



Bob Bennett

## *Bill Analysis*

*Legislative Service Commission*

### **S.B. 227**

127th General Assembly  
(As Introduced)

**Sens. Schuring, Niehaus, Cates, Padgett, Schuler, Grendell**

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#### **BILL SUMMARY**

- Requires the Department of Job and Family Services to pay an annual refund to each nonprofit nursing home that is not certified as a nursing facility and does not participate in the Medicaid program.

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#### **CONTENT AND OPERATION**

##### **Background**

Not all nursing homes participate in the Medicaid program. To participate a nursing home must obtain certification from the Director of Health as a nursing facility and enter into a Medicaid provider agreement with the Director of Job and Family Services. However all nursing homes, not just those that obtain nursing facility certification and participate in Medicaid, are required to pay an annual franchise permit fee. Eighty-four per cent of the revenue raised by the franchise permit fee is required to be used to make Medicaid payments to nursing facilities. The remainder of the revenue must be used to fund the Medicaid program in general, including the Medicaid component known as the PASSPORT program, and the Residential State Supplement (RSS) Program.<sup>1</sup>

The annual franchise permit fee on nursing homes is determined by multiplying \$6.25 by the product of (1) the number of beds licensed as nursing home beds, plus any other beds certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid, on the first day of May of the calendar year in which the fee is determined and (2) the number of days in the

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<sup>1</sup> PASSPORT provides home and community based services to Medicaid recipients age 60 or older who would otherwise qualify for care in a nursing facility. The RSS Program provides limited housing subsidies for recipients of assistance under the federal Supplemental Security Income program for persons with disabilities.

fiscal year beginning on the first day of July of the calendar year in which the fee is determined.<sup>2</sup>

The state receives federal matching funds for qualifying expenditures the state makes under the Medicaid program, including qualifying expenditures paid for by revenue raised by the nursing home franchise permit fee. Historically, the federal government has paid about 60% of Ohio's non-administrative Medicaid costs. However, federal law limits federal financial participation for the Medicaid program when a state receives revenue generated by health-care related taxes.<sup>3</sup> A health-care related tax is a licensing fee, assessment, or other mandatory payment that is related to (1) health care items or services, (2) the provision of, or the authority to provide, the health care items or services, or (3) the payment for the health care items or services.<sup>4</sup> The federal financial participation that a state receives for its Medicaid program is to be reduced by the sum of any revenue received during a fiscal year from health-care related taxes that are deemed impermissible.<sup>5</sup> To avoid being deemed impermissible, a health-care related tax must meet three requirements: it must be broad based, it must be uniformly imposed, and it cannot violate a hold harmless prohibition.<sup>6</sup> A state may obtain a federal waiver of aspects of the broad-based and uniform requirements but not the hold harmless prohibition.<sup>7</sup> State law governing the nursing home franchise permit fee requires the Department of Job and Family Services to take all necessary actions to cease implementation of the franchise permit fee if the United States Centers for Medicare and Medicaid Services determines that the fee is an impermissible health-care related tax.<sup>8</sup>

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<sup>2</sup> The state law governing the nursing home franchise permit fee can be found at Revised Code 3721.50 to 3721.58.

<sup>3</sup> 42 United States Code 1396b(w).

<sup>4</sup> 42 Code of Federal Regulations 433.55.

<sup>5</sup> 42 U.S.C. 1396b(w)(1)(A).

<sup>6</sup> 42 C.F.R. 433.68(b).

<sup>7</sup> 42 U.S.C. 1396b(w)(3)(E) and 42 C.F.R. 433.72(b)(3).

<sup>8</sup> R.C. 3721.51(C).

## The bill

The bill requires the Department of Job and Family Services to pay an annual refund to each nonprofit nursing home<sup>9</sup> that does not obtain certification as a nursing facility and does not participate in the Medicaid program. The refund is to be made with funds appropriated to the Department for the Medicaid program.<sup>10</sup> A nonprofit nursing home's refund is to equal the lesser of the following:

(1) \$6.25 multiplied by the product of (1) the nursing home's licensed bed capacity as of the last day of the previous year and (2) the number of days in the year for which the refund is to be paid;

(2) 50% of the amount the Department would pay the nursing home under the Medicaid program, were the nursing home a Medicaid provider, for Medicaid-covered nursing facility services the nursing home provided the previous year to its residents who are eligible for Medicaid-covered nursing facility services.

The Director of Job and Family Services is required to adopt rules as necessary to implement the bill. The initial rules must be adopted not later than December 21, 2007. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

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## COMMENT

It is possible that the bill could cause the state's franchise permit fee on nursing homes to be deemed an impermissible health-care related tax. This is because the refund the bill requires be paid to nonprofit nursing homes might cause the franchise permit fee to violate the hold harmless prohibition. Federal regulations provide that a taxpayer is considered to be held harmless if any of the following conditions apply: (1) the state imposing the tax provides directly or indirectly for a non-Medicaid payment to those providers or others paying the tax and the amount of the payment is positively correlated to either the amount of the tax or to the difference between the Medicaid payment and the total tax cost, (2) all or any portion of the Medicaid payment to the taxpayer varies based only on the amount of the total tax payment, or (3) the state imposing the tax provides,

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<sup>9</sup> The bill defines "nonprofit nursing home" as a licensed nursing home that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

<sup>10</sup> A state does not receive federal matching funds for payments made to nursing homes that are not certified by the state as meeting federal requirements for nursing facility services. (42 U.S.C. 1396r(g).)

directly or indirectly, for any payment, offset, or waiver that guarantees to hold taxpayers harmless for all or a portion of the tax.<sup>11</sup>

If the franchise permit fee is determined to be an impermissible health-care related tax, the Department of Job and Family Services is required by current state law to cease implementation of the franchise permit fee. The bill does not provide for the Department to cease making the refunds to nonprofit nursing homes if the franchise permit fee is no longer assessed.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-02-07

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<sup>11</sup> 42 C.F.R. 433.68(f).