



General Assembly

**Substitute Bill No. 5451**

February Session, 2012

\* \_\_\_\_\_HB05451HS\_\_\_\_\_032312\_\_\_\_\_\*

**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2 to the general statutes is repealed and the following is substituted in  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)
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**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*