

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 894 Session of
2007

INTRODUCED BY HUGHES, MELLOW, WASHINGTON, STOUT, FERLO, WOZNIAK,
STACK, LAVALLE, KITCHEN, TARTAGLIONE, BOSCOLA AND RAFFERTY,
MAY 23, 2007

REFERRED TO PUBLIC HEALTH AND WELFARE, MAY 23, 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

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

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

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

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

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

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

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

(ii) Pending adoption of regulations, a nursing facility's
request for advance written approval for an increase in medical
assistance certified beds shall be submitted and reviewed in
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.