACIE EVIDENCE OF  
 15 THE COMPUTATION AND LEVY OF THE DEFICIENCY IN THE FEES AND  
 16 OF THE GIVING OF THE NOTICES.

17 NEW SECTION. SECTION 9. CLOSING AGREEMENTS. (1) THE  
 18 DIRECTOR OF THE DEPARTMENT OR ANY PERSON AUTHORIZED IN  
 19 WRITING BY HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH  
 20 ANY FACILITY RELATING TO THE LIABILITY OF THE FACILITY IN  
 21 RESPECT TO THE FEES IMPOSED BY [SECTIONS 1 THROUGH 15] FOR  
 22 ANY PERIOD.

23 (2) AN AGREEMENT UNDER THIS SECTION IS FINAL AND  
 24 CONCLUSIVE, AND EXCEPT UPON A SHOWING OF FRAUD OR  
 25 MALFEASANCE OR MISREPRESENTATION OF A MATERIAL FACT:

1 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED  
 2 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR  
 3 AGENT OF THIS STATE; AND

4 (B) IN ANY SUIT, ACTION, OR PROCEEDING UNDER THE  
 5 AGREEMENT OR ANY DETERMINATION, ASSESSMENT, COLLECTION,  
 6 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE  
 7 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,  
 8 MODIFIED, SET ASIDE, OR DISREGARDED.

9 NEW SECTION. SECTION 10. CREDIT FOR OVERPAYMENT --  
 10 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT DETERMINES  
 11 THAT THE AMOUNT OF FEES, PENALTY, OR INTEREST DUE FOR ANY  
 12 YEAR IS LESS THAN THE AMOUNT PAID, THE AMOUNT OF THE  
 13 OVERPAYMENT MUST BE CREDITED AGAINST ANY FEES, PENALTY, OR  
 14 INTEREST THEN DUE FROM THE FACILITY AND THE BALANCE MUST BE  
 15 REFUNDED TO THE FACILITY OR ITS SUCCESSOR THROUGH  
 16 REORGANIZATION, MERGER, OR CONSOLIDATION OR TO ITS  
 17 SHAREHOLDERS UPON DISSOLUTION.

18 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(A) AND  
 19 (2)(B), INTEREST IS ALLOWED ON OVERPAYMENTS AT THE SAME RATE  
 20 AS IS CHARGED ON DELINQUENT FEES DUE FROM THE DUE DATE OF  
 21 THE REPORT OR FROM THE DATE OF OVERPAYMENT, WHICHEVER DATE  
 22 IS LATER, TO THE DATE THE DEPARTMENT APPROVES REFUNDING OR  
 23 CREDITING OF THE OVERPAYMENT. INTEREST DOES NOT ACCRUE  
 24 DURING ANY PERIOD DURING WHICH THE PROCESSING OF A CLAIM FOR  
 25 REFUND IS DELAYED MORE THAN 30 DAYS BY REASON OF FAILURE OF

1 THE FACILITY TO FURNISH INFORMATION REQUESTED BY THE  
 2 DEPARTMENT FOR THE PURPOSE OF VERIFYING THE AMOUNT OF THE  
 3 OVERPAYMENT. NO INTEREST IS ALLOWED:

4 (A) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM  
 5 THE DATE THE REPORT IS DUE OR FROM THE DATE THE RETURN IS  
 6 FILED, WHICHEVER IS LATER; OR

7 (B) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

8 (3) A PAYMENT NOT MADE INCIDENT TO A DISCHARGE OF  
 9 ACTUAL UTILIZATION FEE LIABILITY OR A PAYMENT REASONABLY  
 10 ASSUMED TO BE IMPOSED BY [SECTIONS 1 THROUGH 15] IS NOT  
 11 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS  
 12 ALLOWABLE.

13 NEW SECTION. SECTION 11. APPLICATION FOR REFUND --  
 14 APPEAL FROM DENIAL. IF THE DEPARTMENT DISALLOWS A CLAIM FOR  
 15 REFUND, IT SHALL NOTIFY THE FACILITY. AT THE EXPIRATION OF  
 16 30 DAYS FROM THE MAILING OF THE NOTICE, THE DEPARTMENT'S  
 17 ACTION BECOMES FINAL UNLESS WITHIN THE 30-DAY PERIOD THE  
 18 FACILITY APPEALS IN WRITING FROM THE ACTION OF THE  
 19 DEPARTMENT TO THE STATE TAX APPEAL BOARD. IF AN APPEAL IS  
 20 MADE, THE BOARD SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 21 AFTER CONSIDERATION OF THE APPEAL AND EVIDENCE PRESENTED,  
 22 THE BOARD SHALL MAIL NOTICE TO THE TAXPAYER OF ITS  
 23 DETERMINATION. THE BOARD'S DETERMINATION IS FINAL WHEN IT  
 24 MAILS NOTICE OF ITS ACTION TO THE TAXPAYER.

25 NEW SECTION. Section 12. Warrant for distraint. If the

1 utilization fee is not paid when due, the department of  
 2 revenue may issue a warrant for distraint as provided in  
 3 Title 15, chapter 1, part 7. ~~The resulting lien has~~  
 4 ~~precedence over any claim, lien, or demand filed and~~  
 5 ~~recorded after the lien under the warrant is perfected.~~

6 NEW SECTION. Section 13. Disposition of fee. All  
 7 proceeds from the collection of utilization fees, including  
 8 penalties and interest, must be deposited in the state  
 9 general fund AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO  
 10 BE USED FOR MEDICAID REIMBURSEMENT TO NURSING FACILITIES THE  
 11 STATE GENERAL FUND AN ACCOUNT IN THE STATE SPECIAL REVENUE  
 12 FUND TO BE USED FOR MEDICAID REIMBURSEMENT TO NURSING  
 13 FACILITIES THE STATE GENERAL FUND.

14 NEW SECTION. Section 14. Relation to other taxes and  
 15 fees. The utilization fee imposed under [section 3 2] is in  
 16 addition to any other taxes and fees required by law to be  
 17 paid by nursing facilities.

18 NEW SECTION. Section 15. Rulemaking authority. The  
 19 department of revenue may adopt rules necessary to implement  
 20 and administer [sections 1 through 10 15].

21 NEW SECTION. SECTION 16. APPROPRIATION. THE FOLLOWING  
 22 MONEY IS APPROPRIATED FROM THE ACCOUNT ESTABLISHED IN  
 23 {SECTION 13} FROM THE ACCOUNT ESTABLISHED IN {SECTION 13} TO  
 24 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO FUND  
 25 INCREASES IN MEDICAID RATES TO NURSING FACILITIES:

1	<u>FISCAL YEAR 1992</u>	
2	<u>STATE-SPECIAL-REVENUE-FUNDS-----</u>	<u>\$-923,626</u>
3	<u>STATE-GENERAL-FUND-----</u>	<u>\$--500,576</u>
4	<u>STATE-SPECIAL-REVENUE-FUNDS STATE GENERAL FUND</u>	<u>\$ 923,626</u>
5	<u>FEDERAL FUNDS</u>	<u>273417223 172097147 2,341,223</u>
6	<u>TOTAL FUNDS</u>	<u>\$-372647049 \$17797723 \$3,264,849</u>
7	<u>FISCAL YEAR 1993</u>	
8	<u>STATE-SPECIAL-REVENUE-FUNDS-----</u>	<u>\$-174657300</u>
9	<u>STATE-GENERAL-FUND-----</u>	<u>\$--6107316</u>
10	<u>STATE-SPECIAL-REVENUE-FUNDS STATE GENERAL FUND</u>	<u>\$ 1,465,300</u>
11	<u>FEDERAL FUNDS</u>	<u>377497294 175027096 3,749,294</u>
12	<u>TOTAL FUNDS</u>	<u>\$-572147594 \$272007412 \$5,214,594</u>

13 NEW SECTION. SECTION 17. Codification instruction.  
 14 [Sections 1 through 10 15] are intended to be codified as an  
 15 integral part of Title 15, and the provisions of Title 15  
 16 apply to [sections 1 through 10 15].

17 NEW SECTION. SECTION 18. CONTINGENT VOIDNESS. (1) IF  
 18 FEDERAL LAW OR POLICY IS AMENDED TO ALLOW A NURSING FACILITY  
 19 TO BILL A PERSON RECEIVING NURSING CARE FOR WHICH THE  
 20 FACILITY IS BEING REIMBURSED BY MEDICARE OR MEDICAID FOR THE  
 21 UTILIZATION FEE PROVIDED IN [SECTION 2], [THIS ACT] IS VOID  
 22 AS OF THE EFFECTIVE DATE OF THE CHANGE IN FEDERAL LAW OR  
 23 POLICY.

24 (2) IF FEDERAL LAW OR POLICY IS AMENDED SO THAT THE  
 25 UTILIZATION FEES COLLECTED PURSUANT TO [THIS ACT] MAY NOT BE

1 CONSIDERED AS THE STATE'S SHARE IN CLAIMING FEDERAL  
 2 FINANCIAL PARTICIPATION UNDER THE MEDICAID PROGRAM, [THIS  
 3 ACT] IS VOID AS OF THE EFFECTIVE DATE OF THE CHANGE IN  
 4 FEDERAL LAW OR POLICY.

5 (3) IF THE FEDERAL GOVERNMENT REFUSES TO PARTICIPATE IN  
 6 OR DENIES APPROVAL OF ANY PLAN FOR MEDICAID PAYMENTS TO  
 7 NURSING FACILITIES ON GROUNDS THAT IT CONSIDERS THE PAYMENTS  
 8 TO BE REIMBURSEMENT TO FACILITIES FOR PAYMENT OF THE  
 9 UTILIZATION FEES, [THIS ACT] IS VOID AS OF THE DATE OF  
 10 RECEIPT BY THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 11 SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION OF SUCH  
 12 REFUSAL OR DENIAL.

13 (4) IF [THIS ACT] BECOMES VOID UNDER THE PROVISIONS OF  
 14 THIS SECTION, ALL FEES RECEIVED OR COLLECTED BY THE  
 15 DEPARTMENT PRIOR TO THE DATE UPON WHICH THE ACT BECOMES VOID  
 16 MUST BE DEPOSITED IN ACCORDANCE WITH [SECTION 13] AND A  
 17 PERSON OR PARTY MAY NOT RECEIVE A REFUND OF ANY FEES  
 18 RECEIVED OR COLLECTED BY THE DEPARTMENT PRIOR TO THE DATE  
 19 UPON WHICH [THIS ACT] BECOMES VOID.

20 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
 21 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
 22 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,  
 23 THEN THE LANGUAGE CONTAINED IN [SECTIONS 7(1) AND 11 OF THIS  
 24 ACT] IS VOID AND THE PROVISIONS OF SENATE BILL NO. 445  
 25 GOVERN THE APPEAL PROCEDURES.

1        NEW SECTION. SECTION 20. SEVERABILITY. IF A PART OF  
2        [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
3        FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
4        ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
5        REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
6        SEVERABLE FROM THE INVALID APPLICATIONS.

7        NEW SECTION. SECTION 21. NONAPPLICABILITY. [SECTIONS 1  
8        THROUGH 15] AND THE FEE ESTABLISHED UNDER [SECTION 2] DO NOT  
9        APPLY TO FACILITIES LICENSED TO PROVIDE INTERMEDIATE  
10       DEVELOPMENTAL DISABILITY CARE AND FACILITIES REIMBURSED AS  
11       INSTITUTIONS FOR MENTAL DISEASE UNDER THE MEDICAID PROGRAM.

12       NEW SECTION. Section 22. Effective        dates        --  
13       applicability. (1) [Sections ~~107-11~~ 15, 17 THROUGH 21~~7-23~~,  
14       and this section] are effective ~~October-17-1991~~ ON PASSAGE  
15       AND APPROVAL.

16       (2) [Sections 1 through 9 ~~14 AND 16~~] are effective July  
17       1, ~~1992~~ 1991, and apply to all bed days on or after July 1,  
18       ~~1992~~ 1991.

19       ~~NEW SECTION--SECTION-23--TERMINATION----[THIS--ACT]~~  
20       ~~TERMINATES-JUNE-30-1993-~~

21       ~~NEW SECTION--Section-23--Termination----[This--act]~~  
22       ~~terminates-June-30-1993-~~

-End-

4/24/91  
3:57 pm  
BDA

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 93 and recommend that House Bill 93 (reference copy -- salmon) be amended as follows:

1. Page 5, line 16.  
Following: "~~\$1~~"  
Strike: "\$1.25"  
Insert: "\$1"
2. Page 5, line 17.  
Following: "AND"  
Strike: "\$1.50"  
Insert: "\$2"
3. Page 5, line 18.  
Following: "~~THEREAFTER~~"  
Insert: "and each year thereafter"
4. Page 15, line 4.  
Strike: "\$ 923,626"  
Insert: "\$1,239,048"
5. Page 15, line 5.  
Strike: "2,341,223"  
Insert: "3,140,761"
6. Page 15, line 6.  
Strike: "\$3,264,849"  
Insert: "\$4,379,809"
7. Page 15, line 10.  
Strike: "\$ 1,465,300"  
Insert: "\$1,253,979"
8. Page 15, line 11.  
Strike: "3,749,294"  
Insert: "3,208,580"
9. Page 15, line 12.  
Strike: "\$5,214,594"  
Insert: "\$4,462,559"

And this Free Conference Committee report be adopted.

For the House:

For the Senate:

Donna Bradley  
Rep. Bradley, Chair

Eleanor Vaughn  
Sen. Vaughn, Chair

Caroline Squires  
Rep. Squires

Frank Koehnke  
Sen. Koehnke

Jack Cobb  
Rep. Cobb

John Thayer  
Sen. Thayer

ADOPT

REJECT



HOUSE BILL NO. 93

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE A UTILIZATION  
FEE ON EACH-NURSING-FACILITY NURSING FACILITIES FOR EACH-BED  
DAY BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN  
FISCAL YEAR ~~1993~~ 1992; TO AUTHORIZE THE DEPARTMENT OF  
REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT,  
COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM  
THE FEE TO BE ~~DEPOSITED IN THE GENERAL FUND~~ USED FOR CERTAIN  
MEDICAID REIMBURSEMENTS DEPOSITED IN THE GENERAL FUND ~~USED~~  
FOR CERTAIN MEDICAID REIMBURSEMENTS DEPOSITED IN THE GENERAL  
FUND; TO PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE  
DATES AND AND AN APPLICABILITY DATE ~~AND A TERMINATION~~  
DATE AND A TERMINATION DATE."

WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE FAILURE TO  
FULLY FUND THE COST OF NURSING HOME CARE FOR MEDICAID  
BENEFICIARIES CREATES A BURDEN ON INDIVIDUALS WHO PAY  
PRIVATELY FOR NURSING HOME CARE BY SHIFTING COST FROM  
MEDICAID TO NON-MEDICAID RESIDENTS IN OUR STATE'S NURSING  
HOMES; AND

WHEREAS, THE STATE HAS THE POTENTIAL OF FACING A LAWSUIT

FROM NURSING HOMES IF THE LEGISLATURE FAILS TO FULLY FUND  
THE COST OF NURSING HOME CARE; AND

WHEREAS, THE LEGISLATURE DESIRES TO ALLEVIATE THE  
COST-SHIFTING FROM MEDICAID TO OTHER PATIENTS, WHILE BEARING  
IN MIND THE FINANCIAL CIRCUMSTANCES FACING THE STATE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO FIND  
CREATIVE FINANCING SOLUTIONS AND TO MAXIMIZE FEDERAL  
PARTICIPATION IN THE COST OF PROGRAMS WHEREVER POSSIBLE; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE TO USE THE  
UTILIZATION FEE ESTABLISHED IN THIS BILL AS A MEANS OF  
PROVIDING ADDITIONAL MEDICAID REIMBURSEMENTS TO NURSING  
HOMES; AND

WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT  
NURSING HOMES CAREFULLY CONSIDER THE INCREASED MEDICAID  
REVENUES MADE AVAILABLE BY THIS LEGISLATION WHEN DETERMINING  
REASONABLE RATES TO BE CHARGED TO NON-MEDICAID PATIENTS IN  
THEIR FACILITIES; AND

WHEREAS, THE LEGISLATURE ENACTS THE FOLLOWING  
LEGISLATION AS A MEANS OF RELIEVING PRIVATELY PAYING  
INDIVIDUALS IN NURSING HOMES FROM THE BURDEN OF COSTS  
SHIFTED FROM THE MEDICAID PROGRAM AND OF MAXIMIZING FEDERAL  
FUNDING OF THIS PROGRAM.

STATEMENT OF INTENT

A statement of intent is required for this bill because



1 [section ~~10~~ 15] grants the department of revenue authority  
 2 to adopt rules necessary to implement and administer  
 3 [sections 1 through ~~10~~ 15].

4 It is the intent of the legislature that, in adopting  
 5 rules, the department:

6 (1) provide procedures and forms for reporting bed days  
 7 that are subject to payment of the utilization fee imposed  
 8 in [section 2];

9 (2) establish requirements for the maintenance of  
 10 records and other documents required to ensure proper  
 11 payment of the utilization fee;

12 (3) develop a process for the estimation and collection  
 13 of delinquent or unpaid fees;

14 (4) provide a process for the reconciliation of  
 15 disputes relating to the payment of utilization fees; and

16 (5) establish other procedures for the efficient  
 17 administration of the utilization fee.

18  
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Definitions. For purposes of  
 21 [sections 1 through ~~10~~ 15], unless the context requires  
 22 otherwise, the following definitions apply:

23 (1) "Bed day" means each whole 24-hour period that a  
 24 resident of a nursing facility is present in the facility  
 25 and receiving skilled nursing care, OR intermediate nursing

1 care, ~~or intermediate developmental disability care~~ or in  
 2 which a bed is held for a resident while he is on temporary  
 3 leave from the facility, ~~regardless of the source of payment~~  
 4 ~~for the resident's care.~~ THE TERM INCLUDES ALL PERIODS FOR  
 5 WHICH THE NURSING FACILITY IS REIMBURSED BY A THIRD-PARTY  
 6 PAYOR, INCLUDING BUT NOT LIMITED TO A PRIVATE OR  
 7 GOVERNMENTAL INSURER OR PUBLIC ASSISTANCE PROGRAM, BUT IT  
 8 DOES NOT INCLUDE ANY PERIOD FOR WHICH THE NURSING FACILITY  
 9 MAY BE REIMBURSED ONLY BY THE RESIDENT, A FRIEND OF THE  
 10 RESIDENT, OR A MEMBER OF THE RESIDENT'S FAMILY. The term  
 11 also includes the day of a resident's admission to a nursing  
 12 facility and the day of the resident's death, even though  
 13 the resident is present less than a whole 24-hour period on  
 14 these days.

15 (2) "Calendar quarter" means the period of 3  
 16 consecutive months ending March 31, June 30, September 30,  
 17 or December 31.

18 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

19 ~~††~~(4) "Nursing facility" or "facility" means a health  
 20 care facility licensed by the department of health and  
 21 environmental sciences as a ~~long-term-care~~ NURSING facility  
 22 to provide skilled nursing care, OR intermediate nursing  
 23 care, ~~or intermediate developmental disability care.~~ The  
 24 term includes ~~all~~ nursing facilities, whether they are:

25 (a) operated as nonprofit or for-profit facilities;

1 (b) freestanding or part of another health care  
2 facility; or

3 (c) publicly or privately operated.

4 ~~(4)~~(5) "Skilled nursing care"; AND "intermediate  
5 nursing care"; ~~and~~ ~~"intermediate-developmental-disability~~  
6 ~~care"~~ have the same meaning as those terms are defined in  
7 50-5-101.

8 ~~(5)~~(6) "Report" means the report of bed days required  
9 in [section 3].

10 ~~(6)~~(7) "Utilization fee" or "fee" means the fee  
11 required to be paid for each bed day in a nursing facility,  
12 as provided in [section 2].

13 NEW SECTION. Section 2. Utilization fee for bed days  
14 in nursing facilities. A nursing facility in the state shall  
15 pay to the department of revenue a utilization fee in the  
16 amount of \$1 ~~\$1=25~~ \$1 for each bed day in the facility  
17 DURING FISCAL YEAR 1992 AND ~~\$1=50~~ \$2 FOR EACH BED DAY IN THE  
18 FACILITY DURING FISCAL YEAR 1993 AND EACH YEAR THEREAFTER  
19 AND EACH YEAR THEREAFTER.

20 NEW SECTION. Section 3. Reporting and collection of  
21 fee. (1) A nursing facility shall report to the department  
22 of revenue, following the end of each calendar quarter, the  
23 number of bed days in the facility during the quarter. The  
24 report must be in the form prescribed by the department and  
25 is due ~~within 30 days following the end~~ ON OR BEFORE THE

1 LAST DAY OF THE MONTH FOLLOWING THE CLOSE of each calendar  
2 quarter. The report must be accompanied by a payment in an  
3 amount equal to the fee required to be paid under [section  
4 2].

5 (2) THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
6 SHALL PROVIDE THE DEPARTMENT AT THE END OF EACH CALENDAR  
7 QUARTER WITH A LIST OF FACILITIES AS DEFINED IN [SECTION  
8 1(4)].

9 NEW SECTION. Section 4. Audit -- records. (1) The  
10 department of revenue may audit the records and other  
11 documents of any nursing facility to ensure that the proper  
12 utilization fee has been collected.

13 (2) The department may require the facility to provide  
14 records and other documentation, including books, ledgers,  
15 and registers, necessary for the department to verify the  
16 proper amount of the utilization fee paid.

17 (3) A facility shall maintain and make available for  
18 inspection BY THE DEPARTMENT sufficient records and other  
19 documentation to demonstrate the number of bed days in the  
20 facility subject to the utilization fee. The facility shall  
21 maintain these records for a period of at least 5 years from  
22 the date the report is due.

23 ~~(4) The amount of the fee due based on a report must be~~  
24 ~~determined by the department within 5 years after the date~~  
25 ~~the report is due. Except in the case of a facility that~~

1 ~~purpose and knowingly files a false report with the intent~~  
 2 ~~to evade payment of the fee, the department is barred after~~  
 3 ~~the 5-year period from revising the report or recomputing~~  
 4 ~~the amount of the utilization fee owed. A proceeding for the~~  
 5 ~~collection of unpaid fees may not be instituted unless~~  
 6 ~~notice for collection of the unpaid fee is provided within~~  
 7 ~~the 5-year period after the report is due.~~

8 ~~{1} A nursing facility may file an application with the~~  
 9 ~~department to revise a report if the application is filed~~  
 10 ~~within 5 years from the date the report was due.~~

11 NEW SECTION. SECTION 5. PERIODS OF LIMITATION. (1)  
 12 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DEFICIENCY  
 13 MAY NOT BE ASSESSED OR COLLECTED WITH RESPECT TO THE QUARTER  
 14 FOR WHICH A REPORT IS FILED UNLESS THE NOTICE OF ADDITIONAL  
 15 FEE PROPOSED TO BE ASSESSED IS MAILED WITHIN 5 YEARS FROM  
 16 THE DATE THE REPORT WAS FILED. FOR THE PURPOSES OF THIS  
 17 SECTION, A REPORT FILED BEFORE THE LAST DAY PRESCRIBED FOR  
 18 FILING IS CONSIDERED FILED ON THE LAST DAY. IF, BEFORE THE  
 19 EXPIRATION OF THE PERIOD PRESCRIBED FOR ASSESSMENT OF THE  
 20 FEE, THE FACILITY CONSENTS IN WRITING TO AN ASSESSMENT AFTER  
 21 THE 5-YEAR PERIOD, THE FEE MAY BE ASSESSED AT ANY TIME PRIOR  
 22 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

23 (2) A REFUND OR CREDIT MAY NOT BE PAID OR ALLOWED WITH  
 24 RESPECT TO THE YEAR FOR WHICH A REPORT IS FILED AFTER 5  
 25 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE REPORT OR

1 AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT, WHICHEVER  
 2 PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION OF THE  
 3 PERIOD, THE FACILITY FILES A CLAIM OR THE DEPARTMENT HAS  
 4 DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED  
 5 THE REFUND OR CREDIT. IF THE FACILITY HAS AGREED IN WRITING  
 6 UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE TIME  
 7 WITHIN WHICH THE DEPARTMENT MAY PROPOSE AN ADDITIONAL  
 8 ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR REFUND OR  
 9 CREDIT IS FILED OR A CREDIT OR REFUND ALLOWED IN THE EVENT  
 10 NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

11 NEW SECTION. Section 6. Penalty and interest for  
 12 delinquent fees -- waiver. {1} Utilization fees are  
 13 delinquent if they are not paid within the time specified in  
 14 {section 3}. The department shall assess a penalty of 10% of  
 15 the amount of delinquent fees plus interest at the rate of  
 16 1% a month computed on the total of fees and penalty due.  
 17 Interest is computed from the date the fees were due to the  
 18 date of payment.

19 {2} The penalty provided for in subsection {1} may be  
 20 waived by the department if the facility demonstrates to the  
 21 department reasonable cause for the failure to file the  
 22 report or to pay the fee within the time specified in  
 23 {section 3}. (1) IF THE FEE FOR ANY FACILITY IS NOT PAID ON  
 24 OR BEFORE THE DUE DATE OF THE REPORT AS PROVIDED IN [SECTION  
 25 3(1)], A PENALTY OF 10% OF THE AMOUNT OF THE FEE DUE MUST BE

1 ASSESSED UNLESS IT IS SHOWN THAT THE FAILURE WAS DUE TO  
 2 REASONABLE CAUSE AND NOT NEGLECT.

3 (2) IF ANY FEE DUE UNDER [SECTION 2] IS NOT PAID WHEN  
 4 DUE, INTEREST IS ADDED TO THE TAX DUE AT THE RATE OF 12% A  
 5 YEAR FROM THE DUE DATE UNTIL PAID.

6 NEW SECTION. --Section 6-- Estimation of fee upon failure  
 7 to file a report or pay the fee -- notice -- (1) if a nursing  
 8 facility fails or refuses to file the report or pay the fee  
 9 within the time specified in (section 3) the department of  
 10 revenue shall estimate the total number of bed days in the  
 11 facility during the calendar quarter and calculate the  
 12 amount of the fee due.

13 (2) The department shall mail to the facility described  
 14 in subsection (1) a notice stating the basis and amount of  
 15 the fee and demanding payment of the fee, including  
 16 penalties and interest. The notice must advise the facility  
 17 that if payment is not made, a warrant for distraint may be  
 18 filed.

19 NEW SECTION. SECTION 7. ESTIMATED FEE ON FAILURE TO  
 20 FILE. (1) IF A FACILITY FAILS TO FILE THE REPORT AS  
 21 REQUIRED, THE DEPARTMENT IS AUTHORIZED TO MAKE AN ESTIMATE  
 22 OF THE FEES DUE FROM THE FACILITY FROM ANY INFORMATION IN  
 23 ITS POSSESSION.

24 (2) FOR THE PURPOSE OF ASCERTAINING THE CORRECTNESS OF  
 25 ANY REPORT OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF BED

1 DAY USE OF ANY FACILITY WHERE INFORMATION HAS BEEN OBTAINED,  
 2 THE DEPARTMENT MAY:

3 (A) EXAMINE OR CAUSE TO HAVE EXAMINED BY ANY DESIGNATED  
 4 AGENT OR REPRESENTATIVE ANY BOOKS, PAPERS, RECORDS, OR  
 5 MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED  
 6 IN THE REPORT;

7 (B) REQUIRE THE ATTENDANCE OF ANY OFFICER OR EMPLOYEE  
 8 OF THE FACILITY RENDERING THE REPORT OR THE ATTENDANCE OF  
 9 ANY OTHER PERSON IN THE PREMISES HAVING RELEVANT KNOWLEDGE;  
 10 AND

11 (C) TAKE TESTIMONY AND REQUIRE PRODUCTION OF ANY OTHER  
 12 MATERIAL FOR ITS INFORMATION.

13 NEW SECTION. SECTION 8. DEFICIENCY ASSESSMENT --  
 14 HEARING. (1) IF THE DEPARTMENT DETERMINES THAT THE AMOUNT OF  
 15 FEES DUE ARE GREATER THAN THE AMOUNT DISCLOSED BY THE  
 16 REPORT, IT SHALL MAIL TO THE FACILITY A NOTICE OF THE  
 17 ADDITIONAL FEES PROPOSED TO BE ASSESSED. WITHIN 30 DAYS  
 18 AFTER THE MAILING OF THE NOTICE, THE FACILITY MAY FILE WITH  
 19 THE DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED  
 20 ADDITIONAL FEES, SETTING FORTH THE GROUNDS UPON WHICH THE  
 21 PROTEST IS BASED, AND MAY REQUEST IN ITS PROTEST AN ORAL  
 22 HEARING OR AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE  
 23 RELATING TO ITS FEES LIABILITY. IF NO PROTEST IS FILED, THE  
 24 AMOUNT OF THE ADDITIONAL FEES PROPOSED TO BE ASSESSED  
 25 BECOMES FINAL UPON THE EXPIRATION OF THE 30-DAY PERIOD. IF

1 SUCH PROTEST IS FILED, THE DEPARTMENT SHALL RECONSIDER THE  
 2 PROPOSED ASSESSMENT AND, IF THE FACILITY HAS SO REQUESTED,  
 3 SHALL GRANT THE FACILITY AN ORAL HEARING. AFTER  
 4 CONSIDERATION OF THE PROTEST AND THE EVIDENCE PRESENTED IN  
 5 THE EVENT OF AN ORAL HEARING, THE DEPARTMENT'S ACTION UPON  
 6 THE PROTEST IS FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO  
 7 THE FACILITY.

8 (2) WHEN A DEFICIENCY IS DETERMINED AND THE FEES BECOME  
 9 FINAL, THE DEPARTMENT SHALL MAIL NOTICE AND DEMAND TO THE  
 10 FACILITY FOR PAYMENT, AND THE FEES BECOME DUE AND PAYABLE AT  
 11 THE EXPIRATION OF 10 DAYS FROM THE DATE OF THE NOTICE AND  
 12 DEMAND. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST  
 13 FROM THE DATE SPECIFIED IN [SECTION 5] FOR PAYMENT OF THE  
 14 FEES. A CERTIFICATE BY THE DEPARTMENT OF THE MAILING OF THE  
 15 NOTICES SPECIFIED IN THIS SECTION IS PRIMA FACIE EVIDENCE OF  
 16 THE COMPUTATION AND LEVY OF THE DEFICIENCY IN THE FEES AND  
 17 OF THE GIVING OF THE NOTICES.

18 NEW SECTION. SECTION 9. CLOSING AGREEMENTS. (1) THE  
 19 DIRECTOR OF THE DEPARTMENT OR ANY PERSON AUTHORIZED IN  
 20 WRITING BY HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH  
 21 ANY FACILITY RELATING TO THE LIABILITY OF THE FACILITY IN  
 22 RESPECT TO THE FEES IMPOSED BY [SECTIONS 1 THROUGH 15] FOR  
 23 ANY PERIOD.

24 (2) AN AGREEMENT UNDER THIS SECTION IS FINAL AND  
 25 CONCLUSIVE, AND EXCEPT UPON A SHOWING OF FRAUD OR

1 MALFEASANCE OR MISREPRESENTATION OF A MATERIAL FACT:

2 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED  
 3 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR  
 4 AGENT OF THIS STATE; AND

5 (B) IN ANY SUIT, ACTION, OR PROCEEDING UNDER THE  
 6 AGREEMENT OR ANY DETERMINATION, ASSESSMENT, COLLECTION,  
 7 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE  
 8 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,  
 9 MODIFIED, SET ASIDE, OR DISREGARDED.

10 NEW SECTION. SECTION 10. CREDIT FOR OVERPAYMENT --  
 11 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT DETERMINES  
 12 THAT THE AMOUNT OF FEES, PENALTY, OR INTEREST DUE FOR ANY  
 13 YEAR IS LESS THAN THE AMOUNT PAID, THE AMOUNT OF THE  
 14 OVERPAYMENT MUST BE CREDITED AGAINST ANY FEES, PENALTY, OR  
 15 INTEREST THEN DUE FROM THE FACILITY AND THE BALANCE MUST BE  
 16 REFUNDED TO THE FACILITY OR ITS SUCCESSOR THROUGH  
 17 REORGANIZATION, MERGER, OR CONSOLIDATION OR TO ITS  
 18 SHAREHOLDERS UPON DISSOLUTION.

19 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (2)(A) AND  
 20 (2)(B), INTEREST IS ALLOWED ON OVERPAYMENTS AT THE SAME RATE  
 21 AS IS CHARGED ON DELINQUENT FEES DUE FROM THE DUE DATE OF  
 22 THE REPORT OR FROM THE DATE OF OVERPAYMENT, WHICHEVER DATE  
 23 IS LATER, TO THE DATE THE DEPARTMENT APPROVES REFUNDING OR  
 24 CREDITING OF THE OVERPAYMENT. INTEREST DOES NOT ACCRUE  
 25 DURING ANY PERIOD DURING WHICH THE PROCESSING OF A CLAIM FOR

1 REFUND IS DELAYED MORE THAN 30 DAYS BY REASON OF FAILURE OF  
 2 THE FACILITY TO FURNISH INFORMATION REQUESTED BY THE  
 3 DEPARTMENT FOR THE PURPOSE OF VERIFYING THE AMOUNT OF THE  
 4 OVERPAYMENT. NO INTEREST IS ALLOWED:

5 (A) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM  
 6 THE DATE THE REPORT IS DUE OR FROM THE DATE THE RETURN IS  
 7 FILED, WHICHEVER IS LATER; OR

8 (B) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

9 (3) A PAYMENT NOT MADE INCIDENT TO A DISCHARGE OF  
 10 ACTUAL UTILIZATION FEE LIABILITY OR A PAYMENT REASONABLY  
 11 ASSUMED TO BE IMPOSED BY [SECTIONS 1 THROUGH 15] IS NOT  
 12 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS  
 13 ALLOWABLE.

14 NEW SECTION. SECTION 11. APPLICATION FOR REFUND --  
 15 APPEAL FROM DENIAL. IF THE DEPARTMENT DISALLOWS A CLAIM FOR  
 16 REFUND, IT SHALL NOTIFY THE FACILITY. AT THE EXPIRATION OF  
 17 30 DAYS FROM THE MAILING OF THE NOTICE, THE DEPARTMENT'S  
 18 ACTION BECOMES FINAL UNLESS WITHIN THE 30-DAY PERIOD THE  
 19 FACILITY APPEALS IN WRITING FROM THE ACTION OF THE  
 20 DEPARTMENT TO THE STATE TAX APPEAL BOARD. IF AN APPEAL IS  
 21 MADE, THE BOARD SHALL GRANT THE TAXPAYER AN ORAL HEARING.  
 22 AFTER CONSIDERATION OF THE APPEAL AND EVIDENCE PRESENTED,  
 23 THE BOARD SHALL MAIL NOTICE TO THE TAXPAYER OF ITS  
 24 DETERMINATION. THE BOARD'S DETERMINATION IS FINAL WHEN IT  
 25 MAILS NOTICE OF ITS ACTION TO THE TAXPAYER.

1 NEW SECTION. Section 12. Warrant for distraint. If the  
 2 utilization fee is not paid when due, the department of  
 3 revenue may issue a warrant for distraint as provided in  
 4 Title 15, chapter 1, part 7. The--resulting--lien--has  
 5 precedence--over--any--claim,--lien,--or--demand--filed--and  
 6 recorded--after--the--lien--under--the--warrant--is--perfected.

7 NEW SECTION. Section 13. Disposition of fee. All  
 8 proceeds from the collection of utilization fees, including  
 9 penalties and interest, must be deposited in the--state  
 10 general-fund AN-ACCOUNT-IN-THE-STATE-SPECIAL-REVENUE-FUND-TO  
 11 BE-USED-FOR-MEDICAID-REIMBURSEMENT-TO-NURSING-FACILITIES THE  
 12 STATE--GENERAL--FUND AN-ACCOUNT-IN-THE-STATE-SPECIAL-REVENUE  
 13 FUND-TO--BE--USED--FOR--MEDICAID--REIMBURSEMENT--TO--NURSING  
 14 FACILITIES THE STATE GENERAL FUND.

15 NEW SECTION. Section 14. Relation to other taxes and  
 16 fees. The utilization fee imposed under [section 9 2] is in  
 17 addition to any other taxes and fees required by law to be  
 18 paid by nursing facilities.

19 NEW SECTION. Section 15. Rulemaking authority. The  
 20 department of revenue may adopt rules necessary to implement  
 21 and administer [sections 1 through 15].

22 NEW SECTION. SECTION 16. APPROPRIATION. THE FOLLOWING  
 23 MONEY IS APPROPRIATED FROM--THE--ACCOUNT--ESTABLISHED--IN  
 24 {SECTION-13} FROM-THE-ACCOUNT-ESTABLISHED-IN-{SECTION-13} TO  
 25 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO FUND

1 INCREASES IN MEDICAID RATES TO NURSING FACILITIES:

2 FISCAL YEAR 1992

3 STATE-SPECIAL-REVENUE-FUNDS-----\$-923,626

4 STATE-GENERAL-FUND-----\$--508,576

5 STATE-SPECIAL-REVENUE-FUNDS

6 STATE GENERAL FUND-----\$-923,626 \$1,239,048

7 FEDERAL FUNDS 273417223 172097147 273417223 \$3,140,761

8 TOTAL FUNDS \$-372647049 \$177977723 \$372647049 \$4,379,809

9 FISCAL YEAR 1993

10 STATE-SPECIAL-REVENUE-FUNDS-----\$-174657300

11 STATE-GENERAL-FUND-----\$--6187316

12 STATE-SPECIAL-REVENUE-FUNDS

13 STATE GENERAL FUND-----\$-174657300 \$1,253,979

14 FEDERAL FUNDS 377497294 175827096 377497294 3,208,580

15 TOTAL FUNDS \$-572147594 \$272007412 \$572147594 \$4,462,559

16 NEW SECTION. Section 17. Codification instruction.  
 17 [Sections 1 through 15] are intended to be codified as an  
 18 integral part of Title 15, and the provisions of Title 15  
 19 apply to [sections 1 through 15].

20 NEW SECTION. SECTION 18. CONTINGENT VOIDNESS. (1) IF  
 21 FEDERAL LAW OR POLICY IS AMENDED TO ALLOW A NURSING FACILITY  
 22 TO BILL A PERSON RECEIVING NURSING CARE FOR WHICH THE  
 23 FACILITY IS BEING REIMBURSED BY MEDICARE OR MEDICAID FOR THE  
 24 UTILIZATION FEE PROVIDED IN [SECTION 2], [THIS ACT] IS VOID  
 25 AS OF THE EFFECTIVE DATE OF THE CHANGE IN FEDERAL LAW OR

1 POLICY.

2 (2) IF FEDERAL LAW OR POLICY IS AMENDED SO THAT THE  
 3 UTILIZATION FEES COLLECTED PURSUANT TO [THIS ACT] MAY NOT BE  
 4 CONSIDERED AS THE STATE'S SHARE IN CLAIMING FEDERAL  
 5 FINANCIAL PARTICIPATION UNDER THE MEDICAID PROGRAM, [THIS  
 6 ACT] IS VOID AS OF THE EFFECTIVE DATE OF THE CHANGE IN  
 7 FEDERAL LAW OR POLICY.

8 (3) IF THE FEDERAL GOVERNMENT REFUSES TO PARTICIPATE IN  
 9 OR DENIES APPROVAL OF ANY PLAN FOR MEDICAID PAYMENTS TO  
 10 NURSING FACILITIES ON GROUNDS THAT IT CONSIDERS THE PAYMENTS  
 11 TO BE REIMBURSEMENT TO FACILITIES FOR PAYMENT OF THE  
 12 UTILIZATION FEES, [THIS ACT] IS VOID AS OF THE DATE OF  
 13 RECEIPT BY THE DEPARTMENT OF SOCIAL AND REHABILITATION  
 14 SERVICES OF NOTICE OF AN OFFICIAL DETERMINATION OF SUCH  
 15 REFUSAL OR DENIAL.

16 (4) IF [THIS ACT] BECOMES VOID UNDER THE PROVISIONS OF  
 17 THIS SECTION, ALL FEES RECEIVED OR COLLECTED BY THE  
 18 DEPARTMENT PRIOR TO THE DATE UPON WHICH THE ACT BECOMES VOID  
 19 MUST BE DEPOSITED IN ACCORDANCE WITH [SECTION 13] AND A  
 20 PERSON OR PARTY MAY NOT RECEIVE A REFUND OF ANY FEES  
 21 RECEIVED OR COLLECTED BY THE DEPARTMENT PRIOR TO THE DATE  
 22 UPON WHICH [THIS ACT] BECOMES VOID.

23 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
 24 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT  
 25 INCLUDES A SECTION ADOPTING A UNIFORM TAX APPEAL PROCEDURE,



1 THEN THE LANGUAGE CONTAINED IN [SECTIONS 7(1) AND 11 OF THIS  
 2 ACT] IS VOID AND THE PROVISIONS OF SENATE BILL NO. 445  
 3 GOVERN THE APPEAL PROCEDURES.

-End-

4 NEW SECTION. SECTION 20. SEVERABILITY. IF A PART OF  
 5 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 6 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 7 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
 8 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
 9 SEVERABLE FROM THE INVALID APPLICATIONS.

10 NEW SECTION. SECTION 21. NONAPPLICABILITY. [SECTIONS 1  
 11 THROUGH 15] AND THE FEE ESTABLISHED UNDER [SECTION 2] DO NOT  
 12 APPLY TO FACILITIES LICENSED TO PROVIDE INTERMEDIATE  
 13 DEVELOPMENTAL DISABILITY CARE AND FACILITIES REIMBURSED AS  
 14 INSTITUTIONS FOR MENTAL DISEASE UNDER THE MEDICAID PROGRAM.

15 NEW SECTION. Section 22. Effective dates --  
 16 applicability. (1) ~~[Sections 10, 11 15, 17 THROUGH 21, 23,~~  
 17 and this section] are effective ~~October 17, 1991~~ ON PASSAGE  
 18 AND APPROVAL.

19 (2) [Sections 1 through 9 14 AND 16] are effective July  
 20 1, ~~1992 1991,~~ and apply to all bed days on or after July 1,  
 21 ~~1992 1991.~~

22 ~~NEW SECTION--SECTION 23--TERMINATION--[THIS--ACT]~~  
 23 ~~TERMINATES JUNE 30, 1993.~~

24 ~~NEW SECTION--Section 23--Termination--[This--act]~~  
 25 ~~terminates June 30, 1993.~~