



General Assembly

Substitute Bill No. 5441

February Session, 2014



AN ACT CONCERNING DIRECT PAYMENT OF RESIDENTIAL CARE FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) As used in sections 17b-83
2 and 17b-601 of the general statutes, as amended by this act, "rated
3 housing facility" means (1) a boarding facility or home licensed by the
4 Department of Developmental Services, the Department of Mental
5 Health and Addiction Services, or the Department of Children and
6 Families; or (2) the facility established by New Horizons, Inc. pursuant
7 to section 19a-507 of the general statutes, provided any such home or
8 facility has been approved by the Department of Social Services to
9 receive state supplement payments for residents found eligible for
10 such payments in accordance with section 17b-600 of the general
11 statutes.

12 Sec. 2. Section 17b-83 of the general statutes is repealed and the
13 following is substituted in lieu thereof (*Effective from passage*):

14 The aid granted under the state supplement program or the
15 temporary family assistance program shall be in the form of money
16 payments and shall be made by the commissioner within available
17 Department of Social Services appropriations, directly to a licensed
18 residential care home, as defined in section 19a-490, a rated housing

19 facility, as defined in section 1 of this act, the applicant or other person
20 entitled to receive the same at such regular intervals as the
21 Commissioner of Social Services determines, provided the payments of
22 the costs of medical care and such other charges in connection with the
23 care and maintenance of a beneficiary as the commissioner deems
24 necessary and reasonable may be made to the licensed residential care
25 home or rated housing facility, applicant or to those persons
26 furnishing such services by the commissioner. Ninety per cent of clean
27 claims for payments to persons furnishing such services shall be made
28 [no] not later than thirty days from receipt of the request for payment
29 and ninety-nine per cent shall be made within ninety days of such
30 receipt. For the purposes of this section "clean claim" means a claim
31 which can be processed without obtaining additional substantiation
32 from the person furnishing such services or other person entitled to
33 receive payment. A claim submitted by any such person who is under
34 investigation for fraud or abuse shall not be considered a clean claim.

35 Sec. 3. Section 17b-601 of the general statutes is repealed and the
36 following is substituted in lieu thereof (*Effective from passage*):

37 The Commissioner of Social Services shall adopt regulations in
38 accordance with the provisions of chapter 54 establishing the method
39 by which payments are made for recipients of the state supplement
40 program who are residents of licensed residential care homes, as
41 defined in section 19a-490, and a rated housing facility, as defined in
42 section 1 of this act. Such regulations shall provide for the
43 safeguarding of residents' personal funds with respect to any homes,
44 or rated housing facilities that handle such funds. Regulations
45 concerning payment [to] for residents shall provide for payment to the
46 [recipient] licensed residential care home or rated housing facility for
47 the period during which the recipient makes [the home his] such home
48 or facility his or her residence, without regard to periods during which
49 the recipient is absent, provided the recipient can reasonably be
50 expected to return to the home or facility before the end of the month
51 following the month in which the recipient leaves the home or facility.

52 If the department determines that a resident of a home or rated
53 housing facility who applies for state supplement benefits is eligible
54 for such benefits, the department shall pay the home or facility at a per
55 diem or monthly rate less any applied income due from the resident.
56 Any retroactive adjustment to the rate of such a home or facility by the
57 commissioner that results in money due to such home or facility shall
58 be made to such home or facility directly, and any such adjustment
59 that results in an overpayment to the home or facility shall be paid by
60 the home or facility to the department. If a retroactive adjustment to
61 the rate of such home or facility results in a current resident becoming
62 eligible for state supplement benefits, and such resident applies for
63 state supplement benefits, the department may determine the start
64 date of eligibility for state supplement benefits to be the later of the
65 resident's admission date or the date ninety days prior to the date the
66 department receives the application. The commissioner shall continue
67 to make payments to licensed residential care homes or rated housing
68 facilities in accordance with reserved bed regulations until the effective
69 date of the regulations adopted pursuant to this section.

70 Sec. 4. Subsection (a) of section 17b-340 of the 2014 supplement to
71 the general statutes is repealed and the following is substituted in lieu
72 thereof (*Effective from passage*):

73 (a) The rates to be paid by or for persons aided or cared for by the
74 state or any town in this state to licensed chronic and convalescent
75 nursing homes, to chronic disease hospitals associated with chronic
76 and convalescent nursing homes, to rest homes with nursing
77 supervision, to licensed residential care homes, as defined by section
78 19a-490, and to residential facilities for persons with intellectual
79 disability which are licensed pursuant to section 17a-227 and certified
80 to participate in the Title XIX Medicaid program as intermediate care
81 facilities for individuals with intellectual disabilities, for room, board
82 and services specified in licensing regulations issued by the licensing
83 agency shall be determined annually, except as otherwise provided in
84 this subsection, after a public hearing, by the Commissioner of Social

85 Services, to be effective July first of each year except as otherwise
86 provided in this subsection. Such rates shall be determined on a basis
87 of a reasonable payment for such necessary services, which basis shall
88 take into account as a factor the costs of such services. Cost of such
89 services shall include reasonable costs mandated by collective
90 bargaining agreements with certified collective bargaining agents or
91 other agreements between the employer and employees, provided
92 "employees" shall not include persons employed as managers or chief
93 administrators or required to be licensed as nursing home
94 administrators, and compensation for services rendered by proprietors
95 at prevailing wage rates, as determined by application of principles of
96 accounting as prescribed by said commissioner. Cost of such services
97 shall not include amounts paid by the facilities to employees as salary,
98 or to attorneys or consultants as fees, where the responsibility of the
99 employees, attorneys, or consultants is to persuade or seek to persuade
100 the other employees of the facility to support or oppose unionization.
101 Nothing in this subsection shall prohibit inclusion of amounts paid for
102 legal counsel related to the negotiation of collective bargaining
103 agreements, the settlement of grievances or normal administration of
104 labor relations. The commissioner may, in [his] the commissioner's
105 discretion, allow the inclusion of extraordinary and unanticipated
106 costs of providing services which were incurred to avoid an immediate
107 negative impact on the health and safety of patients. The commissioner
108 may, in [his] the commissioner's discretion, based upon review of a
109 facility's costs, direct care staff to patient ratio and any other related
110 information, revise a facility's rate for any increases or decreases to
111 total licensed capacity of more than ten beds or changes to its number
112 of licensed rest home with nursing supervision beds and chronic and
113 convalescent nursing home beds. The commissioner may so revise a
114 facility's rate established for the fiscal year ending June 30, 1993, and
115 thereafter for any bed increases, decreases or changes in licensure
116 effective after October 1, 1989. Effective July 1, 1991, in facilities which
117 have both a chronic and convalescent nursing home and a rest home
118 with nursing supervision, the rate for the rest home with nursing
119 supervision shall not exceed such facility's rate for its chronic and

120 convalescent nursing home. All such facilities for which rates are
121 determined under this subsection shall report on a fiscal year basis
122 ending on the thirtieth day of September. Such report shall be
123 submitted to the commissioner by the thirty-first day of December. The
124 commissioner may reduce the rate in effect for a facility which fails to
125 submit a complete and accurate report on or before such date by an
126 amount not to exceed ten per cent of such rate. If a licensed residential
127 care home fails to submit a complete and accurate report, the
128 department shall notify such home of the failure and the home shall
129 have thirty days from the date the notice was issued to submit a
130 complete and accurate report. If a licensed residential care home fails
131 to submit a complete and accurate report not later than thirty days
132 after the date of notice, such home may not receive a retroactive rate
133 increase, in the commissioner's discretion. The commissioner shall,
134 annually, on or before the fifteenth day of February, report the data
135 contained in the reports of such facilities to the joint standing
136 committee of the General Assembly having cognizance of matters
137 relating to appropriations. For the cost reporting year commencing
138 October 1, 1985, and for subsequent cost reporting years, facilities shall
139 report the cost of using the services of any nursing pool employee by
140 separating said cost into two categories, the portion of the cost equal to
141 the salary of the employee for whom the nursing pool employee is
142 substituting shall be considered a nursing cost and any cost in excess
143 of such salary shall be further divided so that seventy-five per cent of
144 the excess cost shall be considered an administrative or general cost
145 and twenty-five per cent of the excess cost shall be considered a
146 nursing cost, provided if the total nursing pool costs of a facility for
147 any cost year are equal to or exceed fifteen per cent of the total nursing
148 expenditures of the facility for such cost year, no portion of nursing
149 pool costs in excess of fifteen per cent shall be classified as
150 administrative or general costs. The commissioner, in determining
151 such rates, shall also take into account the classification of patients or
152 boarders according to special care requirements or classification of the
153 facility according to such factors as facilities and services and such
154 other factors as he deems reasonable, including anticipated

155 fluctuations in the cost of providing such services. The commissioner
156 may establish a separate rate for a facility or a portion of a facility for
157 traumatic brain injury patients who require extensive care but not
158 acute general hospital care. Such separate rate shall reflect the special
159 care requirements of such patients. If changes in federal or state laws,
160 regulations or standards adopted subsequent to June 30, 1985, result in
161 increased costs or expenditures in an amount exceeding one-half of
162 one per cent of allowable costs for the most recent cost reporting year,
163 the commissioner shall adjust rates and provide payment for any such
164 increased reasonable costs or expenditures within a reasonable period
165 of time retroactive to the date of enforcement. Nothing in this section
166 shall be construed to require the Department of Social Services to
167 adjust rates and provide payment for any increases in costs resulting
168 from an inspection of a facility by the Department of Public Health.
169 Such assistance as the commissioner requires from other state agencies
170 or departments in determining rates shall be made available to [him]
171 the commissioner at [his] the commissioner's request. Payment of the
172 rates established [hereunder] pursuant to this section shall be
173 conditioned on the establishment by such facilities of admissions
174 procedures which conform with this section, section 19a-533 and all
175 other applicable provisions of the law and the provision of equality of
176 treatment to all persons in such facilities. The established rates shall be
177 the maximum amount chargeable by such facilities for care of such
178 beneficiaries, and the acceptance by or on behalf of any such facility of
179 any additional compensation for care of any such beneficiary from any
180 other person or source shall constitute the offense of aiding a
181 beneficiary to obtain aid to which [he] the beneficiary is not entitled
182 and shall be punishable in the same manner as is provided in
183 subsection (b) of section 17b-97. For the fiscal year ending June 30,
184 1992, rates for licensed residential care homes and intermediate care
185 facilities for individuals with intellectual disabilities may receive an
186 increase not to exceed the most recent annual increase in the Regional
187 Data Resources Incorporated McGraw-Hill Health Care Costs:
188 Consumer Price Index (all urban)-All Items. Rates for newly certified
189 intermediate care facilities for individuals with intellectual disabilities

190 shall not exceed one hundred fifty per cent of the median rate of rates
191 in effect on January 31, 1991, for intermediate care facilities for
192 individuals with intellectual disabilities certified prior to February 1,
193 1991. Notwithstanding any provision of this section, the Commissioner
194 of Social Services may, within available appropriations, provide an
195 interim rate increase for a licensed chronic and convalescent nursing
196 home or a rest home with nursing supervision for rate periods no
197 earlier than April 1, 2004, only if the commissioner determines that the
198 increase is necessary to avoid the filing of a petition for relief under
199 Title 11 of the United States Code; imposition of receivership pursuant
200 to sections 19a-541 to 19a-549, inclusive; or substantial deterioration of
201 the facility's financial condition that may be expected to adversely
202 affect resident care and the continued operation of the facility, and the
203 commissioner determines that the continued operation of the facility is
204 in the best interest of the state. The commissioner shall consider any
205 requests for interim rate increases on file with the department from
206 March 30, 2004, and those submitted subsequently for rate periods no
207 earlier than April 1, 2004. When reviewing a rate increase request the
208 commissioner shall, at a minimum, consider: (1) Existing chronic and
209 convalescent nursing home or rest home with nursing supervision
210 utilization in the area and projected bed need; (2) physical plant long-
211 term viability and the ability of the owner or purchaser to implement
212 any necessary property improvements; (3) licensure and certification
213 compliance history; (4) reasonableness of actual and projected
214 expenses; and (5) the ability of the facility to meet wage and benefit
215 costs. No rate shall be increased pursuant to this subsection in excess
216 of one hundred fifteen per cent of the median rate for the facility's peer
217 grouping, established pursuant to subdivision (2) of subsection (f) of
218 this section, unless recommended by the commissioner and approved
219 by the Secretary of the Office of Policy and Management after
220 consultation with the commissioner. Such median rates shall be
221 published by the Department of Social Services not later than April
222 first of each year. In the event that a facility granted an interim rate
223 increase pursuant to this section is sold or otherwise conveyed for
224 value to an unrelated entity less than five years after the effective date

225 of such rate increase, the rate increase shall be deemed rescinded and
226 the department shall recover an amount equal to the difference
227 between payments made for all affected rate periods and payments
228 that would have been made if the interim rate increase was not
229 granted. The commissioner may seek recovery from payments made to
230 any facility with common ownership. With the approval of the
231 Secretary of the Office of Policy and Management, the commissioner
232 may waive recovery and rescission of the interim rate for good cause
233 shown that is not inconsistent with this section, including, but not
234 limited to, transfers to family members that were made for no value.
235 The commissioner shall provide written quarterly reports to the joint
236 standing committees of the General Assembly having cognizance of
237 matters relating to aging, human services and appropriations and the
238 budgets of state agencies, that identify each facility requesting an
239 interim rate increase, the amount of the requested rate increase for
240 each facility, the action taken by the commissioner and the secretary
241 pursuant to this subsection, and estimates of the additional cost to the
242 state for each approved interim rate increase. Nothing in this
243 subsection shall prohibit the commissioner from increasing the rate of
244 a licensed chronic and convalescent nursing home or a rest home with
245 nursing supervision for allowable costs associated with facility capital
246 improvements or increasing the rate in case of a sale of a licensed
247 chronic and convalescent nursing home or a rest home with nursing
248 supervision, pursuant to subdivision (15) of subsection (f) of this
249 section, if receivership has been imposed on such home.

250 Sec. 5. Subdivision (1) of subsection (h) of section 17b-340 of the
251 2014 supplement to the general statutes is repealed and the following
252 is substituted in lieu thereof (*Effective July 1, 2014*):

253 (h) (1) For the fiscal year ending June 30, 1993, any residential care
254 home with an operating cost component of its rate in excess of one
255 hundred thirty per cent of the median of operating cost components of
256 rates in effect January 1, 1992, shall not receive an operating cost
257 component increase. For the fiscal year ending June 30, 1993, any

258 residential care home with an operating cost component of its rate that
259 is less than one hundred thirty per cent of the median of operating cost
260 components of rates in effect January 1, 1992, shall have an allowance
261 for real wage growth equal to sixty-five per cent of the increase
262 determined in accordance with subsection (q) of section 17-311-52 of
263 the regulations of Connecticut state agencies, provided such operating
264 cost component shall not exceed one hundred thirty per cent of the
265 median of operating cost components in effect January 1, 1992.
266 Beginning with the fiscal year ending June 30, 1993, for the purpose of
267 determining allowable fair rent, a residential care home with allowable
268 fair rent less than the twenty-fifth percentile of the state-wide
269 allowable fair rent shall be reimbursed as having allowable fair rent
270 equal to the twenty-fifth percentile of the state-wide allowable fair
271 rent. Beginning with the fiscal year ending June 30, 1997, a residential
272 care home with allowable fair rent less than three dollars and ten cents
273 per day shall be reimbursed as having allowable fair rent equal to
274 three dollars and ten cents per day. Property additions placed in
275 service during the cost year ending September 30, 1996, or any
276 succeeding cost year shall receive a fair rent allowance for such
277 additions as an addition to three dollars and ten cents per day if the
278 fair rent for the facility for property placed in service prior to
279 September 30, 1995, is less than or equal to three dollars and ten cents
280 per day. For the fiscal year ending June 30, 1996, and any succeeding
281 fiscal year, the allowance for real wage growth, as determined in
282 accordance with subsection (q) of section 17-311-52 of the regulations
283 of Connecticut state agencies, shall not be applied. For the fiscal year
284 ending June 30, 1996, and any succeeding fiscal year, the inflation
285 adjustment made in accordance with subsection (p) of section 17-311-
286 52 of the regulations of Connecticut state agencies shall not be applied
287 to real property costs. Beginning with the fiscal year ending June 30,
288 1997, minimum allowable patient days for rate computation purposes
289 for a residential care home with twenty-five beds or less shall be
290 eighty-five per cent of licensed capacity. Beginning with the fiscal year
291 ending June 30, 2002, for the purposes of determining the allowable
292 salary of an administrator of a residential care home with sixty beds or

293 less the department shall revise the allowable base salary to thirty-
294 seven thousand dollars to be annually inflated thereafter in accordance
295 with section 17-311-52 of the regulations of Connecticut state agencies.
296 The rates for the fiscal year ending June 30, 2002, shall be based upon
297 the increased allowable salary of an administrator, regardless of
298 whether such amount was expended in the 2000 cost report period
299 upon which the rates are based. Beginning with the fiscal year ending
300 June 30, 2000, and until the fiscal year ending June 30, 2009, inclusive,
301 the inflation adjustment for rates made in accordance with subsection
302 (p) of section 17-311-52 of the regulations of Connecticut state agencies
303 shall be increased by two per cent, and beginning with the fiscal year
304 ending June 30, 2002, the inflation adjustment for rates made in
305 accordance with subsection (c) of said section shall be increased by one
306 per cent. Beginning with the fiscal year ending June 30, 1999, for the
307 purpose of determining the allowable salary of a related party, the
308 department shall revise the maximum salary to twenty-seven
309 thousand eight hundred fifty-six dollars to be annually inflated
310 thereafter in accordance with section 17-311-52 of the regulations of
311 Connecticut state agencies and beginning with the fiscal year ending
312 June 30, 2001, such allowable salary shall be computed on an hourly
313 basis and the maximum number of hours allowed for a related party
314 other than the proprietor shall be increased from forty hours to forty-
315 eight hours per work week. For the fiscal year ending June 30, 2005,
316 each facility shall receive a rate that is two and one-quarter per cent
317 more than the rate the facility received in the prior fiscal year, except
318 any facility that would have been issued a lower rate effective July 1,
319 2004, than for the fiscal year ending June 30, 2004, due to interim rate
320 status or agreement with the department shall be issued such lower
321 rate effective July 1, 2004. Effective upon receipt of all the necessary
322 federal approvals to secure federal financial participation matching
323 funds associated with the rate increase provided in subdivision (4) of
324 subsection (f) of this section, but in no event earlier than October 1,
325 2005, and provided the user fee imposed under section 17b-320 is
326 required to be collected, each facility shall receive a rate that is
327 determined in accordance with applicable law and subject to

328 appropriations, except any facility that would have been issued a
329 lower rate effective October 1, 2005, than for the fiscal year ending June
330 30, 2005, due to interim rate status or agreement with the department,
331 shall be issued such lower rate effective October 1, 2005. Such rate
332 increase shall remain in effect unless: (A) The federal financial
333 participation matching funds associated with the rate increase are no
334 longer available; or (B) the user fee created pursuant to section 17b-320
335 is not in effect. For the fiscal year ending June 30, 2007, rates in effect
336 for the period ending June 30, 2006, shall remain in effect until
337 September 30, 2006, except any facility that would have been issued a
338 lower rate effective July 1, 2006, than for the fiscal year ending June 30,
339 2006, due to interim rate status or agreement with the department,
340 shall be issued such lower rate effective July 1, 2006. Effective October
341 1, 2006, no facility shall receive a rate that is more than four per cent
342 greater than the rate in effect for the facility on September 30, 2006,
343 except for any facility that would have been issued a lower rate
344 effective October 1, 2006, due to interim rate status or agreement with
345 the department, shall be issued such lower rate effective October 1,
346 2006. For the fiscal years ending June 30, 2010, and June 30, 2011, rates
347 in effect for the period ending June 30, 2009, shall remain in effect until
348 June 30, 2011, except any facility that would have been issued a lower
349 rate for the fiscal year ending June 30, 2010, or the fiscal year ending
350 June 30, 2011, due to interim rate status or agreement with the
351 department, shall be issued such lower rate, except (i) any facility that
352 would have been issued a lower rate for the fiscal year ending June 30,
353 2010, or the fiscal year ending June 30, 2011, due to interim rate status
354 or agreement with the Commissioner of Social Services shall be issued
355 such lower rate; and (ii) the commissioner may increase a facility's rate
356 for reasonable costs associated with such facility's compliance with the
357 provisions of section 19a-495a concerning the administration of
358 medication by unlicensed personnel. For the fiscal year ending June 30,
359 2012, rates in effect for the period ending June 30, 2011, shall remain in
360 effect until June 30, 2012, except that (I) any facility that would have
361 been issued a lower rate for the fiscal year ending June 30, 2012, due to
362 interim rate status or agreement with the Commissioner of Social

363 Services shall be issued such lower rate; and (II) the commissioner may
 364 increase a facility's rate for reasonable costs associated with such
 365 facility's compliance with the provisions of section 19a-495a
 366 concerning the administration of medication by unlicensed personnel.
 367 For the fiscal year ending June 30, 2013, the Commissioner of Social
 368 Services may, within available appropriations, provide a rate increase
 369 to a residential care home. Any facility that would have been issued a
 370 lower rate for the fiscal year ending June 30, 2013, due to interim rate
 371 status or agreement with the Commissioner of Social Services shall be
 372 issued such lower rate. For the fiscal years ending June 30, 2012, and
 373 June 30, 2013, the Commissioner of Social Services may provide fair
 374 rent increases to any facility that has undergone a material change in
 375 circumstances related to fair rent and has an approved certificate of
 376 need pursuant to section 17b-352, 17b-353, 17b-354 or 17b-355. For the
 377 fiscal years ending June 30, 2014, and June 30, 2015, for those facilities
 378 that have a calculated rate greater than the rate in effect for the fiscal
 379 year ending June 30, 2013, the commissioner may increase facility rates
 380 based upon available appropriations up to a stop gain as determined
 381 by the commissioner. No facility shall be issued a rate that is lower
 382 than the rate in effect on June 30, 2013, [. Any] except that any facility
 383 that would have been issued a lower rate for the fiscal year ending
 384 June 30, 2014, or the fiscal year ending June 30, 2015, due to interim
 385 rate status or agreement with the commissioner, shall be issued such
 386 lower rate. For the fiscal year ending June 30, 2014, and each fiscal year
 387 thereafter, a residential care home shall receive a rate increase for any
 388 capital improvement made during the fiscal year for the health and
 389 safety of residents and approved by the Department of Social Services,
 390 provided such rate increase is within available appropriations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	17b-83
Sec. 3	<i>from passage</i>	17b-601
Sec. 4	<i>from passage</i>	17b-340(a)

Sec. 5	July 1, 2014	17b-340(h)(1)
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Statement of Legislative Commissioners:

In subdivision (2) of section 1, "receive state supplement payments" was changed to "receive state supplement payments for residents found eligible for such payments" for accuracy and consistency with the provisions of section 17b-600 of the general statutes.

HS *Joint Favorable Subst.*