



House of Representatives

General Assembly

File No. 257

February Session, 2012

Substitute House Bill No. 5451

House of Representatives, April 4, 2012

The Committee on Human Services reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING TRANSPARENCY IN NURSING HOME COST REPORTS.

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 2012 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective July 1, 2012*):

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. Each for-profit chronic
53 and convalescent nursing home which receives state funding pursuant
54 to this section shall include in such annual cost report a profit and loss
55 statement for each related party that the nursing home pays ten
56 thousand dollars or more per year for goods, fees and services and a
57 profit and loss statement for each nursing home transaction with such
58 party. The statement shall include the actual cost of the goods and
59 services, including a detailed account of the goods and services
60 purchased and fees paid, and the mark-up, profit or administrative
61 charges related to such purchase. For purposes of this subsection,
62 "related party" includes, but is not limited to, companies related to
63 such nursing homes through family association, common ownership,
64 control or business association with any of the owners, operators or
65 officials of the facility. Such report shall be submitted to the
66 commissioner by the thirty-first day of December. The commissioner
67 may reduce the rate in effect for a facility which fails to report on or
68 before such date by an amount not to exceed ten per cent of such rate.
69 The commissioner shall annually, on or before the fifteenth day of
70 February, report the data contained in the reports of such facilities to
71 the joint standing committee of the General Assembly having
72 cognizance of matters relating to appropriations. For the cost reporting
73 year commencing October 1, 1985, and for subsequent cost reporting
74 years, facilities shall report the cost of using the services of any nursing
75 pool employee by separating said cost into two categories, the portion
76 of the cost equal to the salary of the employee for whom the nursing
77 pool employee is substituting shall be considered a nursing cost and
78 any cost in excess of such salary shall be further divided so that
79 seventy-five per cent of the excess cost shall be considered an
80 administrative or general cost and twenty-five per cent of the excess
81 cost shall be considered a nursing cost, provided if the total nursing
82 pool costs of a facility for any cost year are equal to or exceed fifteen
83 per cent of the total nursing expenditures of the facility for such cost
84 year, no portion of nursing pool costs in excess of fifteen per cent shall

85 be classified as administrative or general costs. The commissioner, in
86 determining such rates, shall also take into account the classification of
87 patients or boarders according to special care requirements or
88 classification of the facility according to such factors as facilities and
89 services and such other factors as he deems reasonable, including
90 anticipated fluctuations in the cost of providing such services. The
91 commissioner may establish a separate rate for a facility or a portion of
92 a facility for traumatic brain injury patients who require extensive care
93 but not acute general hospital care. Such separate rate shall reflect the
94 special care requirements of such patients. If changes in federal or state
95 laws, regulations or standards adopted subsequent to June 30, 1985,
96 result in increased costs or expenditures in an amount exceeding one-
97 half of one per cent of allowable costs for the most recent cost
98 reporting year, the commissioner shall adjust rates and provide
99 payment for any such increased reasonable costs or expenditures
100 within a reasonable period of time retroactive to the date of
101 enforcement. Nothing in this section shall be construed to require the
102 Department of Social Services to adjust rates and provide payment for
103 any increases in costs resulting from an inspection of a facility by the
104 Department of Public Health. Such assistance as the commissioner
105 requires from other state agencies or departments in determining rates
106 shall be made available to him at his request. Payment of the rates
107 established hereunder shall be conditioned on the establishment by
108 such facilities of admissions procedures which conform with this
109 section, section 19a-533 and all other applicable provisions of the law
110 and the provision of equality of treatment to all persons in such
111 facilities. The established rates shall be the maximum amount
112 chargeable by such facilities for care of such beneficiaries, and the
113 acceptance by or on behalf of any such facility of any additional
114 compensation for care of any such beneficiary from any other person
115 or source shall constitute the offense of aiding a beneficiary to obtain
116 aid to which he is not entitled and shall be punishable in the same
117 manner as is provided in subsection (b) of section 17b-97. For the fiscal
118 year ending June 30, 1992, rates for licensed residential care homes and
119 intermediate care facilities for the mentally retarded may receive an

120 increase not to exceed the most recent annual increase in the Regional
121 Data Resources Incorporated McGraw-Hill Health Care Costs:
122 Consumer Price Index (all urban)-All Items. Rates for newly certified
123 intermediate care facilities for the mentally retarded shall not exceed
124 one hundred fifty per cent of the median rate of rates in effect on
125 January 31, 1991, for intermediate care facilities for the mentally
126 retarded certified prior to February 1, 1991. Notwithstanding any
127 provision of this section, the Commissioner of Social Services may,
128 within available appropriations, provide an interim rate increase for a
129 licensed chronic and convalescent nursing home or a rest home with
130 nursing supervision for rate periods no earlier than April 1, 2004, only
131 if the commissioner determines that the increase is necessary to avoid
132 the filing of a petition for relief under Title 11 of the United States
133 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
134 549, inclusive; or substantial deterioration of the facility's financial
135 condition that may be expected to adversely affect resident care and
136 the continued operation of the facility, and the commissioner
137 determines that the continued operation of the facility is in the best
138 interest of the state. The commissioner shall consider any requests for
139 interim rate increases on file with the department from March 30, 2004,
140 and those submitted subsequently for rate periods no earlier than
141 April 1, 2004. When reviewing a rate increase request the
142 commissioner shall, at a minimum, consider: (1) Existing chronic and
143 convalescent nursing home or rest home with nursing supervision
144 utilization in the area and projected bed need; (2) physical plant long-
145 term viability and the ability of the owner or purchaser to implement
146 any necessary property improvements; (3) licensure and certification
147 compliance history; (4) reasonableness of actual and projected
148 expenses; and (5) the ability of the facility to meet wage and benefit
149 costs. No rate shall be increased pursuant to this subsection in excess
150 of one hundred fifteen per cent of the median rate for the facility's peer
151 grouping, established pursuant to subdivision (2) of subsection (f) of
152 this section, unless recommended by the commissioner and approved
153 by the Secretary of the Office of Policy and Management after
154 consultation with the commissioner. Such median rates shall be

155 published by the Department of Social Services not later than April
 156 first of each year. In the event that a facility granted an interim rate
 157 increase pursuant to this section is sold or otherwise conveyed for
 158 value to an unrelated entity less than five years after the effective date
 159 of such rate increase, the rate increase shall be deemed rescinded and
 160 the department shall recover an amount equal to the difference
 161 between payments made for all affected rate periods and payments
 162 that would have been made if the interim rate increase was not
 163 granted. The commissioner may seek recovery from payments made to
 164 any facility with common ownership. With the approval of the
 165 Secretary of the Office of Policy and Management, the commissioner
 166 may waive recovery and rescission of the interim rate for good cause
 167 shown that is not inconsistent with this section, including, but not
 168 limited to, transfers to family members that were made for no value.
 169 The commissioner shall provide written quarterly reports to the joint
 170 standing committees of the General Assembly having cognizance of
 171 matters relating to human services and appropriations and the budgets
 172 of state agencies and to the select committee of the General Assembly
 173 having cognizance of matters relating to aging, that identify each
 174 facility requesting an interim rate increase, the amount of the
 175 requested rate increase for each facility, the action taken by the
 176 commissioner and the secretary pursuant to this subsection, and
 177 estimates of the additional cost to the state for each approved interim
 178 rate increase. Nothing in this subsection shall prohibit the
 179 commissioner from increasing the rate of a licensed chronic and
 180 convalescent nursing home or a rest home with nursing supervision
 181 for allowable costs associated with facility capital improvements or
 182 increasing the rate in case of a sale of a licensed chronic and
 183 convalescent nursing home or a rest home with nursing supervision,
 184 pursuant to subdivision (15) of subsection (f) of this section, if
 185 receivership has been imposed on such home.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2012	17b-340(a)

Statement of Legislative Commissioners:

In section 1(a), the definition of "related party" was moved for proper form and "per" was substituted for "a" for proper form.

HS *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill changes reporting requirements for certain for-profit chronic and convalescent nursing homes, which has no state fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5451*****AN ACT CONCERNING TRANSPARENCY IN NURSING HOME COST REPORTS.*****SUMMARY:**

Every two to four years, the law requires the Department of Social Services (DSS) commissioner to rebase Medicaid rates for room, board, and other covered services. Facilities affected are licensed chronic and convalescent nursing homes, chronic disease hospitals associated with chronic and convalescent nursing homes with nursing supervision, residential care homes, and intermediate care facilities for those with mental retardation. In the past, DSS has used cost reports to calculate each facility's rates, but has recently substituted a flat, across-the-board percentage instead.

The bill requires each for-profit chronic and convalescent nursing home that qualifies for Medicaid reimbursements to include in its cost report a profit and loss statement for each related party it pays at least \$10,000 per year for goods, fees, and services. (Under the bill, "related parties" include companies related to such nursing homes through family associations, common ownership, control, or business association with any of the owners, operators, or officials of the facility.) The facility's report must also include a detailed account of the actual cost of these purchases, including how much it paid for them and the seller's mark-ups, profits, or administrative fees.

EFFECTIVE DATE: July 1, 2012

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 12 Nay 4 (03/22/2012)