



General Assembly

January Session, 2013

Raised Bill No. 6609

LCO No. 4185



Referred to Committee on HUMAN SERVICES

Introduced by:
(HS)

AN ACT CONCERNING NURSING HOME TRANSPARENCY.

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2 repealed and the following is substituted in lieu thereof (*Effective July*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, 2013*):

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 or her discretion, allow the
36 inclusion of extraordinary and unanticipated costs of providing
37 services which were incurred to avoid an immediate negative impact
38 on the health and safety of patients. The commissioner may, in his or
39 her discretion, based upon review of a facility's costs, direct care staff
40 to patient ratio and any other related information, revise a facility's
41 rate for any increases or decreases to total licensed capacity of more
42 than ten beds or changes to its number of licensed rest home with
43 nursing supervision beds and chronic and convalescent nursing home
44 beds. The commissioner may so revise a facility's rate established for
45 the fiscal year ending June 30, 1993, and thereafter for any bed
46 increases, decreases or changes in licensure effective after October 1,
47 1989. Effective July 1, 1991, in facilities which have both a chronic and
48 convalescent nursing home and a rest home with nursing supervision,
49 the rate for the rest home with nursing supervision shall not exceed
50 such facility's rate for its chronic and convalescent nursing home. All

51 such facilities for which rates are determined under this subsection
52 shall report on a fiscal year basis ending on the thirtieth day of
53 September. Such report shall be submitted to the commissioner by the
54 thirty-first day of December. Each for-profit chronic and convalescent
55 nursing home which receives state funding pursuant to this section
56 shall include in such annual report a profit and loss statement from
57 each related party that receives from such for-profit chronic and
58 convalescent nursing home ten thousand dollars or more a year for
59 goods, fees and services. For purposes of this subsection, (1) a "related
60 party" includes, but is not limited to, any company related to such for-
61 profit chronic and convalescent nursing home through family
62 association, common ownership, control or business association with
63 any of the owners, operators or officials of such nursing home; (2)
64 "company" means any person, partnership, association, company,
65 holding company, limited liability company or corporation; (3) "family
66 association" means a relationship by birth, marriage or domestic
67 partnership; and (4) "profit and loss statement" means the most recent
68 annual statement on profits and losses finalized by a related party
69 before the annual report mandated under this subsection. The
70 commissioner may reduce the rate in effect for a facility which fails to
71 report on or before such date by an amount not to exceed ten per cent
72 of such rate. The commissioner shall annually, on or before the
73 fifteenth day of February, report the data contained in the reports of
74 such facilities to the joint standing committee of the General Assembly
75 having cognizance of matters relating to appropriations. For the cost
76 reporting year commencing October 1, 1985, and for subsequent cost
77 reporting years, facilities shall report the cost of using the services of
78 any nursing pool employee by separating said cost into two categories,
79 the portion of the cost equal to the salary of the employee for whom
80 the nursing pool employee is substituting shall be considered a
81 nursing cost and any cost in excess of such salary shall be further
82 divided so that seventy-five per cent of the excess cost shall be
83 considered an administrative or general cost and twenty-five per cent
84 of the excess cost shall be considered a nursing cost, provided if the

85 total nursing pool costs of a facility for any cost year are equal to or
86 exceed fifteen per cent of the total nursing expenditures of the facility
87 for such cost year, no portion of nursing pool costs in excess of fifteen
88 per cent shall be classified as administrative or general costs. The
89 commissioner, in determining such rates, shall also take into account
90 the classification of patients or boarders according to special care
91 requirements or classification of the facility according to such factors
92 as facilities and services and such other factors as he deems reasonable,
93 including anticipated fluctuations in the cost of providing such
94 services. The commissioner may establish a separate rate for a facility
95 or a portion of a facility for traumatic brain injury patients who require
96 extensive care but not acute general hospital care. Such separate rate
97 shall reflect the special care requirements of such patients. If changes
98 in federal or state laws, regulations or standards adopted subsequent
99 to June 30, 1985, result in increased costs or expenditures in an amount
100 exceeding one-half of one per cent of allowable costs for the most
101 recent cost reporting year, the commissioner shall adjust rates and
102 provide payment for any such increased reasonable costs or
103 expenditures within a reasonable period of time retroactive to the date
104 of enforcement. Nothing in this section shall be construed to require
105 the Department of Social Services to adjust rates and provide payment
106 for any increases in costs resulting from an inspection of a facility by
107 the Department of Public Health. Such assistance as the commissioner
108 requires from other state agencies or departments in determining rates
109 shall be made available to [him] the commissioner at his or her request.
110 Payment of the rates established hereunder shall be conditioned on the
111 establishment by such facilities of admissions procedures which
112 conform with this section, section 19a-533 and all other applicable
113 provisions of the law and the provision of equality of treatment to all
114 persons in such facilities. The established rates shall be the maximum
115 amount chargeable by such facilities for care of such beneficiaries, and
116 the acceptance by or on behalf of any such facility of any additional
117 compensation for care of any such beneficiary from any other person
118 or source shall constitute the offense of aiding a beneficiary to obtain

119 aid to which he is not entitled and shall be punishable in the same
120 manner as is provided in subsection (b) of section 17b-97. For the fiscal
121 year ending June 30, 1992, rates for licensed residential care homes and
122 intermediate care facilities for the mentally retarded may receive an
123 increase not to exceed the most recent annual increase in the Regional
124 Data Resources Incorporated McGraw-Hill Health Care Costs:
125 Consumer Price Index (all urban)-All Items. Rates for newly certified
126 intermediate care facilities for the mentally retarded shall not exceed
127 one hundred fifty per cent of the median rate of rates in effect on
128 January 31, 1991, for intermediate care facilities for the mentally
129 retarded certified prior to February 1, 1991. Notwithstanding any
130 provision of this section, the Commissioner of Social Services may,
131 within available appropriations, provide an interim rate increase for a
132 licensed chronic and convalescent nursing home or a rest home with
133 nursing supervision for rate periods no earlier than April 1, 2004, only
134 if the commissioner determines that the increase is necessary to avoid
135 the filing of a petition for relief under Title 11 of the United States
136 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
137 549, inclusive; or substantial deterioration of the facility's financial
138 condition that may be expected to adversely affect resident care and
139 the continued operation of the facility, and the commissioner
140 determines that the continued operation of the facility is in the best
141 interest of the state. The commissioner shall consider any requests for
142 interim rate increases on file with the department from March 30, 2004,
143 and those submitted subsequently for rate periods no earlier than
144 April 1, 2004. When reviewing a rate increase request the
145 commissioner shall, at a minimum, consider: [(1)] (A) Existing chronic
146 and convalescent nursing home or rest home with nursing supervision
147 utilization in the area and projected bed need; [(2)] (B) physical plant
148 long-term viability and the ability of the owner or purchaser to
149 implement any necessary property improvements; [(3)] (C) licensure
150 and certification compliance history; [(4)] (D) reasonableness of actual
151 and projected expenses; and [(5)] (E) the ability of the facility to meet
152 wage and benefit costs. No rate shall be increased pursuant to this

153 subsection in excess of one hundred fifteen per cent of the median rate
154 for the facility's peer grouping, established pursuant to subdivision (2)
155 of subsection (f) of this section, unless recommended by the
156 commissioner and approved by the Secretary of the Office of Policy
157 and Management after consultation with the commissioner. Such
158 median rates shall be published by the Department of Social Services
159 not later than April first of each year. In the event that a facility
160 granted an interim rate increase pursuant to this section is sold or
161 otherwise conveyed for value to an unrelated entity less than five years
162 after the effective date of such rate increase, the rate increase shall be
163 deemed rescinded and the department shall recover an amount equal
164 to the difference between payments made for all affected rate periods
165 and payments that would have been made if the interim rate increase
166 was not granted. The commissioner may seek recovery from payments
167 made to any facility with common ownership. With the approval of
168 the Secretary of the Office of Policy and Management, the
169 commissioner may waive recovery and rescission of the interim rate
170 for good cause shown that is not inconsistent with this section,
171 including, but not limited to, transfers to family members that were
172 made for no value. The commissioner shall provide written quarterly
173 reports to the joint standing committees of the General Assembly
174 having cognizance of matters relating to human services and
175 appropriations and the budgets of state agencies and to the select
176 committee of the General Assembly having cognizance of matters
177 relating to aging, that identify each facility requesting an interim rate
178 increase, the amount of the requested rate increase for each facility, the
179 action taken by the commissioner and the secretary pursuant to this
180 subsection, and estimates of the additional cost to the state for each
181 approved interim rate increase. Nothing in this subsection shall
182 prohibit the commissioner from increasing the rate of a licensed
183 chronic and convalescent nursing home or a rest home with nursing
184 supervision for allowable costs associated with facility capital
185 improvements or increasing the rate in case of a sale of a licensed
186 chronic and convalescent nursing home or a rest home with nursing

187 supervision, pursuant to subdivision (15) of subsection (f) of this
188 section, if receivership has been imposed on such home.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2013</i>	17b-340(a)

Statement of Purpose:

To provide for greater transparency in nursing home reporting by requiring them to report on profit and losses of related parties.

[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.]