

[First Reprint]

ASSEMBLY, No. 4478

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 30, 2020

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SYNOPSIS

Establishes additional requirements for DOH to assess sanctions and impose penalties on nursing homes; revises reporting requirements for nursing homes.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on October 26, 2020, with amendments.

(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT concerning ¹**long-term care facilities** nursing homes¹ and
 2 supplementing Title 26 of the Revised Statutes.

3
 4 **BE IT ENACTED** by the Senate and General Assembly of the State
 5 of New Jersey:

6
 7 1. ¹**No later than 60 days after the effective date of this act,**
 8 **the** a. The¹ Department of Health shall develop a system of
 9 scaling actions and penalties for repeat violations of State and
 10 federal requirements for ¹**long-term care facility** nursing home¹
 11 administration and operations, which actions and penalties shall
 12 include:

13 ¹**a. Conducting a licensure survey of a long-term care facility**
 14 (1) Developing a special focus survey program for nursing homes¹
 15 with ¹**three or more** a history, over the past three inspection
 16 cycles, of chronic, repeat¹ violations ¹**in a single year at least once**
 17 **every two years for the next four years, or at more frequent**
 18 **intervals for a period longer than four years, if circumstances**
 19 **warrant greater or more frequent oversight** of State or federal
 20 requirements for nursing home administration and operations or a
 21 history of noncompliance with corrective plans or other disciplinary
 22 actions instituted by the department, which program shall include
 23 the use of additional, focused surveys to determine whether the
 24 nursing home is taking appropriate steps to remediate the conditions
 25 that contributed to the violations that resulted in the nursing home
 26 being included in the program and violations occurring while the
 27 nursing home is in the program. The program shall incorporate
 28 more-stringent penalties, sanctions, and corrective measures,
 29 including suspension or revocation of the nursing home's license or
 30 issuing a recommendation that the nursing home's contract with the
 31 federal Centers for Medicare and Medicaid Services be terminated,
 32 for issues that are of longer duration or where the nursing home
 33 fails to demonstrate improvement following the imposition of less-
 34 stringent penalties, sanctions, or corrective measures. A nursing
 35 home included in the program shall remain in the program for a
 36 period of at least 18 months. Any nursing home that qualifies for
 37 inclusion in the federal Centers for Medicare and Medicaid
 38 Services' Special Focus Facility Program that is not placed in that
 39 program shall be automatically included in the special focus survey
 40 program established pursuant to this subsection¹; and

41 ¹**b.] (2)**¹ Assessing enhanced sanctions and other penalties for
 42 continued or repeat noncompliance with department regulations,
 43 particularly when the ¹**facility** nursing home¹ is cited ¹**multiple**

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted October 26, 2020.

1 two or more¹ times for the same violation 'within a six-month
2 period¹ or when violations involve noncompliance with infection
3 control requirements, which enhanced sanctions and penalties shall
4 include:

5 **'[(1)] (a)**¹ a series of escalating fines for repeated violations or
6 multiple violations by the same **'[facility] nursing home**¹ , as well
7 as increased fines when a violation results in severe adverse health
8 consequences for a resident or staff member of the **'[facility]**
9 **nursing home**¹ ; and

10 **'[(2)] (b)**¹ a series of escalating licensure actions for repeated
11 violations or multiple violations by the same **'[facility] nursing**
12 **home**¹ , particularly in cases where a violation results in severe
13 adverse health consequences for a resident or staff member at the
14 **'[facility] nursing home**¹ , which licensure actions shall include:
15 suspending, terminating, or revoking the **'[facility's] nursing**
16 **home's**¹ license; 'issuing a recommendation that the nursing
17 home's contract with the federal Centers for Medicare and
18 Medicaid Services be terminated; requiring the appointment of an
19 independent manager to assume control over operations at the
20 nursing home on a temporary basis; denying payment for all
21 Medicaid claims submitted by the nursing home;¹ restricting new
22 admissions to the **'[facility] nursing home, which may include**
23 **prohibiting the nursing home from accepting any new residents who**
24 **are Medicaid beneficiaries**¹ ; requiring the transfer of residents to
25 another **'[facility] nursing home; requiring closure of the nursing**
26 **home and immediate transfer of all the nursing home's residents to**
27 **another nursing home; requiring additional monitoring of the**
28 **nursing home, which may include placing the nursing home in the**
29 **special focus survey program established pursuant to paragraph (1)**
30 **of this subsection; establishing a directed plan of correction;**
31 **requiring nursing home staff and administrators to undergo directed**
32 **in-service training**¹ ; **'[or , in the case of a nursing home,]**¹
33 petitioning a court of competent jurisdiction for appointment of a
34 receiver in accordance with the provisions of P.L.1977, c.238
35 (C.26:2H-36 et seq.) ¹; or taking any other administrative or
36 disciplinary actions as may be established by the Commissioner of
37 Health by regulation, which may be subject to approval by the
38 federal Centers for Medicare and Medicaid Services, if such
39 approval is required¹ .

40 **'[c.] b.**¹ The department shall **'[evaluate staffing levels and**
41 **competency by resident acuity and complexity, and]**¹ establish a
42 system to impose greater responsibility on each **'[long-term care**
43 **facility's] nursing home's**¹ medical director for quality outcomes at
44 the **'[facility, including imposing specific penalties or sanctions**
45 **against the medical director for repeated failure to produce**
46 **improvements in quality outcomes at the facility]** nursing home,

1 consistent with standards and guidelines promulgated by the federal
2 Centers for Medicare and Medicaid Services for state surveys of
3 nursing home medical directors¹ .

4
5 2. To facilitate enforcement of department rules and
6 requirements concerning ¹~~["long-term care facility"]~~ nursing home¹
7 operations, ¹~~["no later than 60 days after the effective date of this~~
8 ~~act,"]~~¹ the department shall request and consolidate data concerning
9 ¹~~["long-term care facilities"]~~ nursing homes¹ reported to other State
10 and federal authorities, including the federal Centers for Medicare
11 and Medicaid Services, the Department of Human Services,
12 Medicaid managed care ¹~~["plans"]~~ organizations¹ , and the Long-
13 Term Care Ombudsman, in order to identify ¹~~["long-term care~~
14 ~~facilities"]~~ nursing homes¹ with consistent or repeated performance
15 issues, ongoing compliance issues, or high numbers of substantiated
16 complaints. The department shall make the consolidated data
17 collected under this subsection available upon request to other State
18 and federal entities having jurisdiction over ¹~~["long-term care~~
19 ~~facilities"]~~ nursing homes¹ in the State.

20
21 3. a. ¹~~["No later than 60 days after the effective date of this act,~~
22 ~~the"]~~ The¹ department shall undertake a review of reporting
23 requirements for ¹~~["long-term care facilities"]~~ nursing homes¹ and
24 shall take steps to standardize and consolidate the reporting
25 requirements for the purpose of: reducing the administrative
26 demand on ¹~~["the facilities of"]~~ nursing homes in¹ complying with
27 reporting requirements; developing updated standardized data
28 reporting requirements; and improving the utility of the reported
29 data and the ability to share the data across systems, including
30 systems maintained by other State departments and agencies,
31 county and local agencies, and federal authorities. The department's
32 review shall include:

33 (1) identifying and eliminating duplicative reporting;

34 (2) establishing standardized formats, requirements, protocols,
35 and systems for data reporting, which may include requiring
36 ¹~~["facilities"]~~ nursing homes¹ to report data in machine-readable
37 formats to facilitate the processing and analysis of reported data;

38 (3) establishing a centralized, cross-agency workgroup to
39 monitor ¹~~["long-term care facility"]~~ nursing home¹ reporting;

40 (4) assessing State health information technology needs to
41 support technology-enabled and data-driven regulatory oversight
42 across State departments and agencies, anticipate potential uses for
43 the enhanced technologies and systems, enable systems to readily
44 accept and analyze additional data metrics required pursuant to
45 subsection b. of this section, and identify opportunities to centralize
46 and modernize State health data infrastructure, processes, and
47 analytic capabilities;

1 (5) assessing ¹**["long-term care facility"]** nursing home¹ health
2 information technology needs to support population health
3 management, interoperability, and modernized reporting
4 requirements; and

5 (6) identifying and applying for federal funding to support
6 health information technology infrastructure development.

7 b. (1) The department shall require all ¹**["long-term care**
8 **facilities to file with the department monthly and quarterly**
9 **unaudited financial information, quarterly unaudited financial**
10 **statements, annual audited financial statements, and such other**
11 **financial information as the department may request. The**
12 **information and statements reported by facilities pursuant to this**
13 **paragraph shall be posted on the department's"]** nursing homes to
14 post on their¹ Internet ¹**["website and updated as the information or**
15 **statements become available"]** websites annual owner-certified
16 financial statements. The department shall include on its Internet
17 website a link to the page where each nursing home's certified
18 financial statements are posted. Nursing homes that are part of a
19 health care system may post financial statements pursuant to this
20 paragraph that aggregate the financial data across all nursing homes
21 that are a part of that health care system¹ .

22 (2) The department shall require all ¹**["long-term care facilities"]**
23 nursing homes¹ to annually report to the department the number and
24 severity of facility-acquired infections occurring among residents of
25 the ¹**["long-term care facility"]** nursing home¹ in the preceding year
26 involving:

27 (a) Methicillin-resistant Staphylococcus aureus (MRSA);
28 (b) Clostrum difficile (C.Diff);
29 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);
30 (d) Central Line-Associated Bloodstream Infections (CLABSI);
31 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and
32 (f) any other facility-acquired infection for which the
33 department requires annual reporting pursuant to regulations
34 adopted by the Commissioner of Health.

35 c. The department shall develop additional data reporting
36 requirements for ¹**["long-term care facilities"]** nursing homes¹ as are
37 necessary to improve market transparency and facilitate the
38 department's ability to oversee and regulate operations in ¹**["long-**
39 **term care facilities"]** nursing homes¹ , including, but not limited to,
40 data related to occupancy, operating expenses and other appropriate
41 financial metrics, and utilization and staffing data. In developing
42 additional reporting requirements pursuant to this subsection, the
43 department shall solicit feedback from ¹**["long-term care facilities"]**
44 nursing homes¹ and ¹**["Medicaid"]** managed care ¹**["plans"]**
45 organizations¹ concerning proposed new data metrics, methods of
46 maximizing the efficiency of data collection and specification,
47 minimizing duplicative data reporting, and identifying ways to

1 consolidate, automate, or streamline the data required to be reported
2 by State and federal agencies and managed care ~~‘[plans]~~
3 organizations¹ .

4 d. ~~‘[No later than 30 days after the effective date of this act,~~
5 ~~the]~~ The¹ department shall establish centralized State protocols for
6 ~~‘[long-term care facility]~~ nursing home¹ communications to reduce
7 duplicative outreach and enhance information sharing capabilities.

8 e. The department shall require ~~‘[long-term care facilities]~~
9 nursing homes¹ to:

10 (1) post on their Internet websites ~~‘[any policies or plans~~
11 ~~required to be in place at the facility pursuant to State law]~~ a link to
12 the dashboard developed and maintained by the department
13 pursuant to paragraph (1) of subsection f. of this section¹ ; and

14 (2) ~~‘[have a dedicated]~~ designate a¹ staff person ~~‘[available at~~
15 ~~all times to respond]~~ who shall be responsible for responding¹ to
16 questions from the public concerning the nursing home, including
17 questions about the nursing home’s¹ policies ~~‘[and plans required~~
18 ~~to be posted on the facility’s Internet website under paragraph (1) of~~
19 ~~this subsection]~~ , procedures, and operations¹ . The contact
20 information for ~~‘[the facility’s designated staff person]~~ members of
21 the public to direct questions and request information¹ shall be
22 posted on the ~~‘[facility’s]~~ nursing home’s¹ Internet website.

23 f. The department shall analyze data reported by ~~‘[long-term~~
24 ~~care facilities]~~ nursing homes¹ for oversight purposes and shall
25 make the results of its analysis public whenever possible ¹,
26 provided that in no case shall the department make public any data
27 or information it deems to be confidential or proprietary in nature or
28 that it deems to be a trade secret¹ . At a minimum, the department
29 shall:

30 (1) develop, make available on its Internet website, and update
31 at least ~~‘[monthly]~~ annually¹ , a data dashboard that includes the
32 data reported by each ~~‘[long-term care facility]~~ nursing home¹
33 licensed in the State, including:

34 (a) ~~‘[an overall performance score]~~ the nursing home’s star
35 rating issued by the federal Centers for Medicare and Medicaid
36 Services¹ ;

37 (b) the total number of complaints involving the ~~‘[facility]~~
38 nursing home¹ , the number and nature of substantiated complaints
39 involving the ~~‘[facility]~~ nursing home¹ , the number of open
40 investigations of complaints involving ~~‘[facility]~~ the nursing
41 home¹ , and the total number of outstanding complaints involving
42 the ~~‘[facility]~~ nursing home¹ that have not been investigated or
43 resolved;

44 (c) ~~‘[the facility’s star rating issued by the federal Centers for~~
45 ~~Medicare and Medicaid Services;~~

(d) the dates and results of inspections and surveys of the facility nursing home by the Department of Health, the Department of Human Services, and the federal Centers for Medicare and Medicaid Services, including links to any deficiencies or violations for which the facility nursing home was cited and to any corrective action plans in place at the facility nursing home ;

(e) (d) a breakdown of any costs and financial data reported by the facility link to the website where each nursing home's certified financial statements are posted ;

(f) (e) general staffing levels at the facility nursing home and rates of compliance with mandatory staffing ratios, along with the average and overall number of shifts during which the facility nursing home was out of compliance with staffing ratios;

(g) (f) the frequency with which antipsychotic medication was administered to facility residents of the nursing home ;

(h) (g) the number of residents who developed a pressure ulcer, including the number of residents who developed multiple pressure ulcers;

(i) (h) the number of facility-acquired infections at the facility nursing home as reported pursuant to paragraph (2) of subsection b. of this section, including details concerning the relative severity of the facility-acquired infections; and

(j) (i) such other data as the department determines appropriate to allow the public to make informed choices when evaluating and selecting a long-term care facility nursing home ; and

(2) prepare and publish on its Internet website annual reports on New Jersey's long-term care nursing home system of care.

g. The department shall utilize the data dashboard established pursuant to paragraph (1) of subsection f. of this section to develop a performance improvement plan for all nursing homes throughout the State, as well as to identify areas in need of improvement and strategies to facilitate performance improvement in individual nursing homes. In developing a Statewide performance improvement plan, the department may consult with the Nursing Home Advisory Council established pursuant to section 4 of this act.

4. a. There is established in the Department of Health the “Long-Term Care Facility Nursing Home” Advisory Council.” The purpose of the council shall be to advise the department on matters related to the oversight of long-term care facilities nursing homes and on issues concerning long-term care facility nursing home residents and their families, as well as to foster

1 communication with the public regarding ¹~~long-term care~~
2 facilities ~~nursing homes~~¹ . The responsibilities of the advisory
3 council shall include:

4 (1) analyzing and reviewing the results of inspections ¹~~and~~
5 ~~surveys~~¹ of ¹~~long-term care facility~~ ~~nursing homes~~¹ conducted by
6 the department, including the penalties assessed against ¹~~long-term~~
7 care facilities ~~nursing homes~~¹ and the department's adherence to
8 federal guidance concerning state inspections of ¹~~long-term care~~
9 facilities ~~nursing homes~~¹ ;

10 (2) receiving public comment on the results of ¹~~long-term care~~
11 facility ~~nursing home~~¹ inspections ¹~~and surveys~~¹ ; ¹~~and~~¹

12 (3) consulting with the New Jersey Long-Term Care
13 Ombudsman as necessary ¹; ~~and~~

14 (4) reviewing the data dashboard established pursuant to
15 paragraph (1) of subsection f. of section 3 of this act to identify
16 areas of concern within the nursing home industry and develop
17 recommendations for policies, plans, or strategies to foster
18 improvements in quality of care, resident and staff safety, and
19 overall performance in nursing homes licensed in the State¹ .

20 b. The advisory council shall consist of ¹~~seven~~ ~~nine~~¹
21 members, as follows:

22 (1) the New Jersey Long-Term Care Ombudsman and the
23 Assistant Commissioner for the Division of Medical Assistance and
24 Health Services in the Department of Human Services, or their
25 designees, who shall serve ex officio;

26 (2) one ¹nursing home surveyor employed by the Department of
27 Health, to be named by the Commissioner of Health, who shall
28 serve ex officio;

29 (3) two¹ public ¹~~member~~ ~~members~~¹ , to be appointed by the
30 Governor, ¹~~who shall be a representative of the long-term care~~
31 facility industry ~~one of whom shall be a representative of a for-~~
32 profit nursing home and one of whom shall be a representative of a
33 nonprofit nursing home¹ ; and

34 ¹~~(3)~~ ~~(4)~~¹ four public members who are advocates for residents
35 of ¹~~long-term care facilities~~ ~~nursing homes~~¹ , with two of the
36 public members to be appointed by the Senate President and two of
37 the public members to be appointed by the Speaker of the General
38 Assembly.

39 c. The public members of the advisory council shall be
40 appointed, and the advisory council shall first organize, no later
41 than 45 days after the effective date of this act. Upon organizing,
42 the advisory council shall select a chairperson and a vice-
43 chairperson from among its members. The chairperson shall
44 appoint a secretary to the advisory council, who need not be a
45 member of the advisory council.

1 d. Public members of the advisory council shall serve for a
2 term of five years, except that, of the members first appointed,
3 **'[one] two'** shall serve for a term of three years, two shall serve for
4 a term of four years, and two shall serve for a term of five years.
5 Vacancies in the membership shall be filled in the same manner in
6 which the original appointments were made. Public members shall
7 be eligible for reappointment to the advisory council.

8 e. The advisory council shall meet on a quarterly basis at such
9 times and places as shall be designated by the chairperson. A
10 majority of the authorized membership shall constitute a quorum for
11 the purposes of the advisory council taking official action. All
12 meetings of the advisory council shall be open to the public.
13 Agendas, minutes, documents, and testimony from **'[all] each'**
14 meeting shall be posted on the Internet website of the Department
15 of Health. The advisory council shall invite the Attorney General
16 or a representative of the Office of the Attorney General, the State
17 Auditor, the State Comptroller, and a representative of the
18 Department of Health to be present at each meeting.

19 f. The members of the advisory council shall serve without
20 compensation, but shall be eligible for reimbursement for necessary
21 and reasonable expenses incurred in the performance of their duties
22 on the council, within the limits of funds appropriated or otherwise
23 made available to the advisory council for its purposes.

24 g. The advisory council shall be entitled to receive assistance
25 and services from any State, county, or municipal department,
26 board, commission, or agency, as may be available to it for its
27 purposes. The Department of Health shall provide staff and
28 administrative support to the advisory council.

29 h. The advisory council shall biannually prepare and submit a
30 report concerning its analysis of the Department of Health's
31 oversight and inspections of **'[long-term care facilities] nursing**
32 **homes'** along with any recommendations for legislative or
33 administrative action to the Governor and, pursuant to section 2 of
34 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The advisory
35 council may provide additional recommendations to the Department
36 of Health at any time upon request by the department.

37
38 5. **'[This] Sections 1 through 3 of this act shall take effect 180**
39 **days after the date of enactment, and section 4 of this**
40 **act shall take effect immediately.**