ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4478

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 26, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4478, with committee amendments.

As amended by the committee, this bill requires the Department of Health (DOH) to develop a system of scaling actions and penalties for repeat violations of State and federal requirements for nursing home administration and operations.

Specifically, the DOH is to develop a special focus survey program for nursing homes with a history of chronic, repeat violations of State or federal requirements for nursing home administration or operations, or a history of noncompliance with corrective plans or administrative disciplinary actions, over the past three inspection cycles, which program will include the use of additional, focused surveys to determine whether the nursing home is taking appropriate steps to remediate the conditions that contributed to violations cited at the facility. The program will incorporate more-stringent penalties, sanctions, and corrective measures, including suspension or revocation of the facility's license or issuing a recommendation that the facility's contract with the federal Centers for Medicare and Medicaid Services (CMS) 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 will remain in the program for a period of at least 18 months. Any nursing home that qualifies for inclusion in the CMS Special Focus Facility Program that is not placed in that program will be automatically included in the special focus survey program.

Additionally, the DOH is to assess enhanced sanctions and other penalties for continued or repeat noncompliance with department regulations, particularly when the nursing home is cited two or more times for the same violation within a six-month period or when violations involve noncompliance with infection control requirements, including a series of escalating fines and licensure actions for repeated violations or multiple violations by the same nursing home, particularly in cases where a violation resulted in severe adverse health consequences for a resident or staff member at the nursing home. The amended bill enumerates the specific licensure actions that may be

taken, including suspending or revoking the nursing home's license, recommending the nursing home's contract with CMS be terminated, denying payment of Medicaid claims, appointing an independent manager to assume control over the nursing home, appointing a receiver, requiring directed in-service training, establishing a directed plan of correction, or taking other actions as may be provided by the Commissioner of Health by regulation.

The DOH will be required to establish a system to impose greater responsibility on each nursing home's medical director for quality outcomes at the nursing home, consistent with standards and guidelines promulgated by CMS for state surveys of nursing home medical directors.

To facilitate enforcement of rules and requirements concerning nursing home operations, the DOH will be required to request and consolidate nursing home data reported to other State and federal authorities in order to identify nursing homes with consistent or repeated performance issues, ongoing compliance issues, or high numbers of substantiated complaints. The DOH is to make the consolidated data available upon request to other State and federal entities having jurisdiction over nursing homes in the State.

The bill, as amended, requires the DOH to undertake a review of reporting requirements for nursing homes and take steps to standardize and consolidate the reporting requirements for the purpose of reducing the administrative demand of 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. This review is to include:

(1) identifying and eliminating duplicative reporting;

(2) establishing standardized formats, requirements, protocols, and systems for data reporting;

(3) establishing a centralized, cross-agency workgroup to monitor nursing home 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, and identify opportunities to centralize and modernize State health data infrastructure, processes, and analytic capabilities;

(5) assessing nursing home 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.

All nursing homes will be required to post on their Internet websites annual owner-certified financial statements. The DOH will be required to provide, on its Internet website, a link to the sites where

the nursing homes' financial statements are posted. If the nursing home is part of a system of nursing homes, the nursing home may post aggregate financial data for all nursing homes that are part of that system.

All nursing homes will additionally be required to report the number and severity of certain facility-acquired infections occurring among residents of the nursing home in the preceding year.

The DOH will be required to develop additional data reporting requirements for nursing homes as are necessary to improve market transparency and facilitate the DOH's ability to oversee and regulate operations in nursing homes, 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, the DOH will be required to solicit feedback from nursing homes and Medicaid managed care organizations (MCOs) 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 MCOs.

The DOH will be required to establish centralized State protocols for nursing home communications to reduce duplicative outreach and enhance information sharing capabilities.

The DOH will further require nursing homes to post on their Internet websites a link to the dashboard developed and maintained by the DOH under the bill and designate a staff person who will be responsible for responding to questions from the public concerning the nursing home's policies, procedures, and operations. The contact information for the designated staff person will be posted on the nursing home's website.

The DOH will be required to analyze data reported by nursing homes for oversight purposes and make the results of its analysis public whenever possible, provided that nothing in the bill will require the disclosure of any information the DOH deems to be confidential, proprietary, or a trade secret. At a minimum, the DOH is to develop, make available on its Internet website, and update at least annually, a data dashboard that includes the data reported by each nursing home licensed in the State, including:

(1) the nursing home's star rating issued by CMS;

(2) complaints involving the nursing home, including substantiated complaints, open investigations, and complaints that have not been investigated or resolved;

(3) the dates and results of inspections and surveys of the nursing home by State and federal authorities, including links to any deficiencies or violations for which the nursing home was cited and to any corrective action plans in place at the nursing home;

(4) a link to the certified financial statements for the nursing home;

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

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

(7) the number of pressure ulcers developed by residents;

(8) facility-acquired infections at the nursing home; and

(9) any other data the DOH determines appropriate to allow the public to make informed choices when evaluating and selecting a nursing home.

The DOH is to utilize the data dashboard 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.

The DOH will additionally be required to prepare and publish on its Internet website annual reports on New Jersey's nursing home system of care.

The amended bill additionally establishes the "Nursing Home Advisory Council" in the DOH, the purpose of which will be to advise the DOH on matters related to the oversight of nursing homes and on issues concerning nursing home residents and their families, as well as to foster communication with the public regarding nursing homes. The specific responsibilities of the advisory council will include: analyzing and reviewing the results of inspections and surveys of nursing homes, including the penalties assessed against nursing homes and the DOH's adherence to federal guidance concerning state inspections of nursing homes; receiving public comment on the results of nursing home inspections and surveys; consulting with the New Jersey Long-Term Care Ombudsman as necessary; and reviewing the data dashboard established under the bill to identify areas of concern within the nursing home industry and develop recommendations to foster improvements in quality of care, resident and staff safety, and overall performance.

The advisory council will consist of nine members, including 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 will serve ex officio; one nursing home surveyor employed by the DOH, to be named by the Commissioner of Health, who will serve ex officio; two public members, to be appointed by the Governor, with one member representing a for-profit nursing home and one member representing a nonprofit nursing home; and four public members who are advocates for nursing home residents, 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.

The public members of the advisory council are to be appointed, and the advisory council is to first organize, no later than 45 days after the effective date of the bill. Public members of the advisory council will serve for a term of five years, with staggered terms of appointment for the members first appointed. Public members will be eligible for reappointment to the advisory council.

The advisory council will meet on a quarterly basis at such times and places as are designated by the chairperson. A majority of the authorized membership will constitute a quorum for the purposes of taking official action. All meetings of the advisory council will be open to the public. Agendas, minutes, documents, and testimony from each meeting will be posted on the DOH's Internet website. The advisory council is to invite the Attorney General or a representative, the State Auditor, the State Comptroller, and a representative of the DOH to be present at each meeting.

The advisory council will be required to biannually prepare and submit a report concerning its analysis of the DOH's oversight and inspections of nursing homes, along with any recommendations for legislative or administrative action, to the Governor and the Legislature. The advisory council may provide additional recommendations to the DOH at any time upon request.

COMMITTEE AMENDMENTS:

The committee amendments revise the bill to make it applicable only to nursing homes, rather than to all long-term care facilities. The amendments revise the title and synopsis of the bill to reflect this change.

The committee amendments revise the specific actions and penalties the DOH can take under the bill to remove language concerning additional licensure surveys and instead establish a special focus survey program for facilities with a history of chronic, repeat violations or noncompliance with administrative enforcement actions.

The committee amendments clarify language providing that enhanced sanctions that may be imposed against a facility with multiple citations for the same violation, to provide that the enhanced sanctions may be imposed on nursing homes with two or more citations for the same violation in a six-month period.

The committee amendments enumerate specific licensure actions that may be imposed against a nursing home for repeat or multiple violations.

The committee amendments remove a requirement for the DOH to evaluate staffing levels and competency by resident acuity and complexity.

The committee amendments remove language requiring the DOH to impose specific penalties against a nursing home's medical director for failure to produce quality improvements at the facility, and instead provide that the system to impose greater responsibility on medical

directors is to be consistent with CMS guidelines for state surveys of nursing home medical directors.

The committee amendments remove a requirement for nursing homes to submit monthly and quarterly unaudited financial information, annual audited financial statements, and certain other financial information to the DOH, and provide instead that each nursing home will be required to post annual owner-certified financial statements on its own Internet website, with the DOH providing a link to the facility's financial statements on the DOH website. The financial data will no longer be reported to the DOH. The committee amendments provide that nursing homes systems will be permitted to publish aggregate financial statements for all nursing homes that are part of the system.

The committee amendments remove a provision that would have required nursing homes to post all policies and plans in effect at the nursing home on their Internet websites, and instead require nursing home websites to include a link to the DOH's data dashboard.

The committee amendments revise language that would have required nursing homes to have a dedicated staff person available at all times to respond to questions from the public, to instead require the nursing home to designate a staff person responsible for responding to questions from the public.

The committee amendments provide that the DOH is not to make public any information it deems to be confidential, proprietary, or a trade secret.

The committee amendments revise the requirements for the data dashboard to require the DOH to update it annually, rather than monthly. The DOH will no longer be required to develop a performance score for nursing homes. The dashboard will include information about nursing home surveys as well as inspections.

The committee amendments add language providing that the DOH is to use the data dashboard to develop a performance improvement plan for all nursing homes, as well as to identify issues at individual nursing homes.

The committee amendments change the name of the "Long-Term Care Facility Advisory Council" being established under the bill to the "Nursing Home Advisory Council," and revise the membership to include a DOH nursing home surveyor, who will serve ex officio, and one additional public member to be appointed by the Governor. The amendments provide that, of the Governor's two appointees to the council, one will represent for-profit nursing homes and one will represent nonprofit nursing homes.

The committee amendments provide that the advisory council is to review the data dashboard established under the bill to identify areas of concern within the nursing home industry and develop recommendations for improvements.

The committee amendments remove certain deadlines for the DOH to take action and instead provide that the bill will take effect 180 days after the date of enactment, except that the provisions establishing the advisory council will take effect immediately.

The committee amendments make certain technical corrections to fix typographical errors, adjust internal numbering, and to update certain terminology.

FISCAL IMPACT:

The Office of Legislative Services concludes that State costs would increase by an indeterminate, albeit significant, amount for the Department of Health (DOH) to implement the additional data reporting, regulatory, and oversight requirements under this bill.

The special focus survey program established under this bill requires a significant investment of DOH resources to purchase, or develop and implement, an intensive nursing home survey tool, and to hire sufficient staff to oversee program operations, conduct surveys, and monitor the status of those nursing homes enrolled in the program. The enhanced sanctions and penalties that the bill establishes for nursing homes with repeated regulatory noncompliance or violations of infection control regulations would also require the DOH to hire and train additional staff to oversee facilities' compliance with the sanctions and penalties, and ensure that facilities' operations improve in response to these regulatory measures. The escalating fines and penalties imposed on troubled nursing homes will increase State revenues, but the OLS cannot estimate the magnitude of this revenue increase because the bill does not establish either the magnitude of the fines, or the schedule on which fines will be levied on noncompliant facilities.

The DOH will also incur additional costs to develop new, streamlined data collection, reporting, and sharing procedures under this bill. Not only will the DOH need additional staff to manage the collection, standardization, and reporting of a substantial influx of new nursing home data, but the department will also require a significant financial investment in health information technology to process these data, share them with other State and federal authorities, and establish a publicly-facing nursing home data dashboard on the department's website. Although the bill mandates that the DOH apply for any available federal funds to help support the costs of health information technology infrastructure development, it is uncertain to what extent any awards of federal funds may offset the costs to the State. State expenditures will also increase due to a requirement that the DOH utilize the data dashboard to develop a performance improvement plan for nursing homes throughout the State, as well as strategies to facilitate performance improvement.

Finally, Department of Military and Veterans' Affairs (DMAVA) and county-operated nursing homes will incur additional expenses to

comply with the increased operational and data reporting requirements imposed pursuant to this bill. These facilities may also face significant expenses for upgrades to the facilities' data collection and reporting systems needed to report supplemental data to the State. To the extent that any of the DMAVA- or county-operated nursing homes are assessed escalating fines or enhanced penalties or sanctions, the State and certain counties would incur additional costs.