[Second 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 Senate Budget and Appropriations Committee on January 21, 2021, with amendments.

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

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

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

1. [1]**[**No later than 60 days after the effective date of this act, the**]** a. The[1] Department of Health shall develop a system of scaling actions and penalties for repeat violations of State and federal requirements for [1]**[**long-term care facility**]** nursing home[1] administration and operations, which actions and penalties shall include:

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

[1]**[**b.**]** (2)[1] Assessing enhanced sanctions and other penalties for continued or repeat noncompliance with department regulations,

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:
[1]Assembly AAP committee amendments adopted October 26, 2020.
[2]Senate SBA committee amendments adopted January 21, 2021.

particularly when the ¹[facility] nursing home¹ is cited ¹[multiple] two or more¹ times for the same violation ¹within a six-month period¹ or when violations involve noncompliance with infection control requirements, which enhanced sanctions and penalties shall include:

¹[(1)] (a)¹ a series of escalating fines for repeated violations or multiple violations by the same ¹[facility] nursing home¹ , as well as increased fines when a violation results in severe adverse health consequences for a resident or staff member of the ¹[facility] nursing home¹ ; and

¹[(2)] (b)¹ a series of escalating licensure actions for repeated violations or multiple violations by the same ¹[facility] nursing home¹ , particularly in cases where a violation results in severe adverse health consequences for a resident or staff member at the ¹[facility] nursing home¹ , which licensure actions shall include: suspending, terminating, or revoking the ¹[facility's] nursing home's¹ license; ¹issuing a recommendation that the nursing home's contract with the federal Centers for Medicare and Medicaid Services be terminated; requiring the appointment of an independent manager to assume control over operations at the nursing home on a temporary basis; denying payment for all Medicaid claims submitted by the nursing home;¹ restricting new admissions to the ¹[facility] nursing home, which may include prohibiting the nursing home from accepting any new residents who are Medicaid beneficiaries¹ ; requiring the transfer of residents to another ¹[facility] nursing home; requiring closure of the nursing home and immediate transfer of all the nursing home's residents to another nursing home; requiring additional monitoring of the nursing home, which may include placing the nursing home in the special focus survey program established pursuant to paragraph (1) of this subsection; establishing a directed plan of correction; requiring nursing home staff and administrators to undergo directed in-service training¹ ; ¹[or , in the case of a nursing home,]¹ petitioning a court of competent jurisdiction for appointment of a receiver in accordance with the provisions of P.L.1977, c.238 (C.26:2H-36 et seq.) ¹; or taking any other administrative or disciplinary actions as may be established by the Commissioner of Health by regulation, which may be subject to approval by the federal Centers for Medicare and Medicaid Services, if such approval is required¹ .

¹[c.] b.¹ The department shall ¹[evaluate staffing levels and competency by resident acuity and complexity, and]¹ establish a system to impose greater responsibility on each ¹[long-term care facility's] nursing home's¹ medical director for quality outcomes at the ¹[facility, including imposing specific penalties or sanctions against the medical director for repeated failure to produce

improvements in quality outcomes at the facility] nursing home, consistent with standards and guidelines promulgated by the federal Centers for Medicare and Medicaid Services for state surveys of nursing home medical directors[1] .

2. To facilitate enforcement of department rules and requirements concerning [1][long-term care facility] nursing home[1] operations, [1][no later than 60 days after the effective date of this act,][1] the department shall request and consolidate data concerning [1][long-term care facilities] nursing homes[1] reported to other State and federal authorities, including the federal Centers for Medicare and Medicaid Services, the Department of Human Services, Medicaid managed care [1][plans] organizations[1] , and the Long-Term Care Ombudsman, in order to identify [1][long-term care facilities] nursing homes[1] with consistent or repeated performance issues, ongoing compliance issues, or high numbers of substantiated complaints. The department shall make the consolidated data collected under this subsection available upon request to other State and federal entities having jurisdiction over [1][long-term care facilities] nursing homes[1] in the State.

3. a. [1][No later than 60 days after the effective date of this act, the] The[1] department shall undertake a review of reporting requirements for [1][long-term care facilities] nursing homes[1] and shall take steps to standardize and consolidate the reporting requirements for the purpose of: reducing the administrative demand on [1][the facilities of] nursing homes in[1] complying with reporting requirements; developing updated standardized data reporting requirements; and improving the utility of the reported data and the ability to share the data across systems, including systems maintained by other State departments and agencies, county and local agencies, and federal authorities. The department's review shall include:

(1) identifying and eliminating duplicative reporting;

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

(3) establishing a centralized, cross-agency workgroup to monitor [1][long-term care facility] nursing home[1] reporting;

(4) assessing State health information technology needs to support technology-enabled and data-driven regulatory oversight across State departments and agencies, anticipate potential uses for the enhanced technologies and systems, enable systems to readily accept and analyze additional data metrics required pursuant to subsection b. of this section, and identify opportunities to centralize

and modernize State health data infrastructure, processes, and analytic capabilities;

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

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

b. (1) The department shall require all [1][long-term care facilities to file with the department monthly and quarterly unaudited financial information, quarterly unaudited financial statements, annual audited financial statements, and such other financial information as the department may request. The information and statements reported by facilities pursuant to this paragraph shall be posted on the department's] nursing homes to post on their[1] Internet [1][website and updated as the information or statements become available] websites annual owner-certified financial statements [2]along with the nursing home's most recent cost reports submitted to the federal Centers for Medicare and Medicaid Services[2] . The department shall include on its Internet website a link to the page where each nursing home's certified financial statements [2]and cost reports[2] are posted. Nursing homes that are part of a health care system may post financial statements [2]and cost reports[2] pursuant to this paragraph that aggregate the financial data across all nursing homes that are a part of that health care system[1] .

(2) The department shall require all [1][long-term care facilities] nursing homes[1] to annually report to the department the number [2][and severity][2] of facility-acquired infections occurring among residents of the [1][long-term care facility] nursing home[1] in the preceding year involving:

(a) Methicillin-resistant Staphylococcus aureus (MRSA);

(b) Clostrum difficile (C.Diff);

(c) Surgical Site Infections After Colon Surgery (SSi-Colon);

(d) Central Line-Associated Bloodstream Infections (CLABSI);

(e) Catheter-Associated Urinary Tract Infections (CAUTI); and

(f) any other facility-acquired infection for which the department requires annual reporting pursuant to regulations adopted by the Commissioner of Health.

c. The department shall develop additional data reporting requirements for [1][long-term care facilities] nursing homes[1] as are necessary to improve market transparency and facilitate the department's ability to oversee and regulate operations in [1][long-term care facilities] nursing homes[1] , including, but not limited to, data related to occupancy, operating expenses and other appropriate financial metrics, and utilization and staffing data. In developing additional reporting requirements pursuant to this subsection, the

department shall solicit feedback from [1]⟦long-term care facilities⟧ nursing homes[1] and [1]Medicaid[1] managed care [1]⟦plans⟧ organizations[1] concerning proposed new data metrics, methods of maximizing the efficiency of data collection and specification, minimizing duplicative data reporting, and identifying ways to consolidate, automate, or streamline the data required to be reported by State and federal agencies and managed care [1]⟦plans⟧ organizations[1] .

d. [1]⟦No later than 30 days after the effective date of this act, the⟧ The[1] department shall establish centralized State protocols for [1]⟦long-term care facility⟧ nursing home[1] communications to reduce duplicative outreach and enhance information sharing capabilities.

e. The department shall require [1]⟦long-term care facilities⟧ nursing homes[1] to:

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

(2) [1]⟦have a dedicated⟧ designate a[1] staff person [1]⟦available at all times to respond⟧ who shall be responsible for responding[1] to questions from the public concerning the [1]nursing home, including questions about the nursing home's[1] policies [1]⟦and plans required to be posted on the facility's Internet website under paragraph (1) of this subsection⟧ , procedures, and operations[1] . The contact information for [1]⟦the facility's designated staff person⟧ members of the public to direct questions and request information[1] shall be posted on the [1]⟦facility's⟧ nursing home's[1] Internet website.

f. The department shall analyze data reported by [1]⟦long-term care facilities⟧ nursing homes[1] for oversight purposes and shall make the results of its analysis public whenever possible [1], provided that in no case shall the department make public any data or information it deems to be confidential or proprietary in nature or that it deems to be a trade secret[1] . At a minimum, the department shall:

(1) develop, make available on its Internet website, and update at least [1]⟦monthly⟧ [2]⟦annually[1]⟧ quarterly[2] , a data dashboard that includes the data reported by each [1]⟦long-term care facility⟧ nursing home[1] licensed in the State, including:

(a) [1]⟦an overall performance score⟧ the nursing home's star rating issued by the federal Centers for Medicare and Medicaid Services[1] ;

(b) the total number of complaints involving the [1]⟦facility⟧ nursing home[1] , the number and nature of substantiated complaints involving the [1]⟦facility⟧ nursing home[1] , the number of open investigations of complaints involving [1]⟦facility⟧ the nursing

home[1] , and the total number of outstanding complaints involving the [1][facility] nursing home[1] that have not been investigated or resolved;

(c) [1][the facility's star rating issued by the federal Centers for Medicare and Medicaid Services;

(d)][1] the dates and results of inspections [1]and surveys[1] of the [1][facility] nursing home[1] 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 [1][facility] nursing home[1] was cited and to any corrective action plans in place at the [1][facility] nursing home[1] ;

[1][(e)] (d)[1] a [1][breakdown of any costs and financial data reported by the facility] link to the website where each nursing home's certified financial statements [2]and the nursing home's cost reports submitted to the federal Centers for Medicare and Medicaid Services[2] are posted[1] ;

[1][(f)] (e)[1] general staffing levels at the [1][facility] nursing home[1] and rates of compliance with mandatory staffing ratios, along with the average and overall number of shifts during which the [1][facility] nursing home[1] was out of compliance with staffing ratios;

[1][(g)] (f)[1] the frequency with which antipsychotic medication was administered to [1][facility][1] residents [1]of the nursing home[1] ;

[1][(h)] (g)[1] the number of residents who developed a pressure ulcer, including the number of residents who developed multiple pressure ulcers;

[1][(i)] (h)[1] the number of facility-acquired infections at the [1][facility] nursing home[1] as reported pursuant to paragraph (2) of subsection b. of this section [2][, including details concerning the relative severity of the facility-acquired infections][2] ; and

[1][(j)] (i)[1] such other data as the department determines appropriate to allow the public to make informed choices when evaluating and selecting a [1][long-term care facility] nursing home[1] ; and

(2) prepare and publish on its Internet website annual reports on New Jersey's [1][long-term care] nursing home[1] system of care.

[1]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.[1]

4. a. There is established in the Department of Health the [1]**[**"Long-Term Care Facility**]** "Nursing Home"[1] Advisory Council." The purpose of the council shall be to advise the department on matters related to the oversight of [1]**[**long-term care facilities**]** nursing homes[1] and on issues concerning [1]**[**long-term care facility**]** nursing home[1] residents and their families, as well as to foster communication with the public regarding [1]**[**long-term care facilities**]** nursing homes[1] . The responsibilities of the advisory council shall include:

(1) analyzing and reviewing the results of inspections [1]and surveys[1] of [1]**[**long-term care facility**]** nursing homes[1] conducted by the department, including the penalties assessed against [1]**[**long-term care facilities**]** nursing homes[1] and the department's adherence to federal guidance concerning state inspections of [1]**[**long-term care facilities**]** nursing homes[1] ;

(2) receiving public comment on the results of [1]**[**long-term care facility**]** nursing home[1] inspections [1]and surveys[1] ; [1]**[**and**]**[1]

(3) consulting with the New Jersey Long-Term Care Ombudsman as necessary [1]; and

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

b. The advisory council shall consist of [1]**[**seven**]** nine[1] members, as follows:

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

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

(3) two[1] public [1]**[**member**]** members[1] , to be appointed by the Governor, [1]**[**who shall be a representative of the long-term care facility industry**]** one of whom shall be a representative of a for-profit nursing home and one of whom shall be a representative of a nonprofit nursing home[1] ; and

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

c. The public members of the advisory council shall be appointed, and the advisory council shall first organize, no later

than 45 days after the effective date of this act. Upon organizing, the advisory council shall select a chairperson and a vice-chairperson from among its members. The chairperson shall appoint a secretary to the advisory council, who need not be a member of the advisory council.

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

e. The advisory council shall meet on a quarterly basis at such times and places as shall be designated by the chairperson. A majority of the authorized membership shall constitute a quorum for the purposes of the advisory council taking official action. All meetings of the advisory council shall be open to the public. Agendas, minutes, documents, and testimony from [1]**[**all**]** each[1] meeting shall be posted on the Internet website of the Department of Health. The advisory council shall invite the Attorney General or a representative of the Office of the Attorney General, the State Auditor, the State Comptroller, and a representative of the Department of Health to be present at each meeting.

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

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

h. The advisory council shall biannually prepare and submit a report concerning its analysis of the Department of Health's oversight and inspections of [1]**[**long-term care facilities**]** nursing homes[1] along with any recommendations for legislative or administrative action to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The advisory council may provide additional recommendations to the Department of Health at any time upon request by the department.

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