

APRIL 1, 1998

No. 22A

STATE OF NEW HAMPSHIRE

Legislative

SENATE CALENDAR ADENDUM REPORTS & AMENDMENTS

SENATE REPORTS

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES

SB 379, establishing an immunization registry.

MAJORITY REPORT, Ought to pass with amendment, Senator McCarley for the committee. Vote 5-2

MINORITY REPORT, Interim Study, Senator D. Wheeler for the committee. Vote 2-5

SB 409, extending the moratorium on new nursing home beds.

SPLIT REPORT, Ought to pass with amendment, Senator D. Wheeler for the committee. Vote 4-4

SPLIT REPORT, Ought to pass with amendment, Senator Squires for the committee. Vote 4-4

SB 491-FN, relative to the reimbursement of nursing homes. Vote 5-2

Ought to pass with amendment, Senator Squires for the committee.

AMENDMENTS

Public Institutions, Health and Human Services

March 31, 1998

1998-1267s

01/08

Amendment to SB 379

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose.

I. In authorizing the establishment of an immunization registry the general court intends to:

(a) Ensure that the registrant, or the registrant's parent or guardian if the registrant is a minor, can more easily and thoroughly keep track of immunization histories when they change health care providers or provide immunization information under RSA 141-C:20-b.

(b) Provide health care providers who have permission to access the immunization registry with an enhanced ability to determine relevant immunization history.

(c) Provide schools and child care agencies which have permission to access the immunization registry with accurate information concerning immunizations required under RSA 141-C:20-a.

(d) Provide the state with greatly improved accuracy in its records concerning immunization rates among the state's communities.

(e) Improve the state's ability to respond to outbreaks of communicable diseases in a manner which reduces the risk of unnecessary additional immunizations.

II. The general court directs the department of health and human services to ensure that only the minimal amount of medical information necessary to implement an immunization registry under this act be disclosed, and that the system be designed to protect the confidentiality of personal information to the greatest degree consistent with implementing the registry.

2 New Paragraph; Rulemaking. Amend RSA 141-C:6 by inserting after paragraph XVII the following:

XVIII. The immunization registry established under RSA 141-C:20-f.

3 New Section; Immunization Registry Established. Amend RSA 141 by inserting after section 20-e the following new section:

141-C:20-f Immunization Registry.

I. The department shall establish and maintain a state immunization registry. The registry shall be a single repository of accurate, complete and current immunization records to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts.

II. No patient, or the patient's parent or guardian if the patient is a minor, shall be required to participate in the immunization registry.

III. Physicians, nurses, and other health care providers may report an immunization to the immunization registry unless the patient, or the patient's parent or guardian if the patient is a minor, refuses to allow reporting of this information.

IV. Access to the information in the registry shall be limited to primary care physicians, nurses, other appropriate health care providers as determined by the commissioner, schools, child care agencies, and government health agencies or researchers demonstrating a legitimate need for such information as determined by the commissioner.

V. The information contained in the registry shall be used for the following purposes:

(a) To ensure that registrants receive all recommended immunizations in a timely manner by providing access to the registrant's immunization record.

(b) To improve immunization rates by facilitating notice to registrants of overdue or upcoming immunizations.

(c) To control communicable diseases by assisting in the identification of individuals who require immediate immunization in the event of a disease outbreak.

VI. The commissioner shall adopt rules under RSA 541-A concerning the following:

(a) The establishment and maintenance of the immunization registry.

(b) The methods for submitting and content of reports of immunizations.

(c) Procedures for the patient, or the patient's parent or guardian if the patient is a minor, to decline to participate in the registry.

(d) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to review and correct information contained in the registry.

(e) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to withdraw consent for participation at any time and to remove information from the registry.

(f) Limits on and methods of access to the registry by those authorized to gain access under paragraph IV of this section.

(g) Procedures for managed care organizations to obtain summary statistics of immunization information on managed care organization members from the immunization registry.

VII. Any person reporting, receiving, or disclosing information to or from the immunization registry as authorized by this section or by any rule adopted pursuant to this section shall not be liable for civil damages of any kind connected with such submission or disclosure of immunization information.

VIII. Nothing in this section is intended to affect the obligations of persons under RSA 141-C:20-a to have their children properly immunized.

IX. Nothing in this section shall preclude the right of the patient, or the patient's parent or guardian if the patient is a minor, to claim exemption from immunization as defined in RSA 141-C:20-c; nor shall anything in this section require such patient to be included in the registry if the patient, or the patient's parent or guardian if the patient is a minor, objects thereto on any grounds, including but not limited to, that such registry conflicts with the religious beliefs of the patient, or the patient's parent or guardian if the patient is a minor.

X. No health care provider shall discriminate in any way against a person solely because that person elects not to participate in the immunization registry.

4 Effective Date. This act shall take effect 60 days after its passage.

Public Institutions, Health and Human Services

Sen. D. Wheeler, Dist. 11

April 1, 1998

1998-1275s

01/09

Amendment to SB 409-FN

Amend the title of the bill by replacing it with the following:

An Act relative to long-term care and extending the moratorium on new nursing home beds.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Capital Reserve Accounts. Amend RSA 24:13 by inserting after paragraph III the following new paragraph:

IV. Any county upon a majority vote of the county commissioners and subsequent majority vote of the county convention may establish a nonlapsing reserve account for the purposes of funding long-term care services.

2 Fire Safety Standards. Amend RSA 126-A:21 to read as follows:

126-A:21 Standards for Fire Safety. Notwithstanding RSA 153:5, 153:l0-b, or any law to the contrary, the fire code applicable to single family dwellings, as defined in RSA 153:l, X, or, where applicable, single rental units in multi-unit dwellings, as defined in RSA 153:1, IX-a and VI, respectively, shall be the fire code applied by the state fire marshal and local fire departments to community living facilities housing 3 or fewer clients ***and to residences where services are provided by an adult family care provider certified pursuant to RSA 161-F:82.***

3 New Paragraph; Residential Care Facility Licensing Rules. Amend RSA 151:2 by inserting after paragraph III the following new paragraph:

IV. Licensing rules for residential care facilities, licensed pursuant to RSA 151:2, I(e), shall permit residential care facilities to admit residents who have been determined eligible for nursing facility services under a medicaid home and community-based care waiver program and who have been referred to a residential care facility as an alternative to placement in a nursing facility, provided that the clinical services and supports required by the person can be provided or obtained in the residential care setting.

4 New Subdivision; Needs Assessment Process Established. Amend RSA 151 by inserting after section 30 the following new subdivision:

Needs Assessment

151:31 Needs Assessment for Applicants for Residential Long-Term Care Services.

I. In order to determine the most cost effective and clinically appropriate level of residential long-term care services, the department of health and human services, or its designee, shall assess the medical and social needs of each applicant to a nursing home or residential care facility as defined in RSA 151:2.

II. The assessment shall be completed prior to admission or, if necessary for reasons of the person's health or safety, as soon after admission as possible, in accordance with rules adopted by the department pursuant to RSA 541-A.

III. The department, or its designee, shall determine whether the services provided by the nursing home or residential care facility are medically and socially necessary and appropriate for the applicant, and, if not, what other services, such as home and community-based services, would be clinically appropriate and cost effective.

IV. The department, or its designee, shall inform both the applicant and the administrator of the nursing home or residential care facility of the department's determination of the services needed by the applicant and shall provide information and assistance to the applicant in accordance with RSA 151:33.

V. If a nursing home admits an individual who at the time of admission was determined not to be clinically appropriate for the level of services provided by a nursing home and that individual subsequently is determined to be financially eligible for medicaid benefits, the nursing home shall be responsible for all costs of residential long-term care services provided to the individual for the period of one year from the date of the determination of financial eligibility.

151:32 Reassessment at Time of Eligibility. The department, or its designee, shall perform a reassessment of the individual's medical and social needs when the individual becomes financially eligible for medicaid benefits.

151:33 Information and Assistance. If the assessment or reassessment performed pursuant to RSA 151:31 and 151:32 finds the level of residential services clinically appropriate, the department, or its designee, shall determine whether the applicant also could live appropriately and cost effectively at home or in some other community-based setting if home-based services were available to the applicant. If the department, or its designee, determines that a home or other community-based setting is clinically appropriate and cost effective, the department, or its designee, shall:

I. Advise the applicant that a home or other community-based setting is appropriate; and

II. Provide counseling which takes into consideration the applicant's choice of service location and information to the applicant regarding the degree to which the services are available at home or in some other community-based setting and explain the relative cost to the applicant of choosing community-based care rather than nursing home or residential care home care. The counseling shall be based upon the principle that services should be provided in the setting that is least restrictive of the applicant's ability to live independently.

151:34 Notification by Hospitals. Prior to the discharge or referral of any person to any facility required to be licensed under RSA 151, a hospital shall notify the department, or its designee, that such person requires residential long-term care services which necessitate an assessment under RSA 151:31.

151:35 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration of this subdivision.

5 Moratorium Extended. Amend RSA 151-C:4, III to read as follows:

III. No certificate of need shall be granted by the board for any nursing home, skilled nursing facility, intermediate care facility or rehabilitation facility from the effective date of the 1995 department of health and human services reorganization act through the period ending December 31, ~~[1998]~~ **2001**, except that a certificate of need may be issued for replacement or renovation of existing beds as necessary to meet life safety code requirements or to remedy deficiencies noted in a licensing inspection pursuant to RSA 151 or state survey and certification process pursuant to titles XVIII and XIX of the Social Security Act ~~[or for other good cause]~~.

6 New Subdivision; Adult Family Care Program Established. Amend RSA 161-F by inserting after section 75 the following new subdivision:

Adult Family Care

161-F:76 Purpose. The general court recognizes that the percentage of older persons in the state is increasing dramatically, that many of these persons now require or may soon require some type of medical supportive services, and that there is a need for a range of settings in which older persons can receive necessary supportive services.

161-F:77 Definitions. In this subdivision:

I. "Adult family care payment" means any amount paid by the state or a political subdivision thereof to an adult family care provider for caring for a qualified family care recipient.

II. "Adult family care provider" means an individual or individuals who provide care in a personal residence for no more than 2 qualified family care recipients.

III. "Adult family care services" means care and assistance provided in an adult family care home to an elderly or disabled individual who, by reason of age or physical or mental disability, would be in an institution but for these services.

IV. "Department" means the department of health and human services.

V. "Difficulty of care payment" means an amount paid to an adult family care provider by the state or a political subdivision thereof which are in excess of a basic board and care rate and which are based upon a determination that the particular needs of the qualified family care recipient require extraordinary care and services.

VI. "Qualified family care recipient" means an individual 21 years of age or older who, by reason of age or physical or mental disability, requires adult family care services and is living in a personal residence for which the individual was approved by the department, a political subdivision of the state, or any other public or private entity as authorized by the department.

161-F:78 Administration; Placement; Services.

I. The adult family care program shall be administered by the department or its designee.

II. All approvals of individuals as adult family care providers, individuals as qualified family care recipients, eligibility for and the specific adult family care services to be provided, placements with adult family care providers and difficulty of care payments shall be made by the

department except that the department may delegate or assign this authority to a political subdivision of the state or any other public or private entity.

III. The department shall establish the basic board and care services to be provided by an adult family care provider and the types of extraordinary care and services that warrant a difficulty of care payment.

IV. The department shall establish a payment structure for adult family care services.

161-F:79 Limitation. No payment shall be made under this subdivision to any adult family care provider for the care of more than 2 qualified family care recipients at one time in any adult family care home.

161-F:80 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The criteria that shall be met for an individual to become and to maintain status as an adult family care provider.

II. The establishment of standards for certification of adult family care providers.

III. The basic board and care services to be provided in adult family care homes.

IV. The extraordinary care and services to be provided by adult family care providers that warrant a difficulty of care payment.

V. The payment structure for adult family care services.

VI. Eligibility of individuals to receive adult family care services.

VII. Any other matter necessary for the administration of this subdivision.

161-F:81 Exemption. Adult family care providers under this subdivision providing care for up to 2 recipients shall be exempt from the licensure requirements of RSA 151:2, but shall be subject to certification pursuant to RSA 161-F:82.

161-F:82 Certification. The department shall certify all adult family care providers in accordance with rules adopted pursuant to RSA 541-A.

7 Applicability. Until June 30, 2000, the number of persons placed under the waiver by the department of health and human services in adult family care, as established in section 6 of this act, and shared housing shall not exceed a total of 25.

8 Reimbursement of Funds for Persons Eligible to Receive Nursing Facility Services; Limitation on County Payments. Amend RSA 167:18-b to read as follows:

167:18-b Reimbursement of Funds for ~~[Recipients in]~~ **Persons Eligible to Receive** Nursing ~~[Homes]~~ **Facility Services; Limitation on County Payments.**

I. All expenditures in carrying out the purposes of this chapter or RSA 161 relative to old age assistance or aid to the permanently and totally disabled recipients who ~~[are in nursing homes]~~ have been determined eligible to receive nursing facility services and are either in a nursing home or in another residential setting supported by a medicaid home and community-based care waiver program as an alternative to placement in a nursing home shall be made in the first instance from the public assistance fund hereby created, but each ~~[political subdivision]~~ county shall make monthly payments to the state for the amounts due under this section within 30 days from notice thereof and shall reimburse said fund for all assistance granted to persons for which such ~~[political subdivision]~~ county is liable, to the extent of ~~[61.1]~~ 50 percent of the non-federal share, except that no charges shall be made for the non-federal share for recipients in state institutions and intermediate care facilities for the mentally retarded (ICF-MR) serving developmentally impaired persons approved by the department of health and human services. The counties shall have an aggregate credit of \$2,000,000 against amounts due under this section for each fiscal year beginning July 1, 1998. The \$2,000,000 shall be allocated among the counties based upon the proportion each paid under this section in the prior fiscal year and shall be made available as soon as possible after the start of the fiscal year. If the federal share of expenditures under this section is made available to the state in a method other than as a fixed percentage reimbursement, the non-federal share shall be the amount of expenditures remaining after appropriate application of federal funds.

II. If the total reimbursements by all counties made pursuant to RSA 167:18-b for persons who have been determined eligible to receive nursing facility services exceed the amounts set forth below for any of the state fiscal years 1999-2003, the general court in its next regular session shall consider legislation which addresses county reimbursement responsibility under RSA 167:18-b:

(a) State fiscal year 1999-\$60,000,000.

(b) State fiscal year 2000-\$64,800,000.

(c) State fiscal year 2001-\$69,900,000.

(d) State fiscal year 2002-\$75,600,000.

(e) State fiscal year 2003-\$81,600,000.

9 Local Medical Assistance Contribution. Amend RSA 167:18-f to read as follows:

167:18-f Local Medical Assistance Contribution. In addition to any other reimbursement required by law, each county shall, within 60 days from notice thereof, reimburse the public assistance fund at the rate of \$6 per month for each recipient of old age assistance and \$23 per month for each recipient of aid to the permanently and totally disabled for whom the county would be liable under the provisions of RSA 166, ***except that no reimbursement shall be required for any recipient for whom the county has an obligation under RSA 167:18-b.***

10 New Section; Proportionate Share Payments; Fiscal Committee Approval. Amend RSA 167 by inserting after section 18-g the following new section:

167:18-h County Nursing Homes; Proportionate Share Payments by State; County Transfers to the State. Proportionate share payments to county nursing homes and county intergovernmental transfers to the state shall be made each state fiscal year in accordance with the following

conditions. All payment levels specified are at the aggregate level and apportioned to each facility in a percentage equal to that facility's proportion of total county nursing home medicaid utilization:

I. Payment shall be made to the counties in each year of the biennium in an amount equal to the maximum permissible by federal regulations.

II. The counties shall be responsible for making intergovernmental transfers to the state in each year of the biennium in an amount equal to 50 percent of the first \$12,500,000 each year in proportionate share payments.

III. The counties shall be responsible for making intergovernmental transfers to the state in each year of the biennium in an amount equal to 100 percent of any amount in excess of \$12,500,000 up to \$25,000,000 each year. Of the amount so transferred, $\frac{1}{2}$ shall be deposited in the long-term care assistance fund established in RSA 167:94.

IV. The intergovernmental transfer of funds received in each year of the biennium in excess of the initial \$25,000,000 in proportionate share funds shall be distributed in the following manner: the counties shall retain 25 percent of the proportionate share funds and transfer to the state 75 percent of the proportionate share funds in each year. Of the amount so transferred, $\frac{1}{3}$ shall be deposited in the long-term care assistance fund.

11 Applicability. For the fiscal year ending June 30, 1998, the state shall make additional payments to the counties from the long-term care assistance fund, established by RSA 167:94 in section 13 of this act, in a sum equal to the amount, if any, by which 25 percent of the gross proportionate share payments to the counties for state fiscal years 1996, 1997, and 1998 exceeded \$18,750,000. The additional payments under this section shall be apportioned upon total county nursing home medicaid utilization.

12 Transfer of Appropriations; Expenditures. All sums appropriated by 1995, 310:63 and 1997, 350:11 to accounts within the department of health and human services which are unspent as of the effective date of this section shall be transferred to the long-term care assistance fund established by RSA 167:94 in section 13 of this act. Any remaining expenditures required by 1997, 350:11 and 1997, 351:5 to be made from proportionate share revenues for congregate housing, home nursing services and the developmentally disabled waitlist shall be funded from the long-term care assistance fund. The department of health and human services shall expend from the long-term assistance fund an amount equal to the lesser of \$4,000,000 or 5 percent of the gross proportionate share payments to the counties for fiscal years 1996, 1997, and 1998 exclusively for the development of the community-based infrastructure needed to implement the community initiatives contained in the department's long-term care plan entitled "Shaping Tomorrow's Choices."

13 New Subdivisions; Long-Term Care Assistance Fund Established; Medicaid Nursing Facility Rate Advisory Council. Amend RSA 167 by inserting after section 93 the following new subdivisions:

Long-Term Care Assistance Fund

167:94 Long-Term Care Assistance Fund.

I. There is hereby established in the office of the state treasurer a fund to be known as the long-term care assistance fund.

II. The state treasurer shall invest and reinvest the assets of the fund in accordance with law, and the principal assets and accumulated income in the fund shall be nonlapsing.

167:95 Purposes of the Fund. The principal assets and interest earnings from the fund shall be used exclusively by the department of health and human services to increase and support community-based services for individuals at risk of requiring institutional long-term care services.

167:96 Available Assets. Commencing with the fiscal year ending June 30, 1998, the state treasurer shall annually, on or before October 1, certify an amount to the commissioner which shall be the sum of the market value of the principal assets and interest earnings held in the fund available to be expended under RSA 167:95. Notwithstanding any other provision of law, the funds authorized for expenditure shall not be reduced by any funds made available from other sources.

167:97 Long-Term Care Advisory Council. There is hereby created a long-term care advisory council which shall advise the department of health and human services on expenditures from the long-term care assistance fund and on implementation and modification of the department's long-term care plan. The commissioner of health and human services shall appoint the members of the advisory council which shall include representation from community programs and services working with and for individuals with long-term care needs. All members shall serve for a term of one year and may be reappointed. The commissioner, or designee, shall be a non-voting member and shall chair the advisory council. The advisory council's role shall be advisory and recommendations made shall not be binding upon the department. The department may reimburse members for the expense of attending meetings of the advisory council.

167:98 Long-Term Care Planning.

I. On or before July 1, 1998, the department of health and human services shall complete its draft long-term care plan, dated January 21, 1998, entitled "Shaping Tomorrow's Choices" and shall begin an ongoing planning process to establish and maintain the initiatives and community programs described in the plan.

II. The department's planning process shall include, but not be limited to: the establishment of a system of designated focal points of contact where any person can go or call for assistance, information, or referral on any long-term care issue; the filing of appropriate amendments to the medicaid home and community-based waiver with the health care financing administration; and the proposal of legislation necessary to implement the plan.

III. The long-term care advisory council established by RSA 167:97 shall review the department's long-term care plan on at least an annual basis and shall make recommendations for further development and implementation of the plan.

Medicaid Nursing Facility Rate Advisory Council

167:99 Medicaid Nursing Facility Rate Advisory Council.

I. There is hereby created a medicaid nursing facility rate advisory council to advise the department of health and human services in the development and implementation of reimbursement statutes, rules, state plan amendments, and other major policies, practices, and procedures related to the medicaid nursing facility rate reimbursement system. The advisory council shall have advance notice of, and opportunity for input into and comment on, any proposed statutory or rule changes, and state plan amendments affecting nursing facilities, including those relating to

medicaid reimbursement. The advisory council's role is advisory and recommendations made shall not be binding upon the department.

II. The commissioner of the department of health and human services shall make appointments to the advisory council which shall include at least 3 representatives of county nursing home facilities and 3 representatives of proprietary nursing facilities. The representatives of the proprietary nursing facilities shall be appointed from persons selected by the New Hampshire Health Care Association. The representatives of the county nursing home facilities shall be appointed from persons selected by the New Hampshire Association of Counties. The commissioner may appoint additional members of the council, including representatives of agencies which provide community-based long-term care services to persons eligible to receive nursing facility services. The commissioner, or a designee, shall serve as the chair of the advisory council. The department shall provide necessary staffing and support to the advisory council.

14 County Approval Required. Sections 8 and 9 of this act shall not take effect unless both are approved by the legislative body of each of the state's counties. The chairman of the board of county commissioners in each county shall notify the commissioner of health and human services of the date when such approval occurs. The commissioner of health and human services shall notify the director of legislative services of the date the commissioner receives notification of all 10 counties' approval.

15 Memorandum of Agreement. The department of health and human services shall enter into a memorandum of agreement with the New Hampshire Association of Counties with respect to the type, cost, utilization, and procedures for reimbursement of services for which the counties are obligated to make reimbursements under RSA 167:18-b. The memorandum of agreement shall be reviewed annually and amended as determined necessary by the parties thereto.

16 Repeal. The following are repealed:

I. RSA 167:18-b, relative to reimbursement of funds for recipients of nursing facility services.

II. RSA 167:18-f, relative to local medical assistance contributions.

17 Effective Date.

I. Sections 8 and 9 of this act shall take effect July 1, 1998, or upon approval in accordance with section 14 of this act, whichever is later.

II. Section 16 of this act shall take effect July 1, 2003.

III. Sections 10, 11, and 13 of this act shall take effect upon its passage.

IV. The remainder of this act shall take effect July 1, 1998.

1998-1275s

AMENDED ANALYSIS

This bill:

- (1) Allows counties to establish reserve accounts to fund long-term care services.
- (2) Establishes a needs assessment process for individuals applying for long-term care services.
- (3) Extends the moratorium on new nursing homes from December 31, 1998 to December 31, 2001.
- (4) Establishes an adult family care program to provide services to elderly and disabled persons.
- (5) Changes the ratio of reimbursement funds required by the counties and state for nursing home care.
- (6) Creates a nonlapsing long-term care assistance fund to be used by the department of health and human services for persons requiring long-term care services.

Public Institutions, Health and Human Services

Sen. Squires, Dist. 12

April 1, 1998

1998-1276s

01/09

Amendment to SB 409-FN

Amend the title of the bill by replacing it with the following:

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126-A:21 Standards for Fire Safety. Notwithstanding RSA 153:5, 153:l0-b, or any law to the contrary, the fire code applicable to single family dwellings, as defined in RSA 153:l, X, or, where

applicable, single rental units in multi-unit dwellings, as defined in RSA 153:1, IX-a and VI, respectively, shall be the fire code applied by the state fire marshal and local fire departments to community living facilities housing 3 or fewer clients ***and to residences where services are provided by an adult family care provider certified pursuant to RSA 161-F:82.***

3 New Paragraph; Residential Care Facility Licensing Rules. Amend RSA 151:2 by inserting after paragraph III the following new paragraph:

IV. Licensing rules for residential care facilities, licensed pursuant to RSA 151:2, I(e), shall permit residential care facilities to admit residents who have been determined eligible for nursing facility services under a medicaid home and community-based care waiver program and who have been referred to a residential care facility as an alternative to placement in a nursing facility, provided that the clinical services and supports required by the person can be provided or obtained in the residential care setting.

4 Moratorium Extended. Amend RSA 151-C:4, III to read as follows:

III. No certificate of need shall be granted by the board for any nursing home, skilled nursing facility, intermediate care facility or rehabilitation facility from the effective date of the 1995 department of health and human services reorganization act through the period ending December 31, ~~1998~~ **2001**, except that a certificate of need may be issued for replacement or renovation of existing beds as necessary to meet life safety code requirements or to remedy deficiencies noted in a licensing inspection pursuant to RSA 151 or state survey and certification process pursuant to titles XVIII and XIX of the Social Security Act ~~[or for other good cause]~~.

5 New Subdivision; Adult Family Care Program Established. Amend RSA 161-F by inserting after section 75 the following new subdivision:

Adult Family Care

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161-F:77 Definitions. In this subdivision:

I. "Adult family care payment" means any amount paid by the state or a political subdivision thereof to an adult family care provider for caring for a qualified family care recipient.

II. "Adult family care provider" means an individual or individuals who provide care in a personal residence for no more than 2 qualified family care recipients.

III. "Adult family care services" means care and assistance provided in an adult family care home to an elderly or disabled individual who, by reason of age or physical or mental disability, would be in an institution but for these services.

IV. "Department" means the department of health and human services.

V. "Difficulty of care payment" means an amount paid to an adult family care provider by the state or a political subdivision thereof which are in excess of a basic board and care

rate and which are based upon a determination that the particular needs of the qualified family care recipient require extraordinary care and services.

VI. "Qualified family care recipient" means an individual 21 years of age or older who, by reason of age or physical or mental disability, requires adult family care services and is living in a personal residence for which the individual was approved by the department, a political subdivision of the state, or any other public or private entity as authorized by the department.

161-F:78 Administration; Placement; Services.

I. The adult family care program shall be administered by the department or its designee.

II. All approvals of individuals as adult family care providers, individuals as qualified family care recipients, eligibility for and the specific adult family care services to be provided, placements with adult family care providers and difficulty of care payments shall be made by the department except that the department may delegate or assign this authority to a political subdivision of the state or any other public or private entity.

III. The department shall establish the basic board and care services to be provided by an adult family care provider and the types of extraordinary care and services that warrant a difficulty of care payment.

IV. The department shall establish a payment structure for adult family care services.

161-F:79 Limitation. No payment shall be made under this subdivision to any adult family care provider for the care of more than 2 qualified family care recipients at one time in any adult family care home.

161-F:80 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The criteria that shall be met for an individual to become and to maintain status as an adult family care provider.

II. The establishment of standards for certification of adult family care providers.

III. The basic board and care services to be provided in adult family care homes.

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V. The payment structure for adult family care services.

VI. Eligibility of individuals to receive adult family care services.

VII. Any other matter necessary for the administration of this subdivision.

161-F:81 Exemption. Adult family care providers under this subdivision providing care for up to 2 recipients shall be exempt from the licensure requirements of RSA 151:2, but shall be subject to certification pursuant to RSA 161-F:82.

161-F:82 Certification. The department shall certify all adult family care providers in accordance with rules adopted pursuant to RSA 541-A.

6 Applicability. Until June 30, 2000, the number of persons placed under the waiver by the department of health and human services in adult family care, as established in section 6 of this act, and shared housing shall not exceed a total of 25.

7 Reimbursement of Funds for Persons Eligible to Receive Nursing Facility Services; Limitation on County Payments. Amend RSA 167:18-b to read as follows:

167:18-b Reimbursement of Funds for ~~[Recipients in]~~ **Persons Eligible to Receive Nursing** ~~[Homes]~~ **Facility Services; Limitation on County Payments.**

I. All expenditures in carrying out the purposes of this chapter or RSA 161 relative to old age assistance or aid to the permanently and totally disabled recipients who ~~[are in nursing homes]~~ have been determined eligible to receive nursing facility services and are either in a nursing home or in another residential setting supported by a medicaid home and community-based care waiver program as an alternative to placement in a nursing home shall be made in the first instance from the public assistance fund hereby created, but each ~~[political subdivision]~~ county shall make monthly payments to the state for the amounts due under this section within 30 days from notice thereof and shall reimburse said fund for all assistance granted to persons for which such ~~[political subdivision]~~ county is liable, to the extent of ~~[61-1]~~ 50 percent of the non-federal share, except that no charges shall be made for the non-federal share for recipients in state institutions and intermediate care facilities for the mentally retarded (ICF-MR) serving developmentally impaired persons approved by the department of health and human services. The counties shall have an aggregate credit of \$2,000,000 against amounts due under this section for each fiscal year beginning July 1, 1998. The \$2,000,000 shall be allocated among the counties based upon the proportion each paid under this section in the prior fiscal year and shall be made available as soon as possible after the start of the fiscal year. If the federal share of expenditures under this section is made available to the state in a method other than as a fixed percentage reimbursement, the non-federal share shall be the amount of expenditures remaining after appropriate application of federal funds.

II. If the total reimbursements by all counties made pursuant to RSA 167:18-b for persons who have been determined eligible to receive nursing facility services exceed the amounts set forth below for any of the state fiscal years 1999-2003, the general court in its next regular session shall consider legislation which addresses county reimbursement responsibility under RSA 167:18-b:

(a) State fiscal year 1999-\$60,000,000.

(b) State fiscal year 2000-\$64,800,000.

(c) State fiscal year 2001-\$69,900,000.

(d) State fiscal year 2002-\$75,600,000.

(e) State fiscal year 2003-\$81,600,000.

8 Local Medical Assistance Contribution. Amend RSA 167:18-f to read as follows:

167:18-f Local Medical Assistance Contribution. In addition to any other reimbursement required by law, each county shall, within 60 days from notice thereof, reimburse the public assistance fund at the rate of \$6 per month for each recipient of old age assistance and \$23 per month for each recipient of aid to the permanently and totally disabled for whom the county would be liable under the provisions of RSA 166, ***except that no reimbursement shall be required for any recipient for whom the county has an obligation under RSA 167:18-b.***

9 New Section; Proportionate Share Payments; Fiscal Committee Approval. Amend RSA 167 by inserting after section 18-g the following new section:

167:18-h County Nursing Homes; Proportionate Share Payments by State; County Transfers to the State. Proportionate share payments to county nursing homes and county intergovernmental transfers to the state shall be made each state fiscal year in accordance with the following conditions. All payment levels specified are at the aggregate level and apportioned to each facility in a percentage equal to that facility's proportion of total county nursing home medicaid utilization:

I. Payment shall be made to the counties in each year of the biennium in an amount equal to the maximum permissible by federal regulations.

II. The counties shall be responsible for making intergovernmental transfers to the state in each year of the biennium in an amount equal to 50 percent of the first \$12,500,000 each year in proportionate share payments.

III. The counties shall be responsible for making intergovernmental transfers to the state in each year of the biennium in an amount equal to 100 percent of any amount in excess of \$12,500,000 up to \$25,000,000 each year. Of the amount so transferred, ½ shall be deposited in the long-term care assistance fund established in RSA 167:94.

IV. The intergovernmental transfer of funds received in each year of the biennium in excess of the initial \$25,000,000 in proportionate share funds shall be distributed in the following manner: the counties shall retain 25 percent of the proportionate share funds and transfer to the state 75 percent of the proportionate share funds in each year. Of the amount so transferred, 1/3 shall be deposited in the long-term care assistance fund.

10 Applicability. For the fiscal year ending June 30, 1998, the state shall make additional payments to the counties from the long-term care assistance fund, established by RSA 167:94 in section 12 of this act, in a sum equal to the amount, if any, by which 25 percent of the gross proportionate share payments to the counties for state fiscal years 1996, 1997, and 1998 exceeded \$18,750,000. The additional payments under this section shall be apportioned upon total county nursing home medicaid utilization.

11 Transfer of Appropriations; Expenditures. All sums appropriated by 1995, 310:63 and 1997, 350:11 to accounts within the department of health and human services which are unspent as of the effective date of this section shall be transferred to the long-term care assistance fund established by RSA 167:94 in section 12 of this act. Any remaining expenditures required by 1997, 350:11 and 1997, 351:5 to be made from proportionate share revenues for congregate housing, home nursing services and the developmentally disabled waitlist shall be funded from the long-term care assistance fund. The department of health and human services shall expend from the long-term assistance fund an amount equal to the lesser of \$4,000,000 or 5 percent of the gross proportionate share payments to the counties for fiscal years 1996, 1997, and 1998 exclusively for the development

of the community-based infrastructure needed to implement the community initiatives contained in the department's long-term care plan entitled "Shaping Tomorrow's Choices."

12 New Subdivisions; Long-Term Care Assistance Fund Established; Medicaid Nursing Facility Rate Advisory Council. Amend RSA 167 by inserting after section 93 the following new subdivisions:

Long-Term Care Assistance Fund

167:94 Long-Term Care Assistance Fund.

I. There is hereby established in the office of the state treasurer a fund to be known as the long-term care assistance fund.

II. The state treasurer shall invest and reinvest the assets of the fund in accordance with law, and the principal assets and accumulated income in the fund shall be nonlapsing.

167:95 Purposes of the Fund. The principal assets and interest earnings from the fund shall be used exclusively by the department of health and human services to increase and support community-based services for individuals at risk of requiring institutional long-term care services.

167:96 Available Assets. Commencing with the fiscal year ending June 30, 1998, the state treasurer shall annually, on or before October 1, certify an amount to the commissioner which shall be the sum of the market value of the principal assets and interest earnings held in the fund available to be expended under RSA 167:95. Notwithstanding any other provision of law, the funds authorized for expenditure shall not be reduced by any funds made available from other sources.

167:97 Long-Term Care Advisory Council. There is hereby created a long-term care advisory council which shall advise the department of health and human services on expenditures from the long-term care assistance fund and on implementation and modification of the department's long-term care plan. The commissioner of health and human services shall appoint the members of the advisory council which shall include representation from community programs and services working with and for individuals with long-term care needs. All members shall serve for a term of one year and may be reappointed. The commissioner, or designee, shall be a non-voting member and shall chair the advisory council. The advisory council's role shall be advisory and recommendations made shall not be binding upon the department. The department may reimburse members for the expense of attending meetings of the advisory council.

167:98 Long-Term Care Planning.

I. On or before July 1, 1998, the department of health and human services shall complete its draft long-term care plan, dated January 21, 1998, entitled "Shaping Tomorrow's Choices" and shall begin an ongoing planning process to establish and maintain the initiatives and community programs described in the plan.

II. The department's planning process shall include, but not be limited to: the establishment of a system of designated focal points of contact where any person can go or call for assistance, information, or referral on any long-term care issue; the filing of appropriate amendments to the medicaid home and community-based waiver with the health care financing administration; and the proposal of legislation necessary to implement the plan.

III. The long-term care advisory council established by RSA 167:97 shall review the department's long-term care plan on at least an annual basis and shall make recommendations for further development and implementation of the plan.

Medicaid Nursing Facility Rate Advisory Council

167:99 Medicaid Nursing Facility Rate Advisory Council.

I. There is hereby created a medicaid nursing facility rate advisory council to advise the department of health and human services in the development and implementation of reimbursement statutes, rules, state plan amendments, and other major policies, practices, and procedures related to the medicaid nursing facility rate reimbursement system. The advisory council shall have advance notice of, and opportunity for input into and comment on, any proposed statutory or rule changes, and state plan amendments affecting nursing facilities, including those relating to medicaid reimbursement. The advisory council's role is advisory and recommendations made shall not be binding upon the department.

II. The commissioner of the department of health and human services shall make appointments to the advisory council which shall include at least 3 representatives of county nursing home facilities and 3 representatives of proprietary nursing facilities. The representatives of the proprietary nursing facilities shall be appointed from persons selected by the New Hampshire Health Care Association. The representatives of the county nursing home facilities shall be appointed from persons selected by the New Hampshire Association of Counties. The commissioner may appoint additional members of the council, including representatives of agencies which provide community-based long-term care services to persons eligible to receive nursing facility services. The commissioner, or a designee, shall serve as the chair of the advisory council. The department shall provide necessary staffing and support to the advisory council.

13 County Approval Required. Sections 7 and 8 of this act shall not take effect unless both are approved by the legislative body of each of the state's counties. The chairman of the board of county commissioners in each county shall notify the commissioner of health and human services of the date when such approval occurs. The commissioner of health and human services shall notify the director of legislative services of the date the commissioner receives notification of all 10 counties' approval.

14 Memorandum of Agreement. The department of health and human services shall enter into a memorandum of agreement with the New Hampshire Association of Counties with respect to the type, cost, utilization, and procedures for reimbursement of services for which the counties are obligated to make reimbursements under RSA 167:18-b. The memorandum of agreement shall be reviewed annually and amended as determined necessary by the parties thereto.

15 Repeal. The following are repealed:

I. RSA 167:18-b, relative to reimbursement of funds for recipients of nursing facility services.

II. RSA 167:18-f, relative to local medical assistance contributions.

16 Effective Date.

I. Sections 7 and 8 of this act shall take effect July 1, 1998, or upon approval in accordance with section 13 of this act, whichever is later.

II. Section 15 of this act shall take effect July 1, 2003.

III. Sections 9, 10, and 12 of this act shall take effect upon its passage.

IV. The remainder of this act shall take effect July 1, 1998.

1998-1276s

AMENDED ANALYSIS

This bill:

(1) Allows counties to establish reserve accounts to fund long-term care services.

(2) Extends the moratorium on new nursing homes from December 31, 1998 to December 31, 2001.

(3) Establishes an adult family care program to provide services to elderly and disabled persons.

(4) Changes the ratio of reimbursement funds required by the counties and state for nursing home care.

(5) Creates a nonlapsing long-term care assistance fund to be used by the department of health and human services for persons requiring long-term care services.

Public Institutions, Health and Human Services

March 31, 1998

1998-1266s

01/08

Amendment to SB 491-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to residential care facilities.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Residential Care Facility Licensing Rules. Amend RSA 151:2 by inserting after paragraph III the following new paragraph:

IV. Licensing rules for residential care facilities, licensed pursuant to RSA 151:2, I(e), shall permit residential care facilities to admit residents who have been determined eligible for nursing facility services under a medicaid home and community-based care waiver program and who have been referred to a residential care facility as an alternative to placement in a nursing facility, provided that the clinical services and supports required by the person can be provided or obtained in the residential care setting.

2 Effective Date. This act shall take effect 60 days after its passage.

1998-1266s

AMENDED ANALYSIS

This bill allows residential care facilities to admit certain residents if appropriate.