**Section 140.86 Supportive Living Facility Fund**

a) Purpose and Contents

1) The Supportive Living Facility Fund was created in the State Treasury on July 1, 2014 (see 305 ILCS 5/5G-35).  Interest earned by the Fund shall be credited to the Fund.  The Fund shall not be used to replace any funds appropriated to the Medicaid program by the General Assembly.

2) The Fund is created for the purpose of receiving and disbursing monies in accordance with this Section and Sections 5G-10 and 35 of the Code.

3) The Fund shall consist of:

A) All monies collected or received by the Department under subsection (b);

B) All monies collected or received by the Department under subsection (j);

C) All federal matching funds received by the Department as a result of expenditures made by the Department that are attributable to monies deposited in the Fund;

D) Any interest or penalty levied in conjunction with the administration of the Fund;

E) All monies transferred from another fund in the State Treasury; and

F) All other monies received for the Fund from any other source, including interest earned on monies in the Fund.

b) Provider Assessment

Beginning on July 1, 2014, an annual assessment is imposed upon each supportive living facility in an amount equal to $2.30 for each supportive living facility's care days.  This assessment shall not be billed or passed on to any resident of a supportive living facility.

c) Payment of Assessment and Assessment Due

1) The assessment described in subsection (b) of this Section shall be due and payable monthly, on the last State business day of the month for care days reported for the preceding third month prior to the month in which the assessment is payable and due.  A facility that has its payments from the State delayed, due to problems related to State cash flow, may request an extension on the due date for payment pursuant to subsection (c) and shall pay the assessment within 30 days after reimbursement by the Department.

A) The Department shall provide for an electronic submission process for each supportive living facility to report at a minimum the number of care days of the supportive living facility for the reporting period and other reasonable information the Department requires for the administration of its responsibilities. To the extent practicable, the Department shall coordinate the assessment reporting requirements with other reporting required of supportive living facilities.

B) The Department shall prepare an assessment, based on the reported care days, and will bill the facility stating the amount due and payable each month and submit it to each supportive living facility via an electronic process.  Each assessment payment shall be accompanied by a copy of the assessment bill sent to the supportive living facility by the Department.

C) The provider assessment imposed by this Section shall not be due and payable until after the Department notifies the supportive living facilities, in writing, that the payment methodologies to supportive living facilities required under Section 5-5.01a of the Public Aid Code have been approved and the waivers under 42 CFR 433.68, if necessary, have been granted by CMMS.

D) The provider assessment imposed by this Section shall cease to be imposed if the amount of matching federal funds under Title XIX of the Social Security Act is eliminated or significantly reduced on account of the assessment. Any remaining assessments shall be refunded to supportive living facilities in proportion to the amounts of the assessments paid by them.

3) All payments received by the Department shall be credited first to unpaid assessment payment amounts (rather than to penalty or interest), beginning with the most delinquent assessment payments.

d) Reporting Requirements, Penalty, and Maintenance of Records

1) Every supportive living facility subject to the assessment described in subsection (b) shall report the number of care days of the supportive living facility for the reporting period on or before the last business day of the month following the reporting period.  Each supportive living facility shall ensure that an accurate e-mail address is on file with the Department in order for the Department to prepare and send an electronic bill to the supportive living facility.

2) If a provider operates or maintains more than one supportive living facility, a separate report shall be filed for each facility.  In the case of a provider existing as a corporation or legal entity other than an individual, the report filed by it shall be signed by its president, vice president, secretary or treasurer or by its properly authorized agent.

3) If the provider fails to file its monthly report on or before the due date of the report, there shall, unless waived by the Department for reasonable cause, be added to the assessment imposed in subsection (b) a penalty fee equal to 25% of the assessment due.

4) Every provider subject to a license fee or assessment under subsection (b) shall keep records and books that will permit the determination of care days on a calendar year basis. All such books and records shall be kept in the English language and shall, at all times during business hours, be subject to inspection by the Department or its duly authorized agents and employees.

5) Amended Assessment Reports.  With the exception of amended assessment reports filed in accordance with this subsection (d)(5), an amended monthly assessment report must be filed within 30 calendar days after the original report due date.  The amended report must be accompanied by a letter identifying the changes and the justification for the amended report.  The provider will be advised of any adjustments to the original assessment amount through a written notification from the Department.  Penalties may be applied to the amount underpaid due to a filing error.

6) Reconsideration of Adjusted Assessment.  If the Department, through an audit conducted by the Department or its agent within three years after the end of the fiscal year in which the assessment was due, changes the assessment liability of a provider, the provider may request a review or reconsideration of the adjusted assessment within 30 days after the Department's notification of the change in assessment liability. Requests for reconsideration of the assessment adjustment shall not be considered if those requests are not postmarked on or before the end of the 30 day review period.  Penalties may be applied to the amount underpaid due to a filing error.

e) Procedure for Partial Year Reporting/Operating Adjustments

1) Cessation of Business Prior to the Monthly Due Date.  A provider who ceases to conduct, operate, or maintain a facility for which the provider is subject to the assessment imposed under subsection (b), and for which closure occurs prior to the due date for the assessment period, shall file a final report with the Department within 30 days after the closure date. The final report will reflect the number of days the facility was operational during the assessment period and the corresponding final assessment amount.  Closure dates will be verified with the Department of Public Health and, if necessary, adjustments will be made to the final assessment due. (Example:  Facility closes on January 17.  On or before February 17, the facility must file a final report for the reporting month of January 1 through January 31.  The report would reflect 17 days of operation (January 1 through January 17) during the month and must be accompanied by the final assessment payment for the facility.)

2) Commencing of Business During the Month in Which the Assessment is Being Paid.  A provider who commences conducting, operating, or maintaining a facility for which the person is subject to the assessment imposed under subsection (b) shall file an initial report for the assessment period in which the commencement occurs within 30 calendar days after commencement and shall pay the assessment under subsection (c).

3) Change in Ownership and/or Operators. The full monthly assessment must be paid on the designated due dates regardless of changes in ownership or operators.  Liability for the payment of the assessment amount (including past due assessment and any interest or penalties that may have accrued against the amount) rests on the provider currently operating or maintaining the nursing facility regardless of whether these amounts were incurred by the current owner or were incurred by previous owners.  Collection of delinquent assessment/license fees from previous providers will be made against the current provider.  Failure of the current provider to pay any outstanding assessment/license fee liabilities incurred by previous providers shall result in the application of penalties described in subsection (f)(1).

4) Upon request, the Department will share with a potential buyer of a facility information on outstanding assessments and penalties owed by that facility.

f) Penalties

1) Any provider that fails to pay the full amount of an assessment payment when due shall be charged, unless waived by the Department for reasonable cause, a penalty equal to one percent of the amount of the assessment payment not paid on or before the due date, plus one percent of the portion thereof remaining unpaid on the last day of each monthly period thereafter, not to exceed 100% of the assessment amount not paid on or before the due date. Reasonable cause may include but is not limited to:

A) a provider who has not been delinquent on payment of an assessment payment due within the last three calendar years from the time the delinquency occurs;

B) a provider who can demonstrate to the Department's satisfaction that a payment was made prior to the due date; or

C) that the provider is a new owner/operator and the late payment occurred in the assessment period in which the new owner/operator assumed control of the facility.

2) Within 30 days after the due date, the Department may begin recovery actions against delinquent providers participating in the Medicaid Program.  Payments may be withheld from the provider until the entire assessment, including any penalties, is satisfied or until a reasonable repayment schedule has been approved by the Department.  If a reasonable agreement cannot be reached, or if a provider fails to comply with an agreement, the Department reserves the right to recover any outstanding assessment, interest and penalty by recouping the amount or a portion thereof from the provider's future payments from the Department.  The provider may appeal this recoupment in accordance with the Department's rules at 89 Ill. Adm. Code 104.  The Department has the right to continue recoupment during the appeal process. Penalties pursuant to subsection (f)(1) will continue to accrue during the recoupment process.  Recoupment proceedings against the same provider two times in a fiscal year may be cause for termination from the program.  Failure by the Department to initiate recoupment activities within 30 days shall not reduce the provider's liabilities nor shall it preclude the Department from taking action at a later date.

3) If the provider does not participate in the Medicaid Program, or is no longer doing business with the Department, or the Department cannot recover the full amount due through the claims processing system within three months after the license fee or assessment due date, the Department may initiate either administrative or judicial proceedings, or both, to enforce provisions of this Section. Administrative enforcement proceedings initiated under this subsection (f)(3) shall be governed by the Department's administrative rules. Judicial enforcement proceedings initiated under this subsection (f)(3) shall be governed by the rules of procedure applicable to the courts of this State.

4) No proceedings for collection, refund, credit, or other adjustment of an assessment amount shall be issued more than three years after the due date of the assessment, except in the case of an extended period agreed to in writing by the Department and the supportive living facility before the expiration of this limitation period.

5) Any unpaid assessment and/or penalties shall become a lien upon the assets of the supportive living facility upon which it was assessed. If any supportive living facility, outside the usual course of its business, sells or transfers the major part of any one or more of the real property and improvements, the machinery and equipment, or the furniture or fixtures of any supportive living facility that is subject to the provisions of this Section, the seller or transferor shall pay the Department the amount of any assessment, penalty and interest (if any) due from it under this Section up to the date of the sale or transfer. If the seller or transferor fails to pay any assessment, penalty and interest (if any) due, the purchaser or transferee of the asset shall be liable for the amount of the assessment, penalty and interest (if any) up to the amount of the reasonable value of the property acquired by the purchaser or transferee. The purchaser or transferee shall continue to be liable until the purchaser or transferee pays the full amount of the assessment, penalty, and interest (if any) up to the amount of the reasonable value of the property acquired by the purchaser or transferee or until the purchaser or transferee receives from the Department a certificate showing that the assessment, penalty, and interest have been paid or a certificate from the Department showing that no assessment, penalty, or interest is due from the seller or transferor under this Section.

g) Delayed Payment – Groups of Facilities

The Department may establish delayed payment of assessment and/or waive the payment of interest and penalties for groups of facilities when:

1) the State delays payments to facilities due to problems related to State cash flow; or

2) a cash flow bond pool's or any other group financing plans' requests from providers for loans are in excess of its scheduled proceeds such that a significant number of facilities will be unable to obtain a loan to pay the assessment.

h) Delayed Payment – Individual Facilities

In addition to the provisions of subsection (g), the Department may delay assessments for individual facilities that are unable to make timely payments under this Section due to financial difficulties.  No delayed payment arrangements shall extend beyond the last business day of the month following the month the assessment payment was to have been received by the Department as described in subsection (c). The Department may not deny a request for delay of payment of the assessment imposed in subsection (b) if the provider has not been paid due to problems related to State cash flow for services provided during the month in which the assessment is levied.  The request must be received by the Department prior to the due date of the assessment.

1) Criteria.  Delayed payment provisions may be instituted only under extraordinary circumstances.  Delayed payment provisions shall be made only to qualified facilities who meet all of the following requirements:

A) The facility has experienced an emergency that necessitates institution of delayed payment provisions.  Emergency, in this instance, is defined as a circumstance under which institution of the payment and penalty provisions described in subsections (c)(1), (c)(2), (f)(1), (f)(2) and (f)(3) would impose severe and irreparable harm to the clients served.  Circumstances that may create these emergencies include, but are not limited to, the following:

i) Department system errors (either automated system or clerical) that have precluded payments or that have caused erroneous payments such that the facility's ability to provide further services to clients is severely impaired;

ii) cash flow problems encountered by a facility that are unrelated to Department technical system problems and that result in extensive financial problems for a facility, adversely impacting its ability to serve its clients.

B) The facility serves a significant number of clients under the Medical Assistance Program.  Significant, in this instance, means:

i) 85% or more of the facility's residents are eligible for public assistance;

ii) The facility is a government-owned facility that meets the cash flow criterion of subsection (h)(1)(A)(ii);

iii) The facility is a provider who has filed for Chapter 11 bankruptcy, which meets the cash flow criterion of subsection (h)(1)(A)(ii).

C) The facility must ensure that a delay of payment request, as defined under subsection (h)(3)(A), is received by the Department and the request must include a cash position statement that is based upon current assets, current liabilities and other data for a date that is less than 60 days prior to the date of filing.  Any liabilities payable to owners or related parties must not be reported as current liabilities on the Cash Position Statement.  A deferral of license fee or assessment payments will be denied if any of the following criteria are met:

i) the ratio of current assets divided by current liabilities is greater than 2.0;

ii) cash, short term investments and long term investments equal or exceed the total of accrued wages payable and the license fee payment.  Long term investments that are unavailable for expenditure for current operations due to donor restrictions or contractual requirements will not be used in this calculation;

iii) cash or other assets have been distributed during the previous 90 days to owners or related parties in an amount equal to or exceeding the license fee or assessment payment for dividends, salaries in excess of those allowable under Section 140.541 or payments for purchase of goods or services in excess of cost as defined in Section 140.537.

D) The facility, with the exception of government-owned facilities, must show evidence of denial of an application to borrow assessment funds through a cash flow bond pool or financial institution such as a commercial bank.  The denial must be 90 days old or less.

E) The facility must sign an agreement with the Department that specifies the terms and conditions of the delayed payment provisions.  The agreement shall contain the following provisions:

i) specific reasons for institution of the delayed payment provisions;

ii) specific dates on which payments must be received and the amount of payment that must be received on each specific date described;

iii) the interest or a statement of interest waiver as described in subsection (h)(5) that shall be due from the facility as a result of institution of the delayed payment provisions;

iv) a certification stating that, should the entity be sold, the new owners will be made aware of the liability and any agreement selling the entity will include provisions that the new owners will assume responsibility for repaying the debt to the Department according to the original agreement;

v) a certification stating that all information submitted to the Department in support of the delayed payment request is true and accurate to the best of the signator's knowledge; and

vi) such other terms and conditions that may be required by the Department.

2) A facility that does not meet the criteria of subsection (h)(1) may request, prior to the due date, a delayed payment schedule.  The Department may approve the request, notwithstanding the facility not meeting these criteria, upon a sufficient showing of financial difficulties and good cause by the facility.  If the request for a delayed payment schedule is approved, all other conditions of this subsection (h) shall apply.

3) Approval Process

A) In order to receive consideration for delayed payment, facilities must ensure their request is received by the Department prior to the payment due date, in writing (telefax requests are acceptable) to the Bureau of Hospital and Provider Services.  The request must be received by the due date designated by the Department.  Providers will be notified, in writing, of the due date for submitting delay of payment requests.  Requests must be complete and contain all required information before they are considered to have met the time requirements for filing a delayed payment request.  All telefax requests must be followed up with original written requests, postmarked no later than the date of the telefax.  The request must include:

i) an explanation of the circumstances creating the need for the delayed payment provisions;

ii) supportive documentation to substantiate the emergency nature of the request, including a cash position statement as defined in subsection (h)(1)(C), a denial of application to borrow the license fee or assessment as defined in subsection (h)(1)(D), and an explanation of the risk of irreparable harm to the clients; and

iii) specification of the specific arrangements requested by the facility.

B) The facility shall be notified by the Department, in writing prior to the assessment due date, of the Department's decision with regard to the request for institution of delayed payment provisions.  An agreement shall be issued to the facility for all approved requests.  The agreement must be signed by the administrator, owner or other authorized representative and be received by the Department prior to the first scheduled payment date listed in the agreement.

4) Waiver of Penalties.  The penalties described in subsections (f)(1) and (f)(2) may be waived upon approval of the facility's request for institution of delayed payment provisions.  In the event a facility's request for institution of delayed payment provisions is approved and the Department has received the signed agreement in accordance with subsection (h)(3)(B), the penalties shall be permanently waived for the subject month as it pertains to assessment, unless the facility fails to meet all of the terms and conditions of the agreement.  In the event the facility fails to meet all of the terms and conditions of the agreement, the agreement shall be considered null and void and penalties shall be fully reinstated.

5) Interest.  The delayed payments shall include interest at a rate not to exceed the State of Illinois borrowing rate.  The applicable interest rate shall be identified in the agreement described in subsection (h)(1)(E). The interest may be waived by the Department if the facility's current ratio, as described in subsection (h)(1)(C), is 1.5 or less and the facility meets the criteria in subsections (h)(1)(A) and (B).  Any waivers granted shall be expressly identified in the agreement.

6) Subsequent Delayed Payment Arrangements.  Once a facility has requested and received approval for delayed payment arrangements, the facility shall not receive approval for subsequent delayed payment arrangements until the terms and conditions of any current delayed payment agreement have been satisfied or unless the provider is in full compliance with the terms of the current delay of payment agreement.  The waiver of penalties described in subsection (h)(4) shall not apply to a facility that has not satisfied the terms and conditions of any current delayed payment agreement.

i) Administration and Enforcement Provisions

The Department shall administer and enforce Section 5G-5 of the Code and collect the assessments, interest, and penalty fees imposed under the law, using procedures employed in its administration of the Code generally and, as it deems appropriate, in a manner similar to that in which the Department of Revenue administers and collects the retailers' occupation tax under the Retailers' Occupation Tax Act (ROTA).

j) Certification Fee

The Department shall collect an annual certification fee of $100 per each operational or approved supportive living facility for the purposes of funding the administrative process of reviewing new supportive living facility applications and administrative oversight of the health care services delivered by supportive living facilities. The certification fee imposed by this subsection shall cease to be imposed if the amount of matching federal funds under Title XIX of the Social Security Act is eliminated or significantly reduced on account of the certification fee.

k) Definitions

As used in this Section, unless the context requires otherwise:

1) "Department" means the Illinois Department of Healthcare and Family Services.

2) "Fund" means the Supportive Living Facility Fund.

3) "Supportive Living Facility" means an enrolled supportive living site as described Section 5-5.01a of the Code that meets the participation requirements under 89 Ill. Adm. Code 146.215.

4) "Care Days" means, with respect to a supportive living facility, the sum for all apartment units, the number of days during the month in which each apartment unit was occupied by a resident.

(Source: Added at 38 Ill. Reg. 23623, effective December 2, 2014)