



General Assembly

Amendment

February Session, 2014

LCO No. 5478

HB0505105478SR0

Offered by:
SEN. MCKINNEY, 28th Dist.

To: Subst. House Bill No. 5051 File No. 729 Cal. No. 537

"AN ACT IMPROVING TRANSPARENCY OF NURSING HOME OPERATIONS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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4 to the general statutes is repealed and the following is substituted in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

6 (a) For purposes of this subsection, (1) a "related party" of a chronic
7 and convalescent nursing home is (A) anyone with direct or indirect
8 ownership in the home of five per cent or more, (B) an officer, director
9 or partner, (C) a managing employee, or (D) anyone who is an
10 "additional disclosable party" of such home pursuant to 42 USC 1320a-
11 3, as amended from time to time; and (2) "profit and loss statement"
12 means the most recent available annual summary of revenues versus
13 expenditures 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 chronic and convalescent nursing home fifty
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.

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197 is repealed and the following is substituted in lieu thereof (*Effective*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

199 (a) There is established a Nursing Home Financial Advisory
200 Committee to examine the financial solvency of nursing homes on an
201 ongoing basis and to support the Departments of Social Services and
202 Public Health in their mission to provide oversight to the nursing
203 home industry on issues concerning the financial solvency of and
204 quality of care provided by nursing homes. The committee shall
205 convene not later than August 1, 2014, and consist of the following
206 members: The Commissioner of Social Services, or [his] the
207 commissioner's designee; the Commissioner of Public Health, or [his]
208 the commissioner's designee; the Secretary of the Office of Policy and
209 Management, or [his] the secretary's designee; the executive director of
210 the Connecticut Health and Education Facilities Authority, or [his] the
211 director's designee; the [president of LeadingAge Connecticut, Inc. or
212 the president's designee; and the executive director of the Connecticut
213 Association of Health Care Facilities, or the executive director's
214 designee] Long-Term Care Ombudsman and two members appointed
215 by the Governor, one of whom shall be a representative of not-for-
216 profit nursing homes and one of whom shall be a representative of for-
217 profit nursing homes. In addition, the Labor Commissioner may
218 appoint a nonvoting member to the committee. The Commissioner of
219 Social Services [or his designee] and the Commissioner of Public
220 Health, or [his designee] their designees, shall be the chairpersons of
221 the committee.

222 (b) The committee [, upon receipt of a report relative to the financial
223 solvency of and quality of care provided by nursing homes in the state,

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

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

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

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

Sec. 2	<i>from passage</i>	17b-339
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