

CHAPTER 105

AN ACT establishing the "Nursing Home Quality of Care Improvement Fund" and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.26:2H-92 Short title.

1. This act shall be known and may be cited as the "Nursing Home Quality of Care Improvement Fund Act."

C.26:2H-93 Findings, declarations relative to nursing home quality of care.

2. The Legislature finds and declares that:

a. It is in the public interest of this State for its nursing home industry to continue to provide high-quality services to those frail and vulnerable citizens who critically need nursing home care;

b. Presently, New Jersey has the lowest Medicaid reimbursement rate in the region for nursing home services provided;

c. Additional reductions in federal funding, together with the current budget crisis facing the State, are likely to deepen the nursing home industry's funding shortfall;

d. This funding crisis leads directly to caregiver staffing problems, high staff turnover, reduced staffing levels, and, in turn, a diminution in the quality of nursing care services;

e. By establishing an appropriate assessment on nursing homes, in accordance with federal regulations set forth at 42 C.F.R. s.433.68(f), additional funding will be made available to improve the quality of care by increasing Medicaid reimbursement for services delivered to those senior citizens and other persons residing in New Jersey nursing homes;

f. It is, therefore, appropriate to establish a "Nursing Home Quality of Care Improvement Fund" by using investment contributions from nursing home providers to attract federal matching funds; and

g. This innovative approach would allow New Jersey to improve nursing home services by using available federal dollars in the best manner possible.

C.26:2H-94 Definitions relative to nursing home quality of care.

3. As used in this act:

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Fund" means the "Nursing Home Quality of Care Improvement Fund" established pursuant to this act.

"High Medicaid occupancy nursing home" means those nursing homes with the highest Medicaid occupancy that will ensure eligibility for the federal waiver of uniformity under federal regulations consistent with this act.

"Low Medicaid occupancy nursing home" means the 30% of all nursing homes with the lowest Medicaid occupancy consistent with this act.

"Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Medicaid occupancy" means the ratio resulting from dividing Medicaid patient days by total patient days paid for by Medicaid, Medicare, private insurance and private payers.

"Non-Medicare patient day" means any day that a nursing home is paid for a patient and for which it does not receive a payment or copayment from Medicare for Part A skilled nursing facility care.

"Nursing home" means a long-term care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), as well as the distinct part of another health care facility or continuing care retirement community that is licensed to provide skilled nursing care services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.). For the purposes of this act, nursing home shall not include: an acute care hospital; assisted living facility; comprehensive personal care home; residential health care facility; adult day health care facility; alternate family care program; adult family care program; home health care agency; State psychiatric hospital; county health care facility, including, but not limited to, county geriatric center, county nursing home or other

county long-term care facility; the New Jersey Firemen's Home; or a health care facility operated by the Department of Military and Veterans' Affairs.

C.26:2H-95 "Nursing Home Quality of Care Improvement Fund."

4. The "Nursing Home Quality of Care Improvement Fund" is established as a nonlapsing fund in the Department of the Treasury. The fund shall be administered by the State Treasurer, in consultation with the Commissioner of Health and Senior Services or his designee, who shall be responsible for the oversight, coordination and disbursement of fund monies, and shall be credited with monies received pursuant to section 6 of this act, except for those monies which are deposited into the General Fund in accordance with the provisions of that section.

a. The fund shall be comprised of:

(1) revenues from assessments paid by nursing homes pursuant to section 5 of this act;
(2) matching federal funds received pursuant to Title XIX of the federal Social Security Act (42 U.S.C. s.1396 et seq.) that result from the expenditure of revenues from assessments collected pursuant to section 5 of this act;

(3) General Fund revenues, as necessary, to allow for the per diem add-on payments pursuant to subsection d. of section 6 of this act until the revenue from the assessment has been collected. Upon collection of the revenue from the assessment, the General Fund shall be repaid within 90 days; and

(4) any interest or other income earned on monies deposited into the fund.

b. Any disbursement of monies from the fund shall be used solely for Medicaid nursing home add-ons as provided for under section 6 of this act, which shall not in any manner render the assessment mechanism set forth in section 5 of this act to be in violation of the hold harmless provisions of 42 C.F.R. s.433.68(f).

c. The State Treasurer shall provide by regulation for such measures as are required to ensure the integrity of the fund.

d. The State Treasurer shall establish separate accounts within the fund as are needed to efficiently manage and disburse fund monies.

e. Monies in the fund shall not be used to supplant appropriations from the General Fund to the department or the Department of Human Services for use in securing matching federal funds not otherwise provided for in this act.

f. The Director of the Division of Taxation shall be responsible for collecting the assessments.

C.26:2H-96 Payment of annual assessment by nursing homes.

5. a. Each nursing home shall pay an assessment which, when combined with the aggregate amount of assessments paid by all other nursing homes pursuant to this section shall not exceed 6% of the aggregate amount of annual revenues received by all nursing homes in accordance with 42 C.F.R. s.433.68(f)(3)(I). The assessment shall be comprised of the payments required pursuant to paragraphs (1) and (2) of this subsection. This assessment shall be paid to the Director of the Division of Taxation in the Department of the Treasury. The director, in consultation with the commissioner, shall establish appropriate procedures and forms for the purpose of collecting and recording this assessment. The provisions of the "State Tax Uniform Procedure Law," R.S.54:48-1 et seq., shall apply to the extent that those provisions, including the confidentiality, protest and appeal provisions, are not inconsistent with the provisions of this act. The State shall neither collect the assessment on nursing homes nor distribute increases in Medicaid until both the provider assessment and the plan for distribution of the proceeds of the fund are approved by the federal government.

(1) All high or low Medicaid occupancy nursing homes shall pay annually an amount of \$1 per patient day based upon non-Medicare patient days. All other nursing homes shall pay a per diem assessment, to be calculated by dividing the total Statewide maximum allowable assessment permitted under 42 C.F.R. s.433.68(f)(3)(I) less the amount of assessment paid by high and low Medicaid occupancy nursing homes by the total non-Medicare patient days of those nursing homes which are not high or low Medicaid occupancy nursing homes.

(2) Notwithstanding any law to the contrary, each nursing home shall pay to the

director for deposit into the fund, in accordance with the requirements set forth in this act, an amount for nursing home patient days, excluding Medicare patient days, up to the maximum limit allowed by law less any licensing or other fees which would be considered "health care-related taxes" as defined by 42 C.F.R. s.433.55, including, but not limited to, any fees established by the commissioner as permitted under law.

b. The assessment paid under subsection a. of this section shall not include Medicare patient day revenues and receipts from Medicare certified beds.

c. The director, in consultation with the commissioner, shall prescribe by regulation the method by which nursing homes shall report information necessary for the director to calculate the assessment.

d. The assessment shall not be payable by nursing homes until both the provider assessment and the plan for distribution of the proceeds of the fund are approved by the federal government. Thereafter, the assessment shall be payable after the end of each calendar quarter during which the assessment accrues. Prior written notice of the due date of the assessment shall not be issued until the per diem add-ons pursuant to subsection d. of section 6 of this act have been paid.

e. A nursing home shall submit appropriate reports to the director to facilitate the purposes of this act, on a form and in a manner prescribed by the director and within such period of time as the director may require.

C.26:2H-97 Dedicated purposes for monies collected from assessment.

6. The monies collected from the assessment paid by nursing homes pursuant to section 5 of this act shall be dedicated for the purposes provided in this section and shall be allocated through appropriation as follows:

a. As soon after the collection of the monies from the assessment as is practicable, the State Treasurer shall authorize the transfer to the General Fund of \$12.875 million for each quarter for which the assessment has been collected, not to exceed \$51.5 million on an annual basis. All of the amounts so transferred to the General Fund shall be allocated for the support of nursing home programs as the commissioner shall designate, provided that of those amounts, a sufficient amount shall be used to fund nursing home rates at State fiscal year 2003 levels or higher and the continued applicability of nursing home rebasing and bed hold payment methodologies in effect during fiscal year 2003;

b. After the transfer set forth in subsection a. of this section, the director shall transfer \$625,000 for each quarter for which the assessment has been collected, not to exceed \$2.5 million on an annual basis, from the fund to such accounts as the commissioner shall designate to establish a grant program for all nursing homes located in this State. The purpose of the grants shall be: to ensure quality care and to promote recruitment and retention of qualified staff; to improve the quality of care for nursing home residents through the increase of direct or indirect care staff at nursing homes; and to increase or improve the use of innovative patient care technologies. The commissioner shall adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this subsection, but in no way shall this subsection be designed to violate the hold harmless provisions of 42 C.F.R. 433.50 et seq.;

c. The State Treasurer, in consultation with the commissioner, shall distribute to nursing homes all remaining monies in the fund, in accordance with the provisions of this section, including any federal Medicaid funds received pursuant to this act, in order to enhance the quality of care for the residents of those facilities, which may include training, recruitment and improvement of wages and benefits for nursing home direct care employees;

d. The monies identified in subsection c. of this section shall be allocated in the following manner:

(1) sufficient monies from these funds shall be used to recognize the assessment as an allowable cost for Medicaid reimbursement purposes; and

(2) the remaining portion of these funds not allocated under paragraph (1) of this subsection shall be made as a uniform per diem add-on for all Medicaid days provided by nursing facilities.

The Medicaid payments to nursing homes provided for under this subsection shall not violate

the hold harmless provisions set forth at 42 C.F.R. s.433.50 et seq.;

e. Beginning immediately and continuing for a period of 24 months following the enactment of this act, any monies received by facilities pursuant to this act that are expended in the furtherance of increasing recruitment and retention of employees and increasing the wages of caregivers shall not be subject to the nursing screen or direct patient care screens within the routine cost limits imposed by the nursing home rate setting regulations, in accordance with federal regulations and in such a manner so as to not violate the hold harmless provisions set forth at 42 C.F.R. s.433.50 et seq.

During this 24-month period it is recommended that nursing homes increase the nursing and direct care staffing ratio to above the State minimum requirement. Within 24 months of the enactment of this act, the commissioner shall develop, with the advice of industry representatives, consumer organizations and the caregivers' union, increased mandatory State ratios for direct patient care and nursing staffing, to significantly improve nursing and patient care staffing ratios, subject to the availability of funding;

f. The commissioner or his designee shall certify the amounts to be provided to each nursing home in accordance with the formulas established by the commissioner for Medicaid reimbursement.

C.26:2H-98 Duties of commissioner.

7. The commissioner shall:

a. apply for: a State plan amendment to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program pursuant to 42 U.S.C. s.1396b(w)(3)(B); and a waiver of the uniformity requirements contained in 42 C.F.R. s.433.68(e)(2)(i); and

b. prescribe such procedures and forms, and take such other actions, as the commissioner determines necessary to carry out the provisions of this act.

C.26:2H-99 Noncompliance with mechanism for distribution of moneys.

8. a. Notwithstanding any other provision of this act to the contrary, if the State, or any of its officials, agents or employees, fails to comply with the mechanism for distributing monies from the fund as set forth in section 6 of this act, or if the State does not demonstrate continued maintenance of effort for the level of State funding of nursing home reimbursement provided in fiscal year 2003:

(1) the assessment provided for in section 5 of this act shall become void, no further assessment shall be collected and all funds collected to date shall be returned to nursing homes in proportion to the amounts of assessments paid by them under the provisions of this act; and

(2) thereafter, no penalty, fine or fee shall be imposed upon, or other punitive measure taken against, a nursing home that fails to pay an assessment.

b. If federal law is altered to prohibit the use of provider assessments to generate a matching amount of federal Medicaid funds as provided for in this act, the provisions of this act shall become inoperative and void upon the effective date of that prohibition.

c. Notwithstanding any other provision of this act to the contrary, the assessments imposed by section 5 of this act shall not be imposed or collected and the authorized expenditures shall not be made until the State has obtained federal approval of any related State plan amendment and verified the availability of federal financial participation for the New Jersey Medicaid expenditure funded in whole or in part by revenues collected in accordance with section 5 of this act from the assessments.

C.26:2H-100 Payment of assessment not passed through as cost, charge to payers.

9. a. A nursing home that realizes a net financial gain resulting from the payment of its assessment pursuant to section 5 of this act and the distribution of monies in the fund pursuant to section 6 of this act shall not pass through, as a charge or other cost to its residents or a third party payer, any portion of its assessment paid pursuant to section 5 of this act.

b. A nursing home that realizes a net financial loss resulting from the payment of its assessment pursuant to section 5 of this act and the distribution of monies in the fund pursuant

to section 6 of this act shall not pass through, as a charge or other cost to its residents or a third party payer, any amount that exceeds the amount of that net financial loss.

C.26:2H-101 Rules, regulations.

10. a. The State Treasurer shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the applicable provisions of this act; except that, notwithstanding any provision of P.L.1968, c.410 to the contrary, the State Treasurer may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the State Treasurer deems necessary to implement the applicable provisions of this act, which shall be effective for a period not to exceed six months and may thereafter be amended, adopted or readopted by the State Treasurer in accordance with the requirements of P.L.1968, c.410.

b. The rules and regulations adopted by the State Treasurer pursuant to subsection a. of this section shall be adopted in consultation with the commissioner and shall include, but not be limited to: establishment of a system for the efficient collection of the assessment paid by nursing homes pursuant to section 5 of this act; the auditing of nursing home financial information relevant to the collection of the assessment; the reporting of relevant information needed to effectuate the assessment and procedures to effectuate the purposes of section 9 of this act.

c. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the applicable provisions of this act; except that, notwithstanding any provision of P.L.1968, c.410 to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the applicable provisions of this act, which shall be effective for a period not to exceed six months and may thereafter be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410.

11. This act shall take effect July 1, 2003; implementation of the assessment and distribution shall take place 30 days following federal approval of any necessary State plan amendments.

Approved July 1, 2003.