

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1942 Session of
2003

INTRODUCED BY VEON AND DeWEESE, SEPTEMBER 8, 2003

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 8, 2003

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," providing for nursing
21 facility assessments.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
25 as The Administrative Code of 1929, is amended by adding a
26 section to read:

27 Section 2336. Nursing Facility Assessments.--(a) In order

1 to generate additional revenues for medical assistance
2 recipients to have access to medically necessary nursing
3 facility services, the department may implement a monetary
4 assessment on each nursing facility subject to the conditions
5 and requirements specified in this section.

6 (b) The assessment shall be implemented on an annual basis
7 as a health care-related fee as defined in section 1903(w)(3)(B)
8 of the Social Security Act (49 Stat. 620, 42 U.S.C. §
9 1396b(w)(3)(B)) or any amendments thereto and may be imposed
10 only to the extent that the revenues generated therefrom will
11 qualify as the State share of program expenditures eligible for
12 Federal financial participation.

13 (c) The aggregate amount of the assessment and the
14 assessment rate shall be determined in accordance with this
15 section and implemented on an annual basis by the secretary, in
16 consultation with the Secretary of the Budget, and shall be
17 approved by the Governor. In each year in which the assessment
18 is implemented, the assessment rate shall be fixed so as to
19 generate at least fifty million dollars (\$50,000,000) in
20 additional revenue subject to the maximum aggregate amount that
21 may be assessed pursuant to the six per centum (6%) indirect
22 guarantee threshold set forth in 42 CFR 433.68(f)(3)(i)
23 (relating to permissible health care-related taxes after the
24 transition period).

25 (d) The secretary, before implementing an assessment in each
26 fiscal year, shall publish a notice in the Pennsylvania Bulletin
27 that specifies the amount of the assessment being proposed and
28 an explanation of the assessment methodology and amount
29 determination that identifies the aggregate impact on nursing
30 facilities subject to the assessment. Interested parties shall

1 have thirty (30) days in which to submit comments to the
2 secretary. Upon expiration of the thirty-day comment period, the
3 secretary, after consideration of the comments, shall publish a
4 second notice in the Pennsylvania Bulletin announcing the rate
5 of the assessment.

6 (e) Except as permitted under subsection (i), the
7 secretary's determination of the aggregate amount and rate of
8 the assessment pursuant to subsection (d) shall not be subject
9 to administrative or judicial review under 2 Pa.C.S. Chs. 5
10 Subch. A (relating to practice and procedure of Commonwealth
11 agencies) and 7 Subch. A (relating to judicial review of
12 Commonwealth agency action), or any other provision of law; nor
13 shall any assessments implemented under this section or forms or
14 reports required to be completed by nursing facilities pursuant
15 to this section be subject to the act of July 31, 1968 (P.L.769,
16 No.240), referred to as the Commonwealth Documents Law, the act
17 of October 15, 1980 (P.L.950, No.164), known as the Commonwealth
18 Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181),
19 known as the "Regulatory Review Act."

20 (f) There is hereby created a restricted account in the
21 General Fund for the receipt and deposit of moneys from the
22 assessment, any Federal financial participation received by the
23 Commonwealth as a direct result of the assessments and any
24 penalties and interest received under subsection (j). Moneys in
25 the account are hereby appropriated to the department to fund
26 nursing facility services provided by medical assistance nursing
27 facility providers to the extent permitted by section 1903(w) of
28 the Social Security Act.

29 (g) Using the assessment rates implemented by the secretary
30 pursuant to subsection (d), each nursing facility shall

1 calculate the assessment amount it owes for a calendar quarter
2 on a form specified by the department, and shall submit the form
3 and the amount owed to the department no later than the last day
4 of that calendar quarter or thirty (30) days from the date of
5 the second notice published pursuant to subsection (d),
6 whichever is later. A nursing facility's calculation of the
7 assessment amount owed in any quarter is subject to verification
8 by the department pursuant to subsection (h).

9 (h) Upon request by the department, a nursing facility shall
10 furnish to the department such records as the department may
11 specify in order to determine the assessment for a fiscal year
12 or the amount of the assessment due from the nursing facility or
13 to verify that the nursing facility has paid the correct amount
14 due. In the event that the department determines that a nursing
15 facility has failed to pay an assessment or that it has
16 underpaid an assessment, the department shall notify the nursing
17 facility in writing of the amount due, including interest, and
18 the date on which the amount due must be paid, which shall not
19 be less than thirty (30) days from the date of the notice. In
20 the event that the department determines that a nursing facility
21 has overpaid an assessment, the department shall notify the
22 nursing facility in writing of the overpayment and, within
23 thirty (30) days of the date of the notice of the overpayment,
24 shall either refund the amount of the overpayment or offset the
25 amount of the overpayment against any amount that may be owed to
26 the department from the facility.

27 (i) A nursing facility that is aggrieved by a determination
28 of the department as to the amount of the assessment due from
29 the nursing facility or a remedy imposed pursuant to subsection
30 (j) may file a request for review of the decision of the

department by the Bureau of Hearings and Appeals, which shall have exclusive jurisdiction in such matters. The procedures and requirements of 67 Pa.C.S. Ch. 11 (relating to medical assistance hearings and appeals) shall apply to requests for review filed pursuant to this section except that, in any such request for review, a nursing facility may not challenge the assessment rate determined by the secretary, but only whether the department correctly determined the assessment amount due from the nursing facility using the assessment rate in effect for the fiscal year.

(j) In addition to any other remedy provided by law, the department may enforce this section by imposing one or more of the following remedies:

(1) When a nursing facility fails to pay an assessment or penalty in the amount or on the date required by this section, the department shall add interest at the rate provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," to the unpaid amount of the assessment or penalty from the date prescribed for its payment until the date it is paid.

(2) When a nursing facility fails to file a report or to furnish records to the department as required by this section, the department shall impose a penalty against the nursing facility in the amount of one thousand dollars (\$1,000), plus an additional amount of two hundred dollars (\$200) per day for each additional day that the failure to file the report or furnish the records continues.

(3) When a nursing facility that is a medical assistance provider or that is related through common ownership or control as defined in 42 CFR 413.17(b) (relating to cost to related

1 organizations) to a medical assistance provider fails to pay all
2 or part of an assessment or penalty within sixty (60) days of
3 the date that payment is due, the department may deduct the
4 unpaid assessment or penalty and any interest owed thereon from
5 any medical assistance payments due to the nursing facility or
6 to any related medical assistance provider until the full amount
7 is recovered. Any such deduction shall be made only after
8 written notice to the medical assistance provider and may be
9 taken in amounts over a period of time taking into account the
10 financial condition of the medical assistance provider.

11 (4) Within sixty (60) days after the end of each calendar
12 quarter, the department shall notify the Department of Health of
13 any nursing facility that has assessment, penalty or interest
14 amounts that have remained unpaid for ninety (90) days or more.
15 The Department of Health shall not renew the license of any such
16 nursing facility until the department notifies the Department of
17 Health that the nursing facility has paid the outstanding amount
18 in its entirety or that the department has agreed to permit the
19 nursing facility to repay the outstanding amount in installments
20 and that, to date, the nursing facility has paid the
21 installments in the amount and by the date required by the
22 department.

23 (5) The secretary may waive all or part of the interest or
24 penalties assessed against a nursing facility pursuant to this
25 subsection for good cause as shown by the nursing facility.

26 (k) Any assessments implemented and interest and penalties
27 assessed against a nursing facility pursuant to this section
28 shall be a lien on the real and personal property of the nursing
29 facility in the manner provided by section 1401 of "The Fiscal
30 Code," may be entered by the department in the manner provided

1 by section 1404 of "The Fiscal Code" and shall continue and
2 retain priority in the manner provided in section 1404.1 of "The
3 Fiscal Code."

4 (l) The department shall seek a waiver pursuant to 42 CFR
5 433.68(e) from the Centers for Medicare and Medicaid Services of
6 the United States Department of Health and Human Services.

7 (m) No nursing facility shall be directly guaranteed a
8 repayment of its assessment in derogation of 42 CFR 433.68(f):
9 Provided, however, That in each fiscal year in which an
10 assessment is implemented, the department shall use the State
11 revenue collected from the assessment and any Federal funds
12 received by the Commonwealth as a direct result of the
13 assessments to maintain and increase program payments to medical
14 assistance nursing facility providers to the extent permissible
15 under Federal and State law or regulation and without creating
16 an indirect guarantee to hold harmless, as those terms are used
17 in 42 CFR 433.68(f)(3)(i). The secretary shall submit any State
18 Medicaid plan amendments to the United States Department of
19 Health and Human Services that are necessary to make the payment
20 increases.

21 (n) The department may issue such regulations and orders as
22 may be necessary to implement the nursing facility assessment
23 program in accordance with the requirements of this section.

24 (o) During each fiscal year in which an assessment is
25 implemented pursuant to this section, the department shall not
26 adopt new regulations or revise existing regulations that limit,
27 restrict or reduce eligibility for medical assistance nursing
28 facility services or program participation or reimbursement for
29 medical assistance nursing facility providers without publishing
30 a notice of proposed rulemaking and adopting a final-form

1 regulation after public notice and comment in accordance with 45
2 Pa.C.S. (relating to legal notices) and the Commonwealth
3 Documents Law and subject to review pursuant to the "Regulatory
4 Review Act." Notice of proposed rulemaking shall not be omitted
5 pursuant to section 204 of the Commonwealth Documents Law, and
6 no final-form regulation subject to this subsection may take
7 effect pursuant to emergency certification by the Governor under
8 section 6(d) of the "Regulatory Review Act."

9 (p) The assessment authorized in this section shall not be
10 imposed prior to July 1, 2003, or after June 30, 2007.

11 (q) As used in this section, the following words and phrases
12 shall have the meanings given to them in this subsection:

13 "Assessment" means the fee implemented pursuant to this
14 section on every nursing facility.

15 "Department" means the Department of Public Welfare of the
16 Commonwealth.

17 "Medical assistance provider" means a person or entity
18 enrolled by the Department of Public Welfare as a provider of
19 services in the medical assistance program.

20 "Nursing facility" means a non-Federal, nonpublic long-term
21 care nursing facility licensed by the Department of Health
22 pursuant to the act of July 19, 1979 (P.L.130, No.48), known as
23 the "Health Care Facilities Act." The term does not include
24 intermediate care facilities for the mentally retarded.

25 "Program" means the medical assistance program.

26 "Secretary" means the Secretary of Public Welfare of the
27 Commonwealth.

28 Section 2. The addition of section 2336 of the act shall be
29 retroactive to July 1, 2003.

30 Section 3. This act shall take effect immediately.