



General Assembly

February Session, 2014

Raised Bill No. 5136

LCO No. 579



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 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2 to the general statutes is repealed and the following is substituted in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 for-profit 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 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 for-profit chronic and convalescent nursing home
70 ten thousand dollars or more per year for goods, fees and services.
71 Each chronic and convalescent nursing home and rest home with
72 nursing supervision that receives state funding pursuant to this section
73 shall provide in such annual report detailed information on direct care
74 staff, including, but not limited to: (A) Regular hours and wages, (B)
75 overtime hours and wages, (C) benefit hours and wages, and (D)
76 employee health and welfare benefits. Each direct care and
77 administrative nurse position shall be reported as a separate line item.
78 The commissioner may reduce the rate in effect for a facility [which]
79 that fails to report on or before [such date] December thirty-first by an
80 amount not to exceed ten per cent of such rate. The commissioner shall
81 annually, on or before [the fifteenth day of] February fifteenth, report
82 the data contained in the reports of such facilities to the joint standing
83 committee of the General Assembly having cognizance of matters
84 relating to appropriations and the budgets of state agencies. For the

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

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

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

187 appropriations and the budgets of state agencies, that identify each
188 facility requesting an interim rate increase, the amount of the
189 requested rate increase for each facility, the action taken by the
190 commissioner and the secretary pursuant to this subsection, and
191 estimates of the additional cost to the state for each approved interim
192 rate increase. Nothing in this subsection shall prohibit the
193 commissioner from increasing the rate of a licensed chronic and
194 convalescent nursing home or a rest home with nursing supervision
195 for allowable costs associated with facility capital improvements or
196 increasing the rate in case of a sale of a licensed chronic and
197 convalescent nursing home or a rest home with nursing supervision,
198 pursuant to subdivision (15) of subsection (f) of this section, if
199 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, 2014</i>	17b-340(a)

Statement of Purpose:

To require transparency in financial reporting for for-profit 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.]