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**Veto Message: Governor Kunin
1989 (S.28)**

An act relating to setting Medicaid reimbursement rates for nursing homes.

STATE OF VERMONT
Executive Department.
Montpelier, Vt., May 17, 1989

The text of the communication from Her Excellency, the Governor, whereby she vetoed and returned unsigned Senate Bill No.28 to the Senate is as follows:

The Honorable Howard B. Dean
State House
Montpelier, Vermont
Re: S. 28

Dear Lieutenant Governor Dean:

I am returning herewith to the Senate, unsigned and without my approval,

Senate Bill 28, entitled:

An act relating to setting Medicaid reimbursement rates for nursing homes.

I will submit an alternative bill in January which will address in a more effective manner the problems facing nursing homes, including a new method of rate setting which will take into special consideration the nursing homes under greatest stress in the present system. I have a strong commitment to serving Vermont's elderly population in the most appropriate setting. Nursing homes are an essential part of our long-term care system. It is therefore critical that this industry be on a sound financial footing and that Vermont's elderly population receive excellent care.

This bill, unfortunately, does not assure these results and creates serious policy problems.

The bill is unacceptable in its current form for two reasons: It exceeds my spending ceiling, but more importantly, it will have long-term policy consequences on our entire health care payment system. My greatest concern is that S. 28 reverses current policy established by the Legislature and carried out by the administration to impose meaningful cost containment discipline on the nursing home industry. This bill, as written, will have the effect of paying the industry whatever costs are incurred, not only in Vermont, but in surrounding high-cost New England states. In no other sector of our economy do we use something called a 'New England market basket'.

We must address the problems in the industry, but we must do so in a way that is sound from a public policy perspective and that enhances our ability in the future to provide adequate services to the elderly and other Vermont citizens who rely on the state for assistance.

Vermont has made a generous commitment to its elderly population residing in nursing homes. We now spend \$41 million per year on our nursing homes; that is 40 percent of the entire Medicaid budget, which provides health-related services to all needy Vermonters. In 1987, the Legislature added \$380,000 to the Medicaid budget for a special payment to nursing homes, on top of the \$988,000 increase I requested, making a total increase of \$1,368,000. In 1988, we authorized a rebasing for the system, so that all the reasonable costs of operating individual homes would be reflected in their rates. In 1989, we budgeted \$1.6 million for inflationary increases, and we authorized grants totaling \$150,000 to nursing homes for quality of-care projects, which the legislature, at my request, has continued in the coming fiscal year. Our 1990 budget includes an additional \$1.2 million for increased payments to nursing homes.

It is important to note that nursing homes are the only providers in the human services field that are guaranteed a rate increase every year, irrespective of economic conditions or other funding

needs of state government.

The impact of these efforts was summed up in a 1989 study by Peat Marwick,

a national accounting firm, that showed that Vermont is one of the most generous

states in the nation in its reimbursement policies for nursing homes.

The Peat Marwick study said:

'According to a study conducted by the Institute for Health and Aging, Vermont

had the 9th highest reimbursement rate of the 48 continental states in 1986 and one of the ten highest rates since 1982 when Vermont implemented its prospective system.

'In 1986 Vermont's rate was \$51.18 compared with a national average of

\$44.84. In 1988 Vermont ranked 7th highest of 39 states in a Vermont Division of

Rate Setting study.'

Although ranking ninth in nursing home reimbursement rate, Vermont ranked 30th in per capita income. These conclusions indicate that Vermont has acted responsibly compared to other states and compared to our average income (94 percent of the national average). However, I recognize that within the overall reimbursement system, there are a number of nursing homes which are experiencing financial difficulties and need more assistance.

We are committed to maintaining a strong and healthy nursing home industry, particularly small homes in rural areas, while

containing costs. This was also the root of the Legislature's and our efforts to improve the reimbursement system.

For these reasons, I strongly support the policy goals of the bill as expressed in

Section 1:

'It is the policy of this state that rates determined under this chapter should:

(1) provide for quality of care and safety while reasonably containing Medicaid expenditures;

(2) encourage the economically-efficient operation of nursing homes;

(3) provide incentives for less costly, more efficient nursing homes...'

While I supported the Senate version of S. 28, the final version of the bill does not substantiate this policy because of the language in Section 2 ordering the Rate Setting Division of the Agency of Human Services to use a 'New England nursing home market basket' as the inflation factor for setting yearly per diem increases in Medicaid payments for nursing homes.

I consider the use of this market basket factor to be unacceptable public policy for three reasons. First is that the New England nursing home market basket is not constructed or published by the Federal Government— we would have to construct it ourselves. We have little idea of how such an index would have behaved in the past or will behave in the future. We would therefore be tying reimbursements to an index that has no track record.

The second reason is that a New England market basket of any kind gives great weight to those areas of New England that are most populous. Vermont, with four percent of the region's population and a per capita income that is three-quarters of the

regional average, would be forced to maintain an expenditure growth that is simply not reflective of its own economic conditions.

For example, in 1987 average annual pay in Vermont was only 73 percent of

Connecticut's and 79 percent of Massachusetts'. And pay increases in those states exceed increases in Vermont. Average pay rose by five percent in Vermont from 1986 to 1987, while in Connecticut and Massachusetts it rose by 7 1/2 percent — a full 50 percent higher.

Finally, using an industry-specific market basket as a method of determining reimbursements for that industry gives no incentive for cost containment. Any and all cost increases would be passed on and entirely paid for by increases in state reimbursement.

It is critical, in assessing this issue, to understand the important distinction between the inflation rate and a market basket index calculated from a specific industry. The inflation rate reflects the general movement of prices in our economy and for our purposes represents costs that cannot be avoided. The market basket for an industry reflects its overall cost structure, which includes both uncontrollable costs and costs that can — and must — be managed.

Mandating the use of the New England nursing home market basket as the inflation factor will mean that the Division will be forced to simply endorse whatever the industry happens to spend. In fact, the index set forth in S.28 could exceed spending patterns in the nursing home industry in Vermont by factoring in the potentially more rapid rates of cost increases in nursing homes in Massachusetts, Connecticut and Rhode Island.

Although I am returning this bill, I want to assure you that I am committed to working with the Legislature to find an acceptable alternative to the present system. To this end, I will take the following steps:

1. I have today instructed the Secretary of the Agency of Human

Services to establish immediately a program to provide extraordinary relief to any nursing home that is in danger of financial failure due to circumstances beyond its control.

2. I will instruct the Secretary to carry out a reassessment of the entire reimbursement program that will include, as a minimum, consideration of:

(a) The use of severity rating systems to distinguish differences in the severity of illnesses of patients that would generate differential cost pressures on the various homes. This would be similar to the DRG (diagnostic-related group) method used in assessing hospital costs.

(b) The implementation of quality-of-care standards to ensure that whatever the cost and other pressures on the industry, the patients in our homes will receive humane and excellent care.

(c) Formalizing the provision of extraordinary relief for homes in danger of financial failure due to circumstances beyond their control and to provide special assistance to those homes which are meeting essential community needs.

Finally, I want to comment on overall spending. During the session, I stressed the importance of keeping spending growth in Fiscal 1990 under 10 percent, and I indicated that I would take whatever steps were necessary to keep spending under control. Bills passed by the Legislature have appropriated a total of \$600.9 million from the General Fund for Fiscal 1990— growth in spending that exceeds 10 percent. This veto reduces spending to \$600.3 million and brings spending growth back under 10 percent.

I will submit a report and draft legislation to the General Assembly by January 15, 1990.

Sincerely yours,
/s/Madeleine M. Kunin
Governor

No record to override Governor's veto

S.28 1989

Sources: *Journal of the House*, May 7, 1989 (pages 992-997)