



General Assembly

Amendment

February Session, 2004

LCO No. 2765

HB0500402765HDO

Offered by:

REP. VILLANO, 91st Dist.

SEN. HANDLEY, 4th Dist.

To: Subst. House Bill No. 5004

File No. 33

Cal. No. 69

**"AN ACT CONCERNING THE ADMISSION AND CARE OF
PATIENTS IN NURSING HOMES."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 17b-340 of the general statutes,
4 as amended by section 50 of public act 03-3 of the June 30 special
5 session, is repealed and the following is substituted in lieu thereof
6 (*Effective from passage*):

7 (a) The rates to be paid by or for persons aided or cared for by the
8 state or any town in this state to licensed chronic and convalescent
9 nursing homes, chronic disease hospitals associated with chronic and
10 convalescent nursing homes, rest homes with nursing supervision and
11 to licensed residential care homes, as defined by section 19a-490, as
12 amended, and to residential facilities for the mentally retarded which
13 are licensed pursuant to section 17a-227, as amended, and certified to

14 participate in the Title XIX Medicaid program as intermediate care
15 facilities for the mentally retarded, for room, board and services
16 specified in licensing regulations issued by the licensing agency shall
17 be determined annually, except as otherwise provided in this
18 subsection, after a public hearing, by the Commissioner of Social
19 Services, to be effective July first of each year except as otherwise
20 provided in this subsection. Such rates shall be determined on a basis
21 of a reasonable payment for such necessary services, which basis shall
22 take into account as a factor the costs of such services. Cost of such
23 services shall include [(1)] reasonable costs mandated by collective
24 bargaining agreements with certified collective bargaining agents or
25 other agreements between the employer and employees, provided
26 "employees" shall not include persons employed as managers or chief
27 administrators or required to be licensed as nursing home
28 administrators, and [(2)] compensation for services rendered by
29 proprietors at prevailing wage rates, as determined by application of
30 principles of accounting as prescribed by said commissioner. Cost of
31 such services shall not include amounts paid by the facilities to
32 employees as salary, or to attorneys or consultants as fees, where the
33 responsibility of the employees, attorneys, or consultants is to
34 persuade or seek to persuade the other employees of the facility to
35 support or oppose unionization. Nothing in this subsection shall
36 prohibit inclusion of amounts paid for legal counsel related to the
37 negotiation of collective bargaining agreements, the settlement of
38 grievances or normal administration of labor relations. The
39 commissioner may, in his discretion, allow the inclusion of
40 extraordinary and unanticipated costs of providing services which
41 were incurred to avoid an immediate negative impact on the health
42 and safety of patients. The commissioner may, in his discretion, based
43 upon review of a facility's costs, direct care staff to patient ratio and
44 any other related information, revise a facility's rate for any increases
45 or decreases to total licensed capacity of more than ten beds or changes
46 to its number of licensed rest home with nursing supervision beds and
47 chronic and convalescent nursing home beds. The commissioner may
48 so revise a facility's rate established for the fiscal year ending June 30,

49 1993, and thereafter for any bed increases, decreases or changes in
50 licensure effective after October 1, 1989. Effective July 1, 1991, in
51 facilities which have both a chronic and convalescent nursing home
52 and a rest home with nursing supervision, the rate for the rest home
53 with nursing supervision shall not exceed such facility's rate for its
54 chronic and convalescent nursing home. All such facilities for which
55 rates are determined under this subsection shall report on a fiscal year
56 basis ending on the thirtieth day of September. Such report shall be
57 submitted to the commissioner by the thirty-first day of December. The
58 commissioner may reduce the rate in effect for a facility which fails to
59 report on or before such date by an amount not to exceed ten per cent
60 of such rate. The commissioner shall annually, on or before the
61 fifteenth day of February, report the data contained in the reports of
62 such facilities to the joint standing committee of the General Assembly
63 having cognizance of matters relating to appropriations. For the cost
64 reporting year commencing October 1, 1985, and for subsequent cost
65 reporting years, facilities shall report the cost of using the services of
66 any nursing pool employee by separating said cost into two categories,
67 the portion of the cost equal to the salary of the employee for whom
68 the nursing pool employee is substituting shall be considered a
69 nursing cost and any cost in excess of such salary shall be further
70 divided so that seventy-five per cent of the excess cost shall be
71 considered an administrative or general cost and twenty-five per cent
72 of the excess cost shall be considered a nursing cost, provided if the
73 total nursing pool costs of a facility for any cost year are equal to or
74 exceed fifteen per cent of the total nursing expenditures of the facility
75 for such cost year, no portion of nursing pool costs in excess of fifteen
76 per cent shall be classified as administrative or general costs. The
77 commissioner, in determining such rates, shall also take into account
78 the classification of patients or boarders according to special care
79 requirements or classification of the facility according to such factors
80 as facilities and services and such other factors as he deems reasonable,
81 including anticipated fluctuations in the cost of providing such
82 services. The commissioner may establish a separate rate for a facility
83 or a portion of a facility for traumatic brain injury patients who require

84 extensive care but not acute general hospital care. Such separate rate
85 shall reflect the special care requirements of such patients. If changes
86 in federal or state laws, regulations or standards adopted subsequent
87 to June 30, 1985, result in increased costs or expenditures in an amount
88 exceeding one-half of one per cent of allowable costs for the most
89 recent cost reporting year, the commissioner shall adjust rates and
90 provide payment for any such increased reasonable costs or
91 expenditures within a reasonable period of time retroactive to the date
92 of enforcement. Nothing in this section shall be construed to require
93 the Department of Social Services to adjust rates and provide payment
94 for any increases in costs resulting from an inspection of a facility by
95 the Department of Public Health. Such assistance as the commissioner
96 requires from other state agencies or departments in determining rates
97 shall be made available to him at his request. Payment of the rates
98 established hereunder shall be conditioned on the establishment by
99 such facilities of admissions procedures which conform with this
100 section, section 19a-533, as amended, and all other applicable
101 provisions of the law and the provision of equality of treatment to all
102 persons in such facilities. The established rates shall be the maximum
103 amount chargeable by such facilities for care of such beneficiaries, and
104 the acceptance by or on behalf of any such facility of any additional
105 compensation for care of any such beneficiary from any other person
106 or source shall constitute the offense of aiding a beneficiary to obtain
107 aid to which he is not entitled and shall be punishable in the same
108 manner as is provided in subsection (b) of section 17b-97. For the fiscal
109 year ending June 30, 1992, rates for licensed residential care homes and
110 intermediate care facilities for the mentally retarded may receive an
111 increase not to exceed the most recent annual increase in the Regional
112 Data Resources Incorporated McGraw-Hill Health Care Costs:
113 Consumer Price Index (all urban)-All Items. Rates for newly certified
114 intermediate care facilities for the mentally retarded shall not exceed
115 one hundred fifty per cent of the median rate of rates in effect on
116 January 31, 1991, for intermediate care facilities for the mentally
117 retarded certified prior to February 1, 1991. [Notwithstanding any
118 provision of this section, the Commissioner of Social Services shall not

119 adjust an annual rate for a licensed chronic and convalescent nursing
120 home or a rest home with nursing supervision set for the fiscal years
121 ending June 30, 2004, and June 30, 2005, for any reason other than to:
122 (1) Reflect a percentage increase in subsection (f) of this section; (2)
123 lower a rate; or (3) allow the inclusion of extraordinary and
124 unanticipated costs in accordance with this subsection.]
125 Notwithstanding any provision of this section, the Commissioner of
126 Social Services may, within available appropriations, provide an
127 interim rate increase for a licensed chronic and convalescent nursing
128 home or a rest home with nursing supervision for rate periods no
129 earlier than April 1, 2004, only if the commissioner determines that the
130 increase is necessary to avoid the filing of a petition for relief under
131 Title 11 of the United States Code; imposition of receivership pursuant
132 to sections 19a-541 to 19a-549, inclusive, as amended; or substantial
133 deterioration of the facility's financial condition that may be expected
134 to adversely affect resident care and the continued operation of the
135 facility, and the commissioner determines that the continued operation
136 of the facility is in the best interest of the state. The commissioner shall
137 consider any requests for interim rate increases on file with the
138 department from passage of this act and those submitted subsequently
139 for rate periods no earlier than April 1, 2004. When reviewing a rate
140 increase request the commissioner shall, at a minimum, consider: (1)
141 Existing chronic and convalescent nursing home or rest home with
142 nursing supervision utilization in the area and projected bed need; (2)
143 physical plant long-term viability and the ability of the owner or
144 purchaser to implement any necessary property improvements; (3)
145 licensure and certification compliance history; and (4) reasonableness
146 of actual and projected expenses, but shall not consider the immediate
147 profitability of the operation of the facility. No rate shall be increased
148 pursuant to this subsection in excess of one hundred fifteen per cent of
149 the median rate for the facility's peer grouping, established pursuant to
150 subdivision (2) of subsection (f) of this section, unless recommended
151 by the commissioner and approved by the Secretary of the Office of
152 Policy and Management after consultation with the commissioner.
153 Such median rates shall be published by the Department of Social

154 Services not later than April first of each year. In the event that a
155 facility granted an interim rate increase pursuant to this section is sold
156 or otherwise conveyed for value to an unrelated entity less than five
157 years after the effective date of such rate increase, the rate increase
158 shall be deemed rescinded and the department shall recover an
159 amount equal to the difference between payments made for all affected
160 rate periods and payments that would have been made if the interim
161 rate increase was not granted. The commissioner may seek recovery
162 from payments made to any facility with common ownership. With
163 the approval of the Secretary of the Office of Policy and Management,
164 the commissioner may waive recovery and rescission of the interim
165 rate for good cause shown that is not inconsistent with this section,
166 including, but not limited to, transfers to family members that were
167 made for no value. The commissioner shall provide written quarterly
168 reports to the joint standing committees of the General Assembly
169 having cognizance of matters relating to human services and
170 appropriations and the budgets of state agencies and to the select
171 committee of the General Assembly having cognizance of matters
172 relating to aging, that identify each facility requesting an interim rate
173 increase, the amount of the requested rate increase for each facility, the
174 action taken by the commissioner and the secretary pursuant to this
175 subsection, and estimates of the additional cost to the state for each
176 approved interim rate increase. Notwithstanding any provision of the
177 general statutes, on and after July 1, 2005, the commissioner shall not
178 provide an interim rate increase for a licensed chronic and
179 convalescent nursing home or a rest home with nursing supervision.
180 Nothing in this subsection shall prohibit the commissioner from
181 increasing the rate of a licensed chronic and convalescent nursing
182 home or a rest home with nursing supervision for allowable costs
183 associated with facility capital improvements or increasing the rate in
184 case of a sale of a licensed chronic and convalescent nursing home or a
185 rest home with nursing supervision, pursuant to subdivision (16) of
186 subsection (f) of this section, if receivership has been imposed on such
187 home."

This act shall take effect as follows:	
Section 1	<i>from passage</i>