



General Assembly

Amendment

February Session, 2004

LCO No. 5083

SB0056505083SD0

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.

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, but does not include any such facility
16 that (A) (i) does not participate in the Medicare or Medicaid program
17 and (ii) funds over fifty per cent of its operating budget from a
18 charitable foundation that is an exempt operating foundation, as
19 defined in Section 4940(d)(2) of the Internal Revenue Code of 1986 or
20 any subsequent corresponding internal revenue code of the United
21 States, as from time to time amended, or an operating foundation, as
22 defined in Section 4942(j)(3) of said Internal Revenue Code, or (B)
23 provides care to some or all of its patients pursuant to a continuing
24 care contract, as defined in section 17b-520 of the general statutes;

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

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

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

34 (2) The amount of the user fee for the period from January 1, 2005,
35 to June 30, 2005, for the fiscal year beginning July 1, 2005, and for each
36 succeeding fiscal year shall be determined by the commissioner as
37 follows: The sum of anticipated state-wide aggregate nursing facility
38 revenues, including revenues from additional per diem payments as
39 provided in subsection (c) of this section, for the fiscal year ending
40 June 30, 2004, and each succeeding fiscal year, as applicable, multiplied
41 by six per cent and divided by the anticipated state-wide aggregate
42 number of patient days for the fiscal year ending June 30, 2004, and
43 each succeeding fiscal year, as applicable, provided the commissioner
44 may impose a lesser user fee on the minimum number of nursing

45 facilities having the highest number of patient days as necessary to
46 meet the requirements of 42 CFR 433.68(e)(2).

47 (3) The sum of the state-wide aggregate user fees shall equal, but
48 shall not exceed six per cent of state-wide aggregate revenues. Not
49 later than sixty days after the end of each fiscal year, the commissioner
50 shall determine actual aggregate state-wide nursing facility revenues,
51 including revenues from additional per diem payments as provided in
52 subsection (c) of this section, and shall adjust the user fee for that fiscal
53 year as necessary to maintain such six per cent limitation. Not later
54 than sixty days after determining the adjusted user fee, the
55 commissioner shall refund any overpayments to nursing facilities or
56 issue a supplemental user fee bill to nursing facilities.

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

64 (c) (1) All amounts in the nursing facility security account
65 established pursuant to subsection (e) of this section shall be used as
66 follows: The commissioner shall add approximately thirty-five dollars
67 and thirty-four cents to the per diem Medicaid rate established for each
68 nursing facility for the period from January 1, 2005, through June 30,
69 2005, for the fiscal year beginning July 1, 2005, and for each succeeding
70 fiscal year. This additional per diem payment shall reimburse nursing
71 facilities for the cost of user fees related to Medicaid patient days and
72 in part for Medicaid payments in prior years that were insufficient to
73 reimburse Medicaid allowable costs due to an inflation index that did
74 not reflect actual cost increases, rate increase limitations set forth in
75 subdivision (4) of subsection (f) of section 17b-340 of the general
76 statutes, and other factors. The per diem Medicaid rate established for
77 each nursing facility for the period from January 1, 2005, through June

78 30, 2005, for the fiscal year beginning July 1, 2005, and for each
79 succeeding fiscal year shall comply with the requirements of
80 subsections (a), (b), (e) and (f) of section 17b-340 of the general statutes,
81 provided no rate increase limitation set forth in subdivision (4) of
82 subsection (f) of section 17b-340 of the general statutes, shall apply to
83 the additional per diem payment made pursuant to this subsection.

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

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

112 year, all federal financial participation matching funds included in the
113 additional per diem payments set forth in subdivision (2) of this
114 subsection that exceed such funds included in such payments for the
115 immediately preceding fiscal year shall be so designated.

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

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

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

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

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

134 (e) (1) There is established a nursing facility security account which
135 shall be a separate nonlapsing account within the General Fund. The
136 account may contain funds deposited pursuant to subdivision (4) of
137 subsection (b) of this section and any other moneys required by law to
138 be deposited in the account. The moneys in said account shall be used
139 by the commissioner to make additional per diem payments to nursing
140 facilities pursuant to subsection (c) of this section. Expenditures from
141 said account shall not be considered general budget expenditures, as
142 defined pursuant to section 2-33a of the general statutes, as amended

143 by this act, for the current fiscal year for the purposes of determining
144 general budget expenditures for the ensuing fiscal year.

145 (2) The Treasurer shall apply the available resources of the nursing
146 facility security account monthly, beginning with the third month after
147 user fees are first paid into the account, to reimburse the Department
148 of Social Services for the additional per diem payments to nursing
149 facilities pursuant to subsection (c) of this section.

150 (f) (1) Not later than September 30, 2004, the commissioner shall
151 seek approval from the Centers for Medicare and Medicaid Services
152 for, and shall file a State Medicaid Plan amendment regarding, the user
153 fee and additional per diem payments as set forth in this section. The
154 request for approval shall include a request for a waiver to exempt any
155 facility excluded in subdivision (4) of subsection (a) of this section. If
156 such request for a waiver is not granted, the commissioner shall
157 withdraw such plan amendment and shall cease to seek approval for
158 the user fee and additional per diem payments.

159 (2) If the formula set forth in subdivision (2) of subsection (c) of this
160 section for determining the additional per diem payments is not
161 approved, the commissioner shall submit an alternative methodology
162 for computing such payments.

163 (3) The user fee set forth in subsection (b) of this section shall be
164 implemented on the first day of the month following the month in
165 which such approval is received, but shall not be implemented prior to
166 January 1, 2005. The additional per diem payments set forth in
167 subsection (c) of this section shall be made beginning in the first month
168 following the month in which such approval is received but shall not
169 be imposed prior to January 1, 2005.

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

173 (h) The user fee shall terminate automatically upon repeal of the

174 federal law or laws allowing federal matching funds to be paid to the
175 state in connection with expenditures by the state for the additional
176 per diem payment set forth in subsection (c) of this section. Any
177 balance remaining in or due to the nursing facility security account
178 upon termination of the user fee shall be paid to nursing facilities on a
179 pro rata basis according to the user fees paid by each such facility.

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

182 The General Assembly shall not authorize an increase in general
183 budget expenditures for any fiscal year above the amount of general
184 budget expenditures authorized for the previous fiscal year by a
185 percentage which exceeds the greater of the percentage increase in
186 personal income or the percentage increase in inflation, unless the
187 Governor declares an emergency or the existence of extraordinary
188 circumstances and at least three-fifths of the members of each house of
189 the General Assembly vote to exceed such limit for the purposes of
190 such emergency or extraordinary circumstances. Any such declaration
191 shall specify the nature of such emergency or circumstances and may
192 provide that such proposed additional expenditures shall not be
193 considered general budget expenditures for the current fiscal year for
194 the purposes of determining general budget expenditures for the
195 ensuing fiscal year and any act of the General Assembly authorizing
196 such expenditures may contain such provision. As used in this section,
197 "increase in personal income" means the average of the annual increase
198 in personal income in the state for each of the preceding five years,
199 according to United States Bureau of Economic Analysis data;
200 "increase in inflation" means the increase in the consumer price index
201 for urban consumers during the preceding twelve-month period,
202 according to United States Bureau of Labor Statistics data; and "general
203 budget expenditures" means expenditures from appropriated funds
204 authorized by public or special act of the General Assembly, provided
205 (1) general budget expenditures shall not include expenditures for
206 payment of the principal of and interest on bonds, notes or other
207 evidences of indebtedness, expenditures pursuant to section 4-30a, as

208 amended, payments from the nursing facility security account
 209 pursuant to section 1 of this act, or current or increased expenditures
 210 for statutory grants to distressed municipalities, provided such grants
 211 are in effect on July 1, 1991, and (2) expenditures for the
 212 implementation of federal mandates or court orders shall not be
 213 considered general budget expenditures for the first fiscal year in
 214 which such expenditures are authorized, but shall be considered
 215 general budget expenditures for such year for the purposes of
 216 determining general budget expenditures for the ensuing fiscal year.
 217 As used in this section, "federal mandates" means those programs or
 218 services in which the state must participate, or in which the state
 219 participated on July 1, 1991, and in which the state must meet federal
 220 entitlement and eligibility criteria in order to receive federal
 221 reimbursement, provided expenditures for program or service
 222 components which are optional under federal law or regulation shall
 223 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>