



General Assembly

**Substitute Bill No. 6609**

January Session, 2013



**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2 repealed and the following is substituted in lieu thereof (*Effective July*  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 or she deems  
93 reasonable, including anticipated fluctuations in the cost of providing  
94 such services. The commissioner may establish a separate rate for a  
95 facility or a portion of a facility for traumatic brain injury patients who  
96 require extensive care but not acute general hospital care. Such  
97 separate rate shall reflect the special care requirements of such  
98 patients. If changes in federal or state laws, regulations or standards  
99 adopted subsequent to June 30, 1985, result in increased costs or  
100 expenditures in an amount exceeding one-half of one per cent of  
101 allowable costs for the most recent cost reporting year, the  
102 commissioner shall adjust rates and provide payment for any such  
103 increased reasonable costs or expenditures within a reasonable period  
104 of time retroactive to the date of enforcement. Nothing in this section  
105 shall be construed to require the Department of Social Services to  
106 adjust rates and provide payment for any increases in costs resulting  
107 from an inspection of a facility by the Department of Public Health.  
108 Such assistance as the commissioner requires from other state agencies  
109 or departments in determining rates shall be made available to [him]  
110 the commissioner at his or her request. Payment of the rates  
111 established hereunder shall be conditioned on the establishment by  
112 such facilities of admissions procedures which conform with this  
113 section, section 19a-533 and all other applicable provisions of the law  
114 and the provision of equality of treatment to all persons in such  
115 facilities. The established rates shall be the maximum amount  
116 chargeable by such facilities for care of such beneficiaries, and the  
117 acceptance by or on behalf of any such facility of any additional  
118 compensation for care of any such beneficiary from any other person  
119 or source shall constitute the offense of aiding a beneficiary to obtain  
120 aid to which he or she is not entitled and shall be punishable in the  
121 same manner as is provided in subsection (b) of section 17b-97. For the  
122 fiscal year ending June 30, 1992, rates for licensed residential care  
123 homes and intermediate care facilities for the mentally retarded may  
124 receive an increase not to exceed the most recent annual increase in the  
125 Regional Data Resources Incorporated McGraw-Hill Health Care  
126 Costs: Consumer Price Index (all urban)-All Items. Rates for newly

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

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

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

***Statement of Legislative Commissioners:***

In section 1(a), two references to "he" were changed to "he or she" for consistency, and "joint standing committees of the General Assembly having cognizance of matters relating to human services and appropriations and the budgets of state agencies and to the select committee of the General Assembly having cognizance of matters relating to aging," was changed to "joint standing committees of the General Assembly having cognizance of matters relating to aging, human services and appropriations and the budgets of state agencies, [and to the select committee of the General Assembly having cognizance of matters relating to aging,]" for accuracy.

***HS***      *Joint Favorable Subst. -LCO*