

[CORRECTED COPY]

CHAPTER 41

AN ACT concerning nursing home quality of care and amending P.L.2003, c.105.

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

1. Section 3 of P.L.2003, c.105 (C.26:2H-94) is amended to read as follows:

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.

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

"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.

2. Section 5 of P.L.2003, c.105 (C.26:2H-96) is amended to read as follows:

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 paragraph (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.

(Deleted by amendment, P.L.2004, c.41).

(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.

3. Section 6 of P.L.2003, c.105 (C.26:2H-97) is amended to read as follows:

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. (Deleted by amendment, P.L.2004, c.41).

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.

4. Section 7 of P.L.2003, c.105 (C.26:2H-98) is amended to read as follows:

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, including, but not limited to, such actions as are necessary to ensure that the State receives its maximum share of federal financial participation for State Medicaid expenditures under the federal Medicaid program.

5. This act shall take effect immediately.

Approved June 29, 2004.