

[Third Reprint]

ASSEMBLY, No. 4478

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 30, 2020

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Mejia, Danielsen, Assemblywoman Tucker, Assemblymen Holley, Benson,
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Houghtaling, Assemblywoman Swain and Assemblyman Tully**

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 amended by the Senate on December 2, 2021.

(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 ³**[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.

²Senate SBA committee amendments adopted January 21, 2021.

³Senate floor amendments adopted December 2, 2021.

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 directors¹.³

4
5 ³1. A nursing home, as defined under section 1 of P.L.1975,
6 c.397 (C.26:2H-29), cited for the same or a substantially similar F-
7 level deficiency or higher, as outlined in federal Centers for
8 Medicare and Medicaid Services guidance, at any point over a
9 three-year period during any standard or special survey conducted
10 pursuant to 42 U.S.C. s.488.308 or any other inspection conducted
11 by the Department of Health, or any third-party contractor or
12 instrumentality thereof, pursuant to State or federal law or
13 regulation, including in response to a complaint, shall be subject to
14 a penalty that shall be more severe than the penalty imposed for the
15 previous violation. The department may impose additional
16 penalties, sanctions, or corrective measures pursuant to regulation
17 when such deficiencies or violations involve noncompliance with
18 infection control requirements or result in severe adverse health
19 consequences for a resident or staff member of the nursing home.
20 This section shall not be construed to diminish any authority of the
21 Department of Health or any other department that exists pursuant
22 to any other law, rule, or regulation.³

23
24 2. To facilitate enforcement of department rules and
25 requirements concerning ¹**["long-term care facility"]** nursing home¹
26 operations, ¹**["no later than 60 days after the effective date of this**
27 **act,"]**¹ the department shall request and consolidate data concerning
28 ¹**["long-term care facilities"]** nursing homes¹ reported to other State
29 and federal authorities, including the federal Centers for Medicare
30 and Medicaid Services, the Department of Human Services,
31 Medicaid managed care ¹**["plans"]** organizations¹, and the Long-
32 Term Care Ombudsman, in order to identify ¹**["long-term care**
33 **facilities"]** nursing homes¹ with consistent or repeated performance
34 issues, ongoing compliance issues, or high numbers of substantiated
35 complaints. The department shall make the consolidated data
36 collected under this subsection available upon request to other State
37 and federal entities having jurisdiction over ¹**["long-term care**
38 **facilities"]** nursing homes¹ in the State.

39
40 3. a. ¹**["No later than 60 days after the effective date of this act,**
41 **the"]** The¹ the department shall undertake a review of reporting
42 requirements for ¹**["long-term care facilities"]** nursing homes¹ and shall
43 take steps to standardize and consolidate the reporting requirements
44 for the purpose of: reducing the administrative demand on ¹**["the**
45 **facilities of"]** nursing homes in¹ complying with reporting
46 requirements; developing updated standardized data reporting
47 requirements; and improving the utility of the reported data and the

1 ability to share the data across systems, including ³, as appropriate,³
2 systems maintained by other State departments and agencies, county
3 and local agencies, and federal authorities. The department's review
4 shall include:

5 (1) identifying and eliminating duplicative reporting;

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

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

12 (4) assessing State health information technology needs to support
13 technology-enabled and data-driven regulatory oversight across State
14 departments and agencies, anticipate potential uses for the enhanced
15 technologies and systems, enable systems to readily accept and
16 analyze additional data metrics required pursuant to subsection b. of
17 this section, and identify opportunities to centralize and modernize
18 State health data infrastructure, processes, and analytic capabilities;

19 (5) assessing ¹["long-term care facility] nursing home¹ health
20 information technology needs to support population health
21 management, interoperability, and modernized reporting requirements;
22 and

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

25 b. (1) The department shall require all ¹["long-term care facilities
26 to file with the department monthly and quarterly unaudited financial
27 information, quarterly unaudited financial statements, annual audited
28 financial statements, and such other financial information as the
29 department may request. The information and statements reported by
30 facilities pursuant to this paragraph shall be posted on the
31 department's] nursing homes to post on their¹ Internet ¹["website and
32 updated as the information or statements become available] websites
33 annual owner-certified financial statements ²along with the nursing
34 home's most recent cost reports submitted to the federal Centers for
35 Medicare and Medicaid Services² . The department shall include on
36 its Internet website a link to the page where each nursing home's
37 certified financial statements ²and cost reports² are posted. Nursing
38 homes that are part of a health care system may post financial
39 statements ²and cost reports² pursuant to this paragraph that aggregate
40 the financial data across all nursing homes that are a part of that health
41 care system¹ .

42 (2) The department shall require all ¹["long-term care facilities]
43 nursing homes¹ to ³["annually report to the department the number"]³
44 ²["and severity"]² ³["of facility-acquired infections occurring among
45 residents of the"]³ ¹["long-term care facility"] ³["nursing home"]¹ in the
46 preceding year involving"]³ :

47 (a) ³["Methicillin-resistant Staphylococcus aureus (MRSA);

- 1 (b) Clostrum difficile (C.Diff);
2 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);
3 (d) Central Line-Associated Bloodstream Infections (CLABSI);
4 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and
5 (f) any other facility-acquired infection for which the department
6 requires annual reporting pursuant to regulations adopted by the
7 Commissioner of Health] participate in the National Health Care
8 Safety Network's Long-term Care Facility Component;
9 (b) complete the network's long-term care facility annual facility
10 survey; and
11 (c) participate in the network's long-term care facility monthly
12 reporting plan, including:
13 (i) the healthcare-associated infection reporting modules for
14 urinary tract infections, the laboratory-identified event module for
15 Clostrum difficile (C.diff) infection and multidrug-resistant organisms,
16 and prevention measures; and
17 (ii) the monthly reporting plan for prevention process measures,
18 including hand hygiene, gloves, and gown adherence³.
19 c. The department ³[shall] may³ develop additional data
20 reporting requirements for ¹[long-term care facilities] nursing homes¹
21 as are necessary to improve ³[market]³ transparency and facilitate the
22 department's ability to oversee and regulate operations in ¹[long-term
23 care facilities] nursing homes¹, including, but not limited to, data
24 related to occupancy, operating expenses and other appropriate
25 financial metrics, and utilization and staffing data. In developing
26 additional reporting requirements pursuant to this subsection, the
27 department shall solicit feedback from ¹[long-term care facilities]
28 nursing homes^{1 3}, advocacy groups for nursing home residents and
29 their families, the New Jersey Long-Term Care Ombudsman,³ and
30 'Medicaid' managed care ¹[plans] organizations¹ concerning
31 proposed new data metrics, methods of maximizing the efficiency of
32 data collection and specification, minimizing duplicative data
33 reporting, and identifying ways to consolidate, automate, or streamline
34 the data required to be reported by State and federal agencies and
35 managed care ¹[plans] organizations¹.
36 d. ¹[No later than 30 days after the effective date of this act, the]
37 The¹ department shall establish centralized State protocols for ¹[long-
38 term care facility] nursing home¹ communications to reduce
39 duplicative outreach and enhance information sharing capabilities.
40 e. The department shall require ¹[long-term care facilities]
41 nursing homes¹ to:
42 (1) post on their Internet websites ¹[any policies or plans required
43 to be in place at the facility pursuant to State law] a link to the
44 dashboard developed and maintained by the department pursuant to
45 paragraph (1) of subsection f. of this section¹; and

1 (2) ¹have a dedicated¹ designate a¹ staff person ¹available at all
 2 times to respond¹ who shall be responsible for responding¹ to
 3 questions from the public concerning the ¹nursing home, including
 4 questions about the nursing home's¹ policies ¹and plans required to
 5 be posted on the facility's Internet website under paragraph (1) of this
 6 subsection¹ , procedures, and operations¹ . The contact information
 7 for ¹the facility's designated staff person¹ members of the public to
 8 direct questions and request information¹ shall be posted on the
 9 ¹facility's¹ nursing home's¹ Internet website.

10 f. ³(1)³ The department shall ³analyze data reported by³
 11 ¹long-term care facilities¹ ³nursing homes¹ for oversight purposes
 12 and shall make the results of its analysis public whenever possible ¹,
 13 provided that in no case shall the department make public any data or
 14 information it deems to be confidential or proprietary in nature or that
 15 it deems to be a trade secret¹ . At a minimum, the department shall:

16 (1)³ develop, make available on its Internet website, and update at
 17 least ¹monthly¹ ²annually¹ quarterly² , a data dashboard that
 18 ³includes the¹ provides a separate page or listing for each nursing
 19 home licensed in the State with links to the sites where information
 20 and³ data ³reported by each¹ relevant to the³ ¹long-term care
 21 facility¹ nursing home¹ ³licensed in the State, including¹ may be
 22 found, as well as a description of the data and information that is
 23 accessible through each link. The data dashboard shall be searchable
 24 by nursing home. The data and information links available through the
 25 dashboard shall include, at a minimum, for each nursing home³ :

26 (a) ¹an overall performance score¹ the nursing home's star rating
 27 issued by the federal Centers for Medicare and Medicaid Services¹ ;

28 (b) the total number of complaints involving the ¹facility¹
 29 nursing home¹ , the number and nature of substantiated complaints
 30 involving the ¹facility¹ nursing home¹ , the number of open
 31 investigations of complaints involving ¹facility¹ the nursing home¹ ,
 32 and the total number of outstanding complaints involving the
 33 ¹facility¹ nursing home¹ that have not been investigated or resolved;

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

36 (d)¹ the dates and results of inspections ¹and surveys¹ of the
 37 ¹facility¹ nursing home¹ by the Department of Health, the
 38 Department of Human Services, and the federal Centers for Medicare
 39 and Medicaid Services, including links to any deficiencies or
 40 violations for which the ¹facility¹ nursing home¹ was cited and to
 41 any corrective action plans in place at the ¹facility¹ nursing home¹ ;

42 ¹(e)¹ (d)¹ a ¹breakdown of any costs and financial data
 43 reported by the facility¹ link to the website where each nursing home's
 44 certified financial statements ²and the nursing home's cost reports

1 submitted to the federal Centers for Medicare and Medicaid Services²
2 are posted¹ ;

3 ¹**[(f)] (e)**¹ general staffing levels at the ¹**[(facility)] nursing home**¹
4 and ³, to the extent feasible,³ rates of compliance with mandatory
5 staffing ratios ³**],** along with the average and overall number of shifts
6 during which the ¹**[(facility)] nursing home**¹ was out of compliance
7 with staffing ratios³ ;

8 ¹**[(g)] (f)**¹ the frequency with which antipsychotic medication was
9 administered to ¹**[(facility)]**¹ residents ¹of the nursing home¹ ;

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

13 ¹**[(i)] (h)**¹ the number of ³each type of³ facility-acquired
14 ³**[(infections)] infection**³ at the ¹**[(facility)] nursing home**¹ as reported
15 ³to the National Health Care Safety Network's Long-term Care
16 Facility Component³ pursuant to paragraph (2) of subsection b. of this
17 section ²**],** including details concerning the relative severity of the
18 facility-acquired infections² ; and

19 ¹**[(j)] (i)**¹ such other data as the department determines appropriate
20 to allow the public to make informed choices when evaluating and
21 selecting a ¹**[(long-term care facility)] nursing home**¹ ³**];** and ³**].**³

22 (2) ³The department shall³ prepare and publish on its Internet
23 website annual reports on New Jersey's ¹**[(long-term care)] nursing**
24 home¹ system of care.

25 ³**[(g)]** The department shall utilize the data dashboard established
26 pursuant to paragraph (1) of subsection f. of this section to develop a
27 performance improvement plan for all nursing homes throughout the
28 State, as well as to identify areas in need of improvement and
29 strategies to facilitate performance improvement in individual nursing
30 homes. In developing a Statewide performance improvement plan, the
31 department may consult with the Nursing Home Advisory Council
32 established pursuant to section 4 of this act.¹**]**

33 (3) For the purposes of making available to the public the data
34 described in subparagraph (h) of paragraph (1) of this subsection, the
35 department shall: request from the National Healthcare Safety
36 Network, on a quarterly basis, data concerning the number of
37 infections reported to the network by New Jersey nursing homes
38 pursuant to paragraph (2) of subsection b. of this section; make the
39 data available on the department's Internet website; and update the
40 data at least quarterly using the most current data obtained from the
41 National Healthcare Safety Network. The data shall provide details
42 concerning the number of reported infections, by infection type, for
43 each nursing home licensed in the State. The department shall
44 additionally provide on its Internet website data concerning the
45 Statewide and national averages for each type of reported infection in
46 nursing homes.³

1 ³[4. a. There is established in the Department of Health the
2 ¹["Long-Term Care Facility"] "Nursing Home¹ Advisory Council."
3 The purpose of the council shall be to advise the department on
4 matters related to the oversight of ¹["long-term care facilities"]
5 nursing homes¹ and on issues concerning ¹["long-term care facility"]
6 nursing home¹ residents and their families, as well as to foster
7 communication with the public regarding ¹["long-term care
8 facilities"] nursing homes¹ . The responsibilities of the advisory
9 council shall include:

10 (1) analyzing and reviewing the results of inspections ¹and
11 surveys¹ of ¹["long-term care facility"] nursing homes¹ conducted by
12 the department, including the penalties assessed against ¹["long-term
13 care facilities"] nursing homes¹ and the department's adherence to
14 federal guidance concerning state inspections of ¹["long-term care
15 facilities"] nursing homes¹ ;

16 (2) receiving public comment on the results of ¹["long-term care
17 facility"] nursing home¹ inspections ¹and surveys¹ ; ¹["and"]¹

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

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

26 b. The advisory council shall consist of ¹["seven"] nine¹
27 members, as follows:

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

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

35 (3) two¹ public ¹["member"] members¹ , to be appointed by the
36 Governor, ¹["who shall be a representative of the long-term care
37 facility industry"] one of whom shall be a representative of a for-
38 profit nursing home and one of whom shall be a representative of a
39 nonprofit nursing home¹ ; and

40 ¹["(3)"] (4)¹ four public members who are advocates for residents
41 of ¹["long-term care facilities"] nursing homes¹ , with two of the
42 public members to be appointed by the Senate President and two of
43 the public members to be appointed by the Speaker of the General
44 Assembly.

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

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

6 d. Public members of the advisory council shall serve for a
7 term of five years, except that, of the members first appointed,
8 ~~'[one]~~ two¹ shall serve for a term of three years, two shall serve for
9 a term of four years, and two shall serve for a term of five years.
10 Vacancies in the membership shall be filled in the same manner in
11 which the original appointments were made. Public members shall
12 be eligible for reappointment to the advisory council.

13 e. The advisory council shall meet on a quarterly basis at such
14 times and places as shall be designated by the chairperson. A
15 majority of the authorized membership shall constitute a quorum for
16 the purposes of the advisory council taking official action. All
17 meetings of the advisory council shall be open to the public.
18 Agendas, minutes, documents, and testimony from ~~'[all]~~ each¹
19 meeting shall be posted on the Internet website of the Department
20 of Health. The advisory council shall invite the Attorney General
21 or a representative of the Office of the Attorney General, the State
22 Auditor, the State Comptroller, and a representative of the
23 Department of Health to be present at each meeting.

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

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

34 h. The advisory council shall biannually prepare and submit a
35 report concerning its analysis of the Department of Health's
36 oversight and inspections of ~~'[long-term care facilities]~~ nursing
37 homes¹ along with any recommendations for legislative or
38 administrative action to the Governor and, pursuant to section 2 of
39 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The advisory
40 council may provide additional recommendations to the Department
41 of Health at any time upon request by the department. **]³**

42
43 ³4. The department may adopt any regulations necessary to
44 effectuate the purposes of this act on an expedited basis, which
45 regulations shall be effective immediately upon filing with the
46 Office of Administrative Law for a period not to exceed 18 months,
47 and may, thereafter, be amended, adopted or readopted in

1 accordance with the provisions of the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³
3
4 5. ¹~~["This]~~ ³~~["Sections 1 through 3 of this"]~~This³ act shall take
5 effect ³~~["180 days"]~~ on the first day of the 10th month³ after the date of
6 enactment, ³~~["and"]~~ except that³ section 4 of this¹ act shall take effect
7 immediately.