

MAYOR
DANNEL P. MALLOY

RECEIVED

NOV 9 1999

Board of Representatives

11-09-99A11:27 RCVD



CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904-2152
(203) 977-4081
FAX (203) 977-5560

SL/F

ANDREW J. McDONALD
DIRECTOR OF LEGAL AFFAIRS
ASSISTANT CORPORATION COUNSEL
BARRY J. BOODMAN
JAMES V. MINOR
KENNETH B. POVODATOR
RICHARD A. ROBINSON
BURT ROSENBERG

November 8, 1999

To: Carmen Domonkos, President
Board of Representatives

From: Andrew J. McDonald
Director of Legal Affairs

Re: Special Act 99-10
Increased Funding for Nursing Home Staffing

This is in response to the Board of Representatives' request for an opinion concerning the parameters and legislative history of Special Act (S.A.) 99-10, which was passed in the last session of the General Assembly.

First, I should point out that S.A. 99-10 is merely an appropriations act; it is not "legislation" that would normally result in specific statutory language that is supported by a detailed legislative history. Entitled "An Act Concerning the State Budget for the Biennium Ending June 20, 2001, and Making Appropriations Therefor", the legislation reads, in pertinent part, "[t]he following sums are appropriated for the annual period as indicated and for the purposes described." Following that generic language are 99 pages of appropriations with no narrative description regarding each program.

There is virtually no legislative history regarding S.A. 99-10. Gary Richter, Director of Certificates of Need and Rate Setting for the Department of Social Services, has advised this office that S.A. 99-10 was placed before the General Assembly on a Consent Calendar and the appropriation for nursing home staffing was not discussed. Indeed, the

\$75 million program for nursing home staffing is not specifically set forth in S.A. 99-10; rather it is contained within a \$2 billion appropriation for Medicaid.

In the absence of a specific legislative history, we find guidance as to the intent of S.A. 99-10 in two letters authored by officials of the Department of Social Services, the agency to which the appropriation was made. Historically courts afford deference to the construction of legislative enactments as they are applied by the administrative agency empowered by law to carry out the statute's purposes. Connecticut Light & Power Co. v. Texas-Ohio Power, Inc., 243 Conn. 635, 642-43 (1998). The courts have held that an agency's interpretation is entitled to substantial deference, since administrative authorities are able to determine congressional intent in light of their experience in the field. Ross v. Giardi, 237 Conn. 550, 564 (1996).

Bearing these principles in mind, we examine correspondence dated March 25, 1999 from Michael P. Starkowski, Deputy Commissioner of the Department of Social Services, to Smith House. It states, in pertinent part, that:

[O]n February 18, 1999, the Governor announced a Wage, Benefit and Staffing Enhancement Program developed with the leadership of the General Assembly to provide nursing facilities with special funding for wage, benefit and direct and indirect care staffing increases. Essentially the program provides for Medicaid rate increases targeted to wage, benefit and staffing enhancements amounting to \$75 million on an annual basis to be implemented this fiscal year effective April 1, 1999.

Mr. Starkowski's letter goes on to state that, based upon assurances from the General Assembly that the distribution method used to estimate the allocation for each nursing facility will be forthcoming in legislation, Smith House "may proceed to implement wage, benefit and direct and indirect care staffing enhancements." Based upon Smith House's 1998 direct and indirect cost component salary, wage and benefit costs, and its Medicaid utilization, Mr. Starkowski calculated an estimated annual allocation of \$516,750 for Smith House.

Mr. Starkowski then states that "Rate add-ons for wage, benefit and staffing increases are required to be applied towards costs associated with hourly wage increases,

additional employee benefits costs such as health insurance and pension and added direct and indirect care staffing hours." He explains that under the terms of the program, Smith House "must demonstrate that 1999 costs for wages, benefits and staffing have increased over 1998 by an amount at least equal to the enhancement payments received." Finally he explains that 50% of the annual enhancement allocation for Smith House was to be paid between 4-1-99 and 9-30-99. If the Department of Social Services determines that the enhancement funds were not applied to the designated cost increases, retroactive reductions in the remaining enhancement allocation will be made.

Further guidance regarding the import of S.A. 99-10 is found in correspondence from Gary Richter, Director of Certificates of Need and Rate Setting of the Department of Social Services, to State Representative Cristel Truglia, dated June 14, 1999. In that correspondence, Mr. Richter states that:

- Wage, benefit and staffing enhancement funds can be used for wage and benefits increases to existing or replacement employees, excluding administrators and owners. The funds may also be applied to increases related to office support and maintenance workers.
- Under the program, facilities must demonstrate that wage and benefit expenditures for employees have increased by the amount of the Enhancement Program payments received from 1998 to 1999 (and thereafter from 1999 to 2000, and from 2000 to 2001).
- Enhancement Program funds are earmarked for nursing facility employees.

Copies of both letters from the Department of Social Services are attached hereto.

The position outlined by DSS was affirmed in separate legislation passed by the General Assembly. Public Act (P.A.) 99-279, entitled "An Act Concerning Programs and Modifications Necessary to Implement the Budget Relative to the Department of Social Services" was enacted by the General Assembly. It sets forth the computation of a facility's allocation of the funds under the program. Section 20 of P.A. 99-279 requires, in pertinent part, that

"[a]ny facility accepting a rate adjustment for wage, benefit and staffing enhancements

shall apply payments made as a result of such rate adjustment for increased allowable employee wage rates and benefits and additional direct and indirect component staffing. Adjustment funding shall not be applied to wage and salary increases provided to the administrator, assistant administrator, owners or related party employees. Enhancement payments may be applied to increases in costs associated with staffing purchased from staffing agencies provided such costs are deemed necessary and reasonable by the commissioner. The commissioner shall compare expenditures for wages, benefits and staffing for the 1998 cost report period to such expenditures in the 1999, 2000 and 2001 cost report periods to verify whether a facility has applied additional payments to specified enhancements"

Please note that although there is reference in P.A. 99-279 to "applicable regulations", Mr. Richter of the Department of Social Services has advised this office that no regulations currently exist. A copy of Section 20 of P.A. 99-279 is attached.

After the passage of P.A. 99-279, the Department of Social Services issued a single-page memorandum entitled "Nursing Facility Wage, Benefit and Staffing Enhancement Program - Section 20 Public Act 99-279", a copy of which is attached hereto. The document confirms that the proper use of the grant includes:

- salary and wage increases, including hourly wage adjustments, overtime and bonuses.
- allowable fringe benefit increases, such as increases in pensions, health, disability, unemployment and life insurance, uniform allowances, child daycare and employee physicals.
- increases in Medicaid-allowable employee costs related to added staffing or added hours.
- increases in nursing pool and temporary staffing costs, within limitations.

Based upon the foregoing facts, DSS' interpretation of the legislation and the clear language of the statute itself, it

is this office's opinion that the Wage, Benefit and Staffing Enhancement Program contained in S.A. 99-10, as clarified in P.A. 99-279, permits the use of funds received by Smith House under the program for the purposes outlined herein. The funds merely must be used for permitted purposes as defined by DSS and as measured from one annual cost report period to another, without regard to whether they were already obligated expenses.

If this memorandum has raised any further questions for you, I will be happy to answer them.

c.c.: Mayor Dannel P. Malloy
Members, Board of Representatives
Encl.



STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033

March 25, 1999

cc: Sandy
Yip to Susan

Smith House Skilled Nursing Fac.
88 Rockrimmon Road
Stamford, CT 06903

Dear Provider:

As you know, on February 18, 1999 the Governor announced a Wage, Benefit and Staffing Enhancement Program developed with the leadership of the General Assembly to provide nursing facilities with special funding for wage, benefit and direct and indirect care staffing increases. Essentially the program provides for Medicaid rate increases targeted to wage, benefit and staffing enhancements amounting to \$75 million on an annual basis to be implemented this fiscal year effective April 1, 1999. The program also includes general inflation increases of 1% and 2% effective July 1, 1999 and July 1, 2000, respectively.

The purpose of this letter is to provide you with an estimate of the Medicaid rate adjustment that you will likely receive upon passage of legislation implementing this enhancement program. The Department has received assurances from leaders in the General Assembly that the enhancement distribution method used to estimate the allocation for your facility will be adopted in legislation. Consequently, you may proceed to implement wage, benefit and direct and indirect care staffing enhancements. We would expect that the availability of your allocation level as identified in this letter should allow you to proceed expeditiously with any pending labor negotiations.

Current year Medicaid rates would be revised for the period April 1, 1999 through June 30, 1999 to reflect the special adjustment. Revised Medicaid rates will be issued retro-active to April 1, 1999 when legislation is adopted by the General Assembly and signed by the Governor. The same special enhancement adjustment amount would also be included in rates for the next two rate years unless there is a change to your facility's capacity, licensure or operations. Your facility's allocation of the enhancement funding is based on your 1998 direct and indirect cost component salary, wage and benefit costs and Medicaid utilization. The following reflects the expected allocation and rate adjustment for your facility.

Smith House Skilled Nursing Fac.Nurs Fac-CCH

A. 1998 Direct, Indirect and Allocated Benefit Costs	\$ 5,868,711
B. Medicaid Utilization	85.26%
C. Line A Multiplied by Line B	\$ 5,003,663
D. Total of Line C Calculated For All Facilities	<u>725,923,861</u>
E. Facility's Share (Line C / Line D)	0.689%
F. Special Wage, Benefit and Staffing Increase Funding	<u>75,000,000</u>
G. Estimated Facility Allocation (Line E X Line F)	\$ 516,750
H. 1998 Medicaid Days	<u>38,816</u>
I. Estimated Medicaid Per Diem Adjustment (Line G / Line H)	<u>\$ 13.31</u>

Rate add-ons for wage, benefit and staffing increases are required to be applied toward costs associated with hourly wage increases, additional employee benefit costs such as health insurance and pension and added direct and indirect care staffing hours. Adjustment funding may be applied towards wage and benefit increases for any employees except administrators, assistant administrators, owners or related party employees. Enhancement payments may also be used for necessary and reasonable nursing pool costs. If you expect that more than 30% of your enhancement funding will be necessary for nursing pool cost increases (between cost year 1998 and 1999) you should notify the Department so that a review for necessity and reasonableness can be conducted.

Under the program, facilities are allowed to apply enhancement payments to wage, benefit, and staffing increases made during the 1999 cost report period (10/98 - 9/99), not just after April 1, 1999. Your facility must demonstrate that 1999 costs for wages, benefits and staffing have increased over 1998 by an amount at least equal to the enhancement payments received. Your facility will receive 50% of your annual enhancement allocation in the 1999 cost report period representing payments between April 1, 1999 and September 30, 1999. If upon review of the cost report and/or special cost filings, the Department determines that special rate adjustment funds were not applied to designated cost increases, the Department will make retroactive rate reductions as appropriate.

Any facility choosing not to participate in the enhancement program must notify the Department.

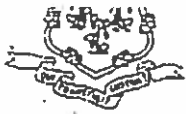
Any questions or correspondence pertaining to enhancement rate adjustments should be directed to Gary Richter, Director, Certificate of Need and Rate Setting (860 424-5105). We will keep you apprised of this initiative as the legislative process proceeds.

Sincerely,



Michael P. Starkowski
Deputy Commissioner

cc: Marc Ryan, Secretary, OPM
Pat Wilson Coker, Commissioner DSS
Gary Richter, DSS



STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033

June 14, 1999

Cristel H. Truglia
State Representative
Legislative Office Building, Room 4030
Hartford, CT 06106-1591

Dear Representative Truglia:

The following responds to the questions you submitted related to the Wage, Benefit and Staffing Enhancement Program for nursing facilities. Questions 1 through 3 were lengthy and have been summarized.

1. Will cost increases associated with raises for secretarial workers be an allowed cost under the Program? (Question was summarized.)

While the Wage, Benefit and Staffing Enhancement allocation formula is based upon 1998 wage and benefit costs for Direct and Indirect category workers, funding can be used for wage and benefit increases given to existing or replacement employees categorized as Administrative such as secretaries. In accordance with the law the only personnel for which funds may not be applied are administrators, assistant administrators, owners and related party employees.

2. How will expenditure decreases associated with higher than normal nursing turnover have an effect on allowable Program costs? (Question was summarized.)

Under the program, facilities must demonstrate that wage and benefit expenditures for employees have increased by the amount of Enhancement Program payments received. In accordance with the implementing legislation the Department will compare cost year 1998 wage and benefit expenditures to 1999, 2000 and 2001 wage and benefit expenditures. If expenditures decrease or increase by less than the amount of enhancement payments the facility will be required to refund unused payments.

3. Will cost increases associated with raises for porters who perform cleaning duties be an allowed cost under the Program? (Question was summarized.)

Within the full question it is stated that porters are categorized as maintenance workers which is an administrative expense under Medicaid rate setting. As indicated in the response to Question #1, raises and benefit increases for existing or replacement administrative employees are eligible under the Enhancement Program.

EXHIBIT B

4. Will uniform allowance expenditure increases, which is a program to reimburse employees for purchasing specific uniforms for work, be considered an allowable cost under the Program?

Yes.

5. Will increases in expenditures for resident care consultants like a Dietician, Pharmaceutical, Physical Therapist, Medical Director, Speech Therapist and Occupational Therapist be considered an allowable cost under the Program?

No, the Enhancement Program funds are targeted to facility employees and necessary outside nursing pool costs.

6. Will increases for the Director of Volunteers and costs associated with the volunteer program be considered an allowable cost under the Program?

Wage and benefit increases associated with the Director would be eligible.

7. Will increases in medical record supply expenses and medical record employee compensation be considered an allowable cost under the program?

Increases to supply expenses would not be allowed but employee cost increases would be eligible under the Enhancement Program.

8. Will increases in the cost associated with employee physicals be considered an allowable cost under the Program?

Yes, the costs associated with physicals are considered an employee benefit since such expenses relate to employee health like health insurance.

9. Since the Program was designed to prevent approximately 50 unionized nursing homes from "striking," will costs associated with negotiating the new union contracts be considered allowable under the Program? These costs are for the use of labor attorneys and negotiators necessary to write or alter a union contract agreement.

No, the Enhancement Program funds are earmarked for nursing facility employees.

10. Can office supply increases used exclusively for nursing and resident care services be considered allowable under the Program?

No, such costs are not related to employee wages and benefits.

11. Can telephone service increases exclusively associated with the residents' rooms or nursing services be considered allowable under the Program?

No, see response to Question # 10.

12. Are cost increases associated with holiday parties for residents or employees considered allowable under the Program.

No, see response to Question # 10.

13. Are cost increases associated with seminars and conventions attended by nursing personnel considered allowable under the Program?

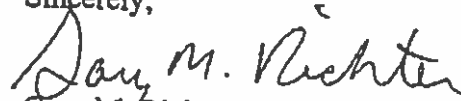
No, see response to Question # 10.

14. Is a cost increase associated with classified ads for hiring nurses and nurses aides considered allowable under the Program?

No, see response to Question # 10.

If you or staff from the Smith House would like any further information please contact me (860-424-5105) or Kathy Shaughnessy (860-424-5108).

Sincerely,



Gary M. Richter

Director CON and Rate Setting

M. Barrett

year ending June 30, 2000, shall receive a rate increase that is more than one per cent more than the rate the facility received in the fiscal year ending June 30, 1999. For the fiscal year ending June 30, 2001, each facility, except a facility with an interim rate or replaced interim rate for the fiscal year ending June 30, 2000, and a facility having a certificate of need or other agreement specifying rate adjustments for the fiscal year ending June 30, 2001, shall receive a rate increase equal to two per cent applied to the rate the facility received for the fiscal year ending June 30, 2000, subject to verification of wage enhancement adjustments pursuant to subdivision (15) of this subsection. For the fiscal year ending June 30, 2001, no facility with an interim rate, replaced interim rate or scheduled rate adjustment specified in a certificate of need or other agreement for the fiscal year ending June 30, 2001, shall receive a rate increase that is more than two per cent more than the rate the facility received for the fiscal year ending June 30, 2000. For the fiscal year ending June 30, [2000] 2002, and any succeeding fiscal year, no facility shall receive a rate that is more than the rate it received in the prior year increased by the annual increase in the Consumer Price Index (all urban) for the most recent calendar year. The Commissioner of Social Services may exclude fair rent from any rate increase maximums established pursuant to this subdivision for a facility which has undergone a material change in circumstances related to fair rent.

Sec. 20. Subsection (f) of section 17b-340 of the general statutes is amended by adding subdivision (15) as follows:

(NEW) (15) The Commissioner of Social Services shall adjust facility rates from April 1, 1999, to June 30, 1999, inclusive, by a per diem amount representing each facility's allocation of funds appropriated for the purpose of wage, benefit and staffing enhancement. A facility's per diem allocation of such funding shall be computed as follows: (A) The facility's direct and indirect component salary, wage, nursing pool and allocated fringe benefit costs as filed for the 1998 cost report period deemed allowable in accordance with this section and applicable regulations without application of cost component maximums specified in subdivision (3) of this subsection shall be totaled; (B) such total shall be multiplied by the facility's Medicaid utilization based on the 1998 cost report; (C) the resulting amount for the facility shall be divided by the sum of the calculations specified in subparagraphs (A) and (B) of this subdivision for all facilities to determine the facility's percentage share of appropriated wage, benefit and staffing enhancement funding; (D) the facility's percentage share shall be multiplied by the amount of appropriated wage, benefit and staffing enhancement funding to determine the facility's allocated amount; and (E) such allocated amount shall be divided by the number of days of care paid for by Medicaid on an annual basis including days for reserved beds specified in the 1998 cost report to determine the per diem wage and benefit rate adjustment amount. The commissioner may adjust a facility's reported 1998 cost and utilization data for the purposes of determining a facility's share of wage, benefit and staffing enhancement funding when reported 1998 information is not substantially representative of estimated cost and utilization data for the fiscal year ending June 30, 2000, due to special circumstances during the 1998 cost report period including change of ownership with a part year cost filing or reductions in facility capacity due to facility renovation projects. Upon completion of the calculation of the allocation of wage, benefit and staffing enhancement funding, the commissioner shall not adjust the allocations due to revisions submitted to previously filed 1998 annual cost reports. In the event that a facility's rate for

EXHIBIT C

the fiscal year ending June 30, 1999, is an interim rate or the rate includes an increase adjustment due to a rate request to the commissioner or other reasons, the commissioner may reduce or withhold the per diem wage, benefit and staffing enhancement allocation computed for the facility. Any enhancement allocations not applied to facility rates shall not be reallocated to other facilities and such unallocated amounts shall be available for the costs associated with interim rates and other Medicaid expenditures. The wage, benefit and staffing enhancement per diem adjustment for the period from April 1, 1999, to June 30, 1999, inclusive, shall also be applied to rates for the fiscal years ending June 30, 2000, and June 30, 2001, except that the commissioner may increase or decrease the adjustment to account for changes in facility capacity or operations. Any facility accepting a rate adjustment for wage, benefit and staffing enhancements shall apply payments made as a result of such rate adjustment for increased allowable employee wage rates and benefits and additional direct and indirect component staffing. Adjustment funding shall not be applied to wage and salary increases provided to the administrator, assistant administrator, owners or related party employees. Enhancement payments may be applied to increases in costs associated with staffing purchased from staffing agencies provided such costs are deemed necessary and reasonable by the commissioner. The commissioner shall compare expenditures for wages, benefits and staffing for the 1998 cost report period to such expenditures in the 1999, 2000 and 2001 cost report periods to verify whether a facility has applied additional payments to specified enhancements. In the event that the commissioner determines that a facility did not apply additional payments to specified enhancements, the commissioner shall recover such amounts from the facility through rate adjustments or other means. The commissioner may require facilities to file cost reporting forms, in addition to the annual cost report, as may be necessary, to verify the appropriate application of wage, benefit and staffing enhancement rate adjustment payments. For the purposes of this subdivision, "Medicaid utilization" means the number of days of care paid for by Medicaid on an annual basis including days for reserved beds as a percentage of total resident days.

Sec. 21. Subsection (h) of section 17b-340 of the general statutes is repealed and the following is substituted in lieu thereof:

(h) For the fiscal year ending June 30, 1993, any residential care home with an operating cost component of its rate in excess of one hundred thirty per cent of the median of operating cost components of rates in effect January 1, 1992, shall not receive an operating cost component increase. For the fiscal year ending June 30, 1993, any residential care home with an operating cost component of its rate that is less than one hundred thirty per cent of the median of operating cost components of rates in effect January 1, 1992, shall have an allowance for real wage growth equal to sixty-five per cent of the increase determined in accordance with subsection (q) of section 17-311-52 of the regulations of Connecticut state agencies, provided such operating cost component shall not exceed one hundred thirty per cent of the median of operating cost components in effect January 1, 1992. Beginning with the fiscal year ending June 30, 1993, for the purpose of determining allowable fair rent, a residential care home with allowable fair rent less than the twenty-fifth percentile of the state-wide allowable fair rent shall be reimbursed as having allowable fair rent equal to the twenty-fifth percentile of the state-wide allowable fair rent. Beginning with the fiscal year ending June 30, 1997, a residential care home with allowable fair rent less than three dollars

**Nursing Facility Wage, Benefit and Staffing Enhancement Program
Section 20 Public Act 99-279**

Appropriate Uses of Wage, Benefit and Staffing Enhancement Payments

Salary, wage and/or benefit increases for nursing facility employees (owners, administrators and related party employees are excluded under the law). Please note that while a facility's enhancement allocation is based upon direct and indirect employee costs, funds may also be applied toward salary, wage and benefit increases for employees categorized in the Administrative cost component area, such as, office support and maintenance workers.

Allowable salary and wage increases generally would include all payroll expense increases, such as, hourly wage adjustments, overtime and bonuses. Payments to employees made in the form of a gift or service award are not recognized under the program.

Allowable fringe benefit increases would include workers compensation, social security (FICA), insurance (health, disability, unemployment, life), pension, uniform allowance, child daycare and employee physicals. Costs associated with employee recruitment, staff parties, training, seminars and conferences are not recognized under the program.

Increases in Medicaid allowable Direct and Indirect employee costs related to added staffing and/or hours. Direct care component staff includes nurses and nurse aides and Indirect component staff includes dietary, housekeeping, laundry, social work and recreation workers, physicians, pharmacists and therapists. Please note that the Department will compare Medicaid allowable Direct and Indirect care costs for cost increase comparison purposes. Medicaid allowable therapy costs are determined based upon a payer type utilization formula and professional fees are subject to per hour limits under Medicaid reimbursement regulation.

Necessary and reasonable increases in nursing pool/temporary staffing costs. The intent of the Wage, Benefit and Staffing Enhancement program is to provide permanent nursing facility employees with higher wages and benefits and to increase direct and indirect care staffing. However, the law does permit the Commissioner to allow reasonable and necessary increases in outside temporary staffing services. As a guideline, facilities should notify the Department of any projected increases in outside service costs which are in excess of 30%. The Department will conduct a review for reasonableness and necessity. Enhancement payments may not be applied to cost increases associated with contracts for services such as therapy, dietary, housekeeping and laundry.

Verification of the Proper Use of Wage, Benefit and Staffing Enhancement Payments

The Department will review annual Medicaid cost report filings and conduct audits as necessary to determine that funds have been applied in accordance with the law. Facilities must demonstrate that spending for wages, benefits and direct/indirect staffing have increased over 1998 by an amount equal to or exceeding payments received under the Enhancement Program. It is important to point out that the Department will adjust 1998 costs to account for bed additions and licensure conversions (RHNS to CCNH) when verifying the appropriate application of Enhancement Program payments by facilities. The Department will revise rates and recover funds when payments are not spent for such purposes.

Under PA 99-279 facilities are credited with wage, benefit and staffing enhancements made during the entire 1999 cost report period (10/98-9/99), not just after April 1, 1999, which is the effective date of Medicaid rate increases related to the Enhancement Program.

Post-It™ brand fax transmittal memo 7671 # of pages 1

To <i>B. Roemling</i>	From <i>Gary Richter</i>
Co. <i>Stamford</i>	Co. <i>DSS</i>
Dept.	Phone #
Fax # <i>203-977-5500</i>	Fax #

EXHIBIT D