

PUBLIC WELFARE CODE - NURSING FACILITY ASSESSMENTS AND KINSHIP CARE PROGRAM

Act of Sep. 30, 2003, P.L. 169, No. 25

Cl. 67

Session of 2003

No. 2003-25

HB 297

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," providing for nursing facility assessments; and establishing the Kinship Care Program.

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

Section 1. The act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, is amended by adding articles to read:

**ARTICLE VIII-A**

**NURSING FACILITY ASSESSMENTS**

**Section 801-A. Definitions.--As used in this article--**

"Assessment" means the fee implemented pursuant to this article on every nursing facility.

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

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

"Program" means the medical assistance program.

**Section 802-A. Authorization.--**In order to generate additional revenues for medical assistance recipients to have access to medically necessary nursing facility services, the department shall implement a monetary assessment on each nursing facility subject to the conditions and requirements specified in this article.

**Section 803-A. Implementations.--**The assessment shall be implemented on an annual basis as a health care-related fee as defined in section 1903(w)(3)(B) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(w)(3)(B)) or any amendments thereto and may be imposed only to the extent that the revenues generated therefrom will qualify as the State share of program expenditures eligible for Federal financial participation.

**Section 804-A. Amount.--**The aggregate amount of the assessment and the assessment rate shall be determined in accordance with this article and implemented on an annual basis by the secretary, in consultation with the Secretary of the Budget, and shall be approved by the Governor. In each year in which the assessment is implemented, the assessment rate shall be fixed so as to generate at least fifty million dollars (\$50,000,000) in additional revenue subject to the maximum aggregate amount that may be assessed pursuant to the six percent (6%) indirect guarantee threshold set forth in 42 CFR 433.68(f)(3)(i).

**Section 805-A. Administration.--**(a) The secretary, before implementing an assessment in each fiscal year, shall publish a notice in the Pennsylvania

Bulletin that specifies the amount of the assessment being proposed and an explanation of the assessment methodology and amount determination that identifies the aggregate impact on nursing facilities subject to the assessment. Interested parties shall have thirty (30) days in which to submit comments to the secretary. Upon expiration of the 30-day comment period, the secretary, after consideration of the comments, shall publish a second notice in the Pennsylvania Bulletin announcing the rate of the assessment.

(b) Except as permitted under section 809-A, the secretary's determination of the aggregate amount and rate of the assessment pursuant to subsection (a) shall not be subject to administrative or judicial review under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), or any other provision of law; nor shall any assessments implemented under this article or forms or reports required to be completed by nursing facilities pursuant to this article be subject to the act of July 31, 1968 (P.L.769, No.240), referred to as the "Commonwealth Documents Law," the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," and the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

Section 806-A. Restricted account.--There is hereby created a restricted account in the General Fund for the receipt and deposit of moneys from the assessment, any Federal financial participation received by the Commonwealth as a direct result of the assessment and any penalties and interest received under section 810-A. Moneys in the account are hereby appropriated to the department to fund nursing facility services provided by medical assistance nursing facility providers to the extent permitted by section 1903(w) of the Social Security Act.

Section 807-A. Calculation.--Using the assessment rates implemented by the secretary pursuant to section 805-A(a), each nursing facility shall calculate the assessment amount it owes for a calendar quarter on a form specified by the department and shall submit the form and the amount owed to the department no later than the last day of that calendar quarter or thirty (30) days from the date of the second notice published pursuant to section 805-A(a), whichever is later. A nursing facility's calculation of the assessment amount owed in any quarter is subject to verification by the department pursuant to section 808-A.

Section 808-A. Records.--Upon request by the department, a nursing facility shall furnish to the department such records as the department may specify in order to determine the assessment for a fiscal year or the amount of the assessment due from the nursing facility or to verify that the nursing facility has paid the correct amount due. In the event that the department determines that a nursing facility has failed to pay an assessment or that it has underpaid an assessment, the department shall notify the nursing facility in writing of the amount due, including interest, and the date on which the amount due must be paid, which shall not be less than thirty (30) days from the date of the notice. In the event that the department determines that a nursing facility has overpaid an assessment, the department shall notify the nursing facility in writing of the overpayment and, within thirty (30) days of the date of the notice of the overpayment, shall either refund the amount of the overpayment or offset the amount of the overpayment against any amount that may be owed to the department from the facility.

Section 809-A. A nursing facility that is aggrieved by a determination of the department as to the amount of the assessment due from the nursing facility or a remedy imposed pursuant to section 810-A may file a request for review of the decision of the department by the Bureau of Hearings and

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

Section 810-A. In addition to any other remedy provided by law, the department may enforce this article by imposing one or more of the following remedies:

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

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

(3) When a nursing facility that is a medical assistance provider or that is related through common ownership or control as defined in 42 CFR 413.17(b) (relating to cost to related organizations) to a medical assistance provider fails to pay all or part of an assessment or penalty within sixty (60) days of the date that payment is due, the department may deduct the unpaid assessment or penalty and any interest owed thereon from any medical assistance payments due to the nursing facility or to any related medical assistance provider until the full amount is recovered. Any such deduction shall be made only after written notice to the medical assistance provider and may be taken in amounts over a period of time taking into account the financial condition of the medical assistance provider.

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

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

Section 811-A. Liens.--Any assessments implemented and interest and penalties assessed against a nursing facility pursuant to this article shall be a lien on the real and personal property of the nursing facility in the manner provided by section 1401 of "The Fiscal Code," may be entered by the department in the manner provided by section 1404 of "The Fiscal Code" and shall continue and retain priority in the manner provided in section 1404.1 of "The Fiscal Code."

Section 812-A. Federal Waiver.--To the extent necessary in order to implement this article, the department shall seek a waiver pursuant to 42 CFR 433.68(e) from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

Section 813-A. Repayment.--No nursing facility shall be directly guaranteed a repayment of its assessment in derogation of 42 CFR 433.68(f): Provided, however, That in each fiscal year in which an assessment is implemented, the department shall use the State revenue collected from the assessment and any Federal funds received by the Commonwealth as a direct result of the assessments to maintain and increase program payments to medical assistance nursing facility providers to the extent permissible under Federal and State law or regulation and without creating an indirect guarantee to hold harmless, as those terms are used in 42 CFR 433.68(f)(i). The secretary shall submit any State Medicaid plan amendments to the United States Department of Health and Human Services that are necessary to make the payment increases.

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

(b) During each fiscal year in which an assessment is implemented pursuant to this article, the department shall not adopt new regulations or revise existing regulations that limit, restrict or reduce eligibility for medical assistance nursing facility services or program participation or reimbursement for medical assistance nursing facility providers without publishing a notice of proposed rulemaking and adopting a final-form regulation after public notice and comment in accordance with 45 Pa.C.S. (relating to legal notices) and the "Commonwealth Documents Law" and subject to review pursuant to the "Regulatory Review Act." Notice of proposed rulemaking shall not be omitted pursuant to section 204 of the "Commonwealth Documents Law" and no final-form regulation subject to this section may take effect pursuant to emergency certification by the Governor under section 6(d) of the "Regulatory Review Act."

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

#### ARTICLE XIII KINSHIP CARE

Section 1301. Scope.

This article relates to the Kinship Care Program.

Section 1302. Definitions.

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

"County agency." The county children and youth social service agency exercising the power and duties provided for in section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the department under Article IX.

"Foster parent." An individual approved by a public or private foster family care agency to provide foster family care services to a child who is temporarily separated from the child's legal family and placed in the legal custody of an agency.

"Relative." An individual who is:

(1) Related within the third degree of consanguinity or affinity to the parent or stepparent of a child.

(2) At least 21 years of age.

Section 1303. Kinship Care Program.

(a) Establishment of program.--The Kinship Care Program is established in the department.

(b) Placement of children.--If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, the county agency shall give first consideration to placement with relatives. The county agency shall document that an attempt was made to place the child with a relative. If the child is not placed with a relative, the agency shall document the reason why such placement was not possible.

(c) Regulations.--

(1) The department shall promulgate regulations necessary to carry out the provisions of this article. These regulations shall provide all of the following:

(i) Relatives shall receive the same foster care rate as other foster parents if they are complying with the regulations governing foster parents.

(ii) Foster care payments received by a relative who is a foster parent shall be excluded from consideration when calculating eligibility for public welfare assistance.

(2) The regulations shall be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 2. All acts and parts of acts are repealed insofar as they are inconsistent with the addition of Article XIII of the act.

Section 3. The addition of Article VIII-A of the act shall apply retroactively to July 1, 2003.

Section 4. This act shall take effect as follows:

(1) The following provisions shall take effect in six months:

(i) The addition of Article XIII of the act.

(ii) Section 2 of this act.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 30th day of September, A. D. 2003.

EDWARD G. RENDELL