



Agency Legislative Proposal – 2024 Session

Document Name: Outdated and Technical Change to DSS Statutes

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Naming Format: AGENCY ACRONYM PROPOSAL NUMBER - TOPIC

Please insert a copy of the fully drafted bill at the end of this document (required for review)

Legislative Liaison	David Seifel 860-249-3286 David.Seifel@ct.gov Jalmar De Dios 860-424-5308 Jalmar.dedios@ct.gov
Division Requesting This Proposal	DHS; OLCRAH
Drafter	Christina Mink, Matt Antonetti, Nicole Godburn, David Seifel

Title of Proposal	An Act Concerning Various Revisions to DSS Statutes
Statutory Reference, if any	<u>Section 1</u> : Conn. Gen. Stat. §§ 17b-606; 17b-340(h)(1); <u>Sections 2-4</u> : CGS 17b-340(i); 17b-340d(a)(11); <u>Section 5</u> : 17b-238 <u>Section 6</u> : 17b-99a
Brief Summary and Statement of Purpose	<u>Section 1</u> will repeal outdated, obsolete provisions of section 17b-606 that are no longer relevant to the Department <u>Sections 2 - 4</u> will make technical corrections to Conn. Gen. Stat. §§ 17b-340 and 17b-340d. <u>Section 5</u> Amends subsection 17b-238(b) to delete reference to arbitration proceedings for appeals and replace with the ability to file appeals to the superior court as provided in chapter 54 (UAPA) <u>Section 6</u> : Amends subsection 17b-99a to delete reference to arbitration proceedings for appeals and replace with the ability to file appeals to the superior court as provided in chapter 54 (UAPA)



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SECTION-BY-SECTION SUMMARY

Summarize sections in groups where appropriate

Section 1: 17b-606 - Subsection (a) of the statute appoints DSS as the lead agency for services to persons with physical or mental disabilities, and subsection (b) requires DSS to convene a “Connecticut Council for Persons with Disabilities” not later than September 30, 1988. DSS is no longer the lead agency for services to persons with physical or mental disabilities, and the council is no longer actively meeting. Therefore, DSS is seeking repeal of these subsections.

Sections 2-4: CGS 17b-340d(a)(11); 17b-340(h)(1) and 17b-340(i) - These provisions are being amended to make a technical correction concerning the date relevant for inflation computations. The statute currently reflects that the rate of inflation shall be computed by comparing the most recent rate year to the average of the gross domestic product deflator for the previous four fiscal quarters ending April thirtieth. However, the relevant fiscal quarter actually ends on March thirty-first, not April thirtieth.

Section 5: Would update appeal processes to remove the concept of an appeal to an arbitration panel and replace with appeal to Superior Court;

Section 6: Would update appeal processes to remove the concept of an appeal to an arbitration panel and replace with appeal to Superior Court to align with Section 5 of this proposal and typical agency practice.

BACKGROUND

Origin of Proposal

☒ New Proposal

☐ Resubmission

If this is a resubmission, please share the prior bill number, the reason the bill did not move forward, and any changes made or conversations had since it was last proposed:

Please consider the following, if applicable:

How does this proposal connect to the 10-year

This proposal simply seeks to repeal outdated, obsolete, or redundant statutory provisions, make various technical corrections, and standardize the appeal process in line with other state agencies.



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vision for the agency’s mission?	
How will we measure if the proposal successfully accomplishes its goals?	
Have there been changes in federal/state laws or regulations that make this legislation necessary?	N/A
Has this proposal or a similar proposal been implemented in other states? If yes, to what result?	N/A
Have certain constituencies called for this proposal?	N/A

INTERAGENCY IMPACT
List each affected agency. Copy the table as needed.

[] Check here if this proposal does NOT impact other agencies

1. Agency Name	With regard to Section 1: ADS, DMHAS, DDS
Agency Contact (name, title)	
Date Contacted	



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Status	<input checked="" type="checkbox"/> [X] Approved <input type="checkbox"/> [] Talks Ongoing
Open Issues, if any	DSS did not receive any pushback from our sister agencies

FISCAL IMPACT
Include the section number(s) responsible for the fiscal impact and the anticipated impact

☐ [] Check here if this proposal does NOT have a fiscal impact

State	There is the possibility of a minor fiscal savings to removal of the arbitration panel. In the recent Fair Haven matter, there was a \$15,000 PSA executed for the arbitrator DSS was responsible for appointing. Potentially, there could be several appeals a year, so removing the arbitration panel could potentially have a minor, positive budgetary impact.
Municipal (Include any municipal mandate that can be found within legislation)	
Federal	
Additional notes	

MONITORING & EVALUATION PLAN
If applicable, please describe the anticipated measurable outcomes and the data that will be used to track those outcomes. Include the section number(s) responsible for those outcomes

☐ [] Check here if this proposal does NOT lead to any measurable outcomes



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ANYTHING ELSE WE SHOULD KNOW?

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INSERT FULLY DRAFTED BILL HERE

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

Section 1. Section 17b-606 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective Upon Passage*):

[(a)] The Department of Social Services shall be the lead agency for services to persons with physical or mental disabilities and shall coordinate the delivery of such services by all state agencies servicing persons with disabilities.

(b) Not later than September 30, 1988, the Commissioner of Social Services shall appoint a Connecticut Council for Persons with Disabilities to advise the Department of Social Services in carrying out its duties pursuant to the provisions of subsection (a) of this section. The council shall be composed of seventeen members, a majority of whom shall be persons with disabilities. The council shall establish its own rules and shall meet at least quarterly.]

[(c)] (a) There shall be established an interagency management committee for services to persons with disabilities. The committee shall be composed of the commissioners, or their designees, of each state agency that provides services to persons with disabilities. The committee shall monthly review and evaluate services to persons with disabilities and shall develop a policy under which state agencies may enter into contracts with other state agencies for the delivery of services to persons with disabilities. The first meeting of the committee shall be convened by the Commissioner of Social Services.

[(d)] (b) The Department of Social Services shall maintain on the department's Internet web site information on services provided to persons with disabilities. The department's Internet web site shall include a link to the Internet web page maintained by the Department of Aging and Disability Services pursuant to section 17a-838 containing information about services for deaf, deafblind and hard of hearing individuals.



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Sec. 2. Subsection (h)(1) of section 17b-340 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective Upon Passage*):

(h)(1) For the fiscal year ending June 30, 1993, any intermediate care facility for individuals with intellectual disabilities with an operating cost component of its rate in excess of one hundred forty per cent of the median of operating cost components of rates in effect January 1, 1992, shall not receive an operating cost component increase. For the fiscal year ending June 30, 1993, any intermediate care facility for individuals with intellectual disabilities with an operating cost component of its rate that is less than one hundred forty per cent of the median of operating cost components of rates in effect January 1, 1992, shall have an allowance for real wage growth equal to thirty per cent of the increase determined in accordance with subsection (q) of section 17-311-52 of the regulations of Connecticut state agencies, provided such operating cost component shall not exceed one hundred forty per cent of the median of operating cost components in effect January 1, 1992. Any facility with real property other than land placed in service prior to October 1, 1991, shall, for the fiscal year ending June 30, 1995, receive a rate of return on real property equal to the average of the rates of return applied to real property other than land placed in service for the five years preceding October 1, 1993. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, the rate of return on real property for property items shall be revised every five years. The commissioner shall, upon submission of a request, allow actual debt service, comprised of principal and interest, in excess of property costs allowed pursuant to section 17-311-52 of the regulations of Connecticut state agencies, provided such debt service terms and amounts are reasonable in relation to the useful life and the base value of the property. For the fiscal year ending June 30, 1995, and any succeeding fiscal year, the inflation adjustment made in accordance with subsection (p) of section 17-311-52 of the regulations of Connecticut state agencies shall not be applied to real property costs. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, the allowance for real wage growth, as determined in accordance with subsection (q) of section 17-311-52 of the regulations of Connecticut state agencies, shall not be applied. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, no rate shall exceed three hundred seventy-five dollars per day unless the commissioner, in consultation with the Commissioner of Developmental Services, determines after a review of program and management costs, that a rate in excess of this amount is necessary for care and treatment of facility residents. For the fiscal year ending June 30, 2002, rate period, the Commissioner of Social Services shall increase the inflation adjustment for rates made in accordance with subsection (p) of section 17-311-52 of the regulations of Connecticut state agencies to update allowable fiscal year 2000 costs to include a three and one-half per cent inflation factor. For the fiscal year ending June 30, 2003, rate period, the commissioner shall increase the inflation adjustment for rates made in accordance with subsection (p) of section 17-311-52 of the regulations of Connecticut state agencies to update allowable fiscal year 2001 costs to include a one and one-half per cent inflation factor, except that such increase shall be effective November 1, 2002, and such facility rate in effect for the fiscal year ending June 30, 2002, shall be paid for services provided until October 31, 2002,



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except any facility that would have been issued a lower rate effective July 1, 2002, than for the fiscal year ending June 30, 2002, due to interim rate status or agreement with the department shall be issued such lower rate effective July 1, 2002, and have such rate updated effective November 1, 2002, in accordance with applicable statutes and regulations. For the fiscal year ending June 30, 2004, rates in effect for the period ending June 30, 2003, shall remain in effect, except any facility that would have been issued a lower rate effective July 1, 2003, than for the fiscal year ending June 30, 2003, due to interim rate status or agreement with the department shall be issued such lower rate effective July 1, 2003. For the fiscal year ending June 1, 2004, each facility shall receive a rate that is five per cent greater than the rate in effect September 30, 2004. Effective upon receipt of all the necessary federal approvals to secure federal financial participation matching funds associated with the rate increase provided in subdivision (4) of subsection (f) of this section, but in no event earlier than October 1, 2005, and provided the user fee imposed under section 17b-320 is required to be collected, each facility shall receive a rate that is four per cent more than the rate the facility received in the prior fiscal year, except any facility that would have been issued a lower rate effective October 1, 2005, than for the fiscal year ending June 30, 2005, due to interim rate status or agreement with the department, shall be issued such lower rate effective October 1, 2005. Such rate increase shall remain in effect unless: (A) The federal financial participation matching funds associated with the rate increase are no longer available; or (B) the user fee created pursuant to section 17b-320 is not in effect. For the fiscal year ending June 30, 2007, rates in effect for the period ending June 30, 2006, shall remain in effect until September 30, 2006, except any facility that would have been issued a lower rate effective July 1, 2006, than for the fiscal year ending June 30, 2006, due to interim rate status or agreement with the department, shall be issued such lower rate effective July 1, 2006. Effective October 1, 2006, no facility shall receive a rate that is more than three per cent greater than the rate in effect for the facility on September 30, 2006, except any facility that would have been issued a lower rate effective October 1, 2006, due to interim rate status or agreement with the department, shall be issued such lower rate effective October 1, 2006. For the fiscal year ending June 30, 2008, each facility shall receive a rate that is two and nine-tenths per cent greater than the rate in effect for the period ending June 30, 2007, except any facility that would have been issued a lower rate effective July 1, 2007, than for the rate period ending June 30, 2007, due to interim rate status, or agreement with the department, shall be issued such lower rate effective July 1, 2007. For the fiscal year ending June 30, 2009, rates in effect for the period ending June 30, 2008, shall remain in effect until June 30, 2009, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2009, due to interim rate status or agreement with the department, shall be issued such lower rate. For the fiscal years ending June 30, 2010, and June 30, 2011, rates in effect for the period ending June 30, 2009, shall remain in effect until June 30, 2011, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2010, or the fiscal year ending June 30, 2011, due to interim rate status or agreement with the department, shall be issued such lower rate. For the fiscal year ending June 30, 2012, rates in effect for the period ending June 30, 2011, shall remain in effect until June 30, 2012, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2012, due to interim rate status or agreement with the department, shall be issued such lower rate. For the fiscal



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years ending June 30, 2014, and June 30, 2015, rates shall not exceed those in effect for the period ending June 30, 2013, except the rate paid to a facility may be higher than the rate paid to the facility for the period ending June 30, 2013, if a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents was made to the facility during the fiscal year ending June 30, 2014, or June 30, 2015, to the extent such rate increases are within available appropriations. Any facility that would have been issued a lower rate for the fiscal year ending June 30, 2014, or the fiscal year ending June 30, 2015, due to interim rate status or agreement with the department, shall be issued such lower rate. For the fiscal years ending June 30, 2016, and June 30, 2017, rates shall not exceed those in effect for the period ending June 30, 2015, except the rate paid to a facility may be higher than the rate paid to the facility for the period ending June 30, 2015, if a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents was made to the facility during the fiscal year ending June 30, 2016, or June 30, 2017, to the extent such rate increases are within available appropriations. For the fiscal years ending June 30, 2016, and June 30, 2017, and each succeeding fiscal year, any facility that would have been issued a lower rate, due to interim rate status, a change in allowable fair rent or agreement with the department, shall be issued such lower rate. For the fiscal years ending June 30, 2018, and June 30, 2019, rates shall not exceed those in effect for the period ending June 30, 2017, except the rate paid to a facility may be higher than the rate paid to the facility for the period ending June 30, 2017, if a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents was made to the facility during the fiscal year ending June 30, 2018, or June 30, 2019, only to the extent such rate increases are within available appropriations. For the fiscal years ending June 30, 2020, and June 30, 2021, rates shall not exceed those in effect for the fiscal year ending June 30, 2019, except the rate paid to a facility may be higher than the rate paid to the facility for the fiscal year ending June 30, 2019, if a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents was made to the facility during the fiscal year ending June 30, 2020, or June 30, 2021, only to the extent such rate increases are within available appropriations. For the fiscal year ending June 30, 2022, rates shall not exceed those in effect for the fiscal year ending June 30, 2021, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities that have documented fair rent additions placed in service in the cost report year ending September 30, 2020, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2023, rates shall not exceed those in effect for the fiscal year ending June 30, 2022, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2021, that are not otherwise included in rates issued. For the fiscal years ending June 30, 2022, and June 30, 2023, a facility may receive a rate increase for a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents during the fiscal year ending June 30, 2022, or



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June 30, 2023, only to the extent such rate increases are within available appropriations. There shall be no increase to rates based on inflation or any inflationary factor for the fiscal years ending June 30, 2022, and June 30, 2023. Notwithstanding any other provisions of chapter 319y, 3 any subsequent increase to allowable operating costs, excluding fair rent, shall be inflated by the gross domestic product deflator when funding is specifically appropriated for such purposes in the enacted budget. The rate of inflation shall be computed by comparing the most recent rate year to the average of the gross domestic product deflator for the previous four fiscal quarters ending [April thirtieth] March thirty-first. Any increase to rates based on inflation shall be applied prior to the application of any other budget adjustment factors that may impact such rates. For the fiscal year ending June 30, 2024, the department shall determine facility rates based upon 2022 cost report filings subject to the provisions of this section, adjusted to reflect any rate increases provided after the cost report year ending June 30, 2022, and with the addition of a two per cent adjustment factor. No facility shall receive a rate less than the rate in effect for the fiscal year ending June 30, 2023. For the fiscal year ending June 30, 2024, the minimum per diem, per bed rate shall remain at five hundred one dollars for a residential facility licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disability. There shall be no increase to rates based on any inflationary factor for the fiscal year ending June 30, 2024. For the fiscal year ending June 30, 2024, and each subsequent fiscal year, the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities that have documented fair rent additions placed in service in the cost report years that are not otherwise included in rates issued. For the fiscal year ending June 30, 2025, the department shall determine facility rates based upon 2023 cost report filings subject to the provisions of this section, adjusted to reflect any rate increases provided after the cost report ending June 30, 2023. A facility may receive a rate that is less than the rate in effect for the fiscal year ending June 30, 2024, but shall not receive a rate less than the minimum per diem, per bed rate. For the fiscal year ending June 30, 2025, the minimum per diem, per bed rate shall remain at five hundred one dollars for a residential facility licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disability. There shall be no increase to rates based on any inflationary factor for the fiscal year ending June 30, 2025. For the fiscal year ending June 30, 2026, the department shall determine facility rates based upon 2024 cost report filings subject to the provisions of this section, adjusted to reflect any rate increases provided after the cost report ending June 30, 2024. For the fiscal year ending June 30, 2026, there shall be no minimum per diem, per bed rate for a residential facility licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disability. There shall be no increase to rates based on any inflationary factor for the fiscal year ending June 30, 2026. For the fiscal years ending June 30, 2024, and June 30, 2025, a facility may receive a rate increase for a capital improvement approved by the Department of Developmental Services, in consultation with the Department of Social Services, for the health or safety of the residents during the fiscal year ending June 30, 2024, or June 30, 2025, only to the extent such rate increases are within available appropriations. Any facility that has a



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significant decrease in land and building costs shall receive a reduced rate to reflect such decrease in land and building costs. For the fiscal years ending June 30, 2012, June 30, 2013, June 30, 2014, June 30, 2015, June 30, 2016, June 30, 2017, June 30, 2018, June 30, 2019, June 30, 2020, June 30, 2021, June 30, 2022, June 30, 2023, June 30, 2024, and June 30, 2025, the Commissioner of Social Services may provide fair rent increases to any facility that has undergone a material change in circumstances related to fair rent and has an approved certificate of need pursuant to section 17b-352, 17b-353, 17b-354 or 17b-355. Notwithstanding the provisions of this section, the Commissioner of Social Services may, within available appropriations, increase or decrease rates issued to intermediate care facilities for individuals with intellectual disabilities to reflect a reduction in available appropriations as provided in subsection (a) of this section. For the fiscal years ending June 30, 2014, and June 30, 2015, the commissioner shall not consider rebasing in determining rates. Notwithstanding the provisions of this subsection, effective July 1, 2021, and July 1, 2022, the commissioner shall, within available appropriations, increase rates for the purpose of wage and benefit enhancements for employees of intermediate care facilities. Facilities that receive a rate adjustment for the purpose of wage and benefit enhancements but do not provide increases in employee salaries as described in this subsection on or before July 31, 2021, and July 31, 2022, respectively, may be subject to a rate decrease in the same amount as the adjustment by the commissioner.

Sec. 3. Subsection (i) of section 17b-340 of the general statutes is repealed and the following is substituted in lieu thereof:

(i) For the fiscal year ending June 30, 1993, any residential care home with an operating cost component of its rate in excess of one hundred thirty per cent of the median of operating cost components of rates in effect January 1, 1992, shall not receive an operating cost component increase. For the fiscal year ending June 30, 1993, any residential care home with an operating cost component of its rate that is less than one hundred thirty per cent of the median of operating cost components of rates in effect January 1, 1992, shall have an allowance for real wage growth equal to sixty-five per cent of the increase determined in accordance with subsection (q) of section 17-311-52 of the regulations of Connecticut state agencies, provided such operating cost component shall not exceed one hundred thirty per cent of the median of operating cost components in effect January 1, 1992. Beginning with the fiscal year ending June 30, 1993, for the purpose of determining allowable fair rent, a residential care home with allowable fair rent less than the twenty-fifth percentile of the state-wide allowable fair rent shall be reimbursed as having allowable fair rent equal to the twenty-fifth percentile of the state-wide allowable fair rent. Beginning with the fiscal year ending June 30, 1997, a residential care home with allowable fair rent less than three dollars and ten cents per day shall be reimbursed as having allowable fair rent equal to three dollars and ten cents per day. Property additions placed in service during the cost year ending September 30, 1996, or any succeeding cost year shall receive a fair rent allowance for such additions as an addition to three dollars and ten cents per day if the fair rent for the facility for property placed in service prior to September 30, 1995, is less than or equal to three dollars and ten cents per day. Beginning with the fiscal year ending June 30, 2016, a residential care home shall be reimbursed the greater of



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the allowable accumulated fair rent reimbursement associated with real property additions and land as calculated on a per day basis or three dollars and ten cents per day if the allowable reimbursement associated with real property additions and land is less than three dollars and ten cents per day. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, the allowance for real wage growth, as determined in accordance with subsection (q) of section 17-311-52 of the regulations of Connecticut state agencies, shall not be applied. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, the inflation adjustment made in accordance with subsection (p) of section 17-311-52 of the regulations of Connecticut state agencies shall not be applied to real property costs. Beginning with the fiscal year ending June 30, 1997, minimum allowable patient days for rate computation purposes for a residential care home with twenty-five beds or less shall be eighty-five per cent of licensed capacity. Beginning with the fiscal year ending June 30, 2002, for the purposes of determining the allowable salary of an administrator of a residential care home with sixty beds or less the department shall revise the allowable base salary to thirty-seven thousand dollars to be annually inflated thereafter in accordance with section 17-311-52 of the regulations of Connecticut state agencies. The rates for the fiscal year ending June 30, 2002, shall be based upon the increased allowable salary of an administrator, regardless of whether such amount was expended in the 2000 cost report period upon which the rates are based. Beginning with the fiscal year ending June 30, 2000, and until the fiscal year ending June 30, 2009, inclusive, the inflation adjustment for rates made in accordance with subsection (p) of section 17-311-52 of the regulations of Connecticut state agencies shall be increased by two per cent, and beginning with the fiscal year ending June 30, 2002, the inflation adjustment for rates made in accordance with subsection (c) of said section shall be increased by one per cent. Beginning with the fiscal year ending June 30, 1999, for the purpose of determining the allowable salary of a related party, the department shall revise the maximum salary to twenty-seven thousand eight hundred fifty-six dollars to be annually inflated thereafter in accordance with section 17-311-52 of the regulations of Connecticut state agencies and beginning with the fiscal year ending June 30, 2001, such allowable salary shall be computed on an hourly basis and the maximum number of hours allowed for a related party other than the proprietor shall be increased from forty hours to forty-eight hours per work week. For the fiscal year ending June 30, 2005, each facility shall receive a rate that is two and one-quarter per cent more than the rate the facility received in the prior fiscal year, except any facility that would have been issued a lower rate effective July 1, 2004, than for the fiscal year ending June 30, 2004, due to interim rate status or agreement with the department shall be issued such lower rate effective July 1, 2004. Effective upon receipt of all the necessary federal approvals to secure federal financial participation matching funds associated with the rate increase provided in subdivision (4) of subsection (f) of this section, but in no event earlier than October 1, 2005, and provided the user fee imposed under section 17b-320 is required to be collected, each facility shall receive a rate that is determined in accordance with applicable law and subject to appropriations, except any facility that would have been issued a lower rate effective October 1, 2005, than for the fiscal year ending June 30, 2005, due to interim rate status or agreement with the department, shall be issued such lower rate effective October 1, 2005. Such rate increase shall remain in effect unless: (1) The federal financial participation matching funds



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associated with the rate increase are no longer available; or (2) the user fee created pursuant to section 17b-320 is not in effect. For the fiscal year ending June 30, 2007, rates in effect for the period ending June 30, 2006, shall remain in effect until September 30, 2006, except any facility that would have been issued a lower rate effective July 1, 2006, than for the fiscal year ending June 30, 2006, due to interim rate status or agreement with the department, shall be issued such lower rate effective July 1, 2006. Effective October 1, 2006, no facility shall receive a rate that is more than four per cent greater than the rate in effect for the facility on September 30, 2006, except for any facility that would have been issued a lower rate effective October 1, 2006, due to interim rate status or agreement with the department, shall be issued such lower rate effective October 1, 2006. For the fiscal years ending June 30, 2010, and June 30, 2011, rates in effect for the period ending June 30, 2009, shall remain in effect until June 30, 2011, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2010, or the fiscal year ending June 30, 2011, due to interim rate status or agreement with the department, shall be issued such lower rate, except (A) any facility that would have been issued a lower rate for the fiscal year ending June 30, 2010, or the fiscal year ending June 30, 2011, due to interim rate status or agreement with the Commissioner of Social Services shall be issued such lower rate; and (B) the commissioner may increase a facility's rate for reasonable costs associated with such facility's compliance with the provisions of section 19a-495a concerning the administration of medication by unlicensed personnel. For the fiscal year ending June 30, 2012, rates in effect for the period ending June 30, 2011, shall remain in effect until June 30, 2012, except that (i) any facility that would have been issued a lower rate for the fiscal year ending June 30, 2012, due to interim rate status or agreement with the Commissioner of Social Services shall be issued such lower rate; and (ii) the commissioner may increase a facility's rate for reasonable costs associated with such facility's compliance with the provisions of section 19a-495a concerning the administration of medication by unlicensed personnel. For the fiscal year ending June 30, 2013, the Commissioner of Social Services may, within available appropriations, provide a rate increase to a residential care home. Any facility that would have been issued a lower rate for the fiscal year ending June 30, 2013, due to interim rate status or agreement with the Commissioner of Social Services shall be issued such lower rate. For the fiscal years ending June 30, 2012, and June 30, 2013, the Commissioner of Social Services may provide fair rent increases to any facility that has undergone a material change in circumstances related to fair rent and has an approved certificate of need pursuant to section 17b-352, 17b-353, 17b-354 or 17b-355. For the fiscal years ending June 30, 2014, and June 30, 2015, for those facilities that have a calculated rate greater than the rate in effect for the fiscal year ending June 30, 2013, the commissioner may increase facility rates based upon available appropriations up to a stop gain as determined by the commissioner. No facility shall be issued a rate that is lower than the rate in effect on June 30, 2013, except that any facility that would have been issued a lower rate for the fiscal year ending June 30, 2014, or the fiscal year ending June 30, 2015, due to interim rate status or agreement with the commissioner, shall be issued such lower rate. For the fiscal year ending June 30, 2014, and each fiscal year thereafter, a residential care home shall receive a rate increase for any capital improvement made during the fiscal year for the health and safety of residents and approved



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by the Department of Social Services, provided such rate increase is within available appropriations. For the fiscal year ending June 30, 2015, and each succeeding fiscal year thereafter, costs of less than ten thousand dollars that are incurred by a facility and are associated with any land, building or nonmovable equipment repair or improvement that are reported in the cost year used to establish the facility's rate shall not be capitalized for a period of more than five years for rate-setting purposes. For the fiscal year ending June 30, 2015, subject to available appropriations, the commissioner may, at the commissioner's discretion: Increase the inflation cost limitation under subsection (c) of section 17-311-52 of the regulations of Connecticut state agencies, provided such inflation allowance factor does not exceed a maximum of five per cent; establish a minimum rate of return applied to real property of five per cent inclusive of assets placed in service during cost year 2013; waive the standard rate of return under subsection (f) of section 17-311-52 of the regulations of Connecticut state agencies for ownership changes or health and safety improvements that exceed one hundred thousand dollars and that are required under a consent order from the Department of Public Health; and waive the rate of return adjustment under subsection (f) of section 17-311-52 of the regulations of Connecticut state agencies to avoid financial hardship. For the fiscal years ending June 30, 2016, and June 30, 2017, rates shall not exceed those in effect for the period ending June 30, 2015, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in cost report years ending September 30, 2014, and September 30, 2015, that are not otherwise included in rates issued. For the fiscal years ending June 30, 2016, and June 30, 2017, and each succeeding fiscal year, any facility that would have been issued a lower rate, due to interim rate status, a change in allowable fair rent or agreement with the department, shall be issued such lower rate. For the fiscal year ending June 30, 2018, rates shall not exceed those in effect for the period ending June 30, 2017, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2016, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2019, rates shall not exceed those in effect for the period ending June 30, 2018, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2017, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2020, rates shall not exceed those in effect for the fiscal year ending June 30, 2019, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2018, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2021, rates shall not exceed those in effect for the fiscal year ending June 30, 2020, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2019, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2022,



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the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities that have documented fair rent additions placed in service in the cost report year ending September 30, 2020, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2023, the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report year ending September 30, 2021, that are not otherwise included in rates issued. For the fiscal years ending June 30, 2022, and June 30, 2023, a facility may receive a rate increase for a capital improvement approved by the Department of Social Services, for the health or safety of the residents during the fiscal year ending June 30, 2022, or June 30, 2023, only to the extent such rate increases are within available appropriations. For the fiscal year ending June 30, 2022, and June 30, 2023, rates shall be based upon rates in effect for the fiscal year ending June 30, 2021, inflated by the gross domestic product deflator applicable to each rate year, except the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities which have documented fair rent additions placed in service in the cost report years ending September 30, 2020, and September 30, 2021, that are not otherwise included in rates issued. For the fiscal years ending June 30, 2024, and June 30, 2025, a facility may receive a rate increase for a capital improvement approved by the Department of Social Services, for the health or safety of the residents during the fiscal year ending June 30, 2024, or June 30, 2025, only to the extent such rate increases are within available appropriations. For the fiscal year ending June 30, 2024, the department shall determine facility rates based upon 2022 cost report filings subject to the provisions of this section, adjusted to reflect any rate increases provided after the cost report year ending September 30, 2022. There shall be no increase to rates based on any inflationary factor for the fiscal year ending June 30, 2024. Notwithstanding any other provisions of chapter 319y, any subsequent increase to allowable operating costs, excluding fair rent, shall be inflated by the gross domestic product deflator when funding is specifically appropriated for such purposes in the enacted budget. The rate of inflation shall be computed by comparing the most recent rate year to the average of the gross domestic product deflator for the previous four fiscal quarters ending ~~April thirtieth~~ March thirty-first. Any increase to rates based on inflation shall be applied prior to the application of any other budget adjustment factors that may impact such rates. The commissioner shall determine whether and to what extent a change in ownership of a facility shall occasion the rebasing of the facility's costs. There shall be no inflation adjustment during a year in which a facility's rates are rebased. For the fiscal year ending June 30, 2024, the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities that have documented fair rent additions placed in service in the cost report year ending September 30, 2022, that are not otherwise included in rates issued. For the fiscal year ending June 30, 2025, the commissioner may, in the commissioner's discretion and within available appropriations, provide pro rata fair rent increases to facilities that have documented fair rent additions placed in service in the cost report year ending September 30, 2023, that are not otherwise included in rates issued.



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Sec. 4. Subsection (a)(11) of section 17b-340d of the general statutes is repealed and the following is substituted in lieu thereof:

(11) There shall be no increase to rates based on inflation or any inflationary factor for the fiscal years ending June 30, 2022, and June 30, 2023, unless otherwise authorized under subdivision (1) of this subsection. Notwithstanding section 17-311-52 of the regulations of Connecticut state agencies, for the fiscal years ending June 30, 2024, and June 30, 2025, there shall be no inflationary increases to rates beyond those already factored into the model for the transition to an acuity-based reimbursement system. Notwithstanding any other provisions of chapter 319y, any subsequent increase to allowable operating costs, excluding fair rent, shall be inflated by the gross domestic product deflator when funding is specifically appropriated for such purposes in the enacted budget. The rate of inflation shall be computed by comparing the most recent rate year to the average of the gross domestic product deflator for the previous four fiscal quarters ending [April thirtieth] March thirty-first.

Section 5: Subsection (b) to Section 17b-238 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective upon Passage*):

(b) Any institution or agency to which payments are to be made under sections 17b-239 to 17b-246, inclusive, and sections 17b-340 and 17b-343 which is aggrieved by any decision of said commissioner may, within ten days after written notice thereof from the commissioner, obtain, by written request to the commissioner, a rehearing on all items of aggrievement. On and after July 1, 1996, a rehearing shall be held by the commissioner or his designee, provided a detailed written description of all such items is filed within ninety days of written notice of the commissioner's decision. The rehearing shall be held within thirty days of the filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision within sixty days of the close of evidence or the date on which final briefs are filed, whichever occurs later. Any designee of the commissioner who presides over such rehearing shall be impartial and shall not be employed within the Department of Social Services office of certificate of need and rate setting. Any such items not resolved at such rehearing to the satisfaction of either such institution or agency or said commissioner may be appealed in accordance with section 4-183. Such appeals shall be privileged cases to be heard by the court as soon after the return day as shall be practicable. [shall be submitted to binding arbitration to an arbitration board consisting of one member appointed by the institution or agency, one member appointed by the commissioner and one member appointed by the Chief Court Administrator from among the retired judges of the Superior Court, which retired judge shall be compensated for his services on such board in the same manner as a state referee is compensated for his services under section 52-434. The proceedings of the arbitration board and any decisions rendered by such board shall be conducted in accordance with the provisions of the Social Security Act, 49 Stat. 620 (1935), 42 USC 1396, as amended from time to time, and chapter 54].



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Section 6: Subsection (i) of Section 17b-99a of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon Passage):

(i) Any facility aggrieved by a final report issued pursuant to subsection (h) of this section may request a rehearing. A rehearing shall be held by the commissioner or the commissioner's designee, provided a detailed written description of all items of aggrievement in the final report is filed by the facility not later than ninety days following the date of written notice of the commissioner's decision. The rehearing shall be held not later than thirty days following the date of filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision not later than sixty days following the close of evidence or the date on which final briefs are filed, whichever occurs later. Any items not resolved at such rehearing to the satisfaction of the facility or the commissioner may be appealed in accordance with section 4-183. Such appeals shall be privileged cases to be heard by the court as soon after the return day as shall be practicable. [shall be submitted to binding arbitration by an arbitration board consisting of one member appointed by the facility, one member appointed by the commissioner and one member appointed by the Chief Court Administrator from among the retired judges of the Superior Court, which retired judge shall be compensated for his services on such board in the same manner as a state referee is compensated for his services under section 52-434. The proceedings of the arbitration board and any decisions rendered by such board shall be conducted in accordance with the provisions of the Social Security Act, 42 USC 1396, as amended from time to time, and chapter 54.]



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Document Name	Nursing Home Forensic Audits and Appointment of Receivers
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Naming Format: AGENCY ACRONYM PROPOSAL NUMBER - TOPIC

Please insert a copy of the fully drafted bill at the end of this document (required for review)

Legislative Liaison	David Seifel 860-249-3286 David.Seifel@ct.gov
Divisions Requesting This Proposal	Reimbursement & CON, Division of Health Services, Policy, OLCRAH
Drafter	Matthew Antonetti, Nicole Godburn, Mehul Dalal

Title of Proposal	An Act Concerning Forensic Audits and Appointment of Receivers in Nursing Home Facilities
Statutory Reference, if any	Section 1: 17b-99a: Amends subsection (a) (1) to include reference to section 17b-340d (acuity-based methodology for Medicaid reimbursement of nursing home services) and adds subsection (m) to 17b-99a to provide that a facility may be subject to recoupment for the costs of any forensic audit ordered by the Department to assess such facility's financial viability; Section 2: 19a-543 (Imposition of Receivership. Grounds.) Section 3: 19a-547 (Appointment of receiver. Qualifications of receiver.)
Brief Summary and Statement of Purpose	Section 1: Amends subsection (a)(1) to include reference to section 17b-340d (acuity-based methodology for Medicaid reimbursement of nursing home services) and adds a new subsection (m) to Conn. Gen. Stat. §17b-99a to provide that a facility may be subject to recoupment for the costs of any forensic audit ordered by the Department to assess the financial viability of such facility and subject to civil monetary penalties for failure to cooperate with such forensic audit.



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	<p>Section 2: Removes the requirement that a facility’s serious financial loss or failure needs to “jeopardize the health, safety and welfare of the patients” for imposition of a receiver under section 19a-543.</p> <p>Section 3: Expands the potential pool of nursing home receivers by mirroring the qualifications of a receiver for a residential care home by removing the requirement that a nursing home receiver possess an active license as a nursing home administrator in Connecticut and removes the requirement for regulations governing the proposed qualifications of receivers as unnecessary.</p>
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BACKGROUND

Origin of Proposal ☒ New Proposal ☐ Resubmission

If this is a resubmission, please share the prior bill number, the reason the bill did not move forward, and any changes made or conversations had since it was last proposed:

Please consider the following, if applicable:

Have there been changes in federal/state laws or regulations that make this legislation necessary?	No
Has this proposal or a similar proposal been implemented in other states? If yes, to what result?	No.



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Have certain constituencies called for this proposal?	.
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INTERAGENCY IMPACT

[] Check here if this proposal does NOT impact other agencies

1. Agency Name	
Agency Contact (name, title)	
Date Contacted	
Status	[] Approved [] Talks Ongoing
Open Issues, if any	

FISCAL IMPACT

Include the section number(s) responsible for the fiscal impact and the anticipated impact

[X] Check here if this proposal does NOT have a fiscal impact

State	
Municipal (Include any municipal mandate that can be found within legislation)	
Federal	



Additional notes	
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MONITORING & EVALUATION PLAN
If applicable, please describe the anticipated measurable outcomes and the data that will be used to track those outcomes. Include the section number(s) responsible for those outcomes

☐ Check here if this proposal does NOT lead to any measurable outcomes

ANYTHING ELSE WE SHOULD KNOW?

INSERT FULLY DRAFTED BILL HERE

Section 1: Section 17b-99a of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage):

- (a)(1) For purposes of this section, (A) “extrapolation” means the determination of an unknown value by projecting the results of the review of a sample to the universe from which the sample was drawn, (B) “facility” means any facility described in this subsection and for which rates are established pursuant to section 17b-340 or section 17b-340d , and (C) “universe” means a defined population of claims submitted by a facility during a specific time period.
- (2) The Commissioner of Social Services shall conduct any audit, including a forensic audit, of a licensed chronic and convalescent nursing home, chronic disease hospital associated with a chronic and convalescent nursing home, a rest home with nursing supervision, a licensed residential care home, as defined in section 19a-490, and a residential facility for persons with intellectual disability which is licensed pursuant to section 17a-227 and certified to participate in



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the Medicaid program as an intermediate care facility for individuals with intellectual disabilities in accordance with the provisions of this section.

(b) Not less than thirty days prior to the commencement of any such audit, the commissioner shall provide written notification of the audit to such facility, unless the commissioner makes a good-faith determination that (1) the health or safety of a recipient of services is at risk; or (2) the facility is engaging in vendor fraud under sections 53a-290 to 53a-296, inclusive.

(c) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit, shall not of itself constitute a willful violation of the rules of a medical assistance program administered by the Department of Social Services unless proof of intent to commit fraud or otherwise violate program rules is established. In determining which facilities shall be subject to audits, the Commissioner of Social Services may give consideration to the history of a facility's compliance in addition to other criteria used to select a facility for an audit.

(d) A finding of overpayment or underpayment to such facility shall not be based on extrapolation unless (1) there is a determination of sustained or high level of payment error involving the facility, (2) documented educational intervention has failed to correct the level of payment error, or (3) the value of the claims in aggregate exceeds two hundred thousand dollars on an annual basis.

(e) A facility, in complying with the requirements of any such audit, shall be allowed not less than thirty days to provide documentation in connection with any discrepancy discovered and brought to the attention of such facility in the course of any such audit.

(f) The commissioner shall produce a preliminary written report concerning any audit conducted pursuant to this section and such preliminary report shall be provided to the facility that was the subject of the audit not later than sixty days after the conclusion of such audit.

(g) The commissioner shall, following the issuance of the preliminary report pursuant to subsection (f) of this section, hold an exit conference with any facility that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report. Such facility may present evidence at such exit conference refuting findings in the preliminary report.

(h) The commissioner shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the facility that was the subject of the audit not later than sixty days after the date of the exit conference conducted pursuant to subsection (g) of this section, unless the commissioner and the facility agree to a later date or there are other referrals or investigations pending concerning the facility.

(i) Any facility aggrieved by a final report issued pursuant to subsection (h) of this section may request a rehearing. A rehearing shall be held by the commissioner or the commissioner's designee, provided a detailed written description of all items of grievance in the final report is filed by the facility not later than ninety days following the date of written notice of the



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commissioner's decision. The rehearing shall be held not later than thirty days following the date of filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision not later than sixty days following the close of evidence or the date on which final briefs are filed, whichever occurs later. Any items not resolved at such rehearing to the satisfaction of the facility or the commissioner shall be submitted to binding arbitration by an arbitration board consisting of one member appointed by the facility, one member appointed by the commissioner and one member appointed by the Chief Court Administrator from among the retired judges of the Superior Court, which retired judge shall be compensated for his services on such board in the same manner as a state referee is compensated for his services under section 52-434. The proceedings of the arbitration board and any decisions rendered by such board shall be conducted in accordance with the provisions of the Social Security Act, 42 USC 1396, as amended from time to time, and chapter 54.

(j) The submission of any false or misleading fiscal information or data to the commissioner shall be grounds for suspension of payments by the state under sections 17b-239 to 17b-246, inclusive, and sections 17b-340 and 17b-343, in accordance with regulations adopted by the commissioner. In addition, any person, including any corporation, who knowingly makes or causes to be made any false or misleading statement or who knowingly submits false or misleading fiscal information or data on the forms approved by the commissioner shall be guilty of a class D felony.

(k) The commissioner, or any agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this section, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner or such agent having authority by law to issue such process may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by the commissioner or the commissioner's authorized agent or to produce any records and papers pursuant thereto, the commissioner or the commissioner's agent may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the business has been conducted, or to any judge of such court if the same is not in session, setting forth such disobedience to process or refusal to answer, and such court or judge shall cite such person to appear before such court or judge to answer such question or to produce such records and papers.

(l) The commissioner shall provide free training to facilities on the preparation of cost reports to avoid clerical errors and shall post information on the department's Internet web site concerning the auditing process and methods to avoid clerical errors. Not later than April 1, 2015, the commissioner shall establish audit protocols to assist facilities subject to audit pursuant to this section in developing programs to improve compliance with Medicaid requirements under state and federal laws and regulations, provided audit protocols may not be relied upon to create a substantive or procedural right or benefit enforceable at law or in equity by any person, including a corporation. The commissioner shall establish and publish on the department's



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Internet web site audit protocols for: (1) Licensed chronic and convalescent nursing homes, (2) chronic disease hospitals associated with chronic and convalescent nursing homes, (3) rest homes with nursing supervision, (4) licensed residential care homes, as defined in section 19a-490, and (5) residential facilities for persons with intellectual disability that are licensed pursuant to section 17a-227 and certified to participate in the Medicaid program as intermediate care facilities for individuals with intellectual disabilities. The commissioner shall ensure that the Department of Social Services, or any entity with which the commissioner contracts to conduct an audit pursuant to this section, has on staff or consults with, as needed, licensed health professionals with experience in treatment, billing and coding procedures used by the facilities being audited pursuant to this section.

(m) Facilities shall be liable to the department for the costs of any forensic audit of a facility identified by the department as potentially experiencing a serious financial loss, including but not limited to any reports or subsequent testimony related thereto. The facility shall cooperate and assist with a forensic audit as requested by the department and shall ensure that all facility personnel, financial consultants, and accountants fully cooperate and assist with a forensic audit as may be necessary. A facility shall be subject to a civil monetary penalty not to exceed three thousand two hundred fifty dollars per day for each day that the facility fails to comply with a written request by the department to cooperate and assist with a forensic audit as may be necessary. A facility may request a fair hearing on the assessment of any such civil monetary penalty as an aggrieved person pursuant to section 17b-60. The department may recover the costs of any such forensic audit or civil monetary penalties assessed in accordance with this subsection through recoupment of such amounts against the funds that would otherwise be paid to such facility for services rendered to recipients of assistance under the Medicaid program.

Section 2: Section 19a-543 is repealed and the following is substituted in lieu thereof (*Effective upon passage*):

The court shall grant an application for the appointment of a receiver for a nursing home facility or residential care home upon a finding of any of the following: (1) Such facility or home is operating without a license issued pursuant to this chapter or such facility's or home's license has been suspended or revoked pursuant to section 19a-494; (2) such facility or home intends to close and adequate arrangements for relocation of its residents have not been made at least thirty days prior to closing; (3) such facility or home has sustained a serious financial loss or failure [which jeopardizes the health, safety and welfare of the patients] or there is a reasonable likelihood of such loss or failure; or (4) there exists in such facility a condition in substantial violation of the Public Health Code, or any other applicable state statutes, or Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as



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amended, or any regulation adopted pursuant to such state or federal laws.

Section 3: Subsection (a) of Section 19a-547 is amended as follows (*Effective upon passage*):

a) The court may appoint any responsible individual whose name is proposed by the Commissioner of Public Health and the Commissioner of Social Services to act as a receiver. Such individual shall have substantial experience in the delivery of high-quality health care services and successful management or operation of long-term care facilities, and have achieved an educational level or have such licensure as customarily is held by persons managing or operating health care facilities similar to the facility or facilities subject to receivership. [be a nursing home facility administrator licensed in the state of Connecticut with substantial experience in operating Connecticut nursing homes. For a residential care home, such individual shall have experience as a residential care home administrator or, if there is no such individual, such individual shall have experience in the state similar to that of a residential care home administrator. The Commissioner of Social Services shall adopt regulations governing qualifications for proposed receivers consistent with this subsection.] No state employee or owner, administrator or other person with a financial interest in the nursing home facility or residential care home may serve as a receiver for that nursing home facility or residential care home. No person appointed to act as a receiver shall be permitted to have a current financial interest in the nursing home facility or residential care home; nor shall such person appointed as a receiver be permitted to have a financial interest in the nursing home facility or residential care home for a period of five years from the date the receivership ceases.