



General Assembly

January Session, 2009

**Committee Bill No. 401**

LCO No. 4649

\*04649SB00401PH\_\*

Referred to Committee on Public Health

Introduced by:  
(PH)

**AN ACT CONCERNING THE ESTABLISHMENT OF AN IMPROVED  
REIMBURSEMENT METHODOLOGY FOR NURSING HOME  
FACILITIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 17b-340 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2009*):

4 (a) The rates to be paid by or for persons aided or cared for by the  
5 state or any town in this state to licensed chronic and convalescent  
6 nursing homes, to chronic disease hospitals associated with chronic  
7 and convalescent nursing homes, to rest homes with nursing  
8 supervision, to licensed residential care homes, as defined by section  
9 19a-490, and to residential facilities for the mentally retarded which are  
10 licensed pursuant to section 17a-227 and certified to participate in the  
11 Title XIX Medicaid program as intermediate care facilities for the  
12 mentally retarded, for room, board and services specified in licensing  
13 regulations issued by the licensing agency shall be determined  
14 annually, except as otherwise provided in this subsection, after a  
15 public hearing, by the Commissioner of Social Services, to be effective

16 July first of each year except as otherwise provided in this subsection.  
17 Such rates shall be determined on a basis of a reasonable payment for  
18 such necessary services, which basis shall take into account as a factor  
19 the costs of such services. Cost of such services shall include  
20 reasonable costs mandated by collective bargaining agreements with  
21 certified collective bargaining agents or other agreements between the  
22 employer and employees, provided "employees" shall not include  
23 persons employed as managers or chief administrators or required to  
24 be licensed as nursing home administrators, and compensation for  
25 services rendered by proprietors at prevailing wage rates, as  
26 determined by application of principles of accounting as prescribed by  
27 said commissioner. Cost of such services shall not include amounts  
28 paid by the facilities to employees as salary, or to attorneys or  
29 consultants as fees, where the responsibility of the employees,  
30 attorneys, or consultants is to persuade or seek to persuade the other  
31 employees of the facility to support or oppose unionization. Nothing  
32 in this subsection shall prohibit inclusion of amounts paid for legal  
33 counsel related to the negotiation of collective bargaining agreements,  
34 the settlement of grievances or normal administration of labor  
35 relations. The commissioner may, in his discretion, allow the inclusion  
36 of extraordinary and unanticipated costs of providing services which  
37 were incurred to avoid an immediate negative impact on the health  
38 and safety of patients. The commissioner may, in his discretion, based  
39 upon review of a facility's costs, direct care staff to patient ratio and  
40 any other related information, revise a facility's rate for any increases  
41 or decreases to total licensed capacity of more than ten beds or changes  
42 to its number of licensed rest home with nursing supervision beds and  
43 chronic and convalescent nursing home beds. The commissioner may  
44 so revise a facility's rate established for the fiscal year ending June 30,  
45 1993, and thereafter for any bed increases, decreases or changes in  
46 licensure effective after October 1, 1989. Effective July 1, 1991, in  
47 facilities which have both a chronic and convalescent nursing home  
48 and a rest home with nursing supervision, the rate for the rest home  
49 with nursing supervision shall not exceed such facility's rate for its

50 chronic and convalescent nursing home. All such facilities for which  
51 rates are determined under this subsection shall report on a fiscal year  
52 basis ending on the thirtieth day of September. Such report shall be  
53 submitted to the commissioner by the thirty-first day of December. The  
54 commissioner may reduce the rate in effect for a facility which fails to  
55 report on or before such date by an amount not to exceed ten per cent  
56 of such rate. The commissioner shall annually, on or before the  
57 fifteenth day of February, report the data contained in the reports of  
58 such facilities to the joint standing committee of the General Assembly  
59 having cognizance of matters relating to appropriations. For the cost  
60 reporting year commencing October 1, 1985, and for subsequent cost  
61 reporting years, facilities shall report the cost of using the services of  
62 any nursing pool employee by separating said cost into two categories,  
63 the portion of the cost equal to the salary of the employee for whom  
64 the nursing pool employee is substituting shall be considered a  
65 nursing cost and any cost in excess of such salary shall be further  
66 divided so that seventy-five per cent of the excess cost shall be  
67 considered an administrative or general cost and twenty-five per cent  
68 of the excess cost shall be considered a nursing cost, provided if the  
69 total nursing pool costs of a facility for any cost year are equal to or  
70 exceed fifteen per cent of the total nursing expenditures of the facility  
71 for such cost year, no portion of nursing pool costs in excess of fifteen  
72 per cent shall be classified as administrative or general costs. The  
73 commissioner, in determining such rates, shall also take into account  
74 the classification of patients or boarders according to special care  
75 requirements or classification of the facility according to such factors  
76 as facilities and services and such other factors as he deems reasonable,  
77 including anticipated fluctuations in the cost of providing such  
78 services. The commissioner may establish a separate rate for a facility  
79 or a portion of a facility for traumatic brain injury patients who require  
80 extensive care but not acute general hospital care. Such separate rate  
81 shall reflect the special care requirements of such patients. If changes  
82 in federal or state laws, regulations or standards adopted subsequent  
83 to June 30, 1985, result in increased costs or expenditures in an amount

84 exceeding one-half of one per cent of allowable costs for the most  
85 recent cost reporting year, the commissioner shall adjust rates and  
86 provide payment for any such increased reasonable costs or  
87 expenditures within a reasonable period of time retroactive to the date  
88 of enforcement. Nothing in this section shall be construed to require  
89 the Department of Social Services to adjust rates and provide payment  
90 for any increases in costs resulting from an inspection of a facility by  
91 the Department of Public Health. Such assistance as the commissioner  
92 requires from other state agencies or departments in determining rates  
93 shall be made available to him at his request. Payment of the rates  
94 established hereunder shall be conditioned on the establishment by  
95 such facilities of admissions procedures which conform with this  
96 section, section 19a-533 and all other applicable provisions of the law  
97 and the provision of equality of treatment to all persons in such  
98 facilities. The established rates shall be the maximum amount  
99 chargeable by such facilities for care of such beneficiaries, and the  
100 acceptance by or on behalf of any such facility of any additional  
101 compensation for care of any such beneficiary from any other person  
102 or source shall constitute the offense of aiding a beneficiary to obtain  
103 aid to which he is not entitled and shall be punishable in the same  
104 manner as is provided in subsection (b) of section 17b-97. For the fiscal  
105 year ending June 30, 1992, rates for licensed residential care homes and  
106 intermediate care facilities for the mentally retarded may receive an  
107 increase not to exceed the most recent annual increase in the Regional  
108 Data Resources Incorporated McGraw-Hill Health Care Costs:  
109 Consumer Price Index (all urban)-All Items. Rates for newly certified  
110 intermediate care facilities for the mentally retarded shall not exceed  
111 one hundred fifty per cent of the median rate of rates in effect on  
112 January 31, 1991, for intermediate care facilities for the mentally  
113 retarded certified prior to February 1, 1991. Notwithstanding any  
114 provision of this section, the Commissioner of Social Services may,  
115 within available appropriations, provide an interim rate increase for a  
116 licensed chronic and convalescent nursing home or a rest home with  
117 nursing supervision for rate periods no earlier than April 1, 2004, only

118 if the commissioner determines that the increase is necessary to avoid  
119 the filing of a petition for relief under Title 11 of the United States  
120 Code; imposition of receivership pursuant to sections 19a-541 to 19a-  
121 549, inclusive; or substantial deterioration of the facility's financial  
122 condition that may be expected to adversely affect resident care and  
123 the continued operation of the facility, and the commissioner  
124 determines that the continued operation of the facility is in the best  
125 interest of the state. The commissioner shall consider any requests for  
126 interim rate increases on file with the department from March 30, 2004,  
127 and those submitted subsequently for rate periods no earlier than  
128 April 1, 2004. When reviewing a rate increase request the  
129 commissioner shall, at a minimum, consider: (1) Existing chronic and  
130 convalescent nursing home or rest home with nursing supervision  
131 utilization in the area and projected bed need; (2) physical plant long-  
132 term viability and the ability of the owner or purchaser to implement  
133 any necessary property improvements; (3) licensure and certification  
134 compliance history; (4) reasonableness of actual and projected  
135 expenses; and (5) the ability of the facility to meet wage and benefit  
136 costs. No rate shall be increased pursuant to this subsection in excess  
137 of one hundred fifteen per cent of the median rate for the facility's peer  
138 grouping, established pursuant to subdivision (2) of subsection (f) of  
139 this section, unless recommended by the commissioner and approved  
140 by the Secretary of the Office of Policy and Management after  
141 consultation with the commissioner. Such median rates shall be  
142 published by the Department of Social Services not later than April  
143 first of each year. In the event that a facility granted an interim rate  
144 increase pursuant to this section is sold or otherwise conveyed for  
145 value to an unrelated entity less than five years after the effective date  
146 of such rate increase, the rate increase shall be deemed rescinded and  
147 the department shall recover an amount equal to the difference  
148 between payments made for all affected rate periods and payments  
149 that would have been made if the interim rate increase was not  
150 granted. The commissioner may seek recovery from payments made to  
151 any facility with common ownership. With the approval of the

152 Secretary of the Office of Policy and Management, the commissioner  
153 may waive recovery and rescission of the interim rate for good cause  
154 shown that is not inconsistent with this section, including, but not  
155 limited to, transfers to family members that were made for no value.  
156 The commissioner shall provide written quarterly reports to the joint  
157 standing committees of the General Assembly having cognizance of  
158 matters relating to human services and appropriations and the budgets  
159 of state agencies and to the select committee of the General Assembly  
160 having cognizance of matters relating to aging, that identify each  
161 facility requesting an interim rate increase, the amount of the  
162 requested rate increase for each facility, the action taken by the  
163 commissioner and the secretary pursuant to this subsection, and  
164 estimates of the additional cost to the state for each approved interim  
165 rate increase. Nothing in this subsection shall prohibit the  
166 commissioner from increasing the rate of a licensed chronic and  
167 convalescent nursing home or a rest home with nursing supervision  
168 for allowable costs associated with facility capital improvements or  
169 increasing the rate in case of a sale of a licensed chronic and  
170 convalescent nursing home or a rest home with nursing supervision,  
171 pursuant to subdivision (16) of subsection (f) of this section, if  
172 receivership has been imposed on such home. If a nursing home's  
173 occupancy rate falls below ninety per cent, any interim rate approval  
174 by the commissioner in accordance with the provisions of this  
175 subsection shall be contingent on such nursing home reducing twenty  
176 per cent of its licensed bed capacity in accordance with the  
177 requirements of sections 17b-352 and 17b-353, as applicable. If a  
178 nursing home's decertification of licensed beds results in residents  
179 being relocated, such nursing home shall make reasonable efforts to  
180 relocate residents to a new facility that is located within a fifteen mile  
181 radius of such nursing home.

182 Sec. 2. Subdivisions (4) and (5) of subsection (f) of section 17b-340 of  
183 the general statutes are repealed and the following is substituted in  
184 lieu thereof (*Effective July 1, 2009*):

185 (4) For the fiscal year ending June 30, 1992, (A) no facility shall  
186 receive a rate that is less than the rate it received for the rate year  
187 ending June 30, 1991; (B) no facility whose rate, if determined pursuant  
188 to this subsection, would exceed one hundred twenty per cent of the  
189 state-wide median rate, as determined pursuant to this subsection,  
190 shall receive a rate which is five and one-half per cent more than the  
191 rate it received for the rate year ending June 30, 1991; and (C) no  
192 facility whose rate, if determined pursuant to this subsection, would be  
193 less than one hundred twenty per cent of the state-wide median rate,  
194 as determined pursuant to this subsection, shall receive a rate which is  
195 six and one-half per cent more than the rate it received for the rate year  
196 ending June 30, 1991. For the fiscal year ending June 30, 1993, no  
197 facility shall receive a rate that is less than the rate it received for the  
198 rate year ending June 30, 1992, or six per cent more than the rate it  
199 received for the rate year ending June 30, 1992. For the fiscal year  
200 ending June 30, 1994, no facility shall receive a rate that is less than the  
201 rate it received for the rate year ending June 30, 1993, or six per cent  
202 more than the rate it received for the rate year ending June 30, 1993.  
203 For the fiscal year ending June 30, 1995, no facility shall receive a rate  
204 that is more than five per cent less than the rate it received for the rate  
205 year ending June 30, 1994, or six per cent more than the rate it received  
206 for the rate year ending June 30, 1994. For the fiscal years ending June  
207 30, 1996, and June 30, 1997, no facility shall receive a rate that is more  
208 than three per cent more than the rate it received for the prior rate  
209 year. For the fiscal year ending June 30, 1998, a facility shall receive a  
210 rate increase that is not more than two per cent more than the rate that  
211 the facility received in the prior year. For the fiscal year ending June  
212 30, 1999, a facility shall receive a rate increase that is not more than  
213 three per cent more than the rate that the facility received in the prior  
214 year and that is not less than one per cent more than the rate that the  
215 facility received in the prior year, exclusive of rate increases associated  
216 with a wage, benefit and staffing enhancement rate adjustment added  
217 for the period from April 1, 1999, to June 30, 1999, inclusive. For the  
218 fiscal year ending June 30, 2000, each facility, except a facility with an

219 interim rate or replaced interim rate for the fiscal year ending June 30,  
220 1999, and a facility having a certificate of need or other agreement  
221 specifying rate adjustments for the fiscal year ending June 30, 2000,  
222 shall receive a rate increase equal to one per cent applied to the rate the  
223 facility received for the fiscal year ending June 30, 1999, exclusive of  
224 the facility's wage, benefit and staffing enhancement rate adjustment.  
225 For the fiscal year ending June 30, 2000, no facility with an interim rate,  
226 replaced interim rate or scheduled rate adjustment specified in a  
227 certificate of need or other agreement for the fiscal year ending June  
228 30, 2000, shall receive a rate increase that is more than one per cent  
229 more than the rate the facility received in the fiscal year ending June  
230 30, 1999. For the fiscal year ending June 30, 2001, each facility, except a  
231 facility with an interim rate or replaced interim rate for the fiscal year  
232 ending June 30, 2000, and a facility having a certificate of need or other  
233 agreement specifying rate adjustments for the fiscal year ending June  
234 30, 2001, shall receive a rate increase equal to two per cent applied to  
235 the rate the facility received for the fiscal year ending June 30, 2000,  
236 subject to verification of wage enhancement adjustments pursuant to  
237 subdivision (15) of this subsection. For the fiscal year ending June 30,  
238 2001, no facility with an interim rate, replaced interim rate or  
239 scheduled rate adjustment specified in a certificate of need or other  
240 agreement for the fiscal year ending June 30, 2001, shall receive a rate  
241 increase that is more than two per cent more than the rate the facility  
242 received for the fiscal year ending June 30, 2000. For the fiscal year  
243 ending June 30, 2002, each facility shall receive a rate that is two and  
244 one-half per cent more than the rate the facility received in the prior  
245 fiscal year. For the fiscal year ending June 30, 2003, each facility shall  
246 receive a rate that is two per cent more than the rate the facility  
247 received in the prior fiscal year, except that such increase shall be  
248 effective January 1, 2003, and such facility rate in effect for the fiscal  
249 year ending June 30, 2002, shall be paid for services provided until  
250 December 31, 2002, except any facility that would have been issued a  
251 lower rate effective July 1, 2002, than for the fiscal year ending June 30,  
252 2002, due to interim rate status or agreement with the department shall

253 be issued such lower rate effective July 1, 2002, and have such rate  
254 increased two per cent effective June 1, 2003. For the fiscal year ending  
255 June 30, 2004, rates in effect for the period ending June 30, 2003, shall  
256 remain in effect, except any facility that would have been issued a  
257 lower rate effective July 1, 2003, than for the fiscal year ending June 30,  
258 2003, due to interim rate status or agreement with the department shall  
259 be issued such lower rate effective July 1, 2003. For the fiscal year  
260 ending June 30, 2005, rates in effect for the period ending June 30, 2004,  
261 shall remain in effect until December 31, 2004, except any facility that  
262 would have been issued a lower rate effective July 1, 2004, than for the  
263 fiscal year ending June 30, 2004, due to interim rate status or  
264 agreement with the department shall be issued such lower rate  
265 effective July 1, 2004. Effective January 1, 2005, each facility shall  
266 receive a rate that is one per cent greater than the rate in effect  
267 December 31, 2004. Effective upon receipt of all the necessary federal  
268 approvals to secure federal financial participation matching funds  
269 associated with the rate increase provided in this subdivision, but in  
270 no event earlier than July 1, 2005, and provided the user fee imposed  
271 under section 17b-320 is required to be collected, for the fiscal year  
272 ending June 30, 2006, the department shall compute the rate for each  
273 facility based upon its 2003 cost report filing or a subsequent cost year  
274 filing for facilities having an interim rate for the period ending June 30,  
275 2005, as provided under section 17-311-55 of the regulations of  
276 Connecticut state agencies. For each facility not having an interim rate  
277 for the period ending June 30, 2005, the rate for the period ending June  
278 30, 2006, shall be determined beginning with the higher of the  
279 computed rate based upon its 2003 cost report filing or the rate in  
280 effect for the period ending June 30, 2005. Such rate shall then be  
281 increased by eleven dollars and eighty cents per day except that in no  
282 event shall the rate for the period ending June 30, 2006, be thirty-two  
283 dollars more than the rate in effect for the period ending June 30, 2005,  
284 and for any facility with a rate below one hundred ninety-five dollars  
285 per day for the period ending June 30, 2005, such rate for the period  
286 ending June 30, 2006, shall not be greater than two hundred seventeen

287 dollars and forty-three cents per day and for any facility with a rate  
288 equal to or greater than one hundred ninety-five dollars per day for  
289 the period ending June 30, 2005, such rate for the period ending June  
290 30, 2006, shall not exceed the rate in effect for the period ending June  
291 30, 2005, increased by eleven and one-half per cent. For each facility  
292 with an interim rate for the period ending June 30, 2005, the interim  
293 replacement rate for the period ending June 30, 2006, shall not exceed  
294 the rate in effect for the period ending June 30, 2005, increased by  
295 eleven dollars and eighty cents per day plus the per day cost of the  
296 user fee payments made pursuant to section 17b-320 divided by  
297 annual resident service days, except for any facility with an interim  
298 rate below one hundred ninety-five dollars per day for the period  
299 ending June 30, 2005, the interim replacement rate for the period  
300 ending June 30, 2006, shall not be greater than two hundred seventeen  
301 dollars and forty-three cents per day and for any facility with an  
302 interim rate equal to or greater than one hundred ninety-five dollars  
303 per day for the period ending June 30, 2005, the interim replacement  
304 rate for the period ending June 30, 2006, shall not exceed the rate in  
305 effect for the period ending June 30, 2005, increased by eleven and one-  
306 half per cent. Such July 1, 2005, rate adjustments shall remain in effect  
307 unless (i) the federal financial participation matching funds associated  
308 with the rate increase are no longer available; or (ii) the user fee  
309 created pursuant to section 17b-320 is not in effect. For the fiscal year  
310 ending June 30, 2007, each facility shall receive a rate that is three per  
311 cent greater than the rate in effect for the period ending June 30, 2006,  
312 except any facility that would have been issued a lower rate effective  
313 July 1, 2006, than for the rate period ending June 30, 2006, due to  
314 interim rate status or agreement with the department, shall be issued  
315 such lower rate effective July 1, 2006. For the fiscal year ending June  
316 30, 2008, each facility shall receive a rate that is two and nine-tenths  
317 per cent greater than the rate in effect for the period ending June 30,  
318 2007, except any facility that would have been issued a lower rate  
319 effective July 1, 2007, than for the rate period ending June 30, 2007, due  
320 to interim rate status or agreement with the department, shall be

321 issued such lower rate effective July 1, 2007. For the fiscal year ending  
322 June 30, 2009, rates in effect for the period ending June 30, 2008, shall  
323 remain in effect until June 30, 2009, except any facility that would have  
324 been issued a lower rate for the fiscal year ending June 30, 2009, due to  
325 interim rate status or agreement with the department shall be issued  
326 such lower rate. The Commissioner of Social Services shall add fair  
327 rent and moveable equipment increases to any other rate increases  
328 established pursuant to this subdivision for a facility [which] that has  
329 undergone a material change in circumstances related to fair rent or  
330 moveable equipment. Interim rates may take into account reasonable  
331 costs incurred by a facility, including wages and benefits.

332 (5) For the purpose of determining allowable fair rent, a facility with  
333 allowable fair rent less than the twenty-fifth percentile of the state-  
334 wide allowable fair rent shall be reimbursed as having allowable fair  
335 rent equal to the twenty-fifth percentile of the state-wide allowable fair  
336 rent, provided for the fiscal years ending June 30, 1996, and June 30,  
337 1997, the reimbursement may not exceed the twenty-fifth percentile of  
338 the state-wide allowable fair rent for the fiscal year ending June 30,  
339 1995. On and after July 1, 1998, the Commissioner of Social Services  
340 may allow minimum fair rent as the basis upon which reimbursement  
341 associated with improvements to real property is added. Beginning  
342 with the fiscal year ending June 30, 1996, any facility with a rate of  
343 return on real property other than land in excess of eleven per cent  
344 shall have such allowance revised to eleven per cent. Effective July 1,  
345 2009, any chronic and convalescent nursing home and rest home with  
346 nursing supervision that has fully amortized (A) the base value of its  
347 real property, other than land, or (B) the base value of its real property,  
348 other than land, for property additions associated with an increase in  
349 bed capacity in such facility shall have the fair rental allowance for the  
350 use of such real property replaced with the lesser of: (i) A value equal  
351 to twelve dollars multiplied by the facility's total annual resident days,  
352 or (ii) the previous fair rental allowance received for such rental  
353 property other than land. In no event shall a facility receive a fair  
354 rental allowance that is less than the twenty-fifth percentile of the

355 state-wide fair rent allowance. Any facility or its related realty affiliate  
356 which finances or refinances debt through bonds issued by the State of  
357 Connecticut Health and Education Facilities Authority shall report the  
358 terms and conditions of such financing or refinancing to the  
359 Commissioner of Social Services within thirty days of completing such  
360 financing or refinancing. The Commissioner of Social Services may  
361 revise the facility's fair rent component of its rate to reflect any  
362 financial benefit the facility or its related realty affiliate received as a  
363 result of such financing or refinancing, including but not limited to,  
364 reductions in the amount of debt service payments or period of debt  
365 repayment. The commissioner shall allow actual debt service costs for  
366 bonds issued by the State of Connecticut Health and Educational  
367 Facilities Authority if such costs do not exceed property costs allowed  
368 pursuant to subsection (f) of section 17-311-52 of the regulations of  
369 Connecticut state agencies, provided the commissioner may allow  
370 higher debt service costs for such bonds for good cause. For facilities  
371 which first open on or after October 1, 1992, the commissioner shall  
372 determine allowable fair rent for real property other than land based  
373 on the rate of return for the cost year in which such bonds were issued.  
374 The financial benefit resulting from a facility financing or refinancing  
375 debt through such bonds shall be shared between the state and the  
376 facility to an extent determined by the commissioner on a case-by-case  
377 basis and shall be reflected in an adjustment to the facility's allowable  
378 fair rent.

379 Sec. 3. Subdivision (1) of subsection (d) of section 19a-537 of the  
380 general statutes is repealed and the following is substituted in lieu  
381 thereof (*Effective July 1, 2009*):

382 (1) A facility shall be reimbursed for reserving the bed of a resident  
383 who is hospitalized for a maximum of seven days including the  
384 admission date of hospitalization, if on such date the nursing home  
385 documents that (A) it has a vacancy rate of not more than [three] six  
386 beds or [three] six per cent of licensed capacity, whichever is greater,  
387 and (B) it contacted the hospital and the hospital failed to provide

388 objective information confirming that the person would be unable to  
389 return to the nursing home within fifteen days of the date of  
390 hospitalization.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	17b-340(a)
Sec. 2	<i>July 1, 2009</i>	17b-340(f)(4) and (5)
Sec. 3	<i>July 1, 2009</i>	19a-537(d)(1)

**Statement of Purpose:**

To ensure the financial viability of the state's nursing home facilities by revising certain reimbursement methodologies.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: SEN. HARRIS, 5th Dist.

S.B. 401