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Title 26.
Chapter 2H.
V - Nursing Home
Quality of Care
Improvement Fund.
§§1-10 -
C.26:2H-92
to 26:2H-101
§11 - Note

P.L. 2003, CHAPTER 105, *approved July 1, 2003*
Assembly Committee Substitute for
Assembly, No. 3686

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

3

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

6

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

9

10 2. The Legislature finds and declares that:

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

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

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

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

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

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

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

34

35 3. As used in this act:

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

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

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

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

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

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

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

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

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

22 "Nursing home" means a long-term care facility licensed pursuant
23 to P.L.1971, c.136 (C.26:2H-1 et seq), as well as the distinct part of
24 another health care facility or continuing care retirement community
25 that is licensed to provide skilled nursing care services pursuant to
26 P.L.1971, c.136 (C.26:2H-1 et seq). For the purposes of this act,
27 nursing home shall not include: an acute care hospital; assisted living
28 facility; comprehensive personal care home; residential health care
29 facility; adult day health care facility; alternate family care program;
30 adult family care program; home health care agency; State psychiatric
31 hospital; county health care facility, including, but not limited to,
32 county geriatric center, county nursing home or other county long-
33 term care facility; the New Jersey Firemen's Home; or a health care
34 facility operated by the Department of Military and Veterans' Affairs.
35

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

45 a. The fund shall be comprised of:

46 (1) revenues from assessments paid by nursing homes pursuant to

1 section 5 of this act;

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

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

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

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

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

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

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

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

28

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

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

9 (2) Notwithstanding any law to the contrary, each nursing home
10 shall pay to the director for deposit into the fund, in accordance with
11 the requirements set forth in this act, an amount for nursing home
12 patient days, excluding Medicare patient days, up to the maximum
13 limit allowed by law less any licensing or other fees which would be
14 considered "health care-related taxes" as defined by 42 C.F.R.
15 s.433.55, including, but not limited to, any fees established by the
16 commissioner as permitted under law.

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

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

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

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

35

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

40 a. As soon after the collection of the monies from the assessment
41 as is practicable, the State Treasurer shall authorize the transfer to the
42 General Fund of \$12.875 million for each quarter for which the
43 assessment has been collected, not to exceed \$51.5 million on an
44 annual basis. All of the amounts so transferred to the General Fund
45 shall be allocated for the support of nursing home programs as the
46 commissioner shall designate, provided that of those amounts, a

1 sufficient amount shall be used to fund nursing home rates at State
2 fiscal year 2003 levels or higher and the continued applicability of
3 nursing home rebasing and bed hold payment methodologies in effect
4 during fiscal year 2003;

5 b. After the transfer set forth in subsection a. of this section, the
6 director shall transfer \$625,000 for each quarter for which the
7 assessment has been collected, not to exceed \$2.5 million on an annual
8 basis, from the fund to such accounts as the commissioner shall
9 designate to establish a grant program for all nursing homes located in
10 this State. The purpose of the grants shall be: to ensure quality care
11 and to promote recruitment and retention of qualified staff; to improve
12 the quality of care for nursing home residents through the increase of
13 direct or indirect care staff at nursing homes; and to increase or
14 improve the use of innovative patient care technologies. The
15 commissioner shall adopt rules and regulations in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), to effectuate the purposes of this subsection, but in no way shall
18 this subsection be designed to violate the hold harmless provisions of
19 42 C.F.R. 433.50 et seq.;

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

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

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

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

35 The Medicaid payments to nursing homes provided for under this
36 subsection shall not violate the hold harmless provisions set forth at
37 C.F.R. s.433.50 et seq.

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

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

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

12
13 7. The commissioner shall:

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

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

22
23 8. a. Notwithstanding any other provision of this act to the
24 contrary, if the State, or any of its officials, agents or employees, fails
25 to comply with the mechanism for distributing monies from the fund
26 as set forth in section 6 of this act, or if the State does not
27 demonstrate continued maintenance of effort for the level of State
28 funding of nursing home reimbursement provided in fiscal year:

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

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

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

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

1 or in part by revenues collected in accordance with section 5 of this
2 act from the assessments.

3

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

10 b. A nursing home that realizes a net financial loss resulting from
11 the payment of its assessment pursuant to section 5 of this act and the
12 distribution of monies in the fund pursuant to section 6 of this act shall
13 not pass through, as a charge or other cost to its residents or a third
14 party payer, any amount that exceeds the amount of that net financial
15 loss.

16

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

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

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

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

4

5

6

7

8 "Nursing Home Quality of Care Improvement Fund Act."

ASSEMBLY, No. 3686

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 5, 2003

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman HERBERT CONAWAY, JR.

District 7 (Burlington and Camden)

SYNOPSIS

"Nursing Home Quality of Care Assurance Fund Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/13/2003)

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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Nursing Home
8 Quality of Care Assurance Fund Act."

9
10 2. The Legislature finds and declares that:

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

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

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

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

22 e. By establishing an appropriate assessment on nursing homes, to
23 the extent possible under federal law, additional funding will be made
24 available to improve the quality of care by increasing Medicaid
25 reimbursement for services delivered to those senior citizens and other
26 persons residing in New Jersey nursing homes;

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

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

33
34 3. As used in this act:

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

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

38 "Director" means the Director of the Division of Revenue in the
39 Department of the Treasury.

40 "Fund" means the "Nursing Home Quality of Care Assurance Fund"
41 established pursuant to this act.

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

46 "Low Medicaid occupancy nursing home" means the 30% of all

1 nursing homes with the lowest Medicaid occupancy consistent with
2 this act.

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

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

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

11 "Nursing home" means a long-term care facility licensed pursuant
12 to P.L.1971, c.136 (C.26:2H-1 et seq), as well as the distinct part of
13 another health care facility or continuing care retirement community
14 that is licensed to provide skilled nursing care services pursuant to
15 P.L.1971, c.136 (C.26:2H-1 et seq). For the purposes of this act,
16 nursing home shall not include: an acute care hospital; assisted living
17 facility; comprehensive personal care home; residential health care
18 facility; adult day health care facility; alternate family care program;
19 adult family care program; home health care agency; State psychiatric
20 hospital; county health care facility, including, but not limited to,
21 county geriatric center, county nursing home or other county long-
22 term care facility; the New Jersey Firemen's Home; or a health care
23 facility operated by the Department of Military and Veterans' Affairs.

24

25 4. The "Nursing Home Quality of Care Assurance Fund" is
26 established as a nonlapsing, revolving fund in the Department of
27 Health and Senior Services. The fund shall be administered by the
28 Commissioner of Health and Senior Services or his designee, who shall
29 be responsible for the oversight, coordination, collection and
30 disbursement of fund monies, and shall be credited with monies
31 received pursuant to section 6 of this act, except for those monies
32 which are deposited into the General Fund in accordance with the
33 provisions of that section.

34 a. The fund shall be comprised of:

35 (1) revenues from assessments paid by nursing homes pursuant to
36 section 5 of this act;

37 (2) matching federal funds received pursuant to Title XIX of the
38 federal Social Security Act (42 U.S.C. s.1396 et seq.) that result from
39 the expenditure of revenues from assessments collected pursuant to
40 section 5 of this act; and

41 (3) any interest or other income earned on monies deposited into
42 the fund.

43 b. Any disbursement of monies from the fund shall be used solely
44 for Medicaid nursing home add-ons as provided for under section 6 of
45 this act, which shall not in any manner render the assessment
46 mechanism set forth in section 5 of this act to be in violation of the

1 hold harmless provisions of 42 C.F.R. s.433.68(f).

2 c. The commissioner shall provide by regulation for such measures
3 as are required to ensure the integrity of the fund.

4 d. The commissioner shall establish separate accounts within the
5 fund as are needed to efficiently manage, collect and disburse fund
6 monies.

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

11

12 5. a. Each nursing home shall annually pay an assessment which,
13 when combined with the aggregate amount of assessments paid by all
14 other nursing homes pursuant to this section shall not exceed 6% of
15 the aggregate amount of annual revenues received by all nursing
16 homes in accordance with 42 C.F.R. s.433.68(f)(3)(i). The assessment
17 shall be comprised of the payments required pursuant to paragraphs
18 (1) and (2) of this subsection. This assessment shall be paid on a
19 quarterly basis, beginning September 30, 2003, to the Director of the
20 Division of Revenue in the Department of the Treasury. The director,
21 in consultation with the Director of the Division of Taxation in the
22 Department of the Treasury and the commissioner, shall establish
23 appropriate procedures and forms for the purpose of collecting and
24 recording this assessment. The provisions of the "State Tax Uniform
25 Procedure Law," R.S. 54:48-1 et seq., shall apply to the extent that
26 those provisions, including the confidentiality, protest and appeal
27 provisions, are not inconsistent with the provisions of this act.

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

36 (2) Notwithstanding any law to the contrary, each nursing home
37 shall pay to the department for deposit into the fund, in accordance
38 with the requirements set forth in this act, an amount for nursing home
39 patient days, excluding Medicare patient days, up to the maximum
40 limit allowed by law less any licensing or other fees which would be
41 considered "health care-related taxes" as defined by 42 C.F.R.
42 s.433.55, including, but not limited to, any fees established by the
43 commissioner as permitted under law.

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

1 c. The commissioner shall prescribe by regulation the method by
2 which nursing homes shall report information necessary for the
3 director to calculate the assessment.

4 d. The assessment shall be paid in installments, not less than
5 quarterly or greater than annually, in a manner to be established by the
6 commissioner. The assessment shall be due not less than 30 days after
7 prior written notice of the amount of the assessment is provided to the
8 nursing homes and high and low Medicaid occupancy nursing homes.

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

13
14 6. The monies collected from the assessment paid by nursing
15 homes pursuant to section 5 of this act shall be dedicated for the
16 purposes provided in this section and shall be expended through
17 appropriation as follows:

18 a. As soon after the collection of the monies from the assessment
19 as is practicable, the State Treasurer shall authorize the transfer of
20 \$51.5 million to the General Fund. Of that sum, a sufficient amount
21 shall be used to assure the continued applicability of nursing home
22 rebasing and bed hold payment methodologies in effect during fiscal
23 year 2003. This transfer shall not be made more than once annually;

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

30 c. The distribution of monies from the fund pursuant to this section
31 shall be made as a per diem add-on to the Medicaid nursing home rate
32 as of July 1, 2003, and shall be calculated in two parts:

33 (1) The first part of the add-on shall be calculated by dividing each
34 nursing home's estimated annual assessment for Medicaid patients
35 pursuant to paragraph (1) of subsection a. of section 5 of this act by
36 its annualized, total Medicaid patient days; and

37 (2) The remainder of the add-on shall be calculated to ensure that
38 each nursing home participating in the Medicaid program receives an
39 equal per diem payment in an amount not to exceed \$600,000 annually
40 as its share of the remainder of the add-on; and

41 d. After the transfer set forth in subsection a. of this section, the
42 commissioner shall distribute all monies in the fund to nursing homes
43 as Medicaid reimbursement increases. The director shall certify to the
44 commissioner the amounts to be provided to each nursing home in
45 accordance with the formulas established by the commissioner for
46 Medicaid reimbursement.

1 7. The commissioner shall:

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

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

10

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

17 (1) the assessment provided for in section 5 of this act shall
18 become void, and no further assessment shall be collected; and

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

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

26

27 9. There shall be appropriated from the General Fund to the
28 department such sums as the Director of the Division of Budget and
29 Accounting in the Department of the Treasury determines necessary
30 to administer the fund.

31

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

42 b. The rules and regulations adopted by the commissioner pursuant
43 to subsection a. of this section shall be adopted in consultation with
44 the director and shall include, but not be limited to: establishment of
45 a system for the efficient collection of the assessment paid by nursing
46 homes pursuant to section 5 of this act; the auditing of nursing home

1 financial information relevant to the collection of the assessment; and
2 the reporting of relevant information needed to effectuate the
3 assessment.

4
5 11. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill, which is designated the "Nursing Home Quality of Care
11 Assurance Fund Act," establishes the "Nursing Home Quality of Care
12 Assurance Fund" in the Department of Health and Senior Services
13 (DHSS).

14 This bill will generate additional federal matching Medicaid funds
15 to enable New Jersey to enhance the quality of care for its nursing
16 home residents. The Governor's recommended budget for fiscal year
17 2004 anticipates the receipt of additional federal Medicaid
18 reimbursement from the enactment of this bill.

19 Specifically, the bill provides as follows:

20 C The fund is to be a nonlapsing, revolving fund in DHSS and be
21 administered by the Commissioner of Health and Senior Services or
22 his designee.

23 C The fund is to be comprised of:

24 --revenues from assessments paid by nursing homes pursuant to the
25 bill;

26 --federal matching Medicaid funds resulting from the expenditure
27 of revenues from assessments collected pursuant to the bill; and

28 --any interest or other income earned on monies deposited into the
29 fund.

30 C Any disbursement from the fund is to be used solely for Medicaid
31 nursing home add-ons as provided for in the bill.

32 C Each nursing home will annually pay an assessment which, when
33 combined with the aggregate amount of assessments paid by all
34 other nursing homes pursuant to the bill, is not to exceed 6% of the
35 aggregate amount of annual revenues received by all nursing homes
36 in accordance with 42 C.F.R. s.433.68(f)(3)(i), to be paid on a
37 quarterly basis, beginning September 30, 2003, to the Director of
38 the Division of Revenue in the Department of the Treasury.

39 C The assessment paid by each nursing home is to be comprised of the
40 following payments:

41 --All high or low Medicaid occupancy nursing homes will pay
42 annually an amount of \$1 per patient day based upon non-Medicare
43 patient days; and all other nursing homes will pay a per diem
44 assessment, to be calculated by dividing the total Statewide maximum
45 allowable assessment permitted under 42 C.F.R. s.433.68(f)(3)(i) less
46 the amount of assessment paid by high and low Medicaid occupancy

1 nursing homes by the total non-Medicare patient days of those nursing
2 homes which are not high or low Medicaid occupancy nursing homes;
3 and

4 --Each nursing home will pay to DHSS for deposit into the fund an
5 amount for nursing home patient days, excluding Medicare patient
6 days, up to the maximum limit allowed by law less any licensing or
7 other fees which would be considered "health care-related taxes" as
8 defined by 42 C.F.R. s.433.55, including, but not limited to, any fees
9 established by the commissioner as permitted under law.

10 C The assessment paid by nursing homes will not include Medicare
11 patient day revenues and receipts from Medicare certified beds.

12 C The monies collected from the assessment paid by nursing homes
13 are to be dedicated for the purposes provided in the bill and
14 expended through appropriation as follows:

15 --As soon after the collection of the monies from the assessment as
16 is practicable, the State Treasurer is to authorize the transfer of \$51.5
17 million to the General Fund. Of that sum, a sufficient amount will be
18 used to assure the continued applicability of nursing home rebasing
19 and bed hold payment methodologies in effect during fiscal year 2003.

20 This transfer will not be made more than once annually;

21 --The Commissioner of Health and Senior Services is to distribute
22 to nursing homes all monies in the fund, including any federal
23 Medicaid funds received pursuant to the bill, in order to enhance the
24 quality of care for the residents of those facilities, which may include
25 training, recruitment and improvement of wages and benefits for
26 nursing home direct care employees;

27 --The distribution of monies from the fund is to be made as a per
28 diem add-on to the Medicaid nursing home rate as of July 1, 2003 and
29 be calculated in two parts as follows:

30 (1) the first part is to be calculated by dividing each nursing home's
31 estimated annual assessment for Medicaid patients under the bill by its
32 annualized, total Medicaid patient days; and

33 (2) the remainder of the add-on is to be calculated to ensure that
34 each nursing home participating in the Medicaid program receives an
35 equal per diem payment in an amount not to exceed \$600,000 annually
36 as its share of the remainder of the add-on.

37 C The Commissioner of Health and Senior Services is directed to
38 apply for: a State plan amendment to secure federal matching
39 Medicaid funds for State Medicaid expenditures made pursuant to
40 the bill; and a waiver of the uniformity requirements contained in 42
41 C.F.R. s.433.68(e)(2)(i).

42 C If the State, or any of its officials, agents or employees, fails to
43 comply with the mechanism for distributing monies from the fund
44 as set forth in the bill, or if the State does not demonstrate
45 continued maintenance of effort for the level of State funding of
46 nursing home reimbursement provided in fiscal year 2003:

- 1 --the assessment provided for in the bill would become void, and no
2 further assessment would be collected; and
3 --thereafter, no penalty, fine or fee would be imposed upon, or
4 other punitive measure taken against, a nursing home that fails to pay
5 an assessment.
- 6 C If federal law is altered to prohibit the use of provider assessments
7 to generate a matching amount of federal Medicaid funds as
8 provided for in this bill, the provisions of the bill would become
9 inoperative and void upon the effective date of that prohibition.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3686

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2003

Assembly Bill No. 3686, as amended, is designated the "Nursing Home Quality of Care Assurance Fund Act," and establishes the "Nursing Home Quality of Care Assurance Fund" in the Department of Health and Senior Services (DHSS).

This bill will generate additional federal matching Medicaid funds to enable New Jersey to enhance the quality of care for its nursing home residents.

Specifically, the bill provides as follows:

- C The fund is to be a nonlapsing fund in the Department of the Treasury and be administered by the State Treasurer, in consultation with the Commissioner of Health and Senior Services or his designee.
- C The fund is to be comprised of:
 - revenues from assessments paid by nursing homes pursuant to the bill;
 - federal matching Medicaid funds resulting from the expenditure of revenues from assessments collected pursuant to the bill;
 - General Fund revenues, as necessary, to allow for the per diem add-on payments (to be provided to nursing homes under the provisions of the bill) 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
 - any interest or other income earned on monies deposited into the fund.
- C Any disbursement from the fund is to be used solely for Medicaid nursing home add-ons as provided for in the bill.
- C Each nursing home will pay an assessment which, when combined with the aggregate amount of assessments paid by all other nursing homes pursuant to the bill, is not to 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), to be paid to the Director of the Division of Taxation. The bill provides, however, that State shall neither collect the assessment 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.

C The assessment paid by each nursing home is to be comprised of the following payments:

--All high or low Medicaid occupancy nursing homes will pay annually an amount of \$1 per patient day based upon non-Medicare patient days; and all other nursing homes will 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; and

--Each nursing home will pay to the Division of Taxation for deposit into the fund 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.

C The assessment paid by nursing homes will not include Medicare patient day revenues and receipts from Medicare certified beds.

C The monies collected from the assessment paid by nursing homes are to be dedicated for the purposes provided in the bill and allocated through appropriation as follows:

--As soon after the collection of the monies from the assessment as is practicable, the State Treasurer is to authorize the transfer from 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. Of that sum, a sufficient amount will be used to assure the continued applicability of nursing home rebasing and bed hold payment methodologies in effect during fiscal year 2003;

-- After the transfer described above is made, the Division of Taxation 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 of Health and Senior Services shall designate to establish a grant program for all nursing homes in the 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 is to distribute to nursing homes all remaining monies in the fund, including any federal Medicaid funds received pursuant to the bill, 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;

-- The monies identified above 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 (1), above, shall be made as a uniform per diem increase for all Medicaid days provided by nursing facilities;

-- Beginning immediately and continuing for a period of 24 months, any monies received by facilities pursuant to this bill 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. The bill provides that 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, 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; and

-- The Commissioner of Health and Senior Services shall certify the amounts to be provided to each nursing home in accordance with the formulas established by the commissioner for Medicaid reimbursement.

C The Commissioner of Health and Senior Services is directed to apply for: a State plan amendment to secure federal matching Medicaid funds for State Medicaid expenditures made pursuant to the bill; and a waiver of the uniformity requirements contained in 42 C.F.R. s.433.68(e)(2)(i).

C 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 the bill, 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:

--the assessment provided for in the bill would become void, and no further assessment would be collected and all funds collected to date shall be returned to nursing homes in proportion to the amounts of assessments paid by them; and

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

C 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 bill, the provisions of the bill would become inoperative and void upon the effective date of that prohibition.

- C The assessments 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 State Medicaid expenditure funded in whole or in part by revenues collected in accordance with this bill.
- C A nursing home that realizes a net financial gain resulting from the payment of its assessment and the distribution of monies in the fund 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 the bill. A nursing home that realizes a net financial loss resulting from the payment of its assessment and the distribution of monies in the fund 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 The bill takes effect on July 1, 2003 and implementation of the assessment and distribution shall take place 30 days following federal approval of any necessary State plan amendments.

COMMITTEE AMENDMENTS:

The committee amendments:

- C Change the name of the fund to the "Nursing Home Quality of Care Improvement Fund;"
- C Provide that the fund will be established in the Department of the Treasury and administered by the State Treasurer, in consultation with the Commissioner of Health and Senior Services;
- C Provide that the fund will be a nonlapsing fund, rather than a nonlapsing, revolving fund, as the bill originally provided;
- C Provide that, in addition to revenue from the assessments and federal matching funds, the fund shall be comprised of General Fund revenues, as necessary, to allow for the per diem add-on payments in the bill until the revenue from the assessment has been collected, and that upon collection of the revenue from the assessment, the General Fund shall be repaid within 90 days;
- C Delete the requirement that nursing homes would pay the assessment annually and provide, instead, that the assessment shall be payable after the end of each calendar quarter during which the assessment accrues;
- C Provide that the assessment will be paid to the Director of the Division of Taxation, rather than the Division of Revenue, as the bill originally provided;
- C Specify that 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;
- C Specify that 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, rather than a single transfer of \$51.5 million annually, as the bill originally provided;

- C Provide for an additional transfer of \$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 establish a grant program in the Department of Health and Senior Services for nursing homes in the State: 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;
- C Revise the distribution formula to nursing homes provided in section 6 of the bill to provide that the monies 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 (1), shall be made as a uniform per diem increase for all Medicaid days provided by nursing facilities;
- C Provide that beginning immediately and continuing for a period of 24 months, any monies received by facilities pursuant to this bill 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. Also, the amendments provide that 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, the commissioner shall develop, with the advice of certain interested parties, 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;
- C Clarify that if the State fails to comply with the bill's distribution mechanism or does not demonstrate continued maintenance of effort regarding nursing home funding, all funds collected to date shall be returned to nursing homes in proportion to the amount of the assessment each has paid;
- C Provide that a nursing home that realizes a net financial gain resulting from the payment of its assessment and the distribution of monies in the fund, shall not pass through, as a charge or other cost to its residents or a third party payer, any portion of its assessment, and that a nursing home that realizes a net financial loss resulting from the payment of its assessment and the

distribution of monies in the fund 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 Direct the State Treasurer, as well as the Commissioner of Health and Senior Services, to adopt rules and regulations to carry out the purposes of the bill; and
- C Provide that the bill shall take effect on July 1, 2003 and implementation of the assessment and distribution shall take place 30 days following federal approval of any necessary State plan amendments.

FISCAL IMPACT:

The Governor's recommended budget for fiscal year 2004 anticipates the receipt of additional federal Medicaid reimbursement from the enactment of this bill.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3686**

STATE OF NEW JERSEY

DATED: JULY 1, 2003

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3686.

The Assembly Committee Substitute for Assembly Bill No. 3686 designated the "Nursing Home Quality of Care Improvement Fund Act," establishes the "Nursing Home Quality of Care Improvement Fund" in the Department of the Treasury.

This bill will generate additional federal matching Medicaid funds to enable New Jersey to enhance the quality of care for its nursing home residents.

Specifically, the bill provides as follows:

Ⓒ The fund is to be a nonlapsing fund in the Department of the Treasury and be administered by the State Treasurer, in consultation with the Commissioner of Health and Senior Services or his designee.

Ⓒ The fund is to be comprised of:

--revenues from assessments paid by nursing homes pursuant to the bill;

--federal matching Medicaid funds resulting from the expenditure of revenues from assessments collected pursuant to the bill;

-- General Fund revenues, as necessary, to allow for the per diem add-on payments (to be provided to nursing homes under the provisions of the bill) 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

--any interest or other income earned on monies deposited into the fund.

Ⓒ Any disbursement from the fund is to be used solely for Medicaid nursing home add-ons as provided for in the bill.

Ⓒ Each nursing home will pay an assessment which, when combined with the aggregate amount of assessments paid by all other nursing homes pursuant to the bill, is not to 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), to be paid to the Director of the Division of Taxation. The bill provides, however, that State shall neither collect the assessment 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.

C The assessment paid by each nursing home is to be comprised of the following payments:

--All high or low Medicaid occupancy nursing homes will pay annually an amount of \$1 per patient day based upon non-Medicare patient days; and all other nursing homes will 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; and

--Each nursing home will pay to the Division of Taxation for deposit into the fund 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.

C The assessment paid by nursing homes will not include Medicare patient day revenues and receipts from Medicare certified beds.

C The monies collected from the assessment paid by nursing homes are to be dedicated for the purposes provided in the bill and allocated through appropriation as follows:

--As soon after the collection of the monies from the assessment as is practicable, the State Treasurer is to authorize the transfer from 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 these monies transferred to the General Fund are to be used to support nursing home programs as designated by the Commissioner of Health and Senior Services, except that a sufficient amount is required to be used to assure the continued applicability of nursing home rebasing and bed hold payment methodologies in effect during fiscal year 2003;

-- After the transfer described above is made, the Division of Taxation 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 of Health and Senior Services shall designate to establish a grant program for all nursing homes in the 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 is to distribute to nursing homes all remaining

monies in the fund, including any federal Medicaid funds received pursuant to the bill, 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;

-- The monies identified above 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 (1), above, shall be made as a uniform per diem increase for all Medicaid days provided by nursing facilities;

-- Beginning immediately and continuing for a period of 24 months, any monies received by facilities pursuant to this bill 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. The bill provides that 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, 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; and

-- The Commissioner of Health and Senior Services shall certify the amounts to be provided to each nursing home in accordance with the formulas established by the commissioner for Medicaid reimbursement.

C The Commissioner of Health and Senior Services is directed to apply for: a State plan amendment to secure federal matching Medicaid funds for State Medicaid expenditures made pursuant to the bill; and a waiver of the uniformity requirements contained in 42 C.F.R. s.433.68(e)(2)(i).

C 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 the bill, 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:

--the assessment provided for in the bill would become void, and no further assessment would be collected and all funds collected to date shall be returned to nursing homes in proportion to the amounts of assessments paid by them; and

--thereafter, no penalty, fine or fee would be imposed upon, or

other punitive measure taken against, a nursing home that fails to pay an assessment.

- C 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 bill, the provisions of the bill would become inoperative and void upon the effective date of that prohibition.
- C The assessments 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 State Medicaid expenditure funded in whole or in part by revenues collected in accordance with this bill.
- C A nursing home that realizes a net financial gain resulting from the payment of its assessment and the distribution of monies in the fund 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 the bill. A nursing home that realizes a net financial loss resulting from the payment of its assessment and the distribution of monies in the fund 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 The bill takes effect on July 1, 2003 and implementation of the assessment and distribution shall take place 30 days following federal approval of any necessary State plan amendments.

The provisions of this substitute bill are identical to those of Senate Bill No. 2636 SCS.

FISCAL IMPACT

The Governor's recommended budget for fiscal year 2004 anticipates the receipt of additional federal Medicaid reimbursement from the enactment of this bill.

SENATE, No. 2636

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 9, 2003

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

SYNOPSIS

"Nursing Home Quality of Care Assurance Fund Act."

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Nursing Home
8 Quality of Care Assurance Fund Act."

9
10 2. The Legislature finds and declares that:

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

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

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

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

22 e. By establishing an appropriate assessment on nursing homes, to
23 the extent possible under federal law, additional funding will be made
24 available to improve the quality of care by increasing Medicaid
25 reimbursement for services delivered to those senior citizens and other
26 persons residing in New Jersey nursing homes;

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

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

33
34 3. As used in this act:

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

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

38 "Director" means the Director of the Division of Revenue in the
39 Department of the Treasury.

40 "Fund" means the "Nursing Home Quality of Care Assurance Fund"
41 established pursuant to this act.

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

46 "Low Medicaid occupancy nursing home" means the 30% of all

1 nursing homes with the lowest Medicaid occupancy consistent with
2 this act.

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

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

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

11 "Nursing home" means a long-term care facility licensed pursuant
12 to P.L.1971, c.136 (C.26:2H-1 et seq), as well as the distinct part of
13 another health care facility or continuing care retirement community
14 that is licensed to provide skilled nursing care services pursuant to
15 P.L.1971, c.136 (C.26:2H-1 et seq). For the purposes of this act,
16 nursing home shall not include: an acute care hospital; assisted living
17 facility; comprehensive personal care home; residential health care
18 facility; adult day health care facility; alternate family care program;
19 adult family care program; home health care agency; State psychiatric
20 hospital; county health care facility, including, but not limited to,
21 county geriatric center, county nursing home or other county long-
22 term care facility; the New Jersey Firemen's Home; or a health care
23 facility operated by the Department of Military and Veterans' Affairs.
24

25 4. The "Nursing Home Quality of Care Assurance Fund" is
26 established as a nonlapsing, revolving fund in the Department of
27 Health and Senior Services. The fund shall be administered by the
28 Commissioner of Health and Senior Services or his designee, who shall
29 be responsible for the oversight, coordination, collection and
30 disbursement of fund monies, and shall be credited with monies
31 received pursuant to section 6 of this act, except for those monies
32 which are deposited into the General Fund in accordance with the
33 provisions of that section.

34 a. The fund shall be comprised of:

35 (1) revenues from assessments paid by nursing homes pursuant to
36 section 5 of this act;

37 (2) matching federal funds received pursuant to Title XIX of the
38 federal Social Security Act (42 U.S.C. s.1396 et seq.) that result from
39 the expenditure of revenues from assessments collected pursuant to
40 section 5 of this act; and

41 (3) any interest or other income earned on monies deposited into
42 the fund.

43 b. Any disbursement of monies from the fund shall be used solely
44 for Medicaid nursing home add-ons as provided for under section 6 of
45 this act, which shall not in any manner render the assessment
46 mechanism set forth in section 5 of this act to be in violation of the

1 hold harmless provisions of 42 C.F.R. s.433.68(f).

2 c. The commissioner shall provide by regulation for such measures
3 as are required to ensure the integrity of the fund.

4 d. The commissioner shall establish separate accounts within the
5 fund as are needed to efficiently manage, collect and disburse fund
6 monies.

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

11

12 5. a. Each nursing home shall annually pay an assessment which,
13 when combined with the aggregate amount of assessments paid by all
14 other nursing homes pursuant to this section, shall not exceed 6% of
15 the aggregate amount of annual revenues received by all nursing
16 homes in accordance with 42 C.F.R. s.433.68(f)(3)(i). The assessment
17 shall be comprised of the payments required pursuant to paragraphs
18 (1) and (2) of this subsection. This assessment shall be paid on a
19 quarterly basis, beginning September 30, 2003, to the Director of the
20 Division of Revenue in the Department of the Treasury. The director,
21 in consultation with the Director of the Division of Taxation in the
22 Department of the Treasury and the commissioner, shall establish
23 appropriate procedures and forms for the purpose of collecting and
24 recording this assessment. The provisions of the "State Tax Uniform
25 Procedure Law," R.S.54:48-1 et seq., shall apply to the extent that
26 those provisions, including the confidentiality, protest and appeal
27 provisions, are not inconsistent with the provisions of this act.

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

36 (2) Notwithstanding any law to the contrary, each nursing home
37 shall pay to the department for deposit into the fund, in accordance
38 with the requirements set forth in this act, an amount for nursing home
39 patient days, excluding Medicare patient days, up to the maximum
40 limit allowed by law less any licensing or other fees which would be
41 considered "health care-related taxes" as defined by 42 C.F.R.
42 s.433.55, including, but not limited to, any fees established by the
43 commissioner as permitted under law.

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

1 c. The commissioner shall prescribe by regulation the method by
2 which nursing homes shall report information necessary for the
3 director to calculate the assessment.

4 d. The assessment shall be paid in installments, not less than
5 quarterly or greater than annually, in a manner to be established by the
6 commissioner. The assessment shall be due not less than 30 days after
7 prior written notice of the amount of the assessment is provided to the
8 nursing homes and high and low Medicaid occupancy nursing homes.

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

13
14 6. The monies collected from the assessment paid by nursing
15 homes pursuant to section 5 of this act shall be dedicated for the
16 purposes provided in this section and shall be expended through
17 appropriation as follows:

18 a. As soon after the collection of the monies from the assessment
19 as is practicable, the State Treasurer shall authorize the transfer of
20 \$51.5 million to the General Fund. Of that sum, a sufficient amount
21 shall be used to assure the continued applicability of nursing home
22 rebasing and bed hold payment methodologies in effect during fiscal
23 year 2003. This transfer shall not be made more than once annually;

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

30 c. The distribution of monies from the fund pursuant to this section
31 shall be made as a per diem add-on to the Medicaid nursing home rate
32 as of July 1, 2003, and shall be calculated in two parts:

33 (1) The first part of the add-on shall be calculated by dividing each
34 nursing home's estimated annual assessment for Medicaid patients
35 pursuant to paragraph (1) of subsection a. of section 5 of this act by
36 its annualized, total Medicaid patient days; and

37 (2) The remainder of the add-on shall be calculated to ensure that
38 each nursing home participating in the Medicaid program receives an
39 equal per diem payment in an amount not to exceed \$600,000 annually
40 as its share of the remainder of the add-on; and

41 d. After the transfer set forth in subsection a. of this section, the
42 commissioner shall distribute all monies in the fund to nursing homes
43 as Medicaid reimbursement increases. The director shall certify to the
44 commissioner the amounts to be provided to each nursing home in
45 accordance with the formulas established by the commissioner for
46 Medicaid reimbursement.

1 7. The commissioner shall:

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

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

10

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

17 (1) the assessment provided for in section 5 of this act shall
18 become void, and no further assessment shall be collected; and

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

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

26

27 9. There shall be appropriated from the General Fund to the
28 department such sums as the Director of the Division of Budget and
29 Accounting in the Department of the Treasury determines necessary
30 to administer the fund.

31

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

42 b. The rules and regulations adopted by the commissioner pursuant
43 to subsection a. of this section shall be adopted in consultation with
44 the director and shall include, but not be limited to: establishment of
45 a system for the efficient collection of the assessment paid by nursing
46 homes pursuant to section 5 of this act; the auditing of nursing home

1 financial information relevant to the collection of the assessment; and
2 the reporting of relevant information needed to effectuate the
3 assessment.

4
5 11. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill, which is designated the "Nursing Home Quality of Care
11 Assurance Fund Act," establishes the "Nursing Home Quality of Care
12 Assurance Fund" in the Department of Health and Senior Services
13 (DHSS).

14 This bill will generate additional federal matching Medicaid funds
15 to enable New Jersey to enhance the quality of care for its nursing
16 home residents. The Governor's recommended budget for fiscal year
17 2004 anticipates the receipt of additional federal Medicaid
18 reimbursement from the enactment of this bill.

19 Specifically, the bill provides as follows:

20 C The fund is to be a nonlapsing, revolving fund in DHSS and be
21 administered by the Commissioner of Health and Senior Services or
22 his designee.

23 C The fund is to be comprised of:

24 -- revenues from assessments paid by nursing homes pursuant to
25 the bill;

26 -- federal matching Medicaid funds resulting from the expenditure
27 of revenues from assessments collected pursuant to the bill; and

28 -- any interest or other income earned on monies deposited into the
29 fund.

30 C Any disbursement from the fund is to be used solely for Medicaid
31 nursing home add-ons as provided for in the bill.

32 C Each nursing home will annually pay an assessment which, when
33 combined with the aggregate amount of assessments paid by all
34 other nursing homes pursuant to the bill, is not to exceed 6% of the
35 aggregate amount of annual revenues received by all nursing homes
36 in accordance with 42 C.F.R. s.433.68(f)(3)(i), to be paid on a
37 quarterly basis, beginning September 30, 2003, to the Director of
38 the Division of Revenue in the Department of the Treasury.

39 C The assessment paid by each nursing home is to be comprised of the
40 following payments:

41 -- All high or low Medicaid occupancy nursing homes will pay
42 annually an amount of \$1 per patient day based upon non-Medicare
43 patient days; and all other nursing homes will pay a per diem
44 assessment, to be calculated by dividing the total Statewide maximum
45 allowable assessment permitted under 42 C.F.R. s.433.68(f)(3)(i) less
46 the amount of assessment paid by high and low Medicaid occupancy

- 1 nursing homes by the total non-Medicare patient days of those nursing
2 homes which are not high or low Medicaid occupancy nursing homes;
3 and
- 4 -- Each nursing home will pay to DHSS for deposit into the fund
5 an amount for nursing home patient days, excluding Medicare patient
6 days, up to the maximum limit allowed by law less any licensing or
7 other fees which would be considered "health care-related taxes" as
8 defined by 42 C.F.R. s.433.55, including, but not limited to, any fees
9 established by the commissioner as permitted under law.
- 10 C The assessment paid by nursing homes will not include Medicare
11 patient day revenues and receipts from Medicare certified beds.
- 12 C The monies collected from the assessment paid by nursing homes
13 are to be dedicated for the purposes provided in the bill and
14 expended through appropriation as follows:
- 15 -- As soon after the collection of the monies from the assessment
16 as is practicable, the State Treasurer is to authorize the transfer of
17 \$51.5 million to the General Fund. Of that sum, a sufficient amount
18 will be used to assure the continued applicability of nursing home
19 rebasing and bed hold payment methodologies in effect during fiscal
20 year 2003. This transfer will not be made more than once annually;
- 21 -- The Commissioner of Health and Senior Services is to distribute
22 to nursing homes all monies in the fund, including any federal
23 Medicaid funds received pursuant to the bill, in order to enhance the
24 quality of care for the residents of those facilities, which may include
25 training, recruitment and improvement of wages and benefits for
26 nursing home direct care employees;
- 27 -- The distribution of monies from the fund is to be made as a per
28 diem add-on to the Medicaid nursing home rate as of July 1, 2003 and
29 be calculated in two parts as follows:
- 30 (1) the first part is to be calculated by dividing each nursing home's
31 estimated annual assessment for Medicaid patients under the bill by its
32 annualized, total Medicaid patient days; and
- 33 (2) the remainder of the add-on is to be calculated to ensure that
34 each nursing home participating in the Medicaid program receives an
35 equal per diem payment in an amount not to exceed \$600,000 annually
36 as its share of the remainder of the add-on.
- 37 C The Commissioner of Health and Senior Services is directed to
38 apply for: a State plan amendment to secure federal matching
39 Medicaid funds for State Medicaid expenditures made pursuant to
40 the bill; and a waiver of the uniformity requirements contained in 42
41 C.F.R. s.433.68(e)(2)(i).
- 42 C If the State, or any of its officials, agents or employees, fails to
43 comply with the mechanism for distributing monies from the fund
44 as set forth in the bill, or if the State does not demonstrate
45 continued maintenance of effort for the level of State funding of
46 nursing home reimbursement provided in fiscal year 2003:

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- 1 -- the assessment provided for in the bill would become void, and
2 no further assessment would be collected; and
3 -- thereafter, no penalty, fine or fee would be imposed upon, or
4 other punitive measure taken against, a nursing home that fails to pay
5 an assessment.
- 6 C If federal law is altered to prohibit the use of provider assessments
7 to generate a matching amount of federal Medicaid funds as
8 provided for in this bill, the provisions of the bill would become
9 inoperative and void upon the effective date of that prohibition.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2636**

STATE OF NEW JERSEY

DATED: JUNE 30, 2003

The Senate Budget and Appropriations Committee reports without recommendation a committee substitute for Senate Bill No. 2636.

This substitute bill, designated the "Nursing Home Quality of Care Improvement Fund Act," establishes the "Nursing Home Quality of Care Improvement Fund" in the Department of the Treasury.

This bill will generate additional federal matching Medicaid funds to enable New Jersey to enhance the quality of care for its nursing home residents.

Specifically, the bill provides as follows:

- * The fund is to be a nonlapsing fund in the Department of the Treasury and be administered by the State Treasurer, in consultation with the Commissioner of Health and Senior Services or his designee.
- * The fund is to be comprised of:
 - Revenues from assessments paid by nursing homes pursuant to the bill;
 - Federal matching Medicaid funds resulting from the expenditure of revenues from assessments collected pursuant to the bill;
 - General Fund revenues, as necessary, to allow for the per diem add-on payments (to be provided to nursing homes under the provisions of the bill) 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
 - Any interest or other income earned on monies deposited into the fund.
- * Any disbursement from the fund is to be used solely for Medicaid nursing home add-ons as provided for in the bill.
- * Each nursing home will pay an assessment which, when combined with the aggregate amount of assessments paid by all other nursing homes pursuant to the bill, is not to 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), to be paid to the Director of the Division of Taxation. The bill provides, however, that the State shall neither collect the assessment 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.

* The assessment paid by each nursing home is to be comprised of the following payments:

-- All high or low Medicaid occupancy nursing homes will pay annually an amount of \$1 per patient day based upon non-Medicare patient days; and all other nursing homes will 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; and

-- Each nursing home will pay to the Division of Taxation for deposit into the fund 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.

* The assessment paid by nursing homes will not include Medicare patient day revenues and receipts from Medicare certified beds.

* The monies collected from the assessment paid by nursing homes are to be dedicated for the purposes provided in the bill and allocated through appropriation as follows:

-- As soon after the collection of the monies from the assessment as is practicable, the State Treasurer is to authorize the transfer from 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 these monies transferred to the General Fund are to be used to support nursing home programs as designated by the Commissioner of Health and Senior Services, except that a sufficient amount would have to be used to fund nursing home rates at State FY2003 levels or higher and the continued applicability of nursing home rebasing and bed hold payment methodologies in effect during fiscal year 2003;

-- After the transfer described above is made, the Division of Taxation 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 of Health and Senior Services shall designate to establish a grant program for all nursing homes in the 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 State Treasurer, in consultation with the commissioner, is to distribute to nursing homes all remaining monies in the fund, including any federal Medicaid funds received pursuant to the bill, 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;

-- The monies identified above 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 (1), above, shall be made as a uniform per diem increase for all Medicaid days provided by nursing facilities;

-- Beginning immediately and continuing for a period of 24 months, any monies received by facilities pursuant to this bill 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. The bill provides that 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, 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; and

-- The Commissioner of Health and Senior Services shall certify the amounts to be provided to each nursing home in accordance with the formulas established by the commissioner for Medicaid reimbursement.

* The Commissioner of Health and Senior Services is directed to apply for: a State plan amendment to secure federal matching Medicaid funds for State Medicaid expenditures made pursuant to the bill; and a waiver of the uniformity requirements contained in 42 C.F.R. s.433.68(e)(2)(i).

* 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 the bill, 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:

-- The assessment provided for in the bill would become void, and no further assessment would be collected and all funds collected to

date shall be returned to nursing homes in proportion to the amounts of assessments paid by them; and

-- Thereafter, no penalty, fine or fee would be imposed upon, or other punitive measure taken against, a nursing home that fails to pay an assessment.

* 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 bill, the provisions of the bill would become inoperative and void upon the effective date of that prohibition.

* The assessments 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 State Medicaid expenditure funded in whole or in part by revenues collected in accordance with this bill.

* A nursing home that realizes a net financial gain resulting from the payment of its assessment and the distribution of monies in the fund 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 the bill. A nursing home that realizes a net financial loss resulting from the payment of its assessment and the distribution of monies in the fund 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.

* The bill takes effect on July 1, 2003 and implementation of the assessment and distribution shall take place 30 days following federal approval of any necessary State plan amendments.

The provisions of this substitute bill are identical to those of Assembly Bill No. 3686 ACS.

FISCAL IMPACT

The Governor's recommended budget for fiscal year 2004 anticipates the receipt of additional federal Medicaid reimbursement from the enactment of this bill.