

[Fourth 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 amended by the Senate on December 20, 2021.

(Sponsorship Updated As Of: 1/10/2022)

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 ³1. 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.

⁴Senate floor amendments adopted December 20, 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[(1)] (a)**¹ a series of escalating fines for repeated violations or
6 multiple violations by the same **¹[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 **¹[facility]**
9 **nursing home**¹ ; and

10 **¹[(2)] (b)**¹ a series of escalating licensure actions for repeated
11 violations or multiple violations by the same **¹[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 **¹[facility] nursing home**¹ , which licensure actions shall include:
15 suspending, terminating, or revoking the **¹[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 **¹[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 **¹[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 ; **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 required**¹ .

40 **¹[c.] b.**¹ The department shall **¹[evaluate staffing levels and**
41 **competency by resident acuity and complexity, and]**¹ establish a
42 system to impose greater responsibility on each **¹[long-term care**
43 **facility's] nursing home's**¹ medical director for quality outcomes at
44 the **¹[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** ¹**The** department shall undertake a review of reporting
42 requirements for ¹**long-term care facilities** nursing homes¹ and
43 shall take steps to standardize and consolidate the reporting
44 requirements for the purpose of: reducing the administrative
45 demand on ¹**the facilities of** nursing homes in¹ complying with
46 reporting requirements; developing updated standardized data
47 reporting requirements; and improving the utility of the reported

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

- 5 (1) identifying and eliminating duplicative reporting;
- 6 (2) establishing standardized formats, requirements, protocols,
7 and systems for data reporting, which may include requiring
8 ¹**facilities** nursing homes¹ to report data in machine-readable
9 formats to facilitate the processing and analysis of reported data;
- 10 (3) establishing a centralized, cross-agency workgroup to
11 monitor ¹**long-term care facility** nursing home¹ reporting;
- 12 (4) assessing State health information technology needs to
13 support technology-enabled and data-driven regulatory oversight
14 across State departments and agencies, anticipate potential uses for
15 the enhanced technologies and systems, enable systems to readily
16 accept and analyze additional data metrics required pursuant to
17 subsection b. of this section, and identify opportunities to centralize
18 and modernize State health data infrastructure, processes, and
19 analytic capabilities;
- 20 (5) assessing ¹**long-term care facility** nursing home¹ health
21 information technology needs to support population health
22 management, interoperability, and modernized reporting
23 requirements; and
- 24 (6) identifying and applying for federal funding to support
25 health information technology infrastructure development.

26 b. (1) The department shall require all ¹**long-term care**
27 **facilities** to file with the department monthly and quarterly
28 unaudited financial information, quarterly unaudited financial
29 statements, annual audited financial statements, and such other
30 financial information as the department may request. The
31 information and statements reported by facilities pursuant to this
32 paragraph shall be posted on the department's **facilities** nursing homes
33 to post on their¹ Internet ¹**website** and updated as the information or
34 statements become available **facilities** websites annual owner-certified
35 financial statements ²along with the nursing home's most recent
36 cost reports submitted to the federal Centers for Medicare and
37 Medicaid Services² . The department shall include on its Internet
38 website a link to the page where each nursing home's certified
39 financial statements ²and cost reports² are posted. Nursing homes
40 that are part of a health care system may post financial statements
41 and cost reports² pursuant to this paragraph that aggregate the
42 financial data across all nursing homes that are a part of that health
43 care system¹ . ⁴A nonprofit nursing home that posts a copy of its
44 most recent Internal Revenue Service Form 990 on its Internet
45 website shall be deemed to have met the requirement for the nursing
46 home to post an owner-certified financial statement on its Internet
47 website pursuant to this paragraph, and the nursing home's posted

1 Internal Revenue Service Form 990 shall be considered an owner-
2 certified financial statement for the purposes of this paragraph and
3 subparagraph (d) of paragraph (1) of subsection f. of this section.⁴

4 (2) The department shall require all ¹[long-term care facilities]
5 nursing homes¹ to ³[annually report to the department the
6 number]³ ²[and severity]² ³[of facility-acquired infections
7 occurring among residents of the]³ ¹[long-term care facility]
8 ³[nursing home]¹ in the preceding year involving³ :

9 (a) ³[Methicillin-resistant Staphylococcus aureus (MRSA);
10 (b) Clostrum difficile (C.Diff);
11 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);
12 (d) Central Line-Associated Bloodstream Infections (CLABSI);
13 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and
14 (f) any other facility-acquired infection for which the
15 department requires annual reporting pursuant to regulations
16 adopted by the Commissioner of Health] participate in the National
17 Health Care Safety Network's Long-term Care Facility Component;
18 (b) complete the network's long-term care facility annual
19 facility survey; and
20 (c) participate in the network's long-term care facility monthly
21 reporting plan, including:
22 (i) the healthcare-associated infection reporting modules for
23 urinary tract infections, the laboratory-identified event module for
24 Clostrum difficile (C.diff) infection and multidrug-resistant
25 organisms, and prevention measures; and
26 (ii) the monthly reporting plan for prevention process measures,
27 including hand hygiene, gloves, and gown adherence³.

28 c. The department ³[shall] may³ develop additional data
29 reporting requirements for ¹[long-term care facilities] nursing
30 homes¹ as are necessary to improve ³[market]³ transparency and
31 facilitate the department's ability to oversee and regulate operations
32 in ¹[long-term care facilities] nursing homes¹ , including, but not
33 limited to, data related to occupancy, operating expenses and other
34 appropriate financial metrics, and utilization and staffing data. In
35 developing additional reporting requirements pursuant to this
36 subsection, the department shall solicit feedback from ¹[long-term
37 care facilities] nursing homes^{1 3} , advocacy groups for nursing home
38 residents and their families, the New Jersey Long-Term Care
39 Ombudsman,³ and ¹Medicaid¹ managed care ¹[plans]
40 organizations¹ concerning proposed new data metrics, methods of
41 maximizing the efficiency of data collection and specification,
42 minimizing duplicative data reporting, and identifying ways to
43 consolidate, automate, or streamline the data required to be reported
44 by State and federal agencies and managed care ¹[plans]
45 organizations¹ .

1 d. ¹ [No later than 30 days after the effective date of this act,
2 the] The¹ department shall establish centralized State protocols for
3 ¹ [long-term care facility] nursing home¹ communications to reduce
4 duplicative outreach and enhance information sharing capabilities.

5 e. The department shall require ¹ [long-term care facilities]
6 nursing homes¹ to:

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

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

20 f. ³ (1)³ The department shall ³ [analyze data reported by]³
21 ¹ [long-term care facilities] ³ [nursing homes]¹ for oversight
22 purposes and shall make the results of its analysis public whenever
23 possible ¹ , provided that in no case shall the department make
24 public any data or information it deems to be confidential or
25 proprietary in nature or that it deems to be a trade secret¹ . At a
26 minimum, the department shall:

27 (1)³ develop, make available on its Internet website, and update
28 at least ¹ [monthly] ² [annually]¹ quarterly² , a data dashboard that
29 ³ [includes the] provides a separate page or listing for each nursing
30 home licensed in the State with links to the sites where information
31 and³ data ³ [reported by each] relevant to the³ ¹ [long-term care
32 facility] nursing home¹ ³ [licensed in the State, including] may be
33 found, as well as a description of the data and information that is
34 accessible through each link. The data dashboard shall be
35 searchable by nursing home. The data and information links
36 available through the dashboard shall include, at a minimum, for
37 each nursing home³ :

38 (a) ¹ [an overall performance score] the nursing home's star
39 rating issued by the federal Centers for Medicare and Medicaid
40 Services¹ ;

41 (b) the total number of complaints involving the ¹ [facility]
42 nursing home¹ , the number and nature of substantiated complaints
43 involving the ¹ [facility] nursing home¹ , the number of open
44 investigations of complaints involving ¹ [facility] the nursing
45 home¹ , and the total number of outstanding complaints involving

1 the ¹【facility】 nursing home¹ that have not been investigated or
2 resolved;

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

5 (d)]¹ the dates and results of inspections ¹and surveys¹ of the
6 ¹【facility】 nursing home¹ by the Department of Health, the
7 Department of Human Services, and the federal Centers for
8 Medicare and Medicaid Services, including links to any deficiencies
9 or violations for which the ¹【facility】 nursing home¹ was cited and
10 to any corrective action plans in place at the ¹【facility】 nursing
11 home¹ ;

12 ¹【(e)】 (d)¹ a ¹【breakdown of any costs and financial data
13 reported by the facility】 link to the website where each nursing
14 home's certified financial statements ²and the nursing home's cost
15 reports submitted to the federal Centers for Medicare and Medicaid
16 Services² are posted¹ ;

17 ¹【(f)】 (e)¹ general staffing levels at the ¹【facility】 nursing
18 home¹ and ³, to the extent feasible,³ rates of compliance with
19 mandatory staffing ratios ³【, along with the average and overall
20 number of shifts during which the ¹【facility】 nursing home¹ was
21 out of compliance with staffing ratios】³ ;

22 ¹【(g)】 (f)¹ the frequency with which antipsychotic medication
23 was administered to ¹【facility】¹ residents ¹of the nursing home¹ ;

24 ¹【(h)】 (g)¹ the number of residents who developed a pressure
25 ulcer, including the number of residents who developed multiple
26 pressure ulcers;

27 ¹【(i)】 (h)¹ the number of ³each type of³ facility-acquired
28 ³【infections】 infection³ at the ¹【facility】 nursing home¹ as reported
29 ³to the National Health Care Safety Network's Long-term Care
30 Facility Component³ pursuant to paragraph (2) of subsection b. of
31 this section ²【, including details concerning the relative severity of
32 the facility-acquired infections】² ; and

33 ¹【(j)】 (i)¹ such other data as the department determines
34 appropriate to allow the public to make informed choices when
35 evaluating and selecting a ¹【long-term care facility】 nursing home¹
36 ³【; and】³ .³

37 (2) ³The department shall³ prepare and publish on its Internet
38 website annual reports on New Jersey's ¹【long-term care】 nursing
39 home¹ system of care.

40 ³【g. The department shall utilize the data dashboard established
41 pursuant to paragraph (1) of subsection f. of this section to develop
42 a performance improvement plan for all nursing homes throughout
43 the State, as well as to identify areas in need of improvement and
44 strategies to facilitate performance improvement in individual
45 nursing homes. In developing a Statewide performance

1 improvement plan, the department may consult with the Nursing
2 Home Advisory Council established pursuant to section 4 of
3 this act.¹】

4 (3) For the purposes of making available to the public the data
5 described in subparagraph (h) of paragraph (1) of this subsection,
6 the department shall: request from the National Healthcare Safety
7 Network, on a quarterly basis, data concerning the number of
8 infections reported to the network by New Jersey nursing homes
9 pursuant to paragraph (2) of subsection b. of this section; make the
10 data available on the department’s Internet website; and update the
11 data at least quarterly using the most current data obtained from the
12 National Healthcare Safety Network. The data shall provide details
13 concerning the number of reported infections, by infection type, for
14 each nursing home licensed in the State. The department shall
15 additionally provide on its Internet website data concerning the
16 Statewide and national averages for each type of reported infection
17 in nursing homes.³

18
19 ³4. a. There is established in the Department of Health the
20 ¹【“Long-Term Care Facility】 “Nursing Home¹ Advisory Council.”
21 The purpose of the council shall be to advise the department on
22 matters related to the oversight of ¹【long-term care facilities】
23 nursing homes¹ and on issues concerning ¹【long-term care facility】
24 nursing home¹ residents and their families, as well as to foster
25 communication with the public regarding ¹【long-term care
26 facilities】 nursing homes¹ . The responsibilities of the advisory
27 council shall include:

28 (1) analyzing and reviewing the results of inspections ¹and
29 surveys¹ of ¹【long-term care facility】 nursing homes¹ conducted by
30 the department, including the penalties assessed against ¹【long-term
31 care facilities】 nursing homes¹ and the department’s adherence to
32 federal guidance concerning state inspections of ¹【long-term care
33 facilities】 nursing homes¹ ;

34 (2) receiving public comment on the results of ¹【long-term care
35 facility】 nursing home¹ inspections ¹and surveys¹ ; ¹【and】¹

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

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

44 b. The advisory council shall consist of ¹【seven】 nine¹
45 members, as follows:

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

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

8 (3) two¹ public ¹~~member~~ members¹, to be appointed by the
9 Governor, ¹~~who shall be a representative of the long-term care~~
10 facility industry one of whom shall be a representative of a for-
11 profit nursing home and one of whom shall be a representative of a
12 nonprofit nursing home¹; and

13 ¹~~(3)~~ (4)¹ four public members who are advocates for residents
14 of ¹~~long-term care facilities~~ nursing homes¹, with two of the
15 public members to be appointed by the Senate President and two of
16 the public members to be appointed by the Speaker of the General
17 Assembly.

18 c. The public members of the advisory council shall be
19 appointed, and the advisory council shall first organize, no later
20 than 45 days after the effective date of this act. Upon organizing,
21 the advisory council shall select a chairperson and a vice-
22 chairperson from among its members. The chairperson shall
23 appoint a secretary to the advisory council, who need not be a
24 member of the advisory council.

25 d. Public members of the advisory council shall serve for a
26 term of five years, except that, of the members first appointed,
27 ¹~~one~~ two¹ shall serve for a term of three years, two shall serve for
28 a term of four years, and two shall serve for a term of five years.
29 Vacancies in the membership shall be filled in the same manner in
30 which the original appointments were made. Public members shall
31 be eligible for reappointment to the advisory council.

32 e. The advisory council shall meet on a quarterly basis at such
33 times and places as shall be designated by the chairperson. A
34 majority of the authorized membership shall constitute a quorum for
35 the purposes of the advisory council taking official action. All
36 meetings of the advisory council shall be open to the public.
37 Agendas, minutes, documents, and testimony from ¹~~all~~ each¹
38 meeting shall be posted on the Internet website of the Department
39 of Health. The advisory council shall invite the Attorney General
40 or a representative of the Office of the Attorney General, the State
41 Auditor, the State Comptroller, and a representative of the
42 Department of Health to be present at each meeting.

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

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

6 h. The advisory council shall biannually prepare and submit a
7 report concerning its analysis of the Department of Health's
8 oversight and inspections of ¹~~["long-term care facilities"]~~ nursing
9 homes¹ along with any recommendations for legislative or
10 administrative action to the Governor and, pursuant to section 2 of
11 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The advisory
12 council may provide additional recommendations to the Department
13 of Health at any time upon request by the department.]³

14
15 ³4. The department may adopt any regulations necessary to
16 effectuate the purposes of this act on an expedited basis, which
17 regulations shall be effective immediately upon filing with the
18 Office of Administrative Law for a period not to exceed 18 months,
19 and may, thereafter, be amended, adopted or readopted in
20 accordance with the provisions of the "Administrative Procedure
21 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³

22
23 5. ¹~~["This"]~~ ³~~["Sections 1 through 3 of this"]~~ ³~~This~~³ act shall take
24 effect ³~~["180 days"]~~ on the first day of the 10th month³ after the date of
25 enactment, ³~~["and"]~~ except that³ section 4 of this¹ act shall take effect
26 immediately.