



General Assembly

January Session, 2005

Raised Bill No. 707

LCO No. 2785

02785 _____ PH_

Referred to Committee on Public Health

Introduced by:
(PH)

AN ACT CONCERNING A NURSING FACILITY USER FEE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section:
- 2 (1) "Federal financial participation matching funds" means all
3 amounts due or paid to the state of Connecticut by the federal
4 government as a result of nursing facility Medicaid payments funded
5 by the user fees described in subsection (b) of this section;
- 6 (2) "Medicaid patient day" means a day of care provided to a patient
7 in a nursing facility and billed to the Medicaid program;
- 8 (3) "Medicare program" includes fee-for-service Medicare and
9 Medicare managed care;
- 10 (4) "Nursing facility" means a chronic and convalescent nursing
11 home or a rest home with nursing supervision licensed by the
12 Department of Public Health;
- 13 (5) "Patient day" means a day of care provided to a patient in a
14 nursing facility and billed by the nursing facility, but does not include

15 patient days billed to the Medicare program;

16 (6) "Revenues" means amounts billed by nursing facilities for all
17 room, board and inpatient and outpatient ancillary services, net of
18 contractual allowances and bad debts.

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

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

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

39 (4) The sum of the state-wide aggregate user fees for each full fiscal
40 year or part thereof shall equal, but shall not exceed, six per cent of
41 state-wide aggregate revenues for such fiscal year or on an annualized
42 basis. Not later than sixty days after the end of each fiscal year, the
43 commissioner shall determine actual aggregate state-wide nursing
44 facility revenues, including revenues from additional per diem
45 payments as provided in subsection (c) of this section, and shall adjust

46 the user fee for that fiscal year as necessary to maintain such six per
47 cent limitation. Not later than sixty days after determining the adjusted
48 user fee, the commissioner shall refund any overpayments to nursing
49 facilities or issue a supplemental user fee bill to nursing facilities.

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

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

77 (2) The exact amount of the additional per diem payment made

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

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

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

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

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

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

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

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

138 (2) The Treasurer shall apply the available resources of the nursing
139 facility security account monthly, beginning with the third month after
140 user fees are first paid into the account, to reimburse the Department
141 of Social Services for the additional per diem payments to nursing

142 facilities pursuant to subsection (c) of this section.

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

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

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

174 January 1, 2005.

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

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

185 Sec. 2. Section 2-33a of the general statutes is repealed and the
186 following is substituted in lieu thereof (*Effective July 1, 2005*):

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>July 1, 2005</i>	2-33a

Statement of Purpose:

To initiate a user fee to be paid by nursing facilities.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]