



# House of Representatives

General Assembly

**File No. 291**

February Session, 2014

Substitute House Bill No. 5051

*House of Representatives, April 2, 2014*

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT IMPROVING TRANSPARENCY OF NURSING HOME OPERATIONS.***

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 2014 supplement  
2 to the general statutes is repealed and the following is substituted in  
3 lieu thereof (*Effective July 1, 2014*):

4 (a) For purposes of this subsection, (1) a "related party" includes, but  
5 is not limited to, any company related to a chronic and convalescent  
6 nursing home through family association, common ownership, control  
7 or business association with any of the owners, operators or officials of  
8 such nursing home; (2) "company" means any person, partnership,  
9 association, holding company, limited liability company or  
10 corporation; (3) "family association" means a relationship by birth,  
11 marriage or domestic partnership; and (4) "profit and loss statement"  
12 means the most recent annual statement on profits and losses finalized  
13 by a related party before the annual report mandated under this

14 subsection. The rates to be paid by or for persons aided or cared for by  
15 the state or any town in this state to licensed chronic and convalescent  
16 nursing homes, to chronic disease hospitals associated with chronic  
17 and convalescent nursing homes, to rest homes with nursing  
18 supervision, to licensed residential care homes, as defined by section  
19 19a-490, and to residential facilities for persons with intellectual  
20 disability [which] that are licensed pursuant to section 17a-227 and  
21 certified to participate in the Title XIX Medicaid program as  
22 intermediate care facilities for individuals with intellectual disabilities,  
23 for room, board and services specified in licensing regulations issued  
24 by the licensing agency shall be determined annually, except as  
25 otherwise provided in this subsection, after a public hearing, by the  
26 Commissioner of Social Services, to be effective July first of each year  
27 except as otherwise provided in this subsection. Such rates shall be  
28 determined on a basis of a reasonable payment for such necessary  
29 services, which basis shall take into account as a factor the costs of  
30 such services. Cost of such services shall include reasonable costs  
31 mandated by collective bargaining agreements with certified collective  
32 bargaining agents or other agreements between the employer and  
33 employees, provided "employees" shall not include persons employed  
34 as managers or chief administrators or required to be licensed as  
35 nursing home administrators, and compensation for services rendered  
36 by proprietors at prevailing wage rates, as determined by application  
37 of principles of accounting as prescribed by said commissioner. Cost of  
38 such services shall not include amounts paid by the facilities to  
39 employees as salary, or to attorneys or consultants as fees, where the  
40 responsibility of the employees, attorneys, or consultants is to  
41 persuade or seek to persuade the other employees of the facility to  
42 support or oppose unionization. Nothing in this subsection shall  
43 prohibit inclusion of amounts paid for legal counsel related to the  
44 negotiation of collective bargaining agreements, the settlement of  
45 grievances or normal administration of labor relations. The  
46 commissioner may, in [his] the commissioner's discretion, allow the  
47 inclusion of extraordinary and unanticipated costs of providing  
48 services [which] that were incurred to avoid an immediate negative

49 impact on the health and safety of patients. The commissioner may, in  
50 [his] the commissioner's discretion, based upon review of a facility's  
51 costs, direct care staff to patient ratio and any other related  
52 information, revise a facility's rate for any increases or decreases to  
53 total licensed capacity of more than ten beds or changes to its number  
54 of licensed rest home with nursing supervision beds and chronic and  
55 convalescent nursing home beds. The commissioner may so revise a  
56 facility's rate established for the fiscal year ending June 30, 1993, and  
57 thereafter for any bed increases, decreases or changes in licensure  
58 effective after October 1, 1989. Effective July 1, 1991, in facilities  
59 [which] that have both a chronic and convalescent nursing home and a  
60 rest home with nursing supervision, the rate for the rest home with  
61 nursing supervision shall not exceed such facility's rate for its chronic  
62 and convalescent nursing home. All such facilities for which rates are  
63 determined under this subsection shall report on a fiscal year basis  
64 ending on [the thirtieth day of] September thirtieth. Such report shall  
65 be submitted to the commissioner by [the thirty-first day of] December  
66 thirty-first. Each for-profit chronic and convalescent nursing home that  
67 receives state funding pursuant to this section shall include in such  
68 annual report a profit and loss statement from each related party that  
69 receives from such chronic and convalescent nursing home ten  
70 thousand dollars or more per year for goods, fees and services. No  
71 cause of action or liability shall arise against the state, the Department  
72 of Social Services, any state official or agent for failure to take action  
73 based on the information required to be reported under this  
74 subsection. The commissioner may reduce the rate in effect for a  
75 facility [which] that fails to report on or before [such date] December  
76 thirty-first by an amount not to exceed ten per cent of such rate. The  
77 commissioner shall annually, on or before [the fifteenth day of]  
78 February fifteenth, report the data contained in the reports of such  
79 facilities to the joint standing committee of the General Assembly  
80 having cognizance of matters relating to appropriations and the  
81 budgets of state agencies. For the cost reporting year commencing  
82 October 1, 1985, and for subsequent cost reporting years, facilities shall  
83 report the cost of using the services of any nursing pool employee by

84 separating said cost into two categories, the portion of the cost equal to  
85 the salary of the employee for whom the nursing pool employee is  
86 substituting shall be considered a nursing cost and any cost in excess  
87 of such salary shall be further divided so that seventy-five per cent of  
88 the excess cost shall be considered an administrative or general cost  
89 and twenty-five per cent of the excess cost shall be considered a  
90 nursing cost, provided if the total nursing pool costs of a facility for  
91 any cost year are equal to or exceed fifteen per cent of the total nursing  
92 expenditures of the facility for such cost year, no portion of nursing  
93 pool costs in excess of fifteen per cent shall be classified as  
94 administrative or general costs. The commissioner, in determining  
95 such rates, shall also take into account the classification of patients or  
96 boarders according to special care requirements or classification of the  
97 facility according to such factors as facilities and services and such  
98 other factors as [he] the commissioner deems reasonable, including  
99 anticipated fluctuations in the cost of providing such services. The  
100 commissioner may establish a separate rate for a facility or a portion of  
101 a facility for traumatic brain injury patients who require extensive care  
102 but not acute general hospital care. Such separate rate shall reflect the  
103 special care requirements of such patients. If changes in federal or state  
104 laws, regulations or standards adopted subsequent to June 30, 1985,  
105 result in increased costs or expenditures in an amount exceeding one-  
106 half of one per cent of allowable costs for the most recent cost  
107 reporting year, the commissioner shall adjust rates and provide  
108 payment for any such increased reasonable costs or expenditures  
109 within a reasonable period of time retroactive to the date of  
110 enforcement. Nothing in this section shall be construed to require the  
111 Department of Social Services to adjust rates and provide payment for  
112 any increases in costs resulting from an inspection of a facility by the  
113 Department of Public Health. Such assistance as the commissioner  
114 requires from other state agencies or departments in determining rates  
115 shall be made available to [him] the commissioner at [his] the  
116 commissioner's request. Payment of the rates established [hereunder]  
117 pursuant to this section shall be conditioned on the establishment by  
118 such facilities of admissions procedures [which] that conform with this

119 section, section 19a-533 and all other applicable provisions of the law  
120 and the provision of equality of treatment to all persons in such  
121 facilities. The established rates shall be the maximum amount  
122 chargeable by such facilities for care of such beneficiaries, and the  
123 acceptance by or on behalf of any such facility of any additional  
124 compensation for care of any such beneficiary from any other person  
125 or source shall constitute the offense of aiding a beneficiary to obtain  
126 aid to which [he] the beneficiary is not entitled and shall be punishable  
127 in the same manner as is provided in subsection (b) of section 17b-97.  
128 For the fiscal year ending June 30, 1992, rates for licensed residential  
129 care homes and intermediate care facilities for individuals with  
130 intellectual disabilities may receive an increase not to exceed the most  
131 recent annual increase in the Regional Data Resources Incorporated  
132 McGraw-Hill Health Care Costs: Consumer Price Index (all urban)-All  
133 Items. Rates for newly certified intermediate care facilities for  
134 individuals with intellectual disabilities shall not exceed one hundred  
135 fifty per cent of the median rate of rates in effect on January 31, 1991,  
136 for intermediate care facilities for individuals with intellectual  
137 disabilities certified prior to February 1, 1991. Notwithstanding any  
138 provision of this section, the Commissioner of Social Services may,  
139 within available appropriations, provide an interim rate increase for a  
140 licensed chronic and convalescent nursing home or a rest home with  
141 nursing supervision for rate periods no earlier than April 1, 2004, only  
142 if the commissioner determines that the increase is necessary to avoid  
143 the filing of a petition for relief under Title 11 of the United States  
144 Code; imposition of receivership pursuant to sections [19a-541 to 19a-  
145 549, inclusive] 19a-542 and 19a-543; or substantial deterioration of the  
146 facility's financial condition that may be expected to adversely affect  
147 resident care and the continued operation of the facility, and the  
148 commissioner determines that the continued operation of the facility is  
149 in the best interest of the state. The commissioner shall consider any  
150 requests for interim rate increases on file with the department from  
151 March 30, 2004, and those submitted subsequently for rate periods no  
152 earlier than April 1, 2004. When reviewing [a] an interim rate increase  
153 request the commissioner shall, at a minimum, consider: [(1)] (A)

154 Existing chronic and convalescent nursing home or rest home with  
155 nursing supervision utilization in the area and projected bed need; [(2)]  
156 (B) physical plant long-term viability and the ability of the owner or  
157 purchaser to implement any necessary property improvements; [(3)]  
158 (C) licensure and certification compliance history; [(4)] (D)  
159 reasonableness of actual and projected expenses; and [(5)] (E) the  
160 ability of the facility to meet wage and benefit costs. No interim rate  
161 shall be increased pursuant to this subsection in excess of one hundred  
162 fifteen per cent of the median rate for the facility's peer grouping,  
163 established pursuant to subdivision (2) of subsection (f) of this section,  
164 unless recommended by the commissioner and approved by the  
165 Secretary of the Office of Policy and Management after consultation  
166 with the commissioner. Such median rates shall be published by the  
167 Department of Social Services not later than April first of each year. In  
168 the event that a facility granted an interim rate increase pursuant to  
169 this section is sold or otherwise conveyed for value to an unrelated  
170 entity less than five years after the effective date of such rate increase,  
171 the rate increase shall be deemed rescinded and the department shall  
172 recover an amount equal to the difference between payments made for  
173 all affected rate periods and payments that would have been made if  
174 the interim rate increase was not granted. The commissioner may seek  
175 recovery [from] of such payments [made to] from any facility with  
176 common ownership. With the approval of the Secretary of the Office of  
177 Policy and Management, the commissioner may waive recovery and  
178 rescission of the interim rate for good cause shown that is not  
179 inconsistent with this section, including, but not limited to, transfers to  
180 family members that were made for no value. The commissioner shall  
181 provide written quarterly reports to the joint standing committees of  
182 the General Assembly having cognizance of matters relating to aging,  
183 human services and appropriations and the budgets of state agencies,  
184 that identify each facility requesting an interim rate increase, the  
185 amount of the requested rate increase for each facility, the action taken  
186 by the commissioner and the secretary pursuant to this subsection, and  
187 estimates of the additional cost to the state for each approved interim  
188 rate increase. Nothing in this subsection shall prohibit the

189 commissioner from increasing the rate of a licensed chronic and  
 190 convalescent nursing home or a rest home with nursing supervision  
 191 for allowable costs associated with facility capital improvements or  
 192 increasing the rate in case of a sale of a licensed chronic and  
 193 convalescent nursing home or a rest home with nursing supervision,  
 194 pursuant to subdivision (15) of subsection (f) of this section, if  
 195 receivership has been imposed on such home.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2014	17b-340(a)

**Statement of Legislative Commissioners:**

In section 1(a)(2), a second reference to "company" was removed for accuracy and to avoid repetition. In section 1(a)(4), "imposition of receivership pursuant to [sections] section 19a-541; [to 19a-549, inclusive;]" was changed to "imposition of receivership pursuant to sections [19a-541 to 19a-549, inclusive] 19a-542 and 19a-543;" for accuracy and consistency with provisions of the general statutes.

**HS**      *Joint Favorable Subst.*

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.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill requires additional information concerning nursing home finances to be reported to the Department of Social Services. There is no fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 5051*****AN ACT IMPROVING TRANSPARENCY OF NURSING HOME OPERATIONS.*****SUMMARY:**

This bill requires every for-profit chronic and convalescent nursing home that receives state funding to include with its cost report to the Department of Social Services (DSS) the most recent finalized annual profit and loss statement from any related party that receives \$10,000 or more for providing goods, "fees," and services to the nursing home. (Presumably, this means any money the related party receives in fees, not "for" them.) By law, DSS pays nursing homes per diem rates for caring for their Medicaid-eligible residents. Rates are set prospectively based on cost reports the homes submit annually.

The bill also prohibits anyone from bringing legal action against DSS or other state employees for not taking action as a result of information obtained by the agency in cost reports.

The bill defines "related party" to include companies related to the nursing home (1) through a family association (i.e., a relationship by birth, marriage, or domestic partnership) or (2) through common ownership, control, or business association with any of the owners, operators, or officials of the nursing home.

EFFECTIVE DATE: July 1, 2014

**BACKGROUND*****Chronic and Convalescent Nursing Homes***

Chronic and convalescent nursing homes are nursing home facilities licensed by the Department of Public Health to provide skilled nursing care under medical supervision and direction to carry out nonsurgical

treatment and dietary procedures for chronic diseases, convalescent stages, acute diseases, or injuries.

### ***Nursing Home Cost Reports***

State law requires nursing homes to submit cost reports to DSS by each December 31. These reports include an accounting by the homes of any related-party transactions that occur during the reporting period. The report form includes space for the home to indicate, for each related party and regardless of the amount of the transaction:

1. the related individual or company name and address;
2. whether the entity also provides goods and services to non-related parties and the percentage of revenue the entity receives from the non-related parties;
3. a description of the goods and services provided;
4. where (page and line number) on the cost report these costs are shown;
5. the cost reported; and
6. the actual cost to the related party.

### ***Federal Requirements***

Federal law requires nursing homes that receive Medicaid funding to disclose to the state Medicaid agency information on related parties, including information on:

1. anyone with direct or indirect ownership in the home of 5% or more;
2. officers, director, and partners;
3. managing employees; and
4. anyone who is an “additional disclosable party” (defined as any person or entity who (a) exercises operational, financial, or

managerial control over the facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the facility; (b) leases or subleases real property to the facility, or owns a whole or part interest of 5% or more of the total property value of the facility; or (c) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility (42 USC § 1320a-3).

Federal regulations permit nursing homes to include as allowable costs those they incurred from procuring services, facilities, and supplies furnished by an entity related by common ownership or control. The maximum allowed is the actual cost to the related party. But the regulations allow homes to include the actual charge for goods and services if the home can demonstrate by convincing evidence that:

1. the supplying organization is a bona fide separate organization;
2. a substantial part of its business activity of the type it is carrying on with the home is also transacted with others and that there is an open, competitive market for the type of services, facilities, or supplies the entity provides;
3. the services, facilities, or supplies that institutions commonly obtain from other entities are not a basic element of patient care that the home ordinarily would furnish directly to its residents; and
4. the charge to the home is in line with the charge in the open market and no more than the entity would charge any others for the same goods and services (42 CFR § 413.17).

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 12 Nay 6 (03/18/2014)