

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4652

STATE OF NEW JERSEY  
219th LEGISLATURE

DATED: SEPTEMBER 28, 2020

SUMMARY

- Synopsis:** Establishes minimum direct care staff-to-resident ratios in nursing homes.
- Type of Impact:** Annual impacts on State expenditures and revenues, General Fund; Indeterminate annual impact on expenditures of certain counties.
- Agencies Affected:** Department of Human Services, Department of Consumer Affairs, Department of Health, Department of Military and Veterans Affairs, certain county governments.

Office of Legislative Services Estimate

| Fiscal Impact             | <u>Annual</u> |
|---------------------------|---------------|
| State Expenditure Impact  | Indeterminate |
| State Revenue Impact      | Indeterminate |
| County Expenditure Impact | Indeterminate |

- The Office of Legislative Services (OLS) estimates that nursing homes operated by the Department of Military and Veterans Affairs (DMAVA) and certain county governments may incur indeterminate changes in annual operating costs to comply with the direct care staffing requirements of the bill. The OLS lacks access to the facility-level data needed to estimate the operational changes nursing homes may implement in response to enactment of the bill.
- Annual expenditures for the State Medicaid program may also change by indeterminate amounts if the bill’s direct care staffing requirements result in adjustments to either the rates the State Medicaid program pays nursing homes for Medicaid enrollees or the number of nursing home beds available for Medicaid patients. Any change in State Medicaid expenditures will affect the amount of federal Medicaid matching funds the State receives each year. Federal Medicare reimbursements to DMAVA for resident care and operational costs could potentially be affected as well.

## **BILL DESCRIPTION**

This bill requires nursing homes to maintain certain minimum direct care staff-to-resident ratios. Specifically, the bill will require:

- (1) one certified nurse aide to every eight residents for the day shift;
- (2) one direct care staff member to every 10 residents for the evening shift, provided that no fewer than half of all staff members are to be certified nurse aides, and each staff member will sign in to work as a certified nurse aide and will perform certified nurse aide duties; and
- (3) one direct care staff member to every 14 residents for the night shift, provided that each direct care staff member is to sign in to work as a certified nurse aide and perform certified nurse aide duties.

As used in the bill, “direct care staff member” means any registered professional nurse, licensed practical nurse, or certified nurse aide who is acting in accordance with that individual’s authorized scope of practice, and pursuant to documented employee time schedules.

The bill sets forth a methodology for computing the appropriate ratio, and provides that a nursing home that experiences an increase in resident census is exempt from increasing the number of direct care staff members for nine consecutive shifts.

The bill provides that long-term care facilities may employ certified homemaker-home health aides to work as certified nurse aides, provided that the homemaker-home health aide is enrolled in a qualified certified nurse aide program and is working toward certification as a certified nurse aide.

The bill also establishes the Special Task Force on Direct Care Workforce Retention and Recruitment. In carrying out its work, the task force will evaluate workplace practices and organizational cultures, advancement opportunities, job supports and incentives, training opportunities, wages and benefits, educational initiatives, and certification reciprocity rules.

No later than one year after the date of the task force’s organizational meeting, it will be required to prepare and submit a report to the Governor and the Legislature concerning its activities, findings, and recommendations. The task force will expire upon submission of its report.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) lacks access to the facility-level data needed to estimate the operational changes nursing homes may implement in response to enactment of the bill. Depending on the circumstances of each facility, the bill may require a nursing home to increase its direct care staffing, permit a reduction therein, or cause no change. The bill also directs the Special Task Force on Direct Care Workforce Retention and Recruitment to recommend a process by which nursing homes may secure a waiver for these direct care staffing requirements.

Nursing homes operated by the Department of Military and Veterans Affairs (DMAVA) and certain county governments may incur indeterminate changes in annual operating expenditures in complying with the direct care staffing requirements of the bill. Currently, the DMAVA operates three facilities. There are nine county facilities: three in Bergen County; two in Middlesex

County; and one each in Atlantic County, Cape May County, Gloucester County, and Passaic County.

The OLS also finds that the requirements under this bill will interact with the requirements of P.L.2020, c.89, which implements a minimum wage for direct care staff of long-term care facilities that is \$3 higher than the State's prevailing minimum wage; after 2025, increases in the minimum wage for direct care staff would be limited to an annual cost-of-living increase. Currently, the State's prevailing minimum wage is \$11.00 per hour, with \$1.00 increases for this rate scheduled for January 1 of each year from 2021 through 2024, when the minimum wage reaches \$15.00 per hour. According to the Manatt Health report concerning the State's response to the spread of coronavirus 2019 (COVID-19) in nursing homes, certified nurse assistants in New Jersey currently earn an average of \$15.00 per hour, while other nursing home staff earn close to the hourly minimum wage. To the extent that DMAVA- and county-operated nursing facilities are required to increase both the number of, and the hourly wages paid to, direct care staff employed at these facilities, growth in DMAVA and county government expenditures may be compounded.

Annual State expenditures may also change by indeterminate amounts if the bill's direct care staffing requirements result in adjustments to either the rates the State Medicaid program pays nursing homes for Medicaid enrollees or the number of nursing home beds available for Medicaid patients. For example, any additional direct care staff hired by nursing homes to provide services to Medicaid recipients would increase the operating costs of these facilities, thereby exerting upward pressure on Medicaid rates to compensate for the additional expenses. Conversely, any decrease in nursing home beds for Medicaid recipients in order to fulfill the direct care staffing ratios of this bill would reduce State Medicaid expenditures, as well as the federal Medicaid matching funds the State receives for such expenditures. While any change in nursing home operating expenditures does not automatically result in corresponding modifications to Medicaid nursing home rates, significant changes would be likely to trigger rate adjustments. Any change in nursing home rates would change annual State Medicaid expenditures and federal Medicaid matching funds. It is also possible that federal Medicare reimbursements to DMAVA for resident care and operational costs may be affected.

The bill may result in an indeterminate recurring State revenue increase due to the possible growth in direct care staff examination and certification fees collected by the Department of Health, which regulates certified nurse aides, and the New Jersey Board of Nursing within the Department of Consumer Affairs, which licenses registered professional nurses, licensed practical nurses, and certified homemaker-home health aides. Any increased revenues realized under the bill would be offset by an indeterminate recurring State expenditure increase attributable to any growth in the administrative demands on the direct care staffing examination and certification programs. The OLS expects any fiscal impact related to the examination and certification to be marginal. The bill may also result in a 12-month increase in State expenditures incurred by the Department of Labor and Workforce Development in providing professional and clerical staff support to the Special Task Force on Direct Care Workforce Retention and Recruitment, as mandated under the bill.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).