

SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2769

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 13, 2023

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2769 (1R).

As amended by the committee, this bill revises the reporting requirements for transfers of nursing home ownership and assignments of substantial management control over a nursing home to a third party entity.

Specifically, the bill requires nursing home owners and operators, as well as applicants for a transfer of ownership of a nursing home and third party entities exercising substantial management control over the nursing home, to provide an organizational chart identifying: parent entities and wholly-owned subsidiaries; principals that provide a service, facility, or supplies to the nursing home; and unrelated parties that provide a service, facility, or supplies to the nursing home that are paid \$200,000 or more by the nursing home. In the case of an applicant for a transfer of ownership of a nursing home, these disclosures will be based on expectations with regard to services, facilities, supplies, and payments.

For applications for transfer of ownership of a nursing home, the organizational chart is to be posted on the Department of Health's (DOH's) Internet website, along with a copy of the transfer of ownership application, which is currently required to be posted on the DOH's website.

As amended, the bill removes a current provision of law that allows applicants for transfers of ownership to prepare and submit a summary of the application information that omits proprietary information and can be used for public disclosure purposes. The bill additionally removes a provision of current law that provides nothing in a transfer of ownership application may be used in an adverse licensure or disciplinary action against the applicant.

As amended, the bill revises the current requirements for approval of a transfer of ownership application to provide that approval is contingent on review of the applicant's history of disciplinary actions

involving facilities owned, operated, or managed by the applicant in both New Jersey and in any other jurisdiction; under current law, this review is limited to New Jersey facilities. Under current law, approval is additionally conditioned on payment of outstanding and issued Medicaid audit claims and penalties issued by the Department of Health (DOH); as amended, the bill adds as a condition of approval that there be payment of all Medicaid overpayments, and requires payment of any State-issued penalty, not just those issued by the DOH. The amended bill further specifies that, if any Medicaid overpayments are identified after the transfer of ownership occurs, the new owner will be required to submit an affidavit to the DOH and to the State Comptroller identifying the responsible party for the overpayments.

As amended, the bill revises the mandatory components of the annual reports nursing homes are required to submit to the DOH to additionally require balance sheets include information concerning equity, and statements of operations include specifically itemized expenses related to leases of land, buildings, and equipment, loans of equipment, and contracts in excess of \$10,000 per year for any service, as well as details concerning any mortgagee for the land or building used by the nursing home. The reporting requirements will also include information concerning the owners and operators of related parties to the nursing home and entities other than a nonprofit organization that have an ownership interest of five percent or more in a private equity fund that is invested in the nursing home.

As amended, the bill revises the threshold for reporting certain interested party transactions from \$2,500 per year to \$10,000 per year. The bill further requires enhanced disclosure of the owners and principals of the owners, management companies, and related parties to a nursing home, including the owners and principals of holding and parent companies and subsidiaries, as well as limited liability companies.

The bill further revises the current financial disclosures required for nursing home owners and operators, to require the submission of an owner-certified financial statement that:

- 1) is reviewed or audited by a certified public accountant and performed in accordance with generally accepted accounting principles in effect the day the application or statement is submitted; and

- 2) includes: a balance sheet detailing the assets, liabilities, and equity the end of the reporting entity's fiscal year; a statement of income, expenses, and operating surplus or deficit for the annual fiscal period; a statement of changes in equity; a statement detailing patient revenue by payer, including, but not limited to, Medicare, NJ FamilyCare, and other payers, and revenue center; a statement of cash flows, including, but not limited to, ongoing and new capital expenditures and depreciation; a combined financial statement that includes all entities reported in the owner-certified financial statement;

and any other information, data, and documents as may be required by the Commissioner of Health or the State Comptroller.

As amended, the bill specifies that an owner-certified financial statement required under P.L.2021, c.457 (C.26:2H-46.3 et seq.) is to meet the requirements for owner-certified financial statements established under the bill.

As amended, the bill further specifies that a health care system consisting of more than one nursing home will be required to submit owner-certified financial statements that consolidate the financial data across all nursing homes that are a part of that health care system, together with a statement of operations or income with respect to each nursing home in the health care system, which statements of operations or income may be submitted in a supplemental schedule. A nonprofit nursing home that files a copy of its most recent Internal Revenue Service Form 990 Public Inspection Copy with the DOH and the State Comptroller, and a nursing home that files with the DOH and the State Comptroller a cost report with an audited financial statement that has been submitted to the federal Centers for Medicare and Medicaid Services, may each be deemed to have satisfied all or part of the requirements of an owner-certified financial statement established under the bill.

For applicants for a transfer of ownership and entities seeking to delegate management of a nursing home, this information will be included with certain materials that current law requires be provided to the Department of Health (DOH). The bill expands the disclosure requirements under current law to additionally reference limited liability companies, which will be required to make the required disclosures for each member of the limited liability company.

The bill revises a current requirement for nursing homes to submit certain information to the DOH within 90 days after the end of the fiscal year to require the information be submitted 150 days after the end of the fiscal year. The DOH will be required to immediately transmit submitted nursing home reports to the State Comptroller. All information submitted under the bill with regard to transfers of ownership, annual reporting, and delegations of substantial management control, is to be certified under penalty of perjury that the information is accurate and complete. All information submitted will additionally be deemed a public record.

As amended, the bill revises the current penalties that apply for failure to make a required report or for submitting false information. Current law authorizes a civil penalty of \$10 to \$100 per day for each day the report is not filed or corrected. The bill revises the civil penalty to up to \$200 per day, makes the penalties discretionary, and authorizes the DOH to curtail resident admissions to the nursing home.

As amended, the bill provides that the State Comptroller, in consultation with the DOH and the Department of Human Services, will be authorized to monitor, review and audit owner-certified

financial statements in accordance with certain existing statutory authorities, and will be authorized to obtain information and testimony, issue reports, make referrals, and coordinate with and require the cooperation of State agencies in the same manner as permitted under those existing statutory authorities.

As amended, the bill grants the DOH and the State Comptroller express authority to promulgate rules and regulations to implement the bill, and the authority to issue temporary notices to implement the bill, which notices will be valid for no more than one year after the date the bill is enacted.

COMMITTEE AMENDMENTS:

The committee amendments revise the definition of “related party” as it applies to the owners and principals of nursing homes, as well as applicants for transfers of ownership of a nursing home and third party entities exercising, or that will exercise, substantial management control over the nursing home. Prior to amendment, the definition applies to: 1) an organization related to an owner or principal of the nursing home or applicant for transfer of ownership or third party managing entity; or 2) an organization that is under common ownership or control with the owner, applicant, or third party entity. As revised, “related party” does not apply to organizations related to the nursing home, but will apply to any organization, either directly or through contracts with a third party entity exercising substantial management control over the nursing home, providing or expected to provide a service, facility, or supplies to the nursing home or that otherwise, either directly or through contracts with a third party entity exercising substantial management control over the nursing home, does, or is expected to do, business with the nursing home: 1) in which organization an owner or principal of the nursing home, an applicant for transfer of ownership, or a third party managing entity, has an ownership or control interest of five percent or more; 2) which is an organization in which an immediate family member of the owner, principal, applicant, or third party managing entity is an owner or principal; or 3) which is an organization that is under common ownership or control with the owner, applicant, or third party entity. The amendments remove language from other sections of the bill that is made redundant by this revised definition.

The committee amendments revise the term “parent corporation” to “parent entity.”

The committee amendments revise a current requirement that applications to transfer ownership of a nursing home include a copy of any lease and management agreements, to specify that the disclosure applies to lease agreements for real property.

The committee amendments remove existing provisions of law allowing transfer of ownership applicants to submit a summary of the

application information that omits proprietary information and can be used for public disclosure purposes.

The committee amendments remove a provision of current law that provides that nothing in a transfer of ownership application may be used in an adverse licensure or disciplinary action against the applicant.

The committee amendments revise the required review of a transfer of ownership application for the applicant's history of disciplinary actions in connection with other facilities to provide that the review encompasses facilities owned, operated, or managed by the applicant in any jurisdiction. Under current law, this review is limited to New Jersey facilities.

The committee amendments revise the transfer of ownership application requirements to provide that approval is conditioned on payment of all outstanding and issued Medicaid audit claims, Medicaid overpayments, and State-issued penalties. Under current law, this provision only applies to Medicaid audit claims and DOH-issued penalties. The amendments add language specifying that, if any Medicaid overpayments are identified after the transfer of ownership occurs, the new owner will be required to submit an affidavit to the DOH and to the State Comptroller identifying the responsible party for the overpayments.

The committee amendments remove a requirement that entities seeking to delegate substantial management control over a nursing home submit a consolidated financial statement to the DOH. The amendments revise the definition of "substantial management control" to provide that more than one entity may be deemed to have substantial management control over a nursing home, to provide that the term applies to the ability to exercise either control or authority at the nursing home, rather than just control, and that the term includes the ability to exercise control or authority over the number of beds at the nursing home.

The committee amendments revise the definition of "nursing home" as used in the bill to cross-reference section 1 of P.L.1975, c.397, rather than P.L.1971, c.136, which outlines the DOH's general authority to license and regulate health care facilities.

The committee amendments remove a section from the bill that would have revised the levels of disclosures required for various types of transfer of ownership applications, and that would set forth express requirements for consolidated financial statements submitted by applicants for transfer of ownership and by entities seeking to transfer substantial management control, which requirements would have mirrored the requirements for financial statements submitted by current nursing home owners.

The committee amendments revise the requirement for various entities to submit consolidated financial statements to instead require submission of owner-certified financial statements. The amendments

revise the requirements for the financial statements to clarify they be prepared and reviewed in accordance with the financial reporting standards in effect the date the application or statement is submitted.

The committee amendments require that the financial statements be certified complete and correct under penalty of perjury, and specify that the information submitted will be deemed a public record. The committee amendments remove a section from the bill that would have required nursing homes to post their consolidated financial statements and organizational charts on their Internet websites, along with consolidated financial statements for any entity exercising substantial management control and for related parties. The amendments also remove a section from the bill would have required the DOH to provide links to these postings on its website and to make the information available to the public upon request.

The committee amendments revise the threshold for nursing homes to report entities holding a monetary obligation on the books of the nursing home. Current law requires nursing homes to report all entities holding an interest of 10 percent or more in a financial obligation of the nursing home; as amended, nursing homes will be required to report all entities holding an interest of five percent or more in a financial obligation of the nursing home.

The committee amendments revise current statutory references to “stockholders” to read “shareholders,” and provide that the term applies to a beneficiary who holds five percent of any class of securities issued by the corporation; under current law, the threshold level for holding securities is 10 percent.

The committee amendments add limited liability companies to the types of entities that are to be included in nursing home disclosures and specify that reporting for the companies includes disclosures relating to each member of the company.

The committee amendments revise the current nursing home reporting requirements to provide that the reports are to be submitted within 150 days after the end of the nursing home’s fiscal year, rather than 90 days.

The committee amendments add a requirement for annual nursing home disclosures submitted to the DOH to be immediately transmitted by the DOH to the State Comptroller.

The committee amendments restore language that would have been deleted by the bill concerning the current reporting requirements for nursing homes concerning balance sheets and statements of operations. The bill revises these requirements to: 1) provide that they be prepared in accordance with notices or regulations adopted by the DOH or the State Comptroller; 2) require the balance sheets include statements of equity; 3) remove a requirement that statements of operations include extraordinary items; 4) require the statements of operations include specifically itemized expenses related to leases of land, buildings, and equipment, loans of equipment, and contracts in

excess of \$10,000 per year for any service, as well as details concerning any mortgagee for the land or building used by the nursing home; and 5) to provide that the statements of operations may be presented in supplemental schedules subject to certain auditing requirements.

The committee amendments add to the existing mandatory annual disclosure requirements for nursing homes a requirement that nursing homes disclose any person who is a member of the board of trustees or a member of the board of directors of the nursing home, as well as any person other than a nonprofit organization that has an ownership interest of five percent or more in a private equity fund that is invested in the nursing home.

The committee amendments revise a requirement under the bill for nursing homes to disclose 100 percent of the current owners of the nursing home, to specify that this disclosure includes all principals and interested parties in the nursing home. The amendments additionally require nursing homes to identify 100 percent of the current owners of any third party entity exercising substantial management control over the nursing home, as well as all principals and interested parties in the third party entity and 100 percent of the owners, principals, and interested parties in any third party entity identified as a principal or interested party in the managing third party entity.

The committee amendments revise the current threshold for reporting certain interested party transactions from \$2,500 in a given year to \$10,000 in a given year.

The committee amendments revise the requirements for the submission of financial statements to remove requirements that they include statements of net worth, ancillary utilization, and resident census, and instead require statements related to equity and changes in equity, as well as any other information, documents, or data as may be required by the DOH or State Comptroller.

The committee amendments require certain entities holding an interest in the land, building, or other real property used by the nursing home, including interest in a mortgage, note, deed of interest, lease, or sublease, to submit owner-certified financial statements as they pertain to the entity's financial interest in the nursing home.

The committee amendments require nursing homes to annually submit to the Commissioner of Health copies of any lease agreements for the nursing home's use of land, buildings, facilities, or other real property.

The committee amendments remove a section of the bill that would have revised section 3 of P.L.2021, c.457 (C.26:2H-46.3) in various ways, including removing an existing statutory requirement for nursing homes to post the cost reports submitted to the federal Centers for Medicare and Medicaid Services (CMS) on their Internet websites, and add a new section providing that the owner-certified financial

statements required under that law are to meet the requirements for owner-certified financial statements established under the bill.

The committee amendments remove from the bill provisions that would have eliminated the ability of nonprofit nursing homes to submit their Internal Revenue Service Form 990 in lieu of an owner-certified financial statement, and add a new section providing that a nonprofit nursing home that files a copy of its most recent Internal Revenue Service Form 990 Public Inspection Copy with the DOH and the State Comptroller, and a nursing home that files with the DOH and the State Comptroller a cost report with an audited financial statement that has been submitted to CMS, may each be deemed to have satisfied all or part of the requirements of an owner-certified financial statement established under the bill.

The committee amendments remove a section from the bill that would have allowed the Department of Human Services to allow nursing homes to meet certain reporting requirements by submitting consolidated financial statements that meet the requirements of the bill.

The committee amendments revise the current penalties that apply to a nursing home that fails to file a required statement or that willfully files a false statement, which are \$10 to \$100 per day for each day of the violation, to revise the monetary penalty to up to \$200 per day, to make the monetary penalty discretionary, and to additionally provide that the DOH will have the authority to curtail admissions for new residents. The amendments further make these penalties applicable to any failure to comply with the requirements of P.L.1977, c.237 (C.26:2H-32 et seq.), which is the law setting forth the current nursing home financial disclosure requirements.

The committee amendments specify that a health care system consisting of more than one nursing home will be required to submit owner-certified financial statements that consolidate the financial data across all nursing homes that are a part of that health care system, together with a statement of operations or income with respect to each nursing home in the health care system, which statements of operations or income may be submitted in a supplemental schedule.

The committee amendments add a provision granting the State Comptroller express authority, under several existing statutory mandates, to review financial statements submitted under the bill.

The committee amendments add sections granting the DOH and the State Comptroller express rulemaking authority, as well as authority to issue temporary notices to implement the bill, with the temporary notices being in effect for no more than one year after the effective date of the bill.

The committee amendments remove language tying the effective date of one section of the bill to a cross-referenced section of law, as that cross-referenced section of law has both already taken effect and is no longer being amended under the bill.

The committee amendments update the numbering and cross-citations used throughout the bill to reflect these changes, as well as to make a technical change involving formatting and to update an outdated statutory cross-reference.