



General Assembly

January Session, 2011

Raised Bill No. 1185

LCO No. 4638

* SB01185PH_JUD032811 *

Referred to Committee on Public Health

Introduced by:
(PH)

**AN ACT CONCERNING STATE PAYMENTS TO NURSING HOMES
AND THE DUTIES OF NURSING HOME RECEIVERS.**

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

1 Section 1. Subdivision (4) of subsection (f) of section 17b-340 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective July 1, 2011*):

4 (4) (A) For the fiscal year ending June 30, 1992, [(A)] (i) no facility
5 shall receive a rate that is less than the rate it received for the rate year
6 ending June 30, 1991; [(B)] (ii) no facility whose rate, if determined
7 pursuant to this subsection, would exceed one hundred twenty per
8 cent of the state-wide median rate, as determined pursuant to this
9 subsection, shall receive a rate which is five and one-half per cent more
10 than the rate it received for the rate year ending June 30, 1991; and
11 [(C)] (iii) no facility whose rate, if determined pursuant to this
12 subsection, would be less than one hundred twenty per cent of the
13 state-wide median rate, as determined pursuant to this subsection,
14 shall receive a rate which is six and one-half per cent more than the
15 rate it received for the rate year ending June 30, 1991. For the fiscal
16 year ending June 30, 1993, no facility shall receive a rate that is less

17 than the rate it received for the rate year ending June 30, 1992, or six
18 per cent more than the rate it received for the rate year ending June 30,
19 1992. For the fiscal year ending June 30, 1994, no facility shall receive a
20 rate that is less than the rate it received for the rate year ending June
21 30, 1993, or six per cent more than the rate it received for the rate year
22 ending June 30, 1993. For the fiscal year ending June 30, 1995, no
23 facility shall receive a rate that is more than five per cent less than the
24 rate it received for the rate year ending June 30, 1994, or six per cent
25 more than the rate it received for the rate year ending June 30, 1994.
26 For the fiscal years ending June 30, 1996, and June 30, 1997, no facility
27 shall receive a rate that is more than three per cent more than the rate it
28 received for the prior rate year. For the fiscal year ending June 30, 1998,
29 a facility shall receive a rate increase that is not more than two per cent
30 more than the rate that the facility received in the prior year. For the
31 fiscal year ending June 30, 1999, a facility shall receive a rate increase
32 that is not more than three per cent more than the rate that the facility
33 received in the prior year and that is not less than one per cent more
34 than the rate that the facility received in the prior year, exclusive of
35 rate increases associated with a wage, benefit and staffing
36 enhancement rate adjustment added for the period from April 1, 1999,
37 to June 30, 1999, inclusive. For the fiscal year ending June 30, 2000,
38 each facility, except a facility with an interim rate or replaced interim
39 rate for the fiscal year ending June 30, 1999, and a facility having a
40 certificate of need or other agreement specifying rate adjustments for
41 the fiscal year ending June 30, 2000, shall receive a rate increase equal
42 to one per cent applied to the rate the facility received for the fiscal
43 year ending June 30, 1999, exclusive of the facility's wage, benefit and
44 staffing enhancement rate adjustment. For the fiscal year ending June
45 30, 2000, no facility with an interim rate, replaced interim rate or
46 scheduled rate adjustment specified in a certificate of need or other
47 agreement for the fiscal year ending June 30, 2000, shall receive a rate
48 increase that is more than one per cent more than the rate the facility
49 received in the fiscal year ending June 30, 1999. For the fiscal year
50 ending June 30, 2001, each facility, except a facility with an interim rate
51 or replaced interim rate for the fiscal year ending June 30, 2000, and a

52 facility having a certificate of need or other agreement specifying rate
53 adjustments for the fiscal year ending June 30, 2001, shall receive a rate
54 increase equal to two per cent applied to the rate the facility received
55 for the fiscal year ending June 30, 2000, subject to verification of wage
56 enhancement adjustments pursuant to subdivision (15) of this
57 subsection. For the fiscal year ending June 30, 2001, no facility with an
58 interim rate, replaced interim rate or scheduled rate adjustment
59 specified in a certificate of need or other agreement for the fiscal year
60 ending June 30, 2001, shall receive a rate increase that is more than two
61 per cent more than the rate the facility received for the fiscal year
62 ending June 30, 2000. For the fiscal year ending June 30, 2002, each
63 facility shall receive a rate that is two and one-half per cent more than
64 the rate the facility received in the prior fiscal year. For the fiscal year
65 ending June 30, 2003, each facility shall receive a rate that is two per
66 cent more than the rate the facility received in the prior fiscal year,
67 except that such increase shall be effective January 1, 2003, and such
68 facility rate in effect for the fiscal year ending June 30, 2002, shall be
69 paid for services provided until December 31, 2002, except any facility
70 that would have been issued a lower rate effective July 1, 2002, than for
71 the fiscal year ending June 30, 2002, due to interim rate status or
72 agreement with the department shall be issued such lower rate
73 effective July 1, 2002, and have such rate increased two per cent
74 effective June 1, 2003. For the fiscal year ending June 30, 2004, rates in
75 effect for the period ending June 30, 2003, shall remain in effect, except
76 any facility that would have been issued a lower rate effective July 1,
77 2003, than for the fiscal year ending June 30, 2003, due to interim rate
78 status or agreement with the department shall be issued such lower
79 rate effective July 1, 2003. For the fiscal year ending June 30, 2005, rates
80 in effect for the period ending June 30, 2004, shall remain in effect until
81 December 31, 2004, except any facility that would have been issued a
82 lower rate effective July 1, 2004, than for the fiscal year ending June 30,
83 2004, due to interim rate status or agreement with the department shall
84 be issued such lower rate effective July 1, 2004. Effective January 1,
85 2005, each facility shall receive a rate that is one per cent greater than
86 the rate in effect December 31, 2004. Effective upon receipt of all the

87 necessary federal approvals to secure federal financial participation
88 matching funds associated with the rate increase provided in this
89 subdivision, but in no event earlier than July 1, 2005, and provided the
90 user fee imposed under section 17b-320 is required to be collected, for
91 the fiscal year ending June 30, 2006, the department shall compute the
92 rate for each facility based upon its 2003 cost report filing or a
93 subsequent cost year filing for facilities having an interim rate for the
94 period ending June 30, 2005, as provided under section 17-311-55 of the
95 regulations of Connecticut state agencies. For each facility not having
96 an interim rate for the period ending June 30, 2005, the rate for the
97 period ending June 30, 2006, shall be determined beginning with the
98 higher of the computed rate based upon its 2003 cost report filing or
99 the rate in effect for the period ending June 30, 2005. Such rate shall
100 then be increased by eleven dollars and eighty cents per day except
101 that in no event shall the rate for the period ending June 30, 2006, be
102 thirty-two dollars more than the rate in effect for the period ending
103 June 30, 2005, and for any facility with a rate below one hundred
104 ninety-five dollars per day for the period ending June 30, 2005, such
105 rate for the period ending June 30, 2006, shall not be greater than two
106 hundred seventeen dollars and forty-three cents per day and for any
107 facility with a rate equal to or greater than one hundred ninety-five
108 dollars per day for the period ending June 30, 2005, such rate for the
109 period ending June 30, 2006, shall not exceed the rate in effect for the
110 period ending June 30, 2005, increased by eleven and one-half per cent.
111 For each facility with an interim rate for the period ending June 30,
112 2005, the interim replacement rate for the period ending June 30, 2006,
113 shall not exceed the rate in effect for the period ending June 30, 2005,
114 increased by eleven dollars and eighty cents per day plus the per day
115 cost of the user fee payments made pursuant to section 17b-320
116 divided by annual resident service days, except for any facility with an
117 interim rate below one hundred ninety-five dollars per day for the
118 period ending June 30, 2005, the interim replacement rate for the
119 period ending June 30, 2006, shall not be greater than two hundred
120 seventeen dollars and forty-three cents per day and for any facility
121 with an interim rate equal to or greater than one hundred ninety-five

122 dollars per day for the period ending June 30, 2005, the interim
123 replacement rate for the period ending June 30, 2006, shall not exceed
124 the rate in effect for the period ending June 30, 2005, increased by
125 eleven and one-half per cent. Such July 1, 2005, rate adjustments shall
126 remain in effect unless [(i)] the federal financial participation matching
127 funds associated with the rate increase are no longer available; or [(ii)]
128 the user fee created pursuant to section 17b-320 is not in effect. For the
129 fiscal year ending June 30, 2007, each facility shall receive a rate that is
130 three per cent greater than the rate in effect for the period ending June
131 30, 2006, except any facility that would have been issued a lower rate
132 effective July 1, 2006, than for the rate period ending June 30, 2006, due
133 to interim rate status or agreement with the department, shall be
134 issued such lower rate effective July 1, 2006. For the fiscal year ending
135 June 30, 2008, each facility shall receive a rate that is two and nine-
136 tenths per cent greater than the rate in effect for the period ending June
137 30, 2007, except any facility that would have been issued a lower rate
138 effective July 1, 2007, than for the rate period ending June 30, 2007, due
139 to interim rate status or agreement with the department, shall be
140 issued such lower rate effective July 1, 2007. For the fiscal year ending
141 June 30, 2009, rates in effect for the period ending June 30, 2008, shall
142 remain in effect until June 30, 2009, except any facility that would have
143 been issued a lower rate for the fiscal year ending June 30, 2009, due to
144 interim rate status or agreement with the department shall be issued
145 such lower rate. For the fiscal years ending June 30, 2010, and June 30,
146 2011, rates in effect for the period ending June 30, 2009, shall remain in
147 effect until June 30, 2011, except any facility that would have been
148 issued a lower rate for the fiscal year ending June 30, 2010, or the fiscal
149 year ending June 30, 2011, due to interim rate status or agreement with
150 the department, shall be issued such lower rate.

151 (B) The Commissioner of Social Services shall add fair rent increases
152 to any other rate increases established pursuant to this subdivision for
153 a facility which has undergone a material change in circumstances
154 related to fair rent, except for the fiscal year ending June 30, 2010, and
155 the fiscal year ending June 30, 2011, such fair rent increases shall only

156 be provided to facilities with an approved certificate of need pursuant
157 to section 17b-352, 17b-353, 17b-354 or 17b-355. Interim rates may take
158 into account reasonable costs incurred by a facility, including wages
159 and benefits. For the fiscal year ending June 30, 2012, in the event that
160 the Commissioner of Social Services has revised a facility's rate
161 pursuant to the provisions of subsections (j) and (k) of section 17b-340,
162 as amended by this act, the commissioner shall add fair rent increases
163 to the facility's revised rate.

164 Sec. 2. Section 17b-340 of the general statutes is amended by adding
165 subsections (j) and (k) as follows (*Effective July 1, 2011*):

166 (NEW) (j) (1) Notwithstanding any provision of this section, the
167 Commissioner of Social Services may issue a revised, increased rate to
168 a licensed chronic and convalescent nursing home or rest home with
169 nursing supervision if: (A) The facility's total occupancy percentage
170 was less than ninety-five per cent during the six-month period
171 immediately preceding the date on which the facility files an
172 application for a rate revision pursuant to this subsection and the
173 facility agrees to reduce its licensed bed capacity; (B) the facility
174 requests additional reimbursement for fair rent or moveable
175 equipment improvements; or (C) the facility requests additional
176 reimbursement to implement a business plan to develop enhanced
177 community-based services or services for residents with special needs,
178 provided (i) the facility has submitted a business plan that meets
179 applicable requirements established by the commissioner pursuant to
180 this subsection; and (ii) the fiscal impact of any approved rate revision
181 is projected as Medicaid budget neutral at the end of the five-year
182 period following the date of a facility's request, or, if the fiscal impact
183 is not projected to be Medicaid budget neutral, the facility's business
184 plan proposes to meet an identified unmet need.

185 (2) On or before October 1, 2011, the Commissioner of Social
186 Services shall develop and publish an application process for rate
187 revision requests authorized pursuant to this subsection. The
188 commissioner shall minimally require that an applicant submit a

189 facility business plan that addresses: (A) The proposed rate increase;
190 (B) facility occupancy statistics for the six months preceding the date of
191 the application and occupancy statistics projected over the next five
192 years, assuming the facility's application is granted; (C) any proposed
193 bed reductions; (D) the effect of the proposal on facility staffing and
194 operations; (E) the discharge plan for affected residents; (F) a
195 description of any proposed fair rent or moveable equipment
196 improvements, if applicable; (G) a description of any proposed
197 enhanced community-based services, if applicable; and (H) a
198 description of any proposed services for residents with special needs,
199 if applicable. Any applicant with capital improvement requests that
200 exceed the certificate of need dollar thresholds set forth in section 17b-
201 353 shall be subject to the requirements of section 17b-353. If a facility
202 requesting a rate increase under this subsection requires a waiver from
203 the Commissioner of Public Health of any provision of section 19-13-
204 D8t of the regulations of Connecticut state agencies and such facility
205 has submitted to said commissioner a written waiver request, said
206 commissioner shall issue a final decision on the facility's waiver
207 request not later than forty-five days after the commissioner's receipt
208 of such request.

209 (3) The Commissioner of Social Services shall approve or deny a
210 facility's application for a rate revision not later than forty-five days
211 after the date of the commissioner's receipt of such application. Any
212 approved revised rate shall be a substitute for the prospective rate
213 determined pursuant to this section and shall not be an interim rate.

214 (4) If a facility's revised rate approval involves a reduction in
215 licensed bed capacity, the facility may elect to implement the approved
216 bed reduction by either: (A) A permanent decertification of the beds, or
217 (B) a temporary reduction in licensed bed capacity. If a facility elects to
218 permanently decertify the beds, the Commissioner of Social Services
219 may permit any such decertified beds that were also Medicaid certified
220 to be relocated in accordance with the provisions of subdivision (3) of
221 subsection (a) of section 17b-354. If a facility elects to temporarily

222 reduce its licensed capacity, it may request, not more than once in any
223 twelve-month period, permission from the commissioner to recertify
224 all or a portion of such licensed bed capacity. In considering any
225 request for recertification, the commissioner shall consider the bed
226 need or service capacity of the facility. The commissioner shall
227 approve or deny any request for recertification of licensed bed capacity
228 not later than forty-five days after the commissioner's receipt of the
229 facility's request. If the commissioner grants a request for
230 recertification of licensed beds, the commissioner may reduce any
231 revised rate previously approved for such facility that had been
232 conditioned upon the facility reducing the number of licensed beds.
233 Such rate reduction shall take effect on the date the facility's license is
234 revised to include the recertified beds.

235 (NEW) (k) The Commissioner of Social Services shall, effective on
236 the date the court appoints a receiver for a facility pursuant to section
237 19a-543, revise the Medicaid rate of such facility placed in receivership,
238 to ensure that the operating portion of such facility's Medicaid rate,
239 when calculated in accordance with section 17b-340, as amended by
240 this act, does not exceed the operating portion of the rate of any other
241 similarly licensed facility located within a fifteen mile radius of the
242 facility placed in receivership, irrespective of whether the facility
243 placed in receivership is paid in accordance with the facility's base rate
244 or through advances to the receiver, and excludes the costs of the
245 receiver and any oversight costs incurred by the facility placed in
246 receivership that may be required by the Commissioner of Public
247 Health.

248 Sec. 3. Subsection (a) of section 19a-545 of the general statutes is
249 repealed and the following is substituted in lieu thereof (*Effective July*
250 *1, 2011*):

251 (a) A receiver appointed pursuant to the provisions of sections 19a-
252 541 to 19a-549, inclusive, in operating such facility, shall have the same
253 powers as a receiver of a corporation under section 52-507, except as
254 provided in subsection (c) of this section and shall exercise such

255 powers to remedy the conditions which constituted grounds for the
 256 imposition of receivership, assure adequate health care for the patients
 257 and preserve the assets and property of the owner. If a facility is
 258 placed in receivership it shall be the duty of the receiver to notify
 259 patients and family, except where medically contraindicated, that the
 260 facility has been placed in receivership. The receiver shall also notify
 261 any person seeking admission as a patient to the facility and such
 262 person's family, to the extent known, that such facility has been placed
 263 in receivership. Such receiver may correct or eliminate any deficiency
 264 in the structure or furnishings of the facility which endangers the
 265 safety or health of the residents while they remain in the facility,
 266 provided the total cost of correction does not exceed three thousand
 267 dollars. The court may order expenditures for this purpose in excess of
 268 three thousand dollars on application from such receiver. If any
 269 resident is transferred or discharged such receiver shall provide for: (1)
 270 Transportation of the resident and such resident's belongings and
 271 medical records to the place where such resident is being transferred
 272 or discharged; (2) aid in locating an alternative placement and
 273 discharge planning in accordance with section 19a-535; (3) preparation
 274 for transfer to mitigate transfer trauma, including but not limited to,
 275 participation by the resident or the resident's guardian in the selection
 276 of the resident's alternative placement, explanation of alternative
 277 placements and orientation concerning the placement chosen by the
 278 resident or the resident's guardian; and (4) custodial care of all
 279 property or assets of residents which are in the possession of an owner
 280 of the facility. The receiver shall preserve all property, assets and
 281 records of residents which the receiver has custody of and shall
 282 provide for the prompt transfer of the property, assets and records to
 283 the alternative placement of any transferred resident. In no event may
 284 the receiver transfer all residents and close a facility without a court
 285 order and without preparing a discharge plan for each resident in
 286 accordance with section 19a-535.

287 Sec. 4. Section 19a-547 of the general statutes is repealed and the
 288 following is substituted in lieu thereof (*Effective July 1, 2011*):

289 (a) The court may appoint any responsible individual [whose name
290 is] or entity proposed by the Commissioner of Public Health and the
291 Commissioner of Social Services to act as a receiver. [Such individual]
292 Any individual appointed shall be a nursing home administrator
293 licensed in the state of Connecticut with substantial experience in
294 operating Connecticut nursing homes, [On or before July 1, 2004, the]
295 provided no individual who is serving as a receiver for three or more
296 facilities may be appointed as a receiver. Any entity appointed shall
297 employ or contract with a nursing home administrator licensed in the
298 state of Connecticut with substantial experience operating Connecticut
299 nursing homes. The Commissioner of Social Services shall adopt
300 regulations, in accordance with the provisions of chapter 54, governing
301 the qualifications for proposed receivers consistent with the provisions
302 of this subsection. No state employee or owner, administrator or other
303 person with a financial interest in the facility may serve as a receiver
304 for that facility. No person or entity appointed to act as a receiver shall
305 be permitted to have a current financial interest in the facility; nor shall
306 such person or entity appointed as a receiver be permitted to have a
307 financial interest in the facility for a period of five years from the date
308 the receivership ceases. Notwithstanding the provisions of this
309 subsection, if an entity is appointed as a receiver, such entity may
310 employ or contract with the entity's affiliates to provide accounting,
311 payroll, information technology and related office support services
312 and the court may permit the entity to participate as a bidder in a sale
313 of the facility.

314 (b) The court may remove such receiver in accordance with section
315 52-513. A nursing home receiver appointed pursuant to this section
316 shall be entitled to a reasonable receiver's fee as determined by the
317 court, provided the receiver's fee shall not exceed two dollars and fifty
318 cents per patient per day. The receiver shall be liable only in [his] an
319 official capacity for injury to person and property by reason of the
320 conditions of the nursing home. [He] The receiver shall not be
321 personally liable, except for acts or omissions constituting gross, wilful
322 or wanton negligence.

323 (c) The court [, in its discretion, may require a] shall require an
324 appropriate bond of such receiver in accordance with section 52-506.

325 (d) The court may require the Commissioner of Public Health to
326 provide for the payment of any receiver's fees authorized in subsection
327 (a) of this section upon a showing by such receiver to the satisfaction of
328 the court that (1) the assets of the nursing home facility are not
329 sufficient to make such payment, and (2) no other source of payment is
330 available, including the submission of claims in a bankruptcy
331 proceeding. The state shall have a claim for any court-ordered fees and
332 expenses of the receiver which shall have priority over all other claims
333 of secured and unsecured creditors and other persons whether or not
334 the nursing home facility is in bankruptcy, to the extent allowed under
335 state or federal law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	17b-340(f)(4)
Sec. 2	<i>July 1, 2011</i>	17b-340
Sec. 3	<i>July 1, 2011</i>	19a-545(a)
Sec. 4	<i>July 1, 2011</i>	19a-547

PH

Joint Favorable C/R

JUD