

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 1367** Session of  
2007

INTRODUCED BY DeWEESE, McCALL, COHEN, SURRA, DERMODY, EACHUS,  
D. EVANS AND MUNDY, MAY 21, 2007

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
MAY 21, 2007

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An  
2 act to consolidate, editorially revise, and codify the public  
3 welfare laws of the Commonwealth," further providing for  
4 medical assistance payments for institutional care, for  
5 definitions, for authorization, for amount, for repayment,  
6 for regulations and for time periods; and providing for the  
7 Senior Care and Services Study Commission.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 443.1 of the act of June 13, 1967  
11 (P.L.31, No.21), known as the Public Welfare Code, amended July  
12 7, 2005 (P.L.177, No.42), is amended to read:

13 Section 443.1. Medical Assistance Payments for Institutional  
14 Care.--The following medical assistance payments shall be made  
15 in behalf of eligible persons whose institutional care is  
16 prescribed by physicians:

17 (1) Payments as determined by the department for inpatient  
18 hospital care consistent with Title XIX of the Social Security  
19 Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.). To be eligible for  
20 such payments a hospital must be qualified to participate under

1 Title XIX of the Social Security Act and have entered into a  
2 written agreement with the department regarding matters  
3 designated by the secretary as necessary to efficient  
4 administration, such as hospital utilization, maintenance of  
5 proper cost accounting records and access to patients' records.  
6 Such efficient administration shall require the department to  
7 permit participating hospitals to utilize the same fiscal  
8 intermediary for this Title XIX program as such hospitals use  
9 for the Title XVIII program;

10 (2) The cost of skilled nursing and intermediate nursing  
11 care in State-owned geriatric centers, institutions for the  
12 mentally retarded, institutions for the mentally ill, and the  
13 cost of skilled and intermediate nursing care provided prior to  
14 June 30, 2004, in county homes which meet the State and Federal  
15 requirements for participation under Title XIX of the Social  
16 Security Act and which are approved by the department. This cost  
17 in county homes shall be as specified by the regulations of the  
18 department adopted under Title XIX of the Social Security Act  
19 and certified to the department by the Auditor General;  
20 elsewhere the cost shall be determined by the department;

21 (3) Rates on a cost-related basis established by the  
22 department for skilled nursing home or intermediate care in a  
23 non-public nursing home, when furnished by a nursing home  
24 licensed or approved by the department and qualified to  
25 participate under Title XIX of the Social Security Act and  
26 provided prior to June 30, 2004;

27 (4) Payments as determined by the department for inpatient  
28 psychiatric care consistent with Title XIX of the Social  
29 Security Act. To be eligible for such payments a hospital must  
30 be qualified to participate under Title XIX of the Social

1 Security Act and have entered into a written agreement with the  
2 department regarding matters designated by the secretary as  
3 necessary to efficient administration, such as hospital  
4 utilization, maintenance of proper cost accounting records and  
5 access to patients' records. Care in a private mental hospital  
6 provided under the fee for service delivery system shall be  
7 limited to thirty days in any fiscal year for recipients aged  
8 twenty-one years or older who are eligible for medical  
9 assistance under Title XIX of the Social Security Act and for  
10 recipients aged twenty-one years or older who are eligible for  
11 general assistance-related medical assistance. Exceptions to the  
12 thirty-day limit may be granted under section 443.3. Only  
13 persons aged twenty-one years or under and aged sixty-five years  
14 or older shall be eligible for care in a public mental hospital.  
15 This cost shall be as specified by regulations of the department  
16 adopted under Title XIX of the Social Security Act and certified  
17 to the department by the Auditor General for county and non-  
18 public institutions;

19 [(5) On or after July 1, 2004, and until such time as  
20 regulations are adopted pursuant to subclause (iii), payments to  
21 county and nonpublic nursing facilities certified to participate  
22 as providers under Title XIX of the Social Security Act for  
23 nursing facility services shall be calculated and made as  
24 specified in the department's regulations in effect on July 1,  
25 2003, except as may be otherwise required by:

26 (i) the Commonwealth's approved Title XIX Plan for nursing  
27 facility services;

28 (ii) regulations promulgated by the department pursuant to  
29 section 454; and

30 (iii) regulations promulgated by the department pursuant to

1 section 204(1)(iv) of the act of July 31, 1968 (P.L.769,  
2 No.240), referred to as the Commonwealth Documents Law,  
3 specifying the methods and standards which the department will  
4 use to set rates and make payments for nursing facility services  
5 effective July 1, 2006. Notwithstanding any other provision of  
6 law, including section 814-A, the promulgation of regulations  
7 under this subsection shall, until June 30, 2006, be exempt from  
8 the following:

9 (A) Section 205 of the Commonwealth Documents Law.

10 (B) Section 204(b) of the act of October 15, 1980 (P.L.950,  
11 No.164), known as the "Commonwealth Attorneys Act."

12 (C) The act of June 25, 1982 (P.L.633, No.181), known as the  
13 "Regulatory Review Act." ]

14 (5) After June 30, 2004 and before June 30, 2007, payments  
15 to county and non-public nursing facilities enrolled in the  
16 medical assistance program as providers of nursing facility  
17 services shall be calculated and made as specified in the  
18 department's regulations in effect on July 1, 2003, except that  
19 if the Commonwealth's approved Title XIX State Plan for nursing  
20 facility services in effect for the period of July 1, 2004,  
21 through June 30, 2007, specifies a methodology for calculating  
22 county and non-public nursing facility payment rates that is  
23 different than the department's regulations in effect on July 1,  
24 2003, the department shall follow the methodology in the  
25 Federally-approved Title XIX State plan.

26 (6) For public nursing home care provided on or after July  
27 1, 2005, the department shall recognize the costs incurred by  
28 county nursing facilities to provide services to eligible  
29 persons as medical assistance program expenditures to the extent  
30 the costs qualify for Federal matching funds and so long as the

1 costs are allowable as determined by the department and reported  
2 and certified by the county nursing facilities in a form and  
3 manner specified by the department. Expenditures reported and  
4 certified by county nursing facilities shall be subject to  
5 periodic review and verification by the department or the  
6 Auditor General. Notwithstanding this paragraph, county nursing  
7 facilities shall be paid based upon rates determined in  
8 accordance with [paragraph (5)] paragraphs (5) and (7).

9 (7) After June 30, 2007, payments to county and nonpublic  
10 nursing facilities enrolled in the medical assistance program as  
11 providers of nursing facility services shall be determined in  
12 accordance with the methodologies for establishing payment rates  
13 for county and non-public nursing facilities specified in the  
14 department's regulations and the Commonwealth's approved Title  
15 XIX State Plan for nursing facility services in effect after  
16 June 30, 2007. The following shall apply:

17 (i) For the fiscal year 2007-2008, the department shall  
18 apply a revenue adjustment neutrality factor and make  
19 adjustments to county and non-public nursing facility payment  
20 rates for medical assistance nursing facility services. The  
21 revenue adjustment factor shall limit the estimated aggregate  
22 increase in the Statewide day-weighted average payment rate over  
23 the three-year period commencing July 1, 2005, and ending June  
24 30, 2008, from the Statewide day-weighted average payment rate  
25 for medical assistance nursing facility services in fiscal year  
26 2004-2005 to 6.912% plus any percentage rate of increase  
27 permitted by the amount of funds appropriated for nursing  
28 facility services in the General Appropriations Act of 2007.  
29 Application of the revenue adjustment neutrality factor shall be  
30 subject to Federal approval of any amendments as may be

1 necessary to the Commonwealth's approved Title XIX State Plan  
2 for nursing facility services.

3 (ii) The department may make additional changes to its  
4 methodologies for establishing payment rates for county and non-  
5 public nursing facilities enrolled in the medical assistance  
6 program consistent with Title XIX of the Social Security Act,  
7 except that, if during a fiscal year an assessment is  
8 implemented under Article VIII-A, the department shall not make  
9 a change under this subparagraph unless it adopts regulations as  
10 provided under section 814-A.

11 (8) As a condition of participation in the medical  
12 assistance program, before any county or non-public nursing  
13 facility increases the number of medical assistance certified  
14 beds in its facility or in the medical assistance program,  
15 whether as a result of an increase in beds in an existing  
16 facility or the enrollment of a new provider, the facility must  
17 seek and obtain advance written approval of the increase in  
18 certified beds from the department. The following shall apply:

19 (i) Before July 1, 2009, the department shall propose  
20 regulations that would establish the process and criteria to be  
21 used to review and respond to requests for increases in medical  
22 assistance certified beds including whether an increase in the  
23 number of certified beds is necessary to assure that long-term  
24 living care and services under the medical assistance program  
25 will be provided in a manner consistent with applicable Federal  
26 and State law, including Title XIX of the Social Security Act.

27 (ii) Pending adoption of regulations, a nursing facility's  
28 request for advance written approval for an increase in medical  
29 assistance certified beds shall be submitted and reviewed in  
30 accordance with the process and guidelines contained in the

1 statement of policy published in 28 Pa.B.138.

2 (iii) The department may publish amendments to the statement  
3 of policy if the department determines that changes to the  
4 process and guidelines for reviewing and responding to requests  
5 for approval of increases in medical assistance certified beds  
6 will facilitate access to medically necessary nursing facility  
7 services or are required to assure that long-term living care  
8 and services under the medical assistance program will be  
9 provided in a manner consistent with applicable Federal and  
10 State law, including Title XIX of the Social Security Act. The  
11 department shall publish the proposed amendments in the  
12 Pennsylvania Bulletin and solicit public comments for thirty  
13 days. After consideration of the comments it receives, the  
14 department may proceed to adopt the amendments by publishing an  
15 amended statement of policy in the Pennsylvania Bulletin which  
16 shall include its responses to the public comments that it  
17 received concerning the proposed amendments.

18 (iv) This subparagraph shall apply to any requests for  
19 approval of an increase in medical assistance certified beds  
20 pending or submitted on or after the effective date of this  
21 subparagraph. This subparagraph shall expire upon the  
22 department's adoption of final regulations or September 30,  
23 2011, whichever occurs first.

24 Section 2. Sections 801-A, 802-A, 804-A, 813-A, 814-A and  
25 815-A of the act, added September 30, 2003 (P.L.169, No.25), are  
26 amended to read:

27 Section 801-A. Definitions.--As used in this article--  
28 "Assessment" means the fee implemented pursuant to this  
29 article on every nursing facility.

30 "County nursing facility" means a long-term care nursing

1 facility that is licensed by the Department of Health under the  
2 act of July 19, 1979 (P.L.130, No.48), known as the "Health Care  
3 Facilities Act" and controlled by the county institution  
4 district or county government if no county institution district  
5 exists. The term does not include intermediate care facilities  
6 for the mentally retarded controlled by the county institution  
7 district or county government.

8 "Medical assistance provider" means a person or entity  
9 enrolled by the Department of Public Welfare as a provider of  
10 services in the medical assistance program.

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

16 "Program" means the medical assistance program.

17 Section 802-A. Authorization.--In order to generate  
18 additional revenues for medical assistance recipients to have  
19 access to medically necessary nursing facility services, the  
20 department shall implement a monetary assessment on each nursing  
21 facility and, beginning July 1, 2007, may implement a monetary  
22 assessment on each county nursing facility subject to the  
23 conditions and requirements specified in this article[.] and any  
24 approved Federal waiver obtained under section 812-A. In each  
25 year in which the department implements an assessment on county  
26 nursing facilities, any requirement or obligation imposed on or  
27 relating to nursing facilities in sections 803-A, 804-A, 805-A,  
28 806-A, 807-A, 808-A, 809-A, 810-A, 811-A, 812-A, 813-A and 814-A  
29 shall be deemed to apply equally to county nursing facilities.

30 Section 804-A. Amount.--The aggregate amount of the



1 assessment and the assessment rate shall be determined in  
2 accordance with this article and implemented on an annual basis  
3 by the secretary, in consultation with the Secretary of the  
4 Budget, and shall be approved by the Governor. In each year in  
5 which the assessment is implemented, the assessment rate shall  
6 be fixed so as to generate at least fifty million dollars  
7 (\$50,000,000) in additional revenue subject to the maximum  
8 aggregate amount that may be assessed [pursuant to the six  
9 percent (6%) indirect guarantee threshold set forth in] under 42  
10 CFR 433.68(f)(3)(i) (relating to permissible health care-related  
11 taxes after the transition period) or any other maximum  
12 established under Federal law.

13 Section 813-A. Repayment.--No nursing facility shall be  
14 directly guaranteed a repayment of its assessment in derogation  
15 of 42 CFR 433.68(f) (relating to permissible health care-related  
16 taxes after the transition period): Provided, however, That in  
17 each fiscal year in which an assessment is implemented, the  
18 department shall use the State revenue collected from the  
19 assessment and any Federal funds received by the Commonwealth as  
20 a direct result of the assessments to maintain and increase  
21 program payments to medical assistance nursing facility  
22 providers to the extent permissible under Federal and State law  
23 or regulation and without creating an indirect guarantee to hold  
24 harmless, as those terms are used in 42 CFR 433.68(f)[(i)  
25 (relating to permissible health care-related taxes after the  
26 transition period)]. If the department implements an assessment  
27 on county nursing facilities, the department shall allocate  
28 assessment revenues available to maintain and increase program  
29 payments to both county and non-county nursing facilities in a  
30 manner that is consistent with Federal law and without creating

1 a direct or an indirect guarantee to hold any nursing facility  
2 harmless. The secretary shall submit any State Medicaid plan  
3 amendments to the United States Department of Health and Human  
4 Services that are necessary to make the payment increases.

5 Section 814-A. Regulations.--(a) The department may issue  
6 such regulations and orders as may be necessary to implement  
7 the nursing facility assessment program in accordance with the  
8 requirements of this article.

9 (b) During each fiscal year in which an assessment is  
10 implemented pursuant to this article, the department shall not  
11 adopt new regulations or revise existing regulations that limit,  
12 restrict or reduce eligibility for medical assistance nursing  
13 facility services or program participation or reimbursement for  
14 medical assistance nursing facility providers without publishing  
15 a notice of proposed rulemaking and adopting a final-form  
16 regulation after public notice and comment in accordance with 45  
17 Pa.C.S. (relating to legal notices) and the act of July 31, 1968  
18 (P.L.769, No.240), known as the "Commonwealth Documents Law,"  
19 and subject to review pursuant to the act of June 25, 1982  
20 (P.L.633, No.181), known as the "Regulatory Review Act." Notice  
21 of proposed rule making shall not be omitted pursuant to section  
22 204 of the "Commonwealth Documents Law," and no final-form  
23 regulation subject to this section may take effect pursuant to  
24 emergency certification by the Governor under section 6(d) of  
25 the "Regulatory Review Act."

26 (c) (1) Notwithstanding subsection (b), the department may  
27 proceed to adopt regulations under section 6(d) of the  
28 "Regulatory Review Act" if all of the following apply:

29 (i) New regulations are necessary to comply with changes in  
30 applicable Federal law or regulations relating to eligibility

1 for medical assistance nursing facility services or to program  
2 participation or reimbursement for medical assistance nursing  
3 facility providers.

4 (ii) A delay in adoption of regulations will result either  
5 in the loss of Federal funds or replacement of Federal funds  
6 with State funds in an amount in excess of one million dollars  
7 (\$1,000,000).

8 (2) Before proceeding under section 6(d) of the "Regulatory  
9 Review Act," the department shall publish advance notice in the  
10 Pennsylvania Bulletin announcing its intent to adopt regulations  
11 under section 6(d) of the "Regulatory Review Act" and soliciting  
12 public comment for at least fourteen days. After consideration  
13 of the comments it receives, the department may proceed to adopt  
14 the regulations under section 6(d) of the "Regulatory Review  
15 Act". In adopting the regulations, the department shall publish  
16 its responses to the comments that it received during the public  
17 comment period.

18 Section 815-A. Time periods.--The assessment authorized in  
19 this article shall not be imposed prior to July 1, 2003, or  
20 after June 30, [2007] 2012.

21 Section 3. The act is amended by adding an article to read:

22 ARTICLE VIII-D

23 SENIOR CARE AND SERVICES STUDY COMMISSION

24 Section 801-D. Definitions.

25 The following words and phrases when used in this article  
26 shall have the meanings given to them in this section unless the  
27 context clearly indicates otherwise:

28 "Commission." The Senior Care and Services Study Commission.

29 Section 802-D. Senior Care and Services Study Commission.

30 (a) Declaration of policy.--The General Assembly recognizes

1 that the health care needs of Pennsylvania's current and future  
2 senior population should be assessed.

3 (b) Establishment.--There is established a Senior Care and  
4 Services Study Commission.

5 (c) Purpose.--The purpose of the commission shall be all of  
6 the following:

7 (1) Reviewing the current care and service offerings and  
8 resources available for Commonwealth residents over the age  
9 of 65 years.

10 (2) Projecting future need for the various levels of  
11 senior care and services through 2025.

12 (3) Evaluating the ability of the current assessment and  
13 delivery systems to meet the projected service needs.

14 (4) Projecting the resources necessary to meet the  
15 projected need and making policy recommendations as to how  
16 the projected need can best be met considering the resource  
17 limitations that may exist at the time the commission  
18 completes its work under this article.

19 (d) Composition.--

20 (1) The commission shall consist of all of the following  
21 members:

22 (i) The Secretary of the Budget or a designee.

23 (ii) The Secretary of Health or a designee.

24 (iii) The Secretary or a designee.

25 (iv) The Secretary of Aging or a designee.

26 (v) One member appointed by the President pro  
27 tempore of the Senate.

28 (vi) One member appointed by the Minority Leader of  
29 the Senate.

30 (vii) One member appointed by the Speaker of the

1 House of Representatives.

2 (viii) One member appointed by the Minority Leader  
3 of the House of Representatives.

4 (ix) The following members appointed by the  
5 Governor:

6 (A) Two Commonwealth residents age 65 or older  
7 who use long-term living services.

8 (B) One individual representing non-profit  
9 nursing facilities.

10 (C) One individual representing for-profit  
11 nursing facilities.

12 (D) One individual representing county nursing  
13 facilities.

14 (E) One individual representing hospital-based  
15 nursing facilities.

16 (F) One individual representing home and  
17 community-based service providers.

18 (G) One individual representing area agencies on  
19 aging.

20 (H) One representative of an organized labor  
21 group representing employees providing long-term  
22 living services.

23 (I) One physician whose practice is focused in  
24 long-term care settings.

25 (J) One individual representing other long-term  
26 living stakeholders as may be determined by the  
27 Governor.

28 (2) Appointments under paragraphs (1)(v), (vi), (vii),  
29 (viii) and (ix) shall be made within 60 days of the effective  
30 date of this section.

1           (3) Upon appointment of the last member under paragraph  
2           (2), the commission shall transmit notice to the Legislative  
3           Reference Bureau for publication in the Pennsylvania Bulletin  
4           of the date of the last appointment. The date of the last  
5           appointment shall be considered the date of the establishment  
6           of the commission.

7           (e) Election of chairperson.--The members of the commission  
8           shall elect a chairperson of the commission from among  
9           themselves.

10          (f) Terms of members.--

11           (1) The terms of those members who serve by virtue of  
12           the public office they hold shall be concurrent with their  
13           service in the office from which they derive their  
14           membership.

15           (2) Except as provided in paragraph (1), members shall  
16           serve until their successors are appointed, if they represent  
17           the interest of the membership class for which they were  
18           appointed.

19           (g) Meetings.--The first meeting of the commission shall be  
20           held within 30 days of establishment of the commission.  
21           Subsequent meetings shall be held at least quarterly but more  
22           frequent meetings may be convened either at the call of the  
23           chairperson or by request of a simple majority of the commission  
24           members.

25           (h) Initial review.--The commission shall complete the  
26           initial review required under subsection (c)(1) within three  
27           months of its establishment.

28           (i) Public input sessions.--Within three months of issuing  
29           the findings under subsection (h), the commission shall hold no  
30           fewer than three public input sessions across the Commonwealth

1 for the purpose of receiving public comment on current or  
2 proposed programs serving seniors.

3 (j) Projections.--The commission shall obtain the  
4 projections under subsection (c)(2) and (4) no later than one  
5 year from its establishment. Nothing in this subsection shall  
6 prohibit the commission, if a majority of the members agree,  
7 from using a Commonwealth procured study initiated prior to the  
8 establishment of the commission to obtain this information.

9 (k) Final report.--The commission shall publish a final  
10 report as required under subsection (c)(1), (2), (3) and (4) no  
11 later than 18 months following its establishment and shall  
12 submit the report to the Governor and the General Assembly. The  
13 final report of the commission and any information and data  
14 compiled by the commission in accordance with this article shall  
15 be made available on the publicly accessible Internet website  
16 operated by the Department of Aging when the commission submits  
17 its final report to the Governor and the General Assembly.

18 (l) Expenses.--The commission is authorized to incur  
19 expenses deemed necessary to implement this article.

20 Section 803-D. Expiration.

21 The commission shall expire following issuance of its report  
22 under subsection (k) or three years after the establishment of  
23 the commission, whichever occurs sooner.

24 Section 4. This act shall take effect immediately.