



General Assembly

February Session, 2014

Governor's Bill No. 5051

LCO No. 373



Referred to Committee on HUMAN SERVICES

Introduced by:

REP. SHARKEY, 88th Dist.
REP. ARESIMOWICZ, 30th Dist.
SEN. WILLIAMS, 29th Dist.
SEN. LOONEY, 11th Dist.

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2 to the general statutes is repealed and the following is substituted in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 such chronic and
6 convalescent nursing home through family association, common
7 ownership, control or business association with any of the owners,
8 operators or officials of such nursing home; (2) "company" means any
9 person, partnership, association, company, holding company, limited
10 liability company or corporation; (3) "family association" means a
11 relationship by birth, marriage or domestic partnership; and (4) "profit

12 and loss statement" means the most recent annual statement on profits
13 and losses finalized by a related party before the annual report
14 mandated under this subsection. The rates to be paid by or for persons
15 aided or cared for by the state or any town in this state to licensed
16 chronic and convalescent nursing homes, to chronic disease hospitals
17 associated with chronic and convalescent nursing homes, to rest homes
18 with nursing supervision, to licensed residential care homes, as
19 defined by section 19a-490, and to residential facilities for persons with
20 intellectual disability [which] that are licensed pursuant to section 17a-
21 227 and 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 chronic and convalescent nursing home that receives
67 state funding pursuant to this section shall include in such annual
68 report a profit and loss statement from each related party that receives
69 from such chronic and convalescent nursing home ten thousand
70 dollars or more per year for goods, fees and services and detailed
71 information on direct care staff, including, but not limited to: (A)
72 Regular hours and wages, (B) overtime hours and wages, and (C)
73 employee health and welfare benefits. Each direct care and
74 administrative nurse position shall be reported as a separate line item.
75 The commissioner may reduce the rate in effect for a facility [which]
76 that fails to report on or before [such date] December thirty-first by an
77 amount not to exceed ten per cent of such rate. The commissioner shall
78 annually, on or before [the fifteenth day of] February fifteenth, report
79 the data contained in the reports of such facilities to the joint standing

80 committee of the General Assembly having cognizance of matters
81 relating to appropriations and the budgets of state agencies. For the
82 cost reporting year commencing October 1, 1985, and for subsequent
83 cost reporting years, facilities shall report the cost of using the services
84 of any nursing pool employee by separating said cost into two
85 categories, the portion of the cost equal to the salary of the employee
86 for whom the nursing pool employee is substituting shall be
87 considered a nursing cost and any cost in excess of such salary shall be
88 further divided so that seventy-five per cent of the excess cost shall be
89 considered an administrative or general cost and twenty-five per cent
90 of the excess cost shall be considered a nursing cost, provided if the
91 total nursing pool costs of a facility for any cost year are equal to or
92 exceed fifteen per cent of the total nursing expenditures of the facility
93 for such cost year, no portion of nursing pool costs in excess of fifteen
94 per cent shall be classified as administrative or general costs. The
95 commissioner, in determining such rates, shall also take into account
96 the classification of patients or boarders according to special care
97 requirements or classification of the facility according to such factors
98 as facilities and services and such other factors as [he] the
99 commissioner deems reasonable, including anticipated fluctuations in
100 the cost of providing such services. The commissioner may establish a
101 separate rate for a facility or a portion of a facility for traumatic brain
102 injury patients who require extensive care but not acute general
103 hospital care. Such separate rate shall reflect the special care
104 requirements of such patients. If changes in federal or state laws,
105 regulations or standards adopted subsequent to June 30, 1985, result in
106 increased costs or expenditures in an amount exceeding one-half of
107 one per cent of allowable costs for the most recent cost reporting year,
108 the commissioner shall adjust rates and provide payment for any such
109 increased reasonable costs or expenditures within a reasonable period
110 of time retroactive to the date of enforcement. Nothing in this section
111 shall be construed to require the Department of Social Services to
112 adjust rates and provide payment for any increases in costs resulting
113 from an inspection of a facility by the Department of Public Health.

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

148 facility, and the commissioner determines that the continued operation
149 of the facility is in the best interest of the state. The commissioner shall
150 consider any requests for interim rate increases on file with the
151 department from March 30, 2004, and those submitted subsequently
152 for rate periods no earlier than April 1, 2004. When reviewing [a] an
153 interim rate increase request the commissioner shall, at a minimum,
154 consider: [(1)] (i) Existing chronic and convalescent nursing home or
155 rest home with nursing supervision utilization in the area and
156 projected bed need; [(2)] (ii) physical plant long-term viability and the
157 ability of the owner or purchaser to implement any necessary property
158 improvements; [(3)] (iii) licensure and certification compliance history;
159 [(4)] (iv) reasonableness of actual and projected expenses; and [(5)] (v)
160 the ability of the facility to meet wage and benefit costs. No interim
161 rate shall be increased pursuant to this subsection in excess of one
162 hundred fifteen per cent of the median rate for the facility's peer
163 grouping, established pursuant to subdivision (2) of subsection (f) of
164 this section, unless recommended by the commissioner and approved
165 by the Secretary of the Office of Policy and Management after
166 consultation with the commissioner. Such median rates shall be
167 published by the Department of Social Services not later than April
168 first of each year. In the event that a facility granted an interim rate
169 increase pursuant to this section is sold or otherwise conveyed for
170 value to an unrelated entity less than five years after the effective date
171 of such rate increase, the rate increase shall be deemed rescinded and
172 the department shall recover an amount equal to the difference
173 between payments made for all affected rate periods and payments
174 that would have been made if the interim rate increase was not
175 granted. The commissioner may seek recovery [from] of such
176 payments [made to] from any facility with common ownership. With
177 the approval of the Secretary of the Office of Policy and Management,
178 the commissioner may waive recovery and rescission of the interim
179 rate for good cause shown that is not inconsistent with this section,
180 including, but not limited to, transfers to family members that were
181 made for no value. The commissioner shall provide written quarterly

182 reports to the joint standing committees of the General Assembly
 183 having cognizance of matters relating to aging, human services and
 184 appropriations and the budgets of state agencies, that identify each
 185 facility requesting an interim rate increase, the amount of the
 186 requested rate increase for each facility, the action taken by the
 187 commissioner and the secretary pursuant to this subsection, and
 188 estimates of the additional cost to the state for each approved interim
 189 rate increase. Nothing in this subsection shall prohibit the
 190 commissioner from increasing the rate of a licensed chronic and
 191 convalescent nursing home or a rest home with nursing supervision
 192 for allowable costs associated with facility capital improvements or
 193 increasing the rate in case of a sale of a licensed chronic and
 194 convalescent nursing home or a rest home with nursing supervision,
 195 pursuant to subdivision (15) of subsection (f) of this section, if
 196 receivership has been imposed on such home.

197 Sec. 2. Section 4-165c of the general statutes is repealed and the
 198 following is substituted in lieu thereof (*Effective July 1, 2014*):

199 No cause of action or liability shall arise against the state, any of its
 200 agencies or subdivisions, or any state official, employee or agent, for
 201 failure to comply with the provisions of section 4-67y, 10-215h, 17b-4a,
 202 17b-112i, 17b-112j, 17b-340, as amended by this act, 17b-790b, 17b-800a
 203 or 19a-59g.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	17b-340(a)
Sec. 2	<i>July 1, 2014</i>	4-165c

Statement of Purpose:

To encourage transparency in financial reporting by all nursing homes.

[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.]