

**ASSEMBLY BILL NO. 1951
(Second Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1951 (Second Reprint) with my recommendations for reconsideration.

SUMMARY OF THE BILL

This bill provides for the review by an independent contractor of the eligibility for a Medicaid recipient to continue to reside in a special care nursing facility. Specifically, the bill provides unlimited length of stay based on whether the resident develops skills leading to a more independent life and continues to benefit from active participation in community involvement, continuing education, employment in the community, sheltered workshop, extended rehabilitation, complex care and vocational training. The bill provides for unlimited length of stay for special care nursing facilities that are free-standing, have 40 or fewer beds, and cannot be owned by a hospital unless the hospital is located at a distance of at least twenty miles.

RECOMMENDED ACTION

I fully support the concept that length of stay considerations take into account the resident's active participation in community involvement provided for neurologically impaired individuals in free-standing special care nursing facilities. However, I am concerned that the provisions of the bill defining an eligible special care nursing facility do not do so by identifying the type of special care nursing facility. Also, I am concerned that certain provisions of the bill could be detrimental to the Medicaid program administered by the Department of Health and Senior Services.

The Department of Health and Senior Services believes that the length of stay considerations provided for in the bill will be appropriate for free-standing special care nursing facilities specializing in the care of neurological impairment because the neurologically impaired resident's maximum benefit and functioning should include a more independent life, active participation in community involvement, continuing education, employment in the community, sheltered workshop, extended rehabilitation, complex care and vocational training. This is particularly appropriate in the case of a free-standing

facility where the resident cannot be transferred to another level of care without leaving the facility and disrupting the resident's participation in the community.

In addition, the bill establishes a standard for length of stay that does not take into account the federal mandate that the State's Medicaid program safeguard against unnecessary utilization of care and services funded by the federal-State program. The federal mandate requires medical necessity determinations in intervals that will prevent unnecessary utilization. In the situation of a resident of a special care nursing facility for neurological impairment, the federally approved determination is for discharge upon achievement of maximum benefit from the specialized programming and maximum level of functioning, and when the individual's condition can be appropriately managed in either the community or other forms of institutional care. Reviews are generally twice a year for extended length of stay. These reviews and determinations are required in order to obtain any level of federal funding for such residents. Accordingly, the provisions of the bill should supplement, rather than replace, medical necessity decisions and further, the time between reviews should not exceed 12 months in order to preserve the availability of federal funds for special care nursing facilities for the neurologically impaired.

Finally, I recommend that the bill's provisions define the term "free-standing special care nursing facility" because residents in a special care nursing facility unit specializing in the treatment of neurological impairment, that is a unit attached to or on the same campus as a conventional nursing facility or hospital, could be placed into another level of care without disrupting involvement with the local community.

Therefore, I herewith return Assembly Bill No. 1951 (Second Reprint) and recommend that it be amended as follows:

Page 2, Line 9:

After "nursing facility" insert "specializing in the treatment of neurological impairment"

Page 2, Lines 12-22:

After "facility" delete in their entirety and insert "specializing in the treatment of neurological impairment, shall be eligible to continue to reside in the facility without limitation on the duration of stay, until achievement of the maximum benefit from the specialized programming and maximum level of functioning. A review to determine achievement of maximum benefit and maximum level of functioning shall include whether the resident develops skills leading to a more independent life and continues

to benefit from active participation in community involvement, continuing education, employment in the community, sheltered workshop, extended rehabilitation, complex care and vocational training and whether the level of functioning would deteriorate if moved. Length of stay shall be determined by the Commissioner of Health and Senior Services on the basis of that review."

Page 2, Lines 28-29:

After "residency at a" insert "free-standing" after "special care nursing facility" insert "specializing in the treatment of neurological impairment"; Delete "two years" insert "one year"

Page 2, Line 33:

After "residency at the" insert "free-standing"; after "special care nursing facility" insert "specializing in the treatment of neurological impairment"

Page 2, Line 34:

After "once every" delete "two years" insert "year"

Page 2, Line 36:

After "continued residency at a" insert "free-standing"; after "special care nursing facility" insert "specializing in the treatment of neurological impairment"

Page 2, Line 41:

Delete "'free-standing' means a facility that: is independently incorporated"

Page 3, Lines 1-8:

Delete in their entirety

Page 3, Line 9:

Delete "and distinct special care nursing facility" Insert "'Free-standing special care nursing facility' means a nursing facility that is not a unit attached to or on the same campus as a rehabilitation or acute hospital and is not a distinct"

Page 3, Line 10:

After "facility" insert ", and"

Respectfully,

Christine Todd Whitman
Governor

Attest:

Richard S. Mroz
Chief Counsel to the Governor