

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4478

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JANUARY 28, 2021

SUMMARY

- Synopsis:** Establishes additional requirements for DOH to assess sanctions and impose penalties on nursing homes; revises reporting requirements for nursing homes.
- Type of Impact:** Increase in State expenditures and revenues. Increase in county expenditures.
- Agencies Affected:** Department of Health, Department of Military and Veterans' Affairs, County-operated nursing homes.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate
County Cost Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that annual State costs would increase by an indeterminate amount for the Department of Health (DOH) to implement additional data reporting, regulatory, and oversight requirements pursuant to this bill.
- The DOH would incur substantial additional costs to develop and implement a special focus survey program and a system of scaling actions and penalties for nursing homes with repeated violations of State and federal requirements concerning nursing home administration and operations. In order to implement these measures, the DOH would be required to hire additional staff to oversee program operations, conduct in-depth surveys, and monitor the compliance status of the State's troubled nursing homes.
- The escalating fines and penalties levied on nursing homes with recurring regulatory violations will increase State revenues, but the OLS cannot estimate the magnitude of the revenue increase because the bill does not establish either the amount of the fines or the schedule on which the fines for noncompliant nursing homes will be levied.

- The three nursing homes operated by the Department of Military and Veterans' Affairs (DMAVA) and nine county-operated nursing homes will incur indeterminate annual cost increases to comply with the increased operational and data reporting requirements imposed pursuant to this bill. To the extent that any of the DMAVA- or county-operated nursing homes are assessed escalating fines or enhanced penalties or sanctions, the State and certain counties would face additional costs to effect the administrative and operational changes necessary to bring these nursing homes into compliance with State and federal requirements.

BILL DESCRIPTION

This bill requires the DOH to establish a system of scaling actions and penalties for nursing homes for repeat violations of State and federal requirements for nursing home administration and operations. The bill also imposes various reporting requirements on nursing homes and establishes a Nursing Home Advisory Council within the DOH.

To improve the operations of those nursing homes with a history of chronic violations of State or federal requirements for nursing home administration or operations, or a recent history of noncompliance with corrective actions, the DOH is to develop and implement a special focus survey program that utilizes intensive surveys to identify whether a facility has effectively remediated the conditions underlying the violations. Any New Jersey nursing home that qualifies for inclusion in the federal Centers for Medicare and Medicaid Services' (CMS) Special Focus Facility Program, but is ultimately not selected for the CMS program, will be automatically included in the DOH special focus survey program for a period of at least 18 months.

Under the bill, the DOH is authorized to impose enhanced corrective measures, penalties and sanctions in the case of facilities with continued or repeated regulatory noncompliance, particularly in situations in which a nursing home is cited two or more times for the same violation within a six-month period, or when a facility is noncompliant with infection control requirements. These enhanced penalties include a series of escalating fines for repeated violations or multiple violations by the same nursing home, and increased fines when a nursing home violation causes severe adverse health consequences for either a facility resident or staff member. The escalating licensure actions that the DOH may take against nursing homes with chronic violations include, but are not limited to: suspending or revoking a facility's license, restricting new admissions to a nursing home, mandating the closure of a nursing home and immediate transfer of all residents to another facility, or petitioning a court of competent jurisdiction for the appointment of a receiver in accordance with State law.

To facilitate enforcement of State and federal rules and requirements for nursing home operations, the DOH is directed to request and consolidate nursing home data that are already reported to other State and federal authorities, in order to identify those facilities with consistent performance issues, ongoing compliance issues, or high numbers of substantiated complaints. The DOH is to make the consolidated data available, upon request, to other State and federal entities with jurisdiction over New Jersey nursing homes.

This bill additionally requires the DOH to review State reporting requirements for nursing homes, begin standardizing and consolidating these reporting requirements in order to reduce the administrative demands of compliance, develop updated standardized data reporting requirements, and improve the utility of the reported data and the ability to share these data across systems, including systems maintained by other State departments and agencies, county and local agencies, and federal authorities.

Pursuant to this bill, the DOH is directed to develop such additional data reporting requirements for nursing homes as are necessary to improve market transparency and facilitate the department's ability to oversee and regulate nursing home operations, including, but not limited

to, information related to occupancy, operating expenses and other appropriate financial metrics, and utilization and staffing data. In developing additional reporting requirements, the department is to solicit feedback from nursing homes and Medicaid managed care organizations concerning proposed data metrics, methods of maximizing the efficiency of data collection and specification, minimizing duplicative data reporting, and identifying ways to consolidate, automate, or streamline reported data.

Furthermore, the DOH is to develop, publish on its Internet website, and update at least quarterly, a data dashboard that includes data reported by each licensed nursing home in the State. The data dashboard will include: the nursing home's star rating from the federal Centers for Medicare and Medicaid Services (CMS); details concerning the number and status of complaints involving the facility; the dates and results of facility inspections and surveys conducted by the DOH, the Department of Human Services and the CMS, including any corrective action plans that are in place at the facility; a link to the website where the nursing home's certified financial statements and cost reports, as submitted to CMS, are published; general staffing levels at the facility and rates of compliance with mandatory staffing ratios; and patient health outcomes data. The bill additionally directs the DOH to utilize this data dashboard to develop a performance improvement plan for all nursing homes in the State, as well as to identify performance areas in need of improvement and strategies to facilitate such improvement in specific nursing homes.

Finally, the bill establishes the "Nursing Home Advisory Council" within the DOH, which is to advise the department on matters concerning nursing home oversight, issues regarding nursing home residents and their families, and improved communications with the general public regarding nursing homes. The bill outlines the responsibilities of the advisory council.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that this bill will increase annual State costs by an indeterminate amount due to requirements that the DOH create a special focus survey program for nursing homes with chronic regulatory violations, impose scalable penalties and sanctions on nursing homes for repeated noncompliance or multiple violations, and develop new, streamlined data collection, reporting, and sharing systems. The escalating fines and penalties levied on nursing homes with recurring regulatory violations will increase State revenues, but the OLS cannot estimate the magnitude of the revenue increase because the bill does not establish either the amount of the fines or the schedule on which the fines for noncompliant nursing homes will be levied.

Moreover, the reporting requirements and enhanced penalties established under this bill will apply to three nursing homes operated by the Department of Military and Veterans' Affairs (DMAVA) and nine nursing homes operated by Bergen (3), Middlesex (2), Atlantic (1), Cape May (1), Gloucester (1) and Passaic (1) counties. These facilities will likely incur additional expenses to comply with the data reporting requirements established in bill, and may potentially incur costs from newly enhanced fines and sanctions levied against troubled nursing homes.

The special focus survey program established under this bill will require a significant investment of DOH resources to develop and implement an intensive nursing home survey tool, and to hire staff to manage program operations, conduct surveys, and monitor the status of those nursing homes enrolled in the program. Even if such a survey program, which appears to be

broadly similar to the Special Focus Facility Program of the CMS, is available for purchase or licensing by the DOH, upfront costs for such a purchase or a licensing agreement would be substantial. However, to the extent that consistent utilization of this survey tool reduces the need for DOH staff to conduct time- and resource-intensive surveys and investigations of nursing homes, the State may realize partially offsetting savings in the out years.

This bill also requires the DOH to develop additional, enhanced sanctions for those nursing homes that are cited two or more times for the same violation within a six-month period, are non-compliant with infection control requirements, or commit a violation that causes a severe adverse health consequence for a facility resident or staff member. The OLS notes that implementation of this requirement will increase State costs due to the administrative and personnel expenses required to oversee facility compliance with enhanced sanctions and penalties, and to ensure that facility operations improve in response to these corrective measures.

Escalating fines levied on troubled nursing homes will increase State revenues, but the OLS cannot estimate the magnitude of the increase because the bill does not establish either the amount of the fines or the schedule on which such fines will be imposed. Depending upon the frequency of fines levied by the DOH, as well as the size of these monetary penalties, the revenue stream from these fines may partially offset the cost of the sanctions provision contained in this bill.

The DOH will also incur additional costs to develop new, streamlined data collection, reporting, and sharing procedures under this bill. Not only will the DOH require additional staff to manage the collection, standardization, analysis and reporting of a substantial influx of new nursing home data, but the department will also require a significant investment in health information technology to process the data, share these data with other State and federal authorities, assess nursing home health information technology needs to support facilities' ability to report and utilize the required data, and establish a publicly-facing nursing home data dashboard on the department's Internet website, which is to be updated at least on a quarterly basis. State expenditures will also increase due to a requirement that the DOH utilize the data dashboard to develop a performance improvement plan for nursing homes throughout the State, as well as strategies to facilitate performance improvement.

The DOH is permitted, however, to solicit feedback from nursing homes and the State's Medicaid managed care organizations in the development of additional data reporting requirements for nursing homes to improve market transparency and expedite the department's ability to improve oversight and regulation of nursing homes. Specifically, the bill directs the DOH to request feedback concerning methods to maximize the efficiency of data collection and specification, and identify ways to consolidate, automate and streamline data reported to State and federal agencies and managed care organizations. To the extent that the DOH can consult with, and access data collection and reporting tools already developed by managed care organizations, State costs would be reduced.

Costs stemming from Nursing Home Advisory Council activities would be minimal, including expenses to produce a biannual report to the Governor and Legislature concerning DOH oversight and inspections of nursing homes and making recommendations for legislative or administrative action, and the salary and benefits for one half of one full-time employee of the DOH, who is to provide staffing and administrative support to the advisory council.

Finally, DMAVA- and county-operated nursing homes will incur additional expenses to comply with increased operational and data reporting requirements. These facilities may also face significant expenses in order to upgrade their health information technology infrastructure in order to meet data collection and reporting requirements established under the bill. To the extent that any DMAVA- or county-operated nursing homes are assessed escalating fines or enhanced penalties or sanctions pursuant to the bill, these facilities may incur substantially higher costs to comply with State and federal requirements.

Section: Human Services

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).