



Substitute House Bill No. 5051

Public Act No. 14-55

AN ACT IMPROVING TRANSPARENCY OF NURSING HOME OPERATIONS.

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

Section 1. Subsection (a) of section 17b-340 of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2014*):

(a) For purposes of this subsection, (1) a "related party" includes, but is not limited to, any company related to a chronic and convalescent nursing home through family association, common ownership, control or business association with any of the owners, operators or officials of such nursing home; (2) "company" means any person, partnership, association, holding company, limited liability company or corporation; (3) "family association" means a relationship by birth, marriage or domestic partnership; and (4) "profit and loss statement" means the most recent annual statement on profits and losses finalized by a related party before the annual report mandated under this subsection. The rates to be paid by or for persons aided or cared for by the state or any town in this state to licensed chronic and convalescent nursing homes, to chronic disease hospitals associated with chronic and convalescent nursing homes, to rest homes with nursing supervision, to licensed residential care homes, as defined by section

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19a-490, and to residential facilities for persons with intellectual disability [which] that are licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as intermediate care facilities for individuals with intellectual disabilities, for room, board and services specified in licensing regulations issued by the licensing agency shall be determined annually, except as otherwise provided in this subsection, after a public hearing, by the Commissioner of Social Services, to be effective July first of each year except as otherwise provided in this subsection. Such rates shall be determined on a basis of a reasonable payment for such necessary services, which basis shall take into account as a factor the costs of such services. Cost of such services shall include reasonable costs mandated by collective bargaining agreements with certified collective bargaining agents or other agreements between the employer and employees, provided "employees" shall not include persons employed as managers or chief administrators or required to be licensed as nursing home administrators, and compensation for services rendered by proprietors at prevailing wage rates, as determined by application of principles of accounting as prescribed by said commissioner. Cost of such services shall not include amounts paid by the facilities to employees as salary, or to attorneys or consultants as fees, where the responsibility of the employees, attorneys, or consultants is to persuade or seek to persuade the other employees of the facility to support or oppose unionization. Nothing in this subsection shall prohibit inclusion of amounts paid for legal counsel related to the negotiation of collective bargaining agreements, the settlement of grievances or normal administration of labor relations. The commissioner may, in [his] the commissioner's discretion, allow the inclusion of extraordinary and unanticipated costs of providing services [which] that were incurred to avoid an immediate negative impact on the health and safety of patients. The commissioner may, in [his] the commissioner's discretion, based upon review of a facility's costs, direct care staff to patient ratio and any other related

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information, revise a facility's rate for any increases or decreases to total licensed capacity of more than ten beds or changes to its number of licensed rest home with nursing supervision beds and chronic and convalescent nursing home beds. The commissioner may so revise a facility's rate established for the fiscal year ending June 30, 1993, and thereafter for any bed increases, decreases or changes in licensure effective after October 1, 1989. Effective July 1, 1991, in facilities [which] that have both a chronic and convalescent nursing home and a rest home with nursing supervision, the rate for the rest home with nursing supervision shall not exceed such facility's rate for its chronic and convalescent nursing home. All such facilities for which rates are determined under this subsection shall report on a fiscal year basis ending on [the thirtieth day of] September thirtieth. Such report shall be submitted to the commissioner by [the thirty-first day of] December thirty-first. Each for-profit chronic and convalescent nursing home that receives state funding pursuant to this section shall include in such annual report a profit and loss statement from each related party that receives from such chronic and convalescent nursing home fifty thousand dollars or more per year for goods, fees and services. No cause of action or liability shall arise against the state, the Department of Social Services, any state official or agent for failure to take action based on the information required to be reported under this subsection. The commissioner may reduce the rate in effect for a facility [which] that fails to report on or before [such date] December thirty-first by an amount not to exceed ten per cent of such rate. The commissioner shall annually, on or before [the fifteenth day of] February fifteenth, report the data contained in the reports of such facilities to the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies. For the cost reporting year commencing October 1, 1985, and for subsequent cost reporting years, facilities shall report the cost of using the services of any nursing pool employee by separating said cost into two categories, the portion of the cost equal to

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the salary of the employee for whom the nursing pool employee is substituting shall be considered a nursing cost and any cost in excess of such salary shall be further divided so that seventy-five per cent of the excess cost shall be considered an administrative or general cost and twenty-five per cent of the excess cost shall be considered a nursing cost, provided if the total nursing pool costs of a facility for any cost year are equal to or exceed fifteen per cent of the total nursing expenditures of the facility for such cost year, no portion of nursing pool costs in excess of fifteen per cent shall be classified as administrative or general costs. The commissioner, in determining such rates, shall also take into account the classification of patients or boarders according to special care requirements or classification of the facility according to such factors as facilities and services and such other factors as [he] the commissioner deems reasonable, including anticipated fluctuations in the cost of providing such services. The commissioner may establish a separate rate for a facility or a portion of a facility for traumatic brain injury patients who require extensive care but not acute general hospital care. Such separate rate shall reflect the special care requirements of such patients. If changes in federal or state laws, regulations or standards adopted subsequent to June 30, 1985, result in increased costs or expenditures in an amount exceeding one-half of one per cent of allowable costs for the most recent cost reporting year, the commissioner shall adjust rates and provide payment for any such increased reasonable costs or expenditures within a reasonable period of time retroactive to the date of enforcement. Nothing in this section shall be construed to require the Department of Social Services to adjust rates and provide payment for any increases in costs resulting from an inspection of a facility by the Department of Public Health. Such assistance as the commissioner requires from other state agencies or departments in determining rates shall be made available to [him] the commissioner at [his] the commissioner's request. Payment of the rates established [hereunder] pursuant to this section shall be conditioned on the establishment by

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

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March 30, 2004, and those submitted subsequently for rate periods no earlier than April 1, 2004. When reviewing [a] an interim rate increase request the commissioner shall, at a minimum, consider: [(1)] (A) Existing chronic and convalescent nursing home or rest home with nursing supervision utilization in the area and projected bed need; [(2)] (B) physical plant long-term viability and the ability of the owner or purchaser to implement any necessary property improvements; [(3)] (C) licensure and certification compliance history; [(4)] (D) reasonableness of actual and projected expenses; and [(5)] (E) the ability of the facility to meet wage and benefit costs. No interim rate shall be increased pursuant to this subsection in excess of one hundred fifteen per cent of the median rate for the facility's peer grouping, established pursuant to subdivision (2) of subsection (f) of this section, unless recommended by the commissioner and approved by the Secretary of the Office of Policy and Management after consultation with the commissioner. Such median rates shall be published by the Department of Social Services not later than April first of each year. In the event that a facility granted an interim rate increase pursuant to this section is sold or otherwise conveyed for value to an unrelated entity less than five years after the effective date of such rate increase, the rate increase shall be deemed rescinded and the department shall recover an amount equal to the difference between payments made for all affected rate periods and payments that would have been made if the interim rate increase was not granted. The commissioner may seek recovery [from] of such payments [made to] from any facility with common ownership. With the approval of the Secretary of the Office of Policy and Management, the commissioner may waive recovery and rescission of the interim rate for good cause shown that is not inconsistent with this section, including, but not limited to, transfers to family members that were made for no value. The commissioner shall provide written quarterly reports to the joint standing committees of the General Assembly having cognizance of matters relating to aging, human services and appropriations and the budgets of state agencies,

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that identify each facility requesting an interim rate increase, the amount of the requested rate increase for each facility, the action taken by the commissioner and the secretary pursuant to this subsection, and estimates of the additional cost to the state for each approved interim rate increase. Nothing in this subsection shall prohibit the commissioner from increasing the rate of a licensed chronic and convalescent nursing home or a rest home with nursing supervision for allowable costs associated with facility capital improvements or increasing the rate in case of a sale of a licensed chronic and convalescent nursing home or a rest home with nursing supervision, pursuant to subdivision (15) of subsection (f) of this section, if receivership has been imposed on such home.

Sec. 2. Section 17b-339 of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established a Nursing Home Financial Advisory Committee to examine the financial solvency of nursing homes on an ongoing basis and to support the Departments of Social Services and Public Health in their mission to provide oversight to the nursing home industry on issues concerning the financial solvency of and quality of care provided by nursing homes. The committee shall convene not later than August 1, 2014, and consist of the following members: The Commissioner of Social Services, or [his] the commissioner's designee; the Commissioner of Public Health, or [his] the commissioner's designee; the Secretary of the Office of Policy and Management, or [his] the secretary's designee; the executive director of the Connecticut Health and Education Facilities Authority, or [his] the director's designee; the [president of LeadingAge Connecticut, Inc. or the president's designee; and the executive director of the Connecticut Association of Health Care Facilities, or the executive director's designee] Long-Term Care Ombudsman and two members appointed

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by the Governor, one of whom shall be a representative of not-for-profit nursing homes and one of whom shall be a representative of for-profit nursing homes. In addition, the Labor Commissioner may appoint a nonvoting member to the committee. The Commissioner of Social Services [or his designee] and the Commissioner of Public Health, or [his designee] their designees, shall be the chairpersons of the committee.

(b) The committee [, upon receipt of a report relative to the financial solvency of and quality of care provided by nursing homes in the state, shall recommend appropriate action for improving the financial condition of any nursing home that is in financial distress] shall (1) evaluate any information and data available, including, but not limited to, (A) quality of care, (B) acuity, (C) census, and (D) staffing levels of nursing homes operating in the state to assess the overall infrastructure and projected needs of such homes, and (2) recommend appropriate action consistent with the goals, strategies and long-term care needs set forth in the strategic plan developed pursuant to subsection (c) of section 17b-369 to the Commissioner of Social Services and the Commissioner of Public Health. The Commissioner of Social Services shall submit quarterly reports to the committee concerning pending nursing home requests for interim rate increases. Such reports shall, without identifying any requesting facility by name, list the amount of each increase requested, the reason for the request and the rate that will result if the request is granted.

(c) Not later than January 1, [2010] 2015, and annually thereafter, the committee shall submit a report on its activities to the joint standing committees of the General Assembly having cognizance of matters relating to aging, appropriations and the budgets of state agencies, human services and public health, in accordance with the provisions of section 11-4a.

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(d) Not later than [January 1, 2010] October 1, 2014, and quarterly thereafter, the committee shall meet with the chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies, human services and public health [, and the Long-Term Care Ombudsman] to discuss activities of the committee relating to the financial solvency of and quality of care provided by nursing homes.

Approved May 28, 2014