

[First Reprint]

ASSEMBLY, No. 4482

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

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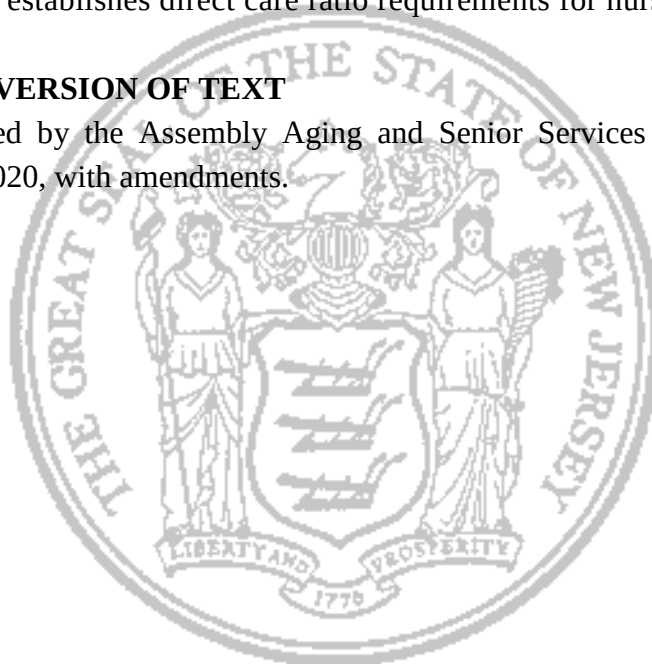
**Assemblywomen Speight, Vainieri Huttie, Assemblyman Benson,
Assemblywomen Reynolds-Jackson and McKnight**

SYNOPSIS

Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care ratio requirements for nursing homes.

CURRENT VERSION OF TEXT

As reported by the Assembly Aging and Senior Services Committee on August 24, 2020, with amendments.



(Sponsorship Updated As Of: 8/24/2020)

1 AN ACT concerning long-term care facilities, amending P.L.1966,
2 c.113, and supplementing Title 30 of the Revised Statutes.

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

6
7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
8 read as follows:

9 2. As used in this act:

10 (a) "Commissioner" means the Commissioner of Labor and
11 Workforce Development.

12 (b) "Director" means the director in charge of the bureau
13 referred to in section 3 of this act.

14 (c) "Wage board" means a board created as provided in section
15 10 of this act.

16 (d) "Wages" means any moneys due an employee from an
17 employer for services rendered or made available by the employee
18 to the employer as a result of their employment relationship
19 including commissions, bonus and piecework compensation and
20 including the fair value of any food or lodgings supplied by an
21 employer to an employee, and, until December 31, 2018, "wages"
22 includes any gratuities received by an employee for services
23 rendered for an employer or a customer of an employer. The
24 commissioner may, by regulation, establish the average value of
25 gratuities received by an employee in any occupation and the fair
26 value of food and lodging provided to employees in any occupation,
27 which average values shall be acceptable for the purposes of
28 determining compliance with this act in the absence of evidence of
29 the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee
31 is regularly paid for each hour of work as determined by dividing
32 the total hours of work during the week into the employee's total
33 earnings for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership,
36 association, corporation, and the State and any county,
37 municipality, or school district in the State, or any agency,
38 authority, department, bureau, or instrumentality thereof, or any
39 person or group of persons acting directly or indirectly in the
40 interest of an employer in relation to an employee.

41 (h) "Employee" includes any individual employed by an
42 employer.

43 (i) "Occupation" means any occupation, service, trade,
44 business, industry or branch or group of industries or employment
45 or class of employment in which employees are gainfully employed.

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 ASE committee amendments adopted August 24, 2020.

1 (j) "Minimum fair wage order" means a wage order
2 promulgated pursuant to this act.

3 (k) "Fair wage" means a wage fairly and reasonably
4 commensurate with the value of the service or class of service
5 rendered and sufficient to meet the minimum cost of living
6 necessary for health.

7 (l) "Oppressive and unreasonable wage" means a wage which is
8 both less than the fair and reasonable value of the service rendered
9 and less than sufficient to meet the minimum cost of living
10 necessary for health.

11 (m) "Limousine" means a motor vehicle used in the business of
12 carrying passengers for hire to provide prearranged passenger
13 transportation at a premium fare on a dedicated, nonscheduled,
14 charter basis that is not conducted on a regular route and with a
15 seating capacity in no event of more than 14 passengers, not
16 including the driver, provided, that such a motor vehicle shall not
17 have a seating capacity in excess of four passengers, not including
18 the driver, beyond the maximum passenger seating capacity of the
19 vehicle, not including the driver, at the time of manufacture.
20 "Limousine" shall not include taxicabs, hotel or airport shuttles and
21 buses, buses employed solely in transporting school children or
22 teachers to and from school, vehicles owned and operated directly
23 or indirectly by businesses engaged in the practice of mortuary
24 science when those vehicles are used exclusively for providing
25 transportation related to the provision of funeral services or vehicles
26 owned and operated without charge or remuneration by a business
27 entity for its own purposes.

28 (n) "Seasonal employment" means employment during a year by
29 an employer that is a seasonal employer ,or employment by a non-
30 profit or government entity of an individual who is not employed by
31 that employer outside of the period of that year commencing on
32 May 1 and ending September 30, or employment by a governmental
33 entity in a recreational program or service during the period
34 commencing on May 1 and ending September 30, except that
35 "seasonal employment" does not include employment of employees
36 engaged to labor on a farm on either a piece-rate or regular hourly
37 rate basis .

38 (o) "Seasonal employer" means an employer who exclusively
39 provides its services in a continuous period of not more than ten
40 weeks during the months of June, July, August, and September, or
41 an employer for which, during the immediately previous calendar
42 year, not less than two thirds of the employer's gross receipts were
43 received in a continuous period of not more than sixteen weeks or
44 for which not less than 75 percent of the wages paid by the
45 employer during the immediately preceding year were paid for work
46 performed during a single calendar quarter.

47 (p) "Small employer" means any employer who employed less
48 than six employees for every working day during each of a majority

1 of the calendar workweeks in the current calendar year and less than
2 six employees for every working day during not less than 48
3 calendar workweeks in the preceding calendar year, except that, if
4 the employer was newly established during the preceding calendar
5 year, the employer shall be regarded as a "small employer" if the
6 employer employed less than six employees for every working day
7 during all of the weeks of that year, and during a majority of the
8 calendar workweeks in the current calendar year, and, if the
9 employer is newly established during the current calendar year, the
10 employer shall be regarded as a "small employer" if the employer
11 employed less than six employees for every working day during a
12 majority of the calendar workweeks in the current calendar year.

13 (q) "Long-term care facility direct care staff member" means
14 any health care professional licensed or certified pursuant to Title
15 26 or Title 45 of the Revised Statutes who is employed by a long-
16 term care facility and who provides personal care, assistance, or
17 treatment services directly to residents of the facility in the course
18 of the professional's regular duties.

19 (cf: P.L.2019, c.32, s.1)

20

21 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
22 read as follows:

23 5. a. Except as provided in subsections c., d., e. **and** g., and
24 i. of this section, each employer shall pay to each of his employees
25 wages at a rate of not less than \$8.85 per hour as of January 1,
26 2019 and, on January 1 of 2020 and January 1 of each subsequent
27 year, the minimum wage shall be increased by any increase in the
28 consumer price index for all urban wage earners and clerical
29 workers (CPI-W) as calculated by the federal government for the 12
30 months prior to the September 30 preceding that January 1, except
31 that any of the following rates shall apply if it exceeds the rate
32 determined in accordance with the applicable increase in the CPI-W
33 for the indicated year: on July 1, 2019, the minimum wage shall be
34 \$10.00 per hour; on January 1, 2020, the minimum wage shall be
35 \$11.00 per hour; and on January 1 of each year from 2021 to 2024,
36 inclusive, the minimum wage shall be increased from the rate of the
37 preceding year by \$1.00 per hour. If the federal minimum hourly
38 wage rate set by section 6 of the federal "Fair Labor Standards Act
39 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
40 level higher than the State minimum wage rate set by this
41 subsection, then the State minimum wage rate shall be increased to
42 the level of the federal minimum wage rate and subsequent
43 increases based on increases in the CPI-W pursuant to this section
44 shall be applied to the higher minimum wage rate. If an applicable
45 wage order has been issued by the commissioner under section 17
46 (C.34:11-56a16) of this act, the employer shall also pay not less
47 than the wages prescribed in said order. The wage rates fixed in
48 this section shall not be applicable to part-time employees primarily

1 engaged in the care and tending of children in the home of the
2 employer, to persons under the age of 18 not possessing a special
3 vocational school graduate permit issued pursuant to section 15 of
4 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
5 salesmen of motor vehicles, or to persons employed as outside
6 salesmen as such terms shall be defined and delimited in regulations
7 adopted by the commissioner, or to persons employed in a volunteer
8 capacity and receiving only incidental benefits at a county or other
9 agricultural fair by a nonprofit or religious corporation or a
10 nonprofit or religious association which conducts or participates in
11 that fair.

12 b. (1) An employer shall also pay each employee not less than
13 1 1/2 times such employee's regular hourly rate for each hour of
14 working time in excess of 40 hours in any week, except that this
15 overtime rate shall not apply: to any individual employed in a bona
16 fide executive, administrative, or professional capacity; or to
17 employees engaged to labor on a farm or employed in a hotel; or to
18 an employee of a common carrier of passengers by motor bus; or to
19 a limousine driver who is an employee of an employer engaged in
20 the business of operating limousines; or to employees engaged in
21 labor relative to the raising or care of livestock.

22 (2) Employees engaged on a piece-rate or regular hourly rate
23 basis to labor on a farm shall be paid for each day worked not less
24 than the applicable minimum hourly wage rate multiplied by the
25 total number of hours worked.

26 (3) Full-time students may be employed by the college or
27 university at which they are enrolled at not less than 85% of the
28 effective applicable minimum wage rate.

29 c. Employees of a small employer, and employees who are
30 engaged in seasonal employment, except for employees who
31 customarily and regularly receive gratuities or tips who shall be
32 subject to the provisions of subsections a. and d. of this section,
33 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
34 of 2020 and January 1 of each subsequent year, that minimum wage
35 rate shall be increased by any increase in the consumer price index
36 for all urban wage earners and clerical workers (CPI-W) as
37 calculated by the federal government for the 12 months prior to the
38 September 30 preceding that January 1, except that any of the
39 following rates shall apply if it exceeds the rate determined in
40 accordance with the applicable increase in the CPI-W for the
41 indicated year: on January 1, 2020, the minimum wage shall be
42 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
43 inclusive, the minimum wage shall be increased from the rate of the
44 preceding year by eighty cents per hour, and, in 2026, the minimum
45 wage shall be increased from the rate of the preceding year by
46 seventy cents per hour, and, in each year from 2027 to 2028
47 inclusive, the minimum wage for employees subject to this
48 subsection c. shall be increased by the same amount as the increase

1 for employees subject to subsection a. of this section based on CPI-
2 W increases, plus one half of the difference between \$15.00 per
3 hour and the minimum wage in effect in 2026 for employees
4 pursuant to subsection a. of this section, so that, by 2028, the
5 minimum wage for employees subject to this subsection shall be the
6 same as the minimum wage in effect for employees subject to
7 subsection a. of this section. If the federal minimum hourly wage
8 rate set by section 6 of the federal "Fair Labor Standards Act of
9 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
10 level higher than the State minimum wage rate set by this
11 subsection, then the State minimum wage rate shall be increased to
12 the level of the federal minimum wage rate and subsequent
13 increases based on increases in the CPI-W pursuant to this
14 subsection shall be applied to the higher minimum wage rate.

15 d. Employees engaged on a piece-rate or regular hourly rate
16 basis to labor on a farm shall be paid \$8.85 per hour as of January
17 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
18 year, that minimum wage rate shall be increased by any increase in
19 the consumer price index for all urban wage earners and clerical
20 workers (CPI-W) as calculated by the federal government for the 12
21 months prior to the September 30 preceding that January 1, except
22 that any of the following rates shall apply if it exceeds the rate
23 determined in accordance with the applicable increase in the CPI-W
24 for the indicated year:

25 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
26 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
27 hour; and on January 1 of each year from 2023 to 2024, inclusive,
28 the minimum wage shall be increased from the rate of the preceding
29 year by eighty cents per hour; and

30 (2) subject to the provisions of paragraph (3) of this subsection
31 d., minimum wage rates shall be increased as follows: on January 1
32 of 2025, the minimum wage shall be increased to \$13.40, and on
33 January 1 of each year from 2026 to 2027, inclusive, the minimum
34 wage shall be increased from the rate of the preceding year by
35 eighty cents per hour, and, in each year from 2028 to 2030
36 inclusive, the minimum wage for employees subject to this
37 subsection d. shall be increased during that year by the same
38 amount as the increase in that year for employees subject to
39 subsection a. of this section based on CPI-W increases, plus one
40 third of the difference between \$15.00 per hour and the minimum
41 wage in effect in 2027 for employees pursuant to subsection a. of
42 this section, so that, by 2030, the minimum wage for employees
43 subject to this subsection shall be the same as the minimum wage in
44 effect for employees subject to subsection a. of this section.

45 (3) Not later than March 31, 2024, the commissioner and the
46 Secretary of Agriculture shall review the report issued by the
47 commissioner pursuant to subsection b. of section 4 of P.L.2019,
48 c.32 (C.34:11-56a4.10) and shall consider any information provided

1 by the secretary regarding the impact on farm employers and the
2 viability of the State's agricultural industry of the increases of the
3 minimum wage made pursuant to paragraph (1) of this subsection,
4 and the potential impact of the increases which would be set by
5 paragraph (2) of this subsection, including comparisons with the
6 wage rates in the agricultural industries in other states, and shall
7 recommend: approval of the increases set forth in paragraph (2) of
8 this subsection; disapproval of the increases set forth in paragraph
9 (2) of this subsection; or an alternative manner of changing the
10 minimum wage after 2024 for employees engaged on a piece-rate or
11 regular hourly rate basis to labor on a farm. In contemplation of the
12 possibility that the commissioner and the secretary are unable to
13 agree on the recommendation required by this paragraph, by
14 December 31, 2021, the Governor shall appoint a public member
15 subject to advice and consent by the Senate, who will serve as a tie-
16 breaking member if needed. The increases set forth in paragraph (2)
17 of this subsection shall take effect unless there is a recommendation
18 pursuant to this paragraph to disapprove the increases or for an
19 alternative manner of changing the minimum wage after 2024 for
20 employees engaged on a piece-rate or regular hourly rate basis to
21 labor on a farm and the Legislature, not later than June 30, 2024,
22 enacts a concurrent resolution approving the implementation of that
23 recommendation. Beginning in 2024, the commissioner, secretary,
24 and public member shall meet biennially to make either a one or
25 two year recommendation to the Legislature for implementation by
26 way of concurrent resolution.

27 (4) If the federal minimum hourly wage rate set by section 6 of
28 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
29 a successor federal law, is raised to a level higher than the State
30 minimum wage rate set by this subsection, then the State minimum
31 wage rate shall be increased to the level of the federal minimum
32 wage rate and subsequent increases based on increases in the CPI-
33 W pursuant to this subsection shall be applied to the higher
34 minimum wage rate.

35 e. With respect to an employee who customarily and regularly
36 receives gratuities or tips, every employer is entitled to a credit for
37 the gratuities or tips received by the employee against the hourly
38 wage rate that would otherwise be paid to the employee pursuant to
39 subsection a. of this section of the following amounts: after
40 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
41 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
42 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
43 calendar year 2023, \$8.87 per hour; and during calendar year 2024
44 and subsequent calendar years, \$9.87 per hour.

45 f. Notwithstanding the provisions of this section to the
46 contrary, every trucking industry employer shall pay to all drivers,
47 helpers, loaders and mechanics for whom the Secretary of
48 Transportation may prescribe maximum hours of work for the safe

1 operation of vehicles, pursuant to section 31502(b) of the federal
2 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
3 than 1 1/2 times the minimum wage required pursuant to this
4 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
5 industry shall be paid no less than the minimum wage rate as
6 provided in this section and N.J.A.C. 12:56-3.1. As used in this
7 section, "trucking industry employer" means any business or
8 establishment primarily operating for the purpose of conveying
9 property from one place to another by road or highway, including
10 the storage and warehousing of goods and property. Such an
11 employer shall also be subject to the jurisdiction of the Secretary of
12 Transportation pursuant to the federal Motor Carrier Act, 49
13 U.S.C.s.31501 et seq., whose employees are exempt under section
14 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
15 U.S.C. s.213(b)(1), which provides an exemption to employees
16 regulated by section 207 of the federal "Fair Labor Standards Act of
17 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
18 U.S.C. s.501 et al.

19 g. Commencing on January 1, 2020, a training wage of not less
20 than 90 percent of the minimum wage rate otherwise set pursuant to
21 subsection a. of this section may be paid to an employee who is
22 enrolled in an established employer on-the-job or other training
23 program which meets standards set by regulations adopted by the
24 commissioner. The period during which an employer may pay the
25 training wage to the employee shall be the first 120 hours of work
26 after hiring the employee in employment in an occupation in which
27 the employee has no previous similar or related experience. An
28 employer shall not utilize any employee paid the training wage in a
29 manner which causes, induces, encourages or assists any
30 displacement or partial displacement of any currently employed
31 worker, including any previous recipient of the training wage, by
32 reducing hours of a currently employed worker, replacing a current
33 or laid off employee with a trainee, or by relocating operations
34 resulting in a loss of employment at a previous workplace, or in a
35 manner which replaces, supplants, competes with or duplicates any
36 approved apprenticeship program. An employer who pays an
37 employee a training wage shall make a good faith effort to continue
38 to employ the employee after the period of the training wage
39 expires and shall not hire the employee at the training wage unless
40 there is a reasonable expectation that there will be regular
41 employment, paying at or above the effective minimum wage, for
42 the trainee upon the successful completion of the period of the
43 training wage. If the commissioner determines that an employer
44 has made repeated, knowing violations of the provisions of this
45 subsection regarding the payment of a training wage, the
46 commissioner shall suspend the employer's right to pay a training
47 wage for a period set pursuant to regulations adopted by the
48 commissioner, but not less than three years.

1 h. The provisions of this section shall not be construed as
2 prohibiting any political subdivision of the State from adopting an
3 ordinance, resolution, regulation or rule, or entering into any
4 agreement, establishing any standard for vendors, contractors and
5 subcontractors of the subdivision regarding wage rates or overtime
6 compensation which is higher than the standards provided for in
7 this section, and no provision of any other State or federal law
8 establishing a minimum standard regarding wages or other terms
9 and conditions of employment shall be construed as preventing a
10 political subdivision of the State from adopting an ordinance,
11 resolution, regulation or rule, or entering into any agreement,
12 establishing a standard for vendors, contractors and subcontractors
13 of the subdivision which is higher than the State or federal law or
14 which otherwise provides greater protections or rights to employees
15 of the vendors, contractors and subcontractors of the subdivision,
16 unless the State or federal law expressly prohibits the subdivision
17 from adopting the ordinance, resolution, regulation or rule, or
18 entering into the agreement.

19 i. Effective on the first day of the second month next following
20 the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill), the minimum wage for long-term care
22 facility direct care staff members shall be in an amount that is \$3
23 higher than the prevailing minimum wage established pursuant to
24 subsection a. of this section ¹], which minimum wage rate shall be
25 annually increased by any increase in the consumer price index for
26 all urban wage earners and clerical workers (CPI-W) as calculated
27 by the federal government for the 12 months prior to the September
28 30 preceding that January 1, plus any amount as is necessary to
29 ensure that the minimum wage established pursuant to this
30 subsection is \$3 higher than the prevailing minimum wage then in
31 effect under subsection a. of this section ¹].

32 (cf: P.L.2019, c.32, s.2)

33
34 3. (New section) a. The Commissioner of Human Services
35 shall submit recommendations to the Legislature, pursuant to
36 section 2 of P.L.1991, c.164 (C.52:14-19.1), for legislative approval
37 of any reimbursement rate increases as may be needed to comply
38 with minimum wage requirements for long-term care facility direct
39 care staff as provided in subsection i. of section 5 of P.L.1966,
40 c.113 (C.34:11-56a4). The commissioner may recommend that
41 increases for nursing homes be tied to improvements in specific
42 quality and safety metrics ¹], including, but not limited to:

- 43 (1) meeting nursing home staffing requirements; and
44 (2) implementing policies for improved communication between
45 the nursing home and Managed Long Term Services and Supports
46 and care managers ¹].

47 b. No later than 90 days after the effective date of this act, the
48 Commissioner of Human Services shall conduct a review of the

1 Department of Human Services' Medicaid value-based payment
2 strategy, including the Quality Incentive Payment Program, to
3 ensure incentives provided under the strategy focus on priority
4 metrics for quality improvement, and shall review and determine
5 whether incentives are an effective means of driving improvements
6 in quality of care and resident and staff safety in nursing homes.

7 c. (1) ~~1~~ No later than 90 days after the effective date of this
8 act, the ~~The~~¹ Commissioner of Human Services shall establish a
9 direct care ~~1~~ loss¹ ratio reporting and rebate requirement ¹, which
10 shall take effect no later than July 1, 2021¹, pursuant to which
11 nursing homes shall be required to report total revenues collected,
12 along with the portion of revenues that are expended on direct care
13 staff wages, other staff wages, ¹taxes,¹ administrative costs,
14 investments in improvements to the facility's equipment and
15 physical plant, ~~1~~ and¹ profits ¹, and any other factors as the
16 commissioner shall require¹.

17 (2) ¹The direct care ratio shall require 90 percent, or such higher
18 percentage as the commissioner may establish by regulation, of a
19 facility's aggregate revenue in a fiscal year to be expended on the
20 direct care of residents.¹ The commissioner shall determine ¹the
21 maximum proportion of revenues that may be dedicated to ~~1~~ which
22 components of the reporting requirements shall be attributed to
23 direct patient care,¹ administrative costs ¹,¹ and profits. The
24 commissioner ¹shall determine the exact ratio based on historical
25 cost reports, and¹ may adjust the ¹components of the¹ ratio as
26 appropriate based on current financial information reported by
27 nursing homes and overall performance by the nursing home related
28 to patient safety and quality of care.

29 (3) The commissioner ¹or an entity designated by the
30 commissioner¹ may conduct an audit of the financial information
31 reported by nursing homes pursuant to this section to ensure the
32 accuracy of the information reported and compliance with the
33 requirements of this section, as well as to identify and recover any
34 payments that exceed the allowed cost ratio for administrative costs
35 and profits.

36 (4) In each case where the direct care loss ratio fails to
37 substantially comply with the ratio requirement established pursuant
38 to this subsection, the nursing home shall issue a pro rata dividend
39 or credit to ¹the State and to¹ all individuals and entities making
40 payments to the nursing home for resident services in an amount
41 sufficient to assure that the aggregate amount paid for direct care
42 staff wages, other staff wages, ¹taxes,¹ administrative costs,
43 investments in improvements to the nursing home's equipment and
44 physical plant, ~~1~~ and¹ profits, ¹and other factors,¹ plus the amount
45 of the dividends and credits, equals the mandatory ratio for the
46 previous calendar year. The pro rata dividend or credit shall be

1 equal to the percentage of payments made by the payor to the
2 nursing home in the previous calendar year out of all payments
3 made to the nursing home for services provided in the previous
4 calendar year from all payment sources. All dividends and credits
5 shall be distributed by ¹~~December 31~~ June 30¹ of the year
6 following the calendar year in which the ratio requirements were
7 not satisfied.

8

9 ¹4. The Commissioner of Human Services shall apply for such
10 State plan amendments or waivers as may be necessary to
11 implement the provisions of this act and to secure federal financial
12 participation for State Medicaid expenditures under the federal
13 Medicaid program.¹

14

15 ¹~~4.~~ 5.¹ This act shall take effect immediately.