

SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO **SENATE, No. 1962**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 14, 2024

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1962.

This bill, as amended, prohibits an owner, administrator, director, officer, or employee of a long-term care facility or any person or entity affiliated or related to the owner, administrator, director, officer, or employee from being eligible to act as an attorney-in-fact for a principal. A “principal” is defined in the bill as a resident of a long-term care facility or an individual who is in the admission process to enter a long-term care facility. Further, the bill prohibits any person who benefits financially from a long-term care facility from acting as an attorney-in-fact. The bill explicitly states that these provisions are not to be construed to prohibit a family member of a principal from acting as attorney-in-fact for the principal.

The determination as to whether to appoint an individual affiliated with a long-term care facility as guardian of a principal is required to be made by the Superior Court in consultation with the Office of the Public Guardian for Elderly Adults. Under the bill, a power of attorney instrument executed by a principal naming an enumerated person is deemed invalid.

The bill, as amended, provides that a principal who sustains injury to person or property as a result of a violation of the provisions regarding the principal’s attorney-in-fact and guardian are to have a cause of action against any person who committed the violation resulting in injury. The action may be brought in any court of competent jurisdiction to enforce the provisions and to recover: 1) actual, compensatory, and punitive damages, and other injunctive and equitable relief as the court determines to be appropriate; 2) treble damages upon proof of willful, malicious, or reckless disregard of the law; and 3) reasonable attorney's fees and other litigation costs reasonably incurred by the principal.

The bill, as amended, requires the Department of Health to develop a standard resident admission contract. The bill permits the department to develop unique standard resident admission agreement

forms for each type of long-term care facility, when appropriate. Long-term care facilities are required to use the applicable admission contract developed by the department beginning on the first day next following the sixth month of the date of enactment. The bill prohibits a long-term care facility from requiring a resident to sign any other document at the time of, or as a condition of, admission into care, including any arbitration agreement.

The bill requires an operator of a long-term facility to provide each resident, or a resident's representative, notice that they may use an attorney to apply for Medicaid long term care benefits at the time of admission. Further, the notice is required to be posted conspicuously in the nursing home or health care facility.

Finally, the bill requires the Commissioner of Human Services to promulgate rules establishing uniform standards of care for non-attorney individuals providing Medicaid application assistance, including, but not limited to: (1) defining who is permitted to act as a Medicaid application assistor before Medicaid agencies and the Office of Administrative Law; (2) outlining the scope and nature of the services that non-attorney Medicaid application assistants are authorized to provide; and (3) requiring Medicaid application assistants to complete training on: Medicaid program rules; handling confidential financial and medical information; conflicts of interest; and what constitutes the unauthorized practice of law.

Under the bill, "long-term care facility" is defined as a nursing home, inclusive of all beds in a skilled nursing facility licensed as a long-term care facility by the Department of Health, an assisted living residence, a comprehensive personal care home, a residential health care facility, a long-term acute care hospital or a dementia care home licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

This bill was prefiled for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amendments add a provision that explicitly states that the provisions of the bill prohibiting certain individuals connected to a long-term care facility from acting as a principal's attorney-in-fact are not to be construed to prohibit a family member of a principal from acting as attorney-in-fact for the principal. The amendments also add a definition for "family member," which is to mean a spouse, domestic partner, partner in a civil union, child, parent, sibling, aunt, uncle, niece, nephew, grandparent, or grandchild.

The committee amendments revise the definition of "long-term care facility" to include long-term acute care hospitals and all beds in skilled nursing facilities licensed as long-term care facilities by the Department of Health.

The committee amendments establish that a principal who sustains injury to person or property as a result of a violation of the provisions of the bill regarding the principal's attorney-in-fact and guardian may be entitled to punitive damages, treble damages, and attorney's fees.

The committee amendments permit the Department of Health to develop unique standard resident admission agreement forms for each type of long-term care facility, when appropriate.

The committee amendments expand the provisions regarding arbitration agreements to prohibit a long-term care facility from requiring the execution of an arbitration agreement by a prospective resident as a condition of admission to the facility. As introduced, the facility was only prohibited from presenting any arbitration agreement to a prospective resident as part of the standard resident admission agreement. The committee amendments also require a long-term care facility to include certain language on an arbitration agreement document indicating that by signing the agreement the resident will be giving up their rights to a jury trial.

The committee amendments remove provisions from the bill that would require the Commissioner of Human Services to adopt rules and regulations that would prohibit non-attorney Medicaid application assistors from charging any fee for providing Medicaid application assistance services.