



General Assembly

Amendment

February Session, 2004

LCO No. 5160

SB0056505160SDO

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, 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, or
25 has entered into an agreement with a provider, as defined in section
26 176-520 of the general statutes, to furnish such care.

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

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

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

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

45 each succeeding fiscal year, as applicable, provided the commissioner
46 may impose a lesser user fee on the minimum number of nursing
47 facilities having the highest number of patient days as necessary to
48 meet the requirements of 42 CFR 433.68(e)(2).

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

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

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

78 subdivision (4) of subsection (f) of section 17b-340 of the general
79 statutes, and other factors. The per diem Medicaid rate established for
80 each nursing facility for the period from January 1, 2005, through June
81 30, 2005, for the fiscal year beginning July 1, 2005, and for each
82 succeeding fiscal year shall comply with the requirements of
83 subsections (a), (b), (e) and (f) of section 17b-340 of the general statutes,
84 provided no rate increase limitation set forth in subdivision (4) of
85 subsection (f) of section 17b-340 of the general statutes, shall apply to
86 the additional per diem payment made pursuant to this subsection.

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

108 (3) For the fiscal year beginning July 1, 2005, all federal financial
109 participation matching funds included in the additional per diem
110 payments set forth in subdivision (2) of this subsection that exceed
111 such funds included in such payments for the period January 1, 2005,

112 to June 30, 2005, as determined on an annualized basis, shall be
113 designated to enhance wages, benefits and staffing in nursing facilities.
114 For the fiscal year beginning July 1, 2006, and each succeeding fiscal
115 year, all federal financial participation matching funds included in the
116 additional per diem payments set forth in subdivision (2) of this
117 subsection that exceed such funds included in such payments for the
118 immediately preceding fiscal year shall be so designated.

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

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

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

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

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

137 (e) (1) There is established a nursing facility security account which
138 shall be a separate nonlapsing account within the General Fund. The
139 account may contain funds deposited pursuant to subdivision (4) of
140 subsection (b) of this section and any other moneys required by law to
141 be deposited in the account. The moneys in said account shall be used
142 by the commissioner to make additional per diem payments to nursing

143 facilities pursuant to subsection (c) of this section. Expenditures from
144 said account shall not be considered general budget expenditures, as
145 defined pursuant to section 2-33a of the general statutes, as amended
146 by this act, for the current fiscal year for the purposes of determining
147 general budget expenditures for the ensuing fiscal year.

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

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

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

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

173 (g) The commissioner shall publish an annual accounting of
174 deposits into and allocation from the nursing facility security account

175 and the use of such allocations.

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

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

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

208 (1) general budget expenditures shall not include expenditures for
 209 payment of the principal of and interest on bonds, notes or other
 210 evidences of indebtedness, expenditures pursuant to section 4-30a, as
 211 amended, payments from the nursing facility security account
 212 pursuant to section 1 of this act, or current or increased expenditures
 213 for statutory grants to distressed municipalities, provided such grants
 214 are in effect on July 1, 1991, and (2) expenditures for the
 215 implementation of federal mandates or court orders shall not be
 216 considered general budget expenditures for the first fiscal year in
 217 which such expenditures are authorized, but shall be considered
 218 general budget expenditures for such year for the purposes of
 219 determining general budget expenditures for the ensuing fiscal year.
 220 As used in this section, "federal mandates" means those programs or
 221 services in which the state must participate, or in which the state
 222 participated on July 1, 1991, and in which the state must meet federal
 223 entitlement and eligibility criteria in order to receive federal
 224 reimbursement, provided expenditures for program or service
 225 components which are optional under federal law or regulation shall
 226 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>