ALBANY, NEW YORK

April 21, 1993

12:10 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: Senate will come to order. Senators will find their seats.

If you will please rise with me for the Pledge of Allegiance to the Flag.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

Today, in the absence of clergy, we will bow our heads for a moment of silent prayer.

(Whereupon, there was a moment of silence.)

Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Tuesday, April 20. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Monday, April 19, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Present.

SENATOR PRESENT: Mr. President, would you recognize Senator Holland, please.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: Mr. President, I have two privileged resolutions at the desk. I would like to have the titles of both read and move for immediate adoption.

ACTING PRESIDENT FARLEY: Secretary will read the titles to Senator Holland's resolutions.

THE SECRETARY: Legislative

Resolution, by Senator Holland, recognizing the week of April 18th through the 24th, 1993, as National Volunteer Weak in the state of New York.

Also, Legislative Resolution, by Senator Holland, commemorating Big Brothers Big Sisters Volunteer Appreciation Week, April the 18th through the 24th, 1993.

ACTING PRESIDENT FARLEY: On both resolutions. All those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolutions are adopted.

Senator Present, we have a substitution. What's your pleasure?

SENATOR PRESENT: On the substitution.

ACTING PRESIDENT FARLEY: The Secretary will make the substitution.

THE SECRETARY: On page 7 of today's calendar, Senator Johnson moves to discharge the Committee on Environmental

Conservation from Assembly Bill Number 4009 and substitute the identical Calendar Number 438.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Senator Volker.

SENATOR VOLKER: Mr. President, on page 12, Calendar Number 55, Senate Print Number 1141A, could you please star that bill. Page 12, Calendar 55, 1141A, please star it.

ACTING PRESIDENT FARLEY: The bill is starred at the request of the sponsor.

Senator Present, what's your pleasure?

SENATOR PRESENT: Let's take up the non-controversial calendar, please.

ACTING PRESIDENT FARLEY: Non-controversial.

Secretary will read.

THE SECRETARY: On page 12, Calendar Number 79, by Senator Spano, Senate Bill Number 1411, an act to amend the Mental Hygiene Law, in relation to prohibiting the Office of Mental Health and the Office of Mental

Retardation from requesting certain redundant information.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 32.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 93, by Senator Daly, Senate Bill Number 1106A.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 108, by Senator Holland.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

THE SECRETARY: Calendar Number 139, by Senator Lack, Senate Bill Number 2179, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 32.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 178, by Senator Sears.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 335, by Senator Kuhl, Senate Bill Number 2530, an act to amend the General Business Law, in

relation to automobile auctioneers.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 342, by Senator Lack, Senate Bill Number 3744, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

ACTING PRESIDENT FARLEY: That

bill is passed.

THE SECRETARY: Calendar Number 348, by Senator Present, Senate Bill Number 1655A, an act to amend the Education Law, in relation to the transportation of pupils.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number three-fifty... -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number

378, by Senator Daly, Senate Bill Number 3204.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 388, by Senator Levy, Senate Bill Number 3515A, an act to amend the Education Law, terms of members of the Board of Regents.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 464.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it

aside.

Senator Present, that's the first time through.

SENATOR PRESENT: Let's take up the controversial calendar, please.

ACTING PRESIDENT FARLEY: Controversial. The Secretary will read controversial.

THE SECRETARY: On page 13, Calendar Number 93, by Senator Daly, Senate Bill Number 1106A, Social Services Law, in relation to direct payment of shelter allowances.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Stachowski, you asked for an explanation. Senator Daly.

SENATOR DALY: Mr. President. One of the major contributors to the lack of adequate housing for those who are on welfare is the unwillingness of property owners to rent apartments to people on welfare. Why? Because all too many of them have been burned by the process. And certainly, in many instances, the

tenants leave the apartment owing several months back rent. And the purpose of this bill is to enable landlords, tenants, or district commissioners to have the shelter allowance of home relief recipients paid to the landlords in the form of a direct voucher at the request of either of the aforementioned.

The bill also provides that once home relief is received in the form of a direct payment at the request of either the landlord or the tenant, it cannot again be issued as an unrestricted payment at a later date.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

108, by Senator Holland, Senate Bill Number 263, an act to amend the Public Health Law, in relation to Medicare-distinct parts in nursing facilities.

SENATOR STACHOWSKI: Could you lay it aside temporarily?

ACTING PRESIDENT FARLEY: Lay it aside temporarily. Is that all right, Senator Present?

SENATOR PRESENT: Yes.

THE SECRETARY: Calendar Number 356, by Senator Larkin, Senate Bill Number 3144, an act to amend the Real Property Tax Law and the Public Service Law, in relation to the definition of special franchise property.

SENATOR STACHOWSKI: Can we have this laid aside temporarily also for Senator Oppenheimer?

ACTING PRESIDENT FARLEY: What's the sponsor's pleasure?

SENATOR PRESENT: Temporarily lay it aside.

ACTING PRESIDENT FARLEY: Lay it

aside, temporarily.

THE SECRETARY: Calendar Number 378, by Senator Daly, Senate Bill Number 3204.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Daly.

SENATOR DALY: Mr. President. This bill strengthens the sanctions on home relief recipients who do not comply with the training and employment requirements, and it clarifies that the burden of proof for failure by public assistance recipients to comply with education, training and employment rests with the recipient, and it makes clear that anyone who voluntarily quits his or her job is ineligible for home relief or aid to dependent children benefits for 75 days.

Basically also, Mr. President, what it does, it makes the work relief and jobs program uniform with mandatory job search for home relief requests.

We do add -- I should clarify that with one other point. We do add or change

the fourth sanction. So that one is issued permanently, not 180 days under the present law.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Gold.

SENATOR GOLD: Yes, very briefly. Last year we debated this, and Senator Connor and myself and Senator Halperin, Markowitz, Montgomery, Ohrenstein, Paterson, Smith, Stavisky and Waldon voted in the negative.

I just want to make one comment. I mentioned yesterday on a completely different subject how, you know, sometimes unless you see something with your own eyes, we all know what's out there, but it doesn't crystallize.

There is an opportunity opening up on my staff in New York, and I have already interviewed four gentlemen, each one of whom is totally qualified -- totally qualified -- each one of them could do that job. Isn't even a question. Each one of them goes to one or two interviews a day, a week, or whatever, and is

trying to get a job.

And you start to understand that in this economic time we are not talking about bums, we are not talking about criminals, we are not talking about sleaze. We are talking about men and women just like us who want to work immediately if you get them a job.

Now, I understand what you want to do here, Senator Daly. I understand it. And what I'm talking about is a little bit of an angle from that. All right? And you are going to tell me, I'm sure, one thing has nothing to do with the other, except for one thing. Some of the legislation that we get here, from time to time the expression mean-spirited has been used. I don't want to use words like that. But the point is that for political reasons -- and this isn't Democrat/Republican political reasons, Senator Daly -- we somehow wind up picking on people who are at the lowest ends ever society, most of whom, the huge number of whom want to work, and for some reason our society has failed them.

I can't tell you -- I have a job to give, and I feel guilty that I don't have four jobs. Because there's four men who want to work, and I can't give them a job.

I don't think bills like this are the answer. I understand the kind of frustration, Senator Daly, that you have in putting in the bill, and I know you very well, and there's not a mean bone in your body. But this kind of legislation, I think, is just the wrong way to go.

It would be wonderful if we could spend our time and if some of the Congressmen down there would stop acting like city councilmen and worry about the national picture and the international picture and we get people back to work. If we could do that, I'm telling you a lot of the problems that we deal with day in and day out would fall by the wayside.

So I wanted to make those comments because I really have had a very difficult week meeting with these people because I think it would affect everybody in this

chamber if you had had this same experience. There are wonderful people out there that want to work. It's not a question of training them. They are qualified, and they can't get jobs.

SENATOR DALY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: Really, I agree with everything Senator Gold said. This bill is not out in any way to hurt those people. This bill is aimed at those who are trying to beat the system.

I point out specifically, Senator, that we do not touch the good cause section of the rules and regulations, and there are 18 individual causes that are listed in the rules and regulations which will excuse someone from these sanctions, and we stayed away from those good causes on purpose because we did not want to have this legislation apply to anyone who was trying. I would be the last one -- I would be the last one to try to -- I should say to change the law so that we create even greater

sanctions on those people who are trying. Only those people, really, who are trying to beat the system.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Stavisky.

SENATOR STAVISKY: I rise for the purpose of explaining my vote.

It appears to me that the penalty, the initial penalty of 75 days, does not take into account the possibility that someone will comply with the requirement within five days or six days. And yet if the 75 days is the penalty for being deprived of sustenance, I believe that that situation may not have been addressed by the sponsor of the bill.

Accordingly, I wish to be recorded in the negative.

SENATOR DALY: Mr. President, if I may explain my vote. I mentioned, although I didn't go into depth in my explanation, the fact that really what we're doing is creating the same sanctions in most cases, the first three sanctions, the 75 days that the Senator mentioned, are the same sanctions that we have in all other employment, training and education programs. So this is not something that stands by itself. In this particular case, we have brought them up together.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 378 are Senators Connor, Espada, Gold, Leichter, Markowitz, Mendez, Nolan, Ohrenstein, Smith, and Stavisky.

Ayes 35, nays 11.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Stavisky.

SENATOR STAVISKY: Mr. President. Yesterday, I arrived in the chamber just moments after the adjournment. If I had been in the chamber on Calendar Number 384, I would have asked to be recorded in the negative.

ACTING PRESIDENT FARLEY: The record will so state.

SENATOR STAVISKY: I'm sorry. Forgive me, sir. 385. It was 385, not 384.

ACTING PRESIDENT FARLEY: 385. The record will state.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes. May I be recorded in the negative on Calendar 93. Was that laid aside or did that pass?

ACTING PRESIDENT FARLEY: Which one are you talking about?

SENATOR LEICHTER: Calendar 93 today.

ACTING PRESIDENT FARLEY: It was passed.

SENATOR LEICHTER: It was passed?

ACTING PRESIDENT FARLEY: Yes, sir.

SENATOR LEICHTER: May I be recorded in the negative?

ACTING PRESIDENT FARLEY: Without objection.

Senator Santiago.

SENATOR SANTIAGO: I need to be recorded in the negative for 378.

ACTING PRESIDENT FARLEY: 378, without objection.

Senator Galiber.

SENATOR GALIBER: Record me in the negative.

ACTING PRESIDENT FARLEY: 378?

SENATOR GALIBER: That's correct.

ACTING PRESIDENT FARLEY: Without objection.

Secretary will continue.

THE SECRETARY: Calendar Number 464, by Senator Nozzolio, Senate Bill Number 4195A, an act to amend the Election Law.

SENATOR NOZZOLIO: Mr. President. Is there a message at the desk?

ACTING PRESIDENT FARLEY: No, there is not, sir.

SENATOR NOZZOLIO: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Lay the bill aside.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Can we call up Calendar 356, Senator Larkin's bill that was laid aside temporarily?

ACTING PRESIDENT FARLEY: Secretary will call up 356, by Senator Larkin.

THE SECRETARY: Calendar Number 356, by Senator Larkin, Senate Bill Number 3144, an act to amend the Real Property Tax Law and the Public Service Law, in relation to the

definition of special franchise property.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Larkin.

SENATOR LARKIN: New York has exempt central office equipment of telephone companies from real property tax since the Legislature enacted the exemption back in 1987, Chapter 416, we have had some changes in the technology within the communication industry which calls for the relocation of some of the central office equipment using transformer fiber optic signals to impulses closer to the consumer. This equipment which is located within the approximate distance of its consumers is entitled to the same benefit as if it was stored at their central office. It's just moving the equipment from the central office to give a better response to the consumer.

And with regard to that, any savings in the real property tax that would be

given to the telephone company on this, the Public Service Commission has deemed by this to ensure that any savings go back to the ratepayer and not to the telephone company.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Would the Senator yield for a question?

ACTING PRESIDENT FARLEY: Senator Larkin, would you yield?

SENATOR LARKIN: Yes.

SENATOR OPPENHEIMER: Is this not going to be taking -- offering another tax break?

SENATOR LARKIN: I can't hear you.

SENATOR OPPENHEIMER: Is this not going to be taking the properties off of the tax rolls for the municipal government and offering the tax break at the expense of the municipal government?

SENATOR LARKIN: The total tax cost across the state is $2.5 million. I would

remind the Senator that the 1987 bill that gave the same exemption to this equipment cost $200 million. This 2.5 million will be taken off the local rolls but will be given as a benefit to ratepayers in the telephone system.

SENATOR OPPENHEIMER: Yeah, I understand. Thank you, Senator.

On the bill. It is true that this doesn't entail a great deal of money for many of our communities. Some of my communities will have to bear a $40,000 reduction, and I feel that we have consistently in this Senate and in the Assembly put the burden on the lower levels of government consistently. We are telling them what they must do. We are not supplying money, and we are causing our property tax rolls to increase at an increasing rate every year. I think that -- though this is not a major item, I think it's something that I can not support because it is just a continuation of the reductions which are causing municipal governments to increase the property taxation on local residents, and I think it's time we took a

stand.

I vote no.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 356 are Senators Cook, Farley, Johnson, Jones, Markowitz, Oppenheimer, Pataki, Seward and Stachowski. Ayes 39, nays 9.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR MARKOWITZ: Mr. President.

ACTING PRESIDENT FARLEY: Senator Markowitz.

SENATOR MARKOWITZ: May I have unanimous approval to vote in the negative on Calendar Number 93, please?

ACTING PRESIDENT FARLEY: Without objection, Senator Markowitz in the negative on Calendar 93.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Calendar 108.

ACTING PRESIDENT FARLEY: 108. Secretary will read it.

THE SECRETARY: Calendar Number 108, by Senator Holland, Senate Bill Number 263, an act to amend the Public Health Law, in relation to Medicare-distinct parts in nursing facilities.

ACTING PRESIDENT FARLEY: Explanation. Senator Holland.

SENATOR HOLLAND: Yes, Mr. President. In New York State today, all nursing home beds must be certified both Medicaid and Medicare. This bill would allow nursing homes to set up separate units for Medicare, thereby allowing higher reimbursement from the federal government and less reimbursement by the state government saving us money.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Leichter.

SENATOR LEICHTER: Senator Holland, if you would be so good as to yield?

SENATOR HOLLAND: Yes, sir.

SENATOR LEICHTER: Yes, I'm trying to understand how that's going to save money for the state. I'm not challenging your conclusion, but I would like to understand it. Could you just run us through that, please?

SENATOR HOLLAND: It would allow separate units to be set up within the facilities, and the accounting will just be Medicare rather than Medicaid; therefore, the federal government will pay for those units rather than the state government contributing.

SENATOR LEICHTER: But, Senator, it's my understanding now that if somebody is Medicare-eligible irrespective of the unit that they are in, doesn't the federal government cover that by Medicare?

SENATOR HOLLAND: To a degree you

are correct, Senator, but it will bring more money into the state of New York.

SENATOR LEICHTER: That's what we're trying to understand and, you know, it's nice to have you say, "This is going to bring in more money," explanation is finished. But how will it bring in more money?

I'm trying to understand how it will bring in more money. Because Medicare eligibility and Medicare payments aren't deter mined by which part of a nursing home you're in or whether you call it this is the Medicare wing as distinguished from the Medicaid wing.

SENATOR HOLLAND: I understand that the cost is just based on the Medicare patient; therefore, the federal government will be paying more money.

SENATOR LEICHTER: If you'll be good enough to continue to yield, Senator Holland?

SENATOR HOLLAND: Sure.

SENATOR LEICHTER: So what you are telling us is that you can establish -

within the same home, you can establish a Medicare rate and a Medicaid rate, and that the Medicare rate could conceivably be higher than the Medicaid rate?

SENATOR HOLLAND: Yes, that's true, Senator.

SENATOR LEICHTER: Now, one thing I -

SENATOR HOLLAND: Go ahead.

SENATOR LEICHTER: I just wanted to give your counsel a chance to speak to you about it.

One of the things that I'm concerned about is will there be different levels of care? Are we then saying, well, the federal government is paying for these people so we're going to try to get that rate up higher? We'll give more care. We'll have more nurses. We'll give better food. The others, Medicaid, will be receiving a different level care. Is that a possibility as a result of this bill?

SENATOR HOLLAND: No, Senator, that is not true. They will both be receiving

the same level of care. And before any nursing home goes into this program, they must prepare and have the Commissioner approve a policy that outlines the level of care that they are to get, the transfer and discharge policies, and the patient's rights. The level of care will be the same.

SENATOR LEICHTER: Senator, I don't see anything in the bill which states that the level of care must be the same. You say that they must submit a plan, but you don't say necessarily that it has to have the same level of care. I think, inevitably, you are going to have to have a different level of care, and I will tell you why. Because what you are really saying is that if you have a nursing home and you have homogenized rates for Medicaid and Medicare that the Medicaid rates, I assume, track the Medicare, or the other way about. In any event, they are locked together.

Now, as I understand this bill, you are trying to unlock it. And I want to just add here at this point that I have a lot of

trouble understanding Medicare/Medicaid, and I haven't really looked into it. Obviously, you are a chair of a committee. I assume you have.

But it seems to me that what you are trying to do is to separate the two and get the fed's to set a separate rate. Because, presently, you still have the fed's paying for people who are Medicare eligible. Isn't that the case?

SENATOR HOLLAND: Yes.

SENATOR LEICHTER: So what you are doing is trying to get a separate rate so that in some way that presently, let's say for the sake of argument, in that home why, the reimbursement rate for both Medicare and Medicaid patients is $100. Now, what you are trying to do is maybe get the fed's to pay 120 whereas the state will be paying only $100 for the Medicaid people. So isn't that - inevitably, isn't somebody in the fed's -- they are not all dopes. I mean somebody is going to say, "Wait a second. The state is paying 100. They want us to pay 120. Let's go in there."

If the level of care is the same, wouldn't the fed's at that point say, "Wait a second. Why should we be paying more reimbursement than the state is paying under Medicaid if the level of care is the same?"

SENATOR HOLLAND: I'm not sure that the level of care is always the same. The need is always the same, Senator.

SENATOR LEICHTER: Well, Senator, that was my point initially that this bill may very well lead to a differential in care.

SENATOR HOLLAND: But if -- go ahead. You've got the floor.

SENATOR LEICHTER: That you are going to have different services for people who are Medicare eligible than people who are Medicaid eligible.

SENATOR HOLLAND: O.K., but -

SENATOR LEICHTER: You concede now that that is the case.

SENATOR HOLLAND: I do. But it depends upon the needs of the individuals. They will receive the quality of care necessary

depending upon their need. And I'm sure that the federal government will not reimburse us and will still maintain -- still continue to check and see if those needs are met as we do.

SENATOR LEICHTER: Well, all that you are saying, Senator, is that basic needs - obviously, you have to meet the basic requirements, but you will now have two levels of care and Medicare people will receive a better level of care. I must tell you I am disturbed about that. Has the Health Department commented on your bill, Senator?

SENATOR HOLLAND: No. No, they have not.

SENATOR LEICHTER: All right.

SENATOR HOLLAND: But I want to repeat that the Commissioner is required to approve a policy before any nursing home goes into this.

SENATOR LEICHTER: I understand that. Thank you, Senator, and I appreciate that you and I had an opportunity to discuss the bill, because it's certainly much clearer on my

part, and while -- well, I think what it shows is essentially the statement that you initially made that it's going to save money for the state is just not so. It may bring in more money to the nursing home, and it may -- not may -- but as you concede, it will lead to a differentiation in the level of care between Medicaid and Medicare because you conceded unless there was that differentiation the fed's are not going to pay more for the Medicare than we pay for the Medicaid. So I must say, Senator, there are no savings that I see whatsoever for the state whatsoever in this plan.

And I know we're dealing in a very murky, complex, difficult area and you know much more about it than I do, but certainly as I understand the bill now and as you have explained it, that very nice statement you made which made us all feel good, "Hey, this bill is going to save money for the state," really doesn't show up on examination and you are leading to what I think is somewhat troublesome

of whether we want to have two levels of care in nursing homes.

So I would respectfully suggest, Senator, that this bill may need more study.

ACTING PRESIDENT FARLEY: Senator Cook.

SENATOR COOK: Senator Holland, if you would yield and help me understand. Correct me if I'm incorrect on what I'm going to say because I think I know what I'm talking about, but I stand to be corrected.

Senator Leichter, I believe the situation is this, that in the nursing home the needs of the population are considered relative to the needs of the residents of the home. I think that's what the RUGS rate basically is. It's according to the needs of the residents of the home.

What this proposes to do, I believe, is to differentiate that population of the given home into two segments. There will be a Medicare segment and a Medicaid segment, and rates will be established separately according

to the two. The assumption is that the needs level, the RUGS rate for the federal government would be higher because the level of care needed for those people would be higher. The average level of care needed for the non-Medicare population would be somewhat lower. That would permit the Medicaid rate to go down.

You don't end up with any differential in total income for the nursing home. What you do, however, is you have the federal government paying for the higher level of care that is necessary for the Medicare population as opposed to the Medicaid population.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Will Senator Cook yield?

SENATOR COOK: Yes.

SENATOR LEICHTER: But, Senator, the level of care is not determined whether you

are on Medicare or whether you are on Medicaid. The level of care is determined by how sick you are, how infirm you are.

SENATOR COOK: Mr. President. Senator, I think you are looking at it backwards because you don't begin with the rate at the top and go down. You start with each patient, and you, in effect, survey what the care needs are for the patient in a nursing home. Not all nursing homes would get the same RUGS rate depending -- of wherever they are. It depends on the level of service they need.

So that's where you start. You provide the level of service needed, level of care needed by the patient, and that's where the rate is established. It's based on the severity of the cases within that nursing home.

So, Senator, it could be conceivable in some cases, I guess, where the Medicare rate could actually be lower and the Medicaid rate higher because it's based upon - on a survey of the actual patients. It's not an assumption that you are going to give less care

to somebody. It's based on an actual survey that less care is actually needed by those patients that are there, and that's why you end up with a lower rate.

Am I basically correct?

SENATOR HOLLAND: Yes.

SENATOR LEICHTER: But, again, Senator Cook, the fact is that if you determine -- if you end up that all of the Medicaid patients require greater care than the Medicare patients, which may often be the case because they by and large tend to be a poorer population, then under no circumstance will there be any saving even for the home. So it's hard to understand.

I think essentially as I -- I think as this bill becomes clearer, I think you are making a distinction between Medicare and Medicaid which I think may be unfortunate, and you are also I think in a sense going to stigmatize people who are on Medicaid. Then what happens if somebody who is on Medicare may lose that Medicare eligibility? And then, what,

move to Medicaid? I think you are setting up a double standard here. And certainly one thing is clear. There is no saving to the state.

SENATOR COOK: Mr. President.

ACTING PRESIDENT FARLEY: Senator Cook.

SENATOR COOK: Try one more time. Let's assume we are all in a nursing home, the 61 of us. Everybody on that side of the aisle needs a catheter that has to be changed all the time. Okay. Nobody on this side does. When you determine the RUGS rate, currently, you take all of those costs of all of these patients and you mix them all together and you say the average cost of caring for a patient in this nursing home is a certain level depending on whether they need the catheter or they don't need it, because it's based on an average level of care in the facility.

What this attempts to do is say all the people on that side of the room happen to be Medicare eligible. So you are going to compute their rate separately from the people on

this side of the aisle who are not Medicaid eligible. However, what happens is because you now all need catheters and we don't and therefore the rate is higher on your side, you still get your catheters. You get reimbursed for a higher rate, and you happen to be in Medicare because the federal government is paying it. All of us on this side who don't have the catheters are getting reimbursed Medicaid rates which will be lower. So let's say it's $100. You are paying an average of $100 a day for everybody in the room. You may end up with a Medicare rate now being 125, the Medicaid rate being 75, because of the different level of care required for those patients. But when you average it all up, it's still $100 per patient for the whole nursing home.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Senator Cook, I think I followed you, but you are talking about catheters which are a supply. Would it be the

same, for example, let's say everybody on that side of the aisle needed deep psychiatric care and the people on this side -

(Laughter.)

SENATOR COOK: Same principle. Same principle.

ACTING PRESIDENT FARLEY: Same principle.

Senator Onorato.

SENATOR ONORATO: I don't know who wants to tackle this, Senator Holland or Senator Cook. What happens eventually -- we know when we're dealing with nursing homes that the mix is Medicare and Medicaid. What happens is eventually most Medicare patients do become Medicaid somewhere down the line when their funds are exhausted. How does that now affect the rates when they start -- originally, you went into the nursing home, you had 50 Medicare and 100 Medicaid. Now you got 140 Medicaid and 10 Medicare. Do you have to constantly readjust the rates for the nursing home or not?

ACTING PRESIDENT FARLEY: Senator

Cook.

SENATOR COOK: Mr. President. You click over onto whatever your eligibility is. I believe that the surveys are done periodically. The RUGS rate is established. I'm not sure how often the survey is done, but periodically the patients within the nursing home are surveyed. So the next year when they came around and surveyed all the patients who are in the Medicaid section, that person who had moved into Medicaid would be apart of that survey for establishing the Medicaid rate rather than the part of the group that was used in surveying for the Medicare rate.

ACTING PRESIDENT FARLEY: You can read the last section.

I'm sorry. Somebody? Oh, I'm sorry, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. Would Senator Holland yield for a question?

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR MONTGOMERY: Thank you, Senator Holland, I'm a little bit confused. The way that you and Senator Cook have been discussing what happens when you separate out the Medicare and the Medicaid is that it's primarily a fiscal action that is required, and so it's basically paper that we're talking about that we need to establish which beds are Medicare and which are Medicaid.

So your bill seems to establish segregated units, however, and force the facility to respond by physically segregating the beds themselves. And I'm just wondering why you feel it necessary to establish this kind of segregation among the patients in the nursing home.

SENATOR HOLLAND: They do have to be separated, Senator, as you say. We feel it would be a savings for the nursing home and, overall, for the state as well. That's our thrust.

SENATOR MONTGOMERY: If they are required to physically segregate the beds?

SENATOR HOLLAND: They are required.

SENATOR MONTGOMERY: In other words, we can't get the differential in reimbursement unless the beds are physically segregated?

SENATOR HOLLAND: That is true, Senator, and that is the reason or one of the reasons that the facility has to have a plan approved by the Commissioner with regard to transfers if this proposal is accepted. It has to be agreeable to the Commissioner.

SENATOR MONTGOMERY: Mr. President, if I may pursue that?

ACTING PRESIDENT FARLEY: Senator Montgomery.

SENATOR MONTGOMERY: In order to get the reimbursement at a higher rate, it is not simply that one bed, A, because it's a Medicare patient receives a different rate of reimbursement than bed B because that patient is a Medicaid patient? Is that not the case?

SENATOR HOLLAND: They have to be

physically separated. If could be the next room or the next aisle, but they have to be physically separated.

SENATOR MONTGOMERY: Mr. President. If Senator Holland would allow me I would like to ask, then, why do you establish units? Why is it necessary to establish units?

SENATOR HOLLAND: Federal regulations, Senator. But just indicating the separate areas, that's all it means.

SENATOR MONTGOMERY: The Medicare rate indicates a higher level of service?

SENATOR HOLLAND: Yes.

SENATOR MONTGOMERY: For that patient?

SENATOR HOLLAND: Yes.

SENATOR MONTGOMERY: But it also requires that patient to be in a different room?

SENATOR HOLLAND: Yes.

SENATOR MONTGOMERY: And a different wing of -

SENATOR HOLLAND: Not necessarily

a different wing. It could be the next bed. They could just move the bed to a separate area, a distinct unit, a distinct area.

SENATOR MONTGOMERY: Mr. President, if Senator Holland would yield?

I would like to ask you if the facility -- if you anticipate based on this legislation that the facility would then begin to diminish the number of Medicaid beds because of the higher rate of reimbursement to Medicare and, therefore, we may lose a number of Medicaid beds in the state?

SENATOR HOLLAND: Hasn't been the case, Senator. I don't see that. It really depends upon the census. Eighty percent of clients in nursing homes are Medicaid today and historically.

SENATOR MONTGOMERY: They are today?

SENATOR HOLLAND: Yes.

SENATOR MONTGOMERY: But assuming that the nursing home is interested in balancing its books, do you anticipate that it may be -

they may see it in their interest to reduce the number of Medicaid beds, make smaller units for Medicaid beds and larger units for Medicare? Is that conceivable?

SENATOR HOLLAND: It is conceivable, I guess, Senator.

SENATOR MONTGOMERY: Okay. Thank you, Senator Holland.

Mr. President, just on the bill briefly.

ACTING PRESIDENT FARLEY: Senator Montgomery on the bill.

SENATOR MONTGOMERY: I think based that on the debate on the floor and certainly Senator Holland's own acknowledgement that we may lose, in fact, Medicaid beds and that we're now asking nursing homes to have separate units, and it's conceivable that we may have two units dedicated to Medicare and one unit dedicated to Medicaid, because there's more income based on the Medicare, the number of Medicare beds, and so I would urge, Senator Holland, to think very carefully about the

possible consequences of this.

Because, one, we're segregating patients within the same facility and, two, there is a possibility that we're going to lose the mix of nursing home beds that we currently have because nursing homes will see it in their interest not to serve Medicaid patients as equal priority to Medicare patients.

So I hope that Senator Holland will rethink this and that we're able to come up with a solution that does not require us to segregate patients in any nursing home in the state.

(Whereupon, Senator Mega was in the chair.)

ACTING PRESIDENT MEGA: Senator Espada.

SENATOR ESPADA: Yes, Mr. President. Would Senator Holland yield for a question, please?

ACTING PRESIDENT MEGA: Senator Holland, will you yield?

SENATOR HOLLAND: Yes, I will.

ACTING PRESIDENT MEGA: Senator yields.

Senator Espada.

SENATOR ESPADA: Senator Holland, I'm advised that RUGS 3 will probably answer some of the questions with respect to these distinctions. They are due to take effect this summer. Why not wait that out and see the full implementation of the new federal initiative there?

SENATOR HOLLAND: It's a probability what you say, that RUGS 3 will assist. But they have been slow in implementing RUGS 3 and we just wanted to move ahead.

SENATOR ESPADA: Mr. President, if I might follow up.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MEGA: You may.

SENATOR ESPADA: Having heard the possible ramifications that are not -- it is not the legislative intent of this sponsor, I'm sure. But I tell you coming from a health care background, unfortunately what drives much of

the treatment plans, the quality of the treatment plans, is the reimbursement, is the amount of money received at the other end of the treatment phase. That's unfortunate, but it's a real truism in our industry. And I would ask you to please take into account that perhaps in terms of balancing these equities, it may very well be worth our while to wait and see the full impact of RUGS 3. I ask you to please consider that.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 2. This act -

ACTING PRESIDENT MEGA: Oh, Senator Jones. I apologize.

SENATOR JONES: That's okay.

ACTING PRESIDENT MEGA: Senator Jones.

SENATOR JONES: Will Senator Holland yield for another question?

ACTING PRESIDENT MEGA: Senator Holland, do you yield?

Senator yields.

Senator Jones.

SENATOR JONES: Thank you. I'm still trying to get this straightened out in my mind, and I have to admit at this point my heart is also getting involved since I have a 92-year-old mother, and I'm trying to picture these two sections here. But is there not a problem today that the number of people -- there are many people in hospitals. I believe that was a major concern during the budget process that there are people waiting for nursing home beds. Is that not correct?

SENATOR HOLLAND: That's true, yes, Senator.

SENATOR JONES: Okay. Now, my next question is, does the nursing home at some point make a distinction? I'm not sure whether it would be on the number of patients there or whatever. We have, let's say, 30 Medicare beds, 40 Medicaid beds. Would it be something like that?

SENATOR HOLLAND: I assume that

would be in the policy that is approved by the Commissioner, yes, Senator.

SENATOR JONES: Okay. Then I guess I'm wondering would that not then create an additional problem if these nursing homes then cut down on the number of Medicaid beds? What would then happen to the people awaiting these beds in hospitals?

SENATOR HOLLAND: I wouldn't -- I wouldn't -- I want to go back to what Senator Montgomery said. You know, it's just a possibility. I don't think this is really going to happen. And I also believe that if there was a necessity to change the number of beds, the Commissioner would be more than willing to change the number of beds. I don't think we're going to leave any beds unoccupied if we can put people into them and help the people.

SENATOR JONES: Okay. Would the Senator just yield to one more question?

ACTING PRESIDENT MEGA: Senator yields.

SENATOR JONES: In other words,

you're saying, then, that this decision can be changed at any point by a nursing home. Say they needed to change the mix, 30/40, or whatever it could. There would not be a time frame that this would have to happen.

SENATOR HOLLAND: Yes.

SENATOR JONES: Thank you, Senator.

ACTING PRESIDENT MEGA: Are there any other questions or any comments on Senator Holland's bill?

If not, read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: Senator Smith to explain her vote.

SENATOR SMITH: Thank you, Mr. President. As a former administrator in a nursing home, I'm greatly concerned about the segregation that this bill would create,

especially since I have been privy to how skilled nursing facility beds and health-related beds have been traded off for the sake of finances. And in communities such as those that I represent, the majority of the people are clearly Medicaid eligible and not Medicare eligible. And I've even watched as people are accepted from hospitals into nursing homes and how the evaluations process can be skewed to take in only those that can be easily taken care of. So this raises an even greater concern, and, therefore, I must vote in the negative. And I urge my colleagues to join me.

ACTING PRESIDENT MEGA: Negatives please raise your hand.

Senator Santiago to explain her vote.

SENATOR SANTIAGO: I would like to ask for unanimous consent to be excused from the vote, please.

ACTING PRESIDENT MEGA: Without objection.

THE SECRETARY: Those recorded in

the negative on Calendar Number 108 are Senators Connor, Espada, Galiber, Jones, Leichter, Markowitz, Montgomery, Paterson and Smith. Ayes 42, nays 9.

ACTING PRESIDENT MEGA: The bill is passed.

Senator Present, that concludes the calendar.

SENATOR PRESENT: Mr. President, would you recognize Senator Paterson, please?

ACTING PRESIDENT MEGA: Senator Paterson.

SENATOR PATERSON: Thank you, Senator President -- Senator Present and Mr. President. With unanimous consent, I would like to be recorded in the negative on Calendar Number 378.

ACTING PRESIDENT MEGA: Without objection.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT MEGA: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr.

President. I would like also unanimous consent to be recorded in the negative also on 378.

ACTING PRESIDENT MEGA: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEGA: Senator Present. Stand at ease temporarily.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT MEGA: Senator Present.

SENATOR PRESENT: There being no further business, I move we adjourn until Monday, April 26, at 2:30 p.m., intervening days to be legislative days.

ACTING PRESIDENT MEGA: So ordered.

(Whereupon, at 1:06 p.m., the Senate adjourned.)