



General Assembly

Amendment

February Session, 2004

LCO No. 5383

SB0056505383SD0

Offered by:

SEN. MURPHY, 16th Dist.
SEN. LOONEY, 11th Dist.
SEN. GUNTHER, 21st Dist.
SEN. DAILY, 33rd Dist.

SEN. HARP, 10th Dist.
SEN. HANDLEY, 4th Dist.
SEN. PRAGUE, 19th Dist.
SEN. COLEMAN, 2nd Dist.

To: Subst. Senate Bill No. 565

File No. 456

Cal. No. 335

"AN ACT CONCERNING A NURSING FACILITY USER FEE."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
4 section:

5 (1) "Federal financial participation matching funds" means all
6 amounts due or paid to the state of Connecticut by the federal
7 government as a result of nursing facility Medicaid payments funded
8 by the user fees described in subsection (b) of this section;

9 (2) "Medicaid patient day" means a day of care provided to a patient
10 in a nursing facility and billed to the Medicaid program;

11 (3) "Medicare program" includes fee-for-service Medicare and
12 Medicare managed care;

13 (4) "Nursing facility" means a chronic and convalescent nursing
14 home or a rest home with nursing supervision licensed by the
15 Department of Public Health.

16 (5) "Patient day" means a day of care provided to a patient in a
17 nursing facility and billed by the nursing facility, but does not include
18 patient days billed to the Medicare program;

19 (6) "Revenues" means all room, board and inpatient and outpatient
20 ancillary revenues billed by nursing facilities, net of contractual
21 allowances and bad debts.

22 (b) (1) The Commissioner of Social Services shall assess a user fee of
23 approximately fourteen dollars per patient day on each nursing
24 facility.

25 (2) The commissioner shall impose the user fee assessment in a
26 manner consistent with 42 CFR Part 433, Subpart B, and in no event
27 shall any nursing facility be held harmless within the meaning of 42
28 CFR 433.68(f).

29 (3) The amount of the user fee for the period from January 1, 2005,
30 to June 30, 2005, for the fiscal year beginning July 1, 2005, and for each
31 succeeding fiscal year shall be determined by the commissioner as
32 follows: The sum of anticipated state-wide aggregate nursing facility
33 revenues, including revenues from additional per diem payments as
34 provided in subsection (c) of this section, for the fiscal year ending
35 June 30, 2005, and each succeeding fiscal year, as applicable, multiplied
36 by six per cent and divided by the anticipated state-wide aggregate
37 number of patient days for the fiscal year ending June 30, 2005, and
38 each succeeding fiscal year, as applicable, provided the commissioner
39 may impose a lesser user fee on the minimum number of nursing
40 facilities having the highest number of patient days as necessary to
41 meet the requirements of 42 CFR 433.68(e)(2).

42 (4) The sum of the state-wide aggregate user fees for each full fiscal
43 year or part thereof shall equal, but shall not exceed six per cent of

44 state-wide aggregate revenues for such fiscal year or on an annualized
45 basis. Not later than sixty days after the end of each fiscal year, the
46 commissioner shall determine actual aggregate state-wide nursing
47 facility revenues, including revenues from additional per diem
48 payments as provided in subsection (c) of this section, and shall adjust
49 the user fee for that fiscal year as necessary to maintain such six per
50 cent limitation. Not later than sixty days after determining the adjusted
51 user fee, the commissioner shall refund any overpayments to nursing
52 facilities or issue a supplemental user fee bill to nursing facilities.

53 (5) All amounts collected by the commissioner pursuant to this
54 section and all federal financial participation matching funds, together
55 with any interest and late fees thereon, shall be deposited in the
56 nursing facility security account established pursuant to subsection (e)
57 of this section. No appropriation, expenditure or withdrawal from the
58 nursing facility security account shall be permitted except in
59 accordance with this section.

60 (c) (1) All amounts in the nursing facility security account
61 established pursuant to subsection (e) of this section shall be used as
62 follows: The commissioner shall add approximately thirty-five dollars
63 and thirty-four cents to the per diem Medicaid rate established for each
64 nursing facility for the period from January 1, 2005, through June 30,
65 2005, for the fiscal year beginning July 1, 2005, and for each succeeding
66 fiscal year. This additional per diem payment shall reimburse nursing
67 facilities for the cost of user fees related to Medicaid patient days and
68 in part for Medicaid payments in prior years that were insufficient to
69 reimburse Medicaid allowable costs due to an inflation index that did
70 not reflect actual cost increases, rate increase limitations set forth in
71 subdivision (4) of subsection (f) of section 17b-340 of the general
72 statutes, and other factors. The per diem Medicaid rate established for
73 each nursing facility for the period from January 1, 2005, through June
74 30, 2005, for the fiscal year beginning July 1, 2005, and for each
75 succeeding fiscal year shall comply with the requirements of
76 subsections (a), (b), (e) and (f) of section 17b-340 of the general statutes,
77 provided no rate limitation set forth in section 17b-340 of the general

78 statutes, shall apply to the additional per diem payment made
79 pursuant to this subsection.

80 (2) The exact amount of the additional per diem payment made
81 pursuant to subdivision (1) of this subsection shall be determined by
82 the commissioner as follows: The anticipated amount of state-wide
83 aggregate user fees as established by subdivision (3) of subsection (b)
84 of this section to be paid by nursing facilities during the fiscal year
85 beginning July 1, 2004, and each succeeding fiscal year, multiplied by
86 two and divided by the anticipated state-wide aggregate number of
87 Medicaid patient days for the same period. Not later than sixty days
88 after the end of each fiscal year, the commissioner shall determine the
89 actual user fees for that fiscal year as set forth in subdivision (4) of
90 subsection (b) of this section, divided by the actual number of state-
91 wide aggregate Medicaid patient days, and shall adjust the additional
92 per diem payment for that fiscal year as necessary. The commissioner
93 shall make a supplemental payment to nursing facilities or recoup any
94 overpayments not later than sixty days after determining the adjusted
95 per diem payment. In calculating the additional per diem payment, the
96 commissioner may deduct one-tenth of one per cent from the
97 aggregate state-wide user fees prior to calculating the per diem
98 amount. Such deduction shall be used to fund administrative costs
99 incurred by the Department of Social Services in implementing the
100 requirements of this section.

101 (3) For the fiscal year beginning July 1, 2005, all federal financial
102 participation matching funds included in the additional per diem
103 payments set forth in subdivision (2) of this subsection that exceed
104 such funds included in such payments for the period January 1, 2005,
105 to June 30, 2005, as determined on an annualized basis, shall be
106 designated to enhance wages, benefits and staffing in nursing facilities.
107 For the fiscal year beginning July 1, 2006, and each succeeding fiscal
108 year, all federal financial participation matching funds included in the
109 additional per diem payments set forth in subdivision (2) of this
110 subsection that exceed such funds included in such payments for the
111 immediately preceding fiscal year shall be so designated.

112 (d) (1) All user fees paid by nursing facilities shall be an allowable
113 cost for Medicaid rate-setting purposes.

114 (2) User fees shall be calculated monthly by each nursing facility by
115 multiplying the amount of the user fee times such facility's number of
116 patient days for that month. The user fees shall be payable to the
117 nursing facility security account no later than the last day of the month
118 following the month for which the user fees are calculated.

119 (3) The commissioner shall prepare forms for nursing facilities to
120 use in reporting and calculating the user fees.

121 (4) The commissioner may conduct audits of nursing facility user
122 fee payments for the purpose of determining whether the nursing
123 facility has correctly computed the number of patient days, provided
124 no such audit shall review any period of time prior to January 1, 2005,
125 or more than three years prior to the beginning date of such audit.

126 (5) The commissioner may charge interest on any unpaid user fees
127 at a rate not to exceed the then current rate charged on deficiency
128 assessments pursuant to subsection (b) of section 12-415 of the general
129 statutes.

130 (e) (1) There is established a nursing facility security account which
131 shall be a separate nonlapsing account within the General Fund. The
132 account may contain funds deposited pursuant to subdivision (5) of
133 subsection (b) of this section and any other moneys required by law to
134 be deposited in the account. The moneys in said account shall be used
135 by the commissioner to make additional per diem payments to nursing
136 facilities pursuant to subsection (c) of this section. Expenditures from
137 said account shall not be considered general budget expenditures, as
138 defined pursuant to section 2-33a of the general statutes, as amended
139 by this act, for the current fiscal year for the purposes of determining
140 general budget expenditures for the ensuing fiscal year.

141 (2) The Treasurer shall apply the available resources of the nursing
142 facility security account monthly, beginning with the third month after

143 user fees are first paid into the account, to reimburse the Department
144 of Social Services for the additional per diem payments to nursing
145 facilities pursuant to subsection (c) of this section.

146 (f) (1) Not later than September 30, 2004, the commissioner shall
147 seek approval from the Centers for Medicare and Medicaid Services
148 for, and shall file a State Medicaid Plan amendment regarding, the user
149 fee and additional per diem payments as set forth in this section. The
150 request for approval shall include a request for a waiver of federal
151 requirements for uniform and broad-based user fees in accordance
152 with 42 CFR 433.68, to exempt from the user fee assessment any
153 nursing facility (A) that (i) does not participate in the Medicare or
154 Medicaid program, and (ii) funds over fifty per cent of its operating
155 budget from a charitable foundation that is an exempt operating
156 foundation, as defined in Section 4940 (d) (2) of the Internal Revenue
157 Code of 1986 or any subsequent corresponding internal revenue code
158 of the United States, as from time to time amended, or an operating
159 foundation, as defined in Section 4942(j)(3) of said Internal Revenue
160 Code; (B) operated by an entity that is registered with the Department
161 of Social Services pursuant to section 17b-521 of the general statutes,
162 regardless of whether such nursing facility participates in the Medicaid
163 program; and (C) as deemed necessary and appropriate to meet the
164 waiver requirements in 42 CFR 433.68

165 (2) If the Centers for Medicare and Medicaid Services does not
166 approve a waiver exempting the nursing facilities described in
167 subdivision (1) of this subsection, the commissioner shall withdraw
168 such plan amendment, cease to seek approval for the user fee and
169 additional per diem payments and refrain from imposition or
170 collection of the user fee.

171 (3) The user fee set forth in subsection (b) of this section shall be
172 implemented on the first day of the month following the month in
173 which approval pursuant to subdivision (1) of this subsection is
174 received, but shall not be implemented prior to January 1, 2005. The
175 additional per diem payments set forth in subsection (c) of this section

176 shall be made beginning in the first month following the month in
177 which such approval is received but shall not be imposed prior to
178 January 1, 2005.

179 (g) The commissioner shall publish an annual accounting of
180 deposits into and allocation from the nursing facility security account
181 and the use of such allocations.

182 (h) The user fee shall terminate automatically upon repeal of the
183 federal law or laws allowing federal matching funds to be paid to the
184 state in connection with expenditures by the state for the additional
185 per diem payment set forth in subsection (c) of this section. Any
186 balance remaining in or due to the nursing facility security account
187 upon termination of the user fee shall be paid to nursing facilities on a
188 pro rata basis according to the user fees paid by each such facility.

189 Sec. 2. Section 2-33a of the general statutes is repealed and the
190 following is substituted in lieu thereof (*Effective July 1, 2004*):

191 The General Assembly shall not authorize an increase in general
192 budget expenditures for any fiscal year above the amount of general
193 budget expenditures authorized for the previous fiscal year by a
194 percentage which exceeds the greater of the percentage increase in
195 personal income or the percentage increase in inflation, unless the
196 Governor declares an emergency or the existence of extraordinary
197 circumstances and at least three-fifths of the members of each house of
198 the General Assembly vote to exceed such limit for the purposes of
199 such emergency or extraordinary circumstances. Any such declaration
200 shall specify the nature of such emergency or circumstances and may
201 provide that such proposed additional expenditures shall not be
202 considered general budget expenditures for the current fiscal year for
203 the purposes of determining general budget expenditures for the
204 ensuing fiscal year and any act of the General Assembly authorizing
205 such expenditures may contain such provision. As used in this section,
206 "increase in personal income" means the average of the annual increase
207 in personal income in the state for each of the preceding five years,

208 according to United States Bureau of Economic Analysis data;
 209 "increase in inflation" means the increase in the consumer price index
 210 for urban consumers during the preceding twelve-month period,
 211 according to United States Bureau of Labor Statistics data; and "general
 212 budget expenditures" means expenditures from appropriated funds
 213 authorized by public or special act of the General Assembly, provided
 214 (1) general budget expenditures shall not include expenditures for
 215 payment of the principal of and interest on bonds, notes or other
 216 evidences of indebtedness, expenditures pursuant to section 4-30a, as
 217 amended, payments from the nursing facility security account
 218 pursuant to section 1 of this act, or current or increased expenditures
 219 for statutory grants to distressed municipalities, provided such grants
 220 are in effect on July 1, 1991, and (2) expenditures for the
 221 implementation of federal mandates or court orders shall not be
 222 considered general budget expenditures for the first fiscal year in
 223 which such expenditures are authorized, but shall be considered
 224 general budget expenditures for such year for the purposes of
 225 determining general budget expenditures for the ensuing fiscal year.
 226 As used in this section, "federal mandates" means those programs or
 227 services in which the state must participate, or in which the state
 228 participated on July 1, 1991, and in which the state must meet federal
 229 entitlement and eligibility criteria in order to receive federal
 230 reimbursement, provided expenditures for program or service
 231 components which are optional under federal law or regulation shall
 232 be considered general budget expenditures."

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>July 1, 2004</i>