

ASSEMBLY, No. 4657

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2020

Sponsored by:

Assemblywoman AURA K. DUNN

District 25 (Morris and Somerset)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

Assemblymen McGuckin and Catalano

SYNOPSIS

“Sally’s law”; establishes testing and visitation requirements and employment restrictions for long-term care facilities in response to outbreaks of infectious disease.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2021)

1 AN ACT concerning infectious disease control and prevention in
2 long-term care facilities and supplementing Title 26 of the
3 Revised Statutes.

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

7
8 1. As used in this act:

9 “Infectious disease” means a disease caused by a living organism
10 or other pathogen, including a fungus, bacteria, parasite, protozoan,
11 virus, or prion. An infectious disease may, or may not, be
12 transmissible from person to person, animal to person, or insect to
13 person.

14 “Long-term care facility” means a nursing home, assisted living
15 residence, comprehensive personal care home, residential health
16 care facility, or dementia care home licensed pursuant to P.L.1971,
17 c.136 (C.26:2H-1 et seq.).

18 “Rapid-result test” means a test for active infection with an
19 infectious disease, the results of which are, to the extent possible,
20 available within 24 hours after the test is administered.

21
22 2. During an outbreak, epidemic, or pandemic of an infectious
23 disease affecting or likely to affect one or more long-term care
24 facilities:

25 a. All staff employed by or providing services at an affected
26 long-term care facility shall be tested for active infection with the
27 infectious disease at least once per week and immediately upon
28 showing any signs or symptoms of having contracted the infectious
29 disease.

30 b. No later than seven days after the date a state of emergency
31 or public health emergency, if any, is declared in response to the
32 outbreak, epidemic, or pandemic of the infectious disease or as soon
33 as rapid-result testing for the infectious disease becomes available,
34 all long-term care facilities in the State shall have access to rapid-
35 result testing for the infectious disease, as follows:

36 (1) For long-term care facilities with more than 100 authorized
37 resident beds, the facility shall have sufficient on-site rapid
38 response testing resources available to make the test available to all
39 staff, residents, and first-time visitors at the facility. The facility
40 may seek reimbursement for the cost of administering and
41 processing the test from a staff member’s or resident’s health
42 benefits plan; provided that in no case shall the facility charge a
43 staff member or resident for any portion of the cost of a rapid-result
44 test that is not covered by a health benefits plan, if the test was
45 conducted pursuant to subsection a. of this section. For any test not
46 conducted pursuant to subsection a. of this section, the facility may
47 seek reimbursement from the staff member or resident in an amount

1 equal to the actual cost to the facility of administering and
2 processing the test; and

3 (2) For long-term care facilities with 100 or fewer authorized
4 resident beds, subject to the provisions of subsection c. of this
5 section, the facility shall have access to rapid-result testing for the
6 infectious disease for staff, residents, and first-time visitors at the
7 facility through the county board of health for the county in which
8 the facility is located.

9 c. (1) No later than seven days after the date a state of
10 emergency or public health emergency, if any, is declared in
11 response to the outbreak, epidemic, or pandemic of the infectious
12 disease or as soon as rapid-result testing for the infectious disease
13 becomes available, each county board of health shall obtain and
14 make available to staff, residents, and first-time visitors at long-
15 term care facilities located in the county that have 100 or fewer
16 authorized beds, as well as to members of the public residing in that
17 county, a rapid-result test for the infectious disease.

18 (2) In situations where the current or anticipated demand for
19 rapid-result test resources through the county board of health
20 exceeds the county board of health's current supply of test
21 resources, the county board of health shall prioritize tests as
22 follows:

23 (a) tests shall first be made available to staff and residents of
24 long-term care facilities with fewer than 100 beds when the staff
25 member or resident currently exhibit signs or symptoms of the
26 infectious disease or was recently exposed to the infectious disease;

27 (b) if the county board of health can satisfy current and
28 anticipated demand for rapid-result tests under subparagraph (a) of
29 this paragraph from available testing resources, the county board of
30 health may make rapid-result tests available to staff members of
31 long-term care facilities with 100 or fewer authorized beds for the
32 purposes of performing weekly tests for the infectious disease as
33 provided in subsection a. of this section, as well as for performing
34 other medically-indicated tests for the infectious disease among
35 staff members of long-term care facilities; and

36 (c) if the county board of health can satisfy current and
37 anticipated demand for rapid-result tests under both subparagraphs
38 (a) and (b) of this paragraph from available testing resources, the
39 county board of health may make rapid-result tests available on a
40 first-come, first served basis to first-time visitors to a long-term
41 care facility with 100 or fewer authorized beds that is located in the
42 county, as well as to any resident of the county.

43 (3) County boards of health may charge a reasonable fee for the
44 administration of a rapid-result test administered to any person,
45 which fee shall not exceed the reasonable cost to the county board
46 of health of administering and processing the test. In the case of
47 tests provided to staff and residents of long-term care facilities with
48 100 or fewer authorized beds, the county board of health shall seek

1 reimbursement from the facility, and shall be prohibited from
2 charging any fee for the test to the staff member or resident. The
3 facility may seek reimbursement for the cost of the test from a staff
4 member's or resident's health benefits plan; provided that in no
5 case shall the facility charge a staff member or resident for any
6 portion of the cost of a rapid-result test that is not covered by a
7 health benefits plan, if the test was conducted pursuant to
8 subsection a. of this section. For any test not conducted pursuant to
9 subsection a. of this section, the facility may seek reimbursement
10 from the staff member or resident in an amount equal to the actual
11 cost of the test to the facility.

12 d. Long-term care facilities shall establish designated spaces
13 for the isolation of residents who have tested positive for the
14 infectious disease or who were exposed to the infectious disease,
15 and shall take appropriate steps to ensure, to the extent possible,
16 that no more than one resident is housed in each residential room in
17 the facility.

18

19 3. During an outbreak, epidemic, or pandemic of an infectious
20 disease affecting or likely to affect one or more long-term care
21 facilities:

22 a. (1) Residents of a long-term care facility may designate up
23 to two individuals who shall be authorized to engage in indoor
24 visitation with the resident. The designation of authorized visitors
25 pursuant to this paragraph shall remain in effect until the outbreak,
26 epidemic, or pandemic is no longer affecting or likely to affect the
27 long-term care facility, and a resident shall not be permitted to
28 make any changes to the individuals designated for visitation during
29 this period except in the event of the death of a designated
30 individual.

31 (2) An individual designated by a resident of a long-term care
32 facility for indoor visitation with the resident pursuant to paragraph
33 (1) of this subsection shall:

34 (a) be allowed to visit the resident inside the long-term care
35 facility once per day, at any time, day or night, for any duration of
36 time, provided the individual schedules a visitation appointment
37 with the facility at least 24 hours in advance;

38 (b) be screened for the signs and symptoms of the infectious
39 disease prior to being allowed entry to the facility;

40 (c) undergo a rapid-result test for the infectious disease in
41 connection with that individual's first visit to the facility under this
42 subsection. Consistent with the requirements of subsections b. and
43 c. of section 2 of this act, the facility or the county board of health,
44 as applicable, may administer the test to the individual and seek
45 reimbursement from the individual for administration of the rapid-
46 result test, which reimbursement shall not exceed the actual cost of
47 administering and processing the test;

1 (d) for a second or subsequent visit to the facility as authorized
2 under this subsection, submit a written attestation to the facility
3 that, during the period between the individual's last visit to the
4 facility and the current visit, the individual has adhered to guidance
5 from the federal Centers for Disease Control and Prevention, the
6 Department of Health, and the county or local board of health, if
7 any, with regard to infection control and prevention measures to
8 prevent transmission of the infectious disease, including, as
9 applicable, maintaining social distancing, wearing a face mask or
10 facial covering while in public, avoiding large group gatherings,
11 avoiding contact with others while present in indoor settings, and
12 any other measures as may be in place; and

13 (e) be allowed to bring in food and beverage items for
14 exclusive consumption by the visitor and the resident, which food
15 and beverage items shall be screened by the facility and may be
16 excluded by the facility if the food or beverage item presents a risk
17 of transmitting an infectious disease or otherwise violates facility
18 policies concerning outside food and beverages.

19 (3) Long-term care facilities shall limit in-person visitation as
20 authorized under this subsection to one visitor per resident at a
21 time. Visitation shall take place in the resident's room, if the
22 resident does not have a roommate, or in a designated visitation
23 area, if the resident has one or more roommates. Designated
24 visitation areas shall be thoroughly cleaned and sanitized after each
25 use. The facility shall implement protocols and procedures to
26 ensure that visitors to the facility have as little contact as possible
27 with staff and residents of the facility, are kept away from common
28 areas within the facility to the extent possible, and do not touch any
29 surfaces in the facility except as may be otherwise unavoidable.

30 (4) No visitation in a long-term care facility shall be authorized
31 pursuant to this subsection unless the Department of Health has
32 completed an in-person inspection of the facility during the current
33 outbreak, epidemic, or pandemic involving an infectious disease,
34 made a written determination that the facility is in compliance with
35 the requirements of this act and all applicable infection prevention
36 and control requirements as are currently applicable to the facility,
37 and expressly approves indoor visitation to take place at the facility
38 consistent with the requirements of this subsection.

39 b. Residents of a long-term care facility may designate a family
40 member or other individual who shall be authorized to approve the
41 resident's personal physician, or a care provider whose services are
42 paid for directly by the resident or the resident's family, to enter the
43 facility for up to four hours per week to provide direct care services
44 to the resident, which direct care services may be provided over the
45 course of multiple visits within the week; provided that the
46 physician or care provider may request approval from the facility to
47 provide more than four hours of direct care services to the patient
48 per week, which request shall be granted if supported by medical

1 need. A physician or care provider who enters a facility pursuant to
2 this subsection shall not be considered to be employed by or
3 providing services at the long-term care facility for the purposes of
4 section 5 of this act. The designated family member or other
5 individual may, but not need not, be an individual designated for
6 visitation pursuant to subsection a. of this section.

7 c. An individual designated by a resident of a long-term care
8 facility for indoor visitation with the resident pursuant to paragraph
9 (1) of subsection a. of this section, or who is a personal physician or
10 care provider allowed access to the long-term care facility pursuant
11 to subsection b. of this section, shall be required to comply with
12 current guidance issued by the federal Centers for Disease Control
13 and Prevention or any other guidance required by the Department of
14 Health concerning infection prevention and control in long-term
15 care facilities, including any requirements concerning the use of
16 personal protective equipment. Consistent with applicable guidance
17 and current practices adopted in response to the outbreak, epidemic,
18 or pandemic, the facility may require the individual to acquire the
19 personal protective equipment at the individual's own expense,
20 prohibit the reuse of personal protective equipment, maintain a
21 supply of the personal protective equipment at the facility, and
22 establish and enforce requirements concerning proper doffing and
23 disposal of the personal protective equipment.

24
25 4. During an outbreak, epidemic, or pandemic of an infectious
26 disease affecting or likely to affect one or more long-term care
27 facilities:

28 a. Residents who travel outside a long-term care facility for
29 medical or non-medical reasons shall be roomed in a separate area
30 of the facility, and shall be subject to appropriate procedures and
31 protocols as are necessary to ensure that those residents are isolated
32 from, and do not have contact with, residents who do not travel
33 outside the facility. The facility shall further establish separate
34 rooming areas and appropriate procedures and protocols to ensure
35 that residents who travel outside the facility only for medical
36 reasons are isolated from, and do not have contact with, residents
37 who travel outside the facility for non-medical reasons.

38 b. All residents who travel outside the facility for any reason
39 shall be tested for the infectious disease at least once per week,
40 regardless of whether the resident exhibits any signs or symptoms
41 of having contracted the infectious disease. The long-term care
42 facility and the resident shall split the costs of any portion of a test
43 required pursuant to this subsection that are not otherwise covered
44 under the resident's health benefits plan.

45
46 5. During an outbreak, epidemic, or pandemic of an infectious
47 disease affecting or likely to affect one or more long-term care
48 facilities:

1 public health emergency declared in response to an outbreak,
2 epidemic, or pandemic involving an infectious disease.

3 Specifically, the bill requires that all staff employed by or
4 providing services at a long-term care facility be tested for active
5 infection with the infectious disease at least once per week and
6 immediately upon showing any signs or symptoms of having
7 contracted the infectious disease. For facilities with more than 100
8 authorized beds, the test is to be made available on-site. For
9 facilities with 100 or fewer authorized beds, the test may be made
10 available through the county board of health. County boards of
11 health and facilities with more than 100 authorized beds will have
12 seven days from the date a state of emergency or public health
13 emergency, if any, is declared in response to the outbreak,
14 epidemic, or pandemic, or as soon as rapid-result tests become
15 available, to acquire rapid-result testing materials.

16 With regard to county boards of health, in situations where the
17 current or anticipated demand for rapid-result testing resources
18 through the county board of health exceeds the current supply of
19 test resources, the county board of health will be required to give
20 priority to testing staff and residents at facilities with 100 or fewer
21 authorized beds who currently exhibit signs or symptoms of the
22 infectious disease or have been recently exposed to the infectious
23 disease, followed by routine, weekly and medically-indicated
24 testing of staff members of facilities with 100 or fewer authorized
25 beds, followed by first-time visitors to the facility and members of
26 the public, who would be tested on a first-come, first served basis.

27 County boards of health may charge a reasonable fee for the
28 administration of a rapid-result test, which fee may not exceed the
29 reasonable cost to the county board of health of administering and
30 processing the test. In the case of tests provided to staff and
31 residents of long-term care facilities with 100 or fewer authorized
32 beds, the county board of health may only seek reimbursement from
33 the facility, and will be prohibited from charging any testing fee to
34 the staff member or resident. The facility would be permitted to
35 seek reimbursement from the staff member's or resident's health
36 benefits plan for the costs of the test, provided that, in the case of
37 weekly screening tests and tests for individuals showing signs or
38 symptoms of the infectious disease or who were exposed to the
39 infectious disease, the facility will be prohibited from charging staff
40 or residents for any portion of the cost of a test that is not covered
41 under a health benefits plan.

42 The bill requires long-term care facilities to establish designated
43 spaces for the isolation of residents who have tested positive for the
44 infectious disease or who were exposed to the infectious disease,
45 and further requires facilities to take appropriate steps to ensure, to
46 the extent possible, that no more than one resident is housed in each
47 residential room in the facility.

1 The bill allows long-term care facility residents to designate up
2 to two individuals who will be authorized to engage in indoor
3 visitation with the resident. The designation will remain in effect
4 until the outbreak, epidemic, or pandemic is no longer affecting or
5 likely to affect the long-term care facility, a resident may not
6 change the designated visitors during this period except in the case
7 of the death of a designated visitor.

8 Designated visitors will be allowed to visit the resident inside the
9 long-term care facility once per day, at any time, day or night, for
10 any duration of time, provided the individual schedules a visitation
11 appointment with the facility at least 24 hours in advance.

12 Long-term care facilities are to limit in-person visitation to one
13 visitor per resident at a time. Visitation is to take place in the
14 resident's room, if the resident does not have a roommate, or in a
15 designated visitation area, if the resident has one or more
16 roommates. Designated visitation areas are to be thoroughly
17 cleaned and sanitized after each use. Facilities will be required to
18 implement protocols and procedures to ensure that visitors to the
19 facility have as little contact as possible with staff and residents of
20 the facility, are kept away from common areas within the facility to
21 the extent possible, and do not touch any surfaces in the facility
22 except as may be otherwise unavoidable.

23 All visitors will be screened for the signs and symptoms of the
24 infectious disease prior to being allowed entry to the facility. In
25 addition, the first time a designated visitor visits the facility, the
26 visitor will be required to undergo a rapid-result test for the
27 infectious disease, which may be provided by the facility or by the
28 county board of health, depending on whether rapid-result tests for
29 the disease are made available through the facility. The entity
30 administering the test may charge the visitor a reasonable
31 reimbursement fee for the test, which fee may not exceed the actual
32 cost of administering and processing the test. For a second or
33 subsequent visit to the facility, designated visitors will be required
34 to submit a written attestation to the facility that, during the period
35 between the individual's last visit to the facility and the current
36 visit, the individual adhered to guidance from the federal Centers
37 for Disease Control and Prevention, the Department of Health, and
38 the county or local board of health as may apply with regard to
39 infection prevention and control, including, as applicable,
40 maintaining social distancing, wearing a face mask or facial
41 covering while in public, avoiding large group gatherings, and
42 avoiding contact with others while present in indoor settings.

43 Designated visitors will be allowed bring in food and beverage
44 items for exclusive consumption by the visitor and the resident,
45 which food and beverage items will be screened by the facility and
46 may be excluded by the facility if the food or beverage item
47 presents a risk of transmitting the infectious disease or otherwise
48 violates facility policies concerning outside food and beverages.

1 No visitation in a long-term care facility will be allowed unless
2 the Department of Health has completed an in-person inspection of
3 the facility during the current outbreak, epidemic, or pandemic,
4 made a written determination that the facility is in compliance with
5 the requirements of the bill and all applicable infection prevention
6 and control requirements as are currently applicable to the facility,
7 and expressly approves indoor visitation to take place at the facility.

8 Additionally, residents of a long-term care facility may designate
9 a family member or other individual who may approve the
10 resident's personal physician or a care provider whose services are
11 paid for directly by the resident or the resident's family, to enter the
12 facility for up to four hours per week to provide direct care services
13 to the resident, which care may be provided during multiple visits
14 over the course of the week. The physician or care provider may
15 request approval from the facility to provide more than four hours
16 of direct care services per week, which request is to be granted
17 based on demonstrated medical need.

18 Designated visitors and personal physicians and care providers
19 accessing a facility will be required to comply with current
20 guidance issued by the federal Centers for Disease Control and
21 Prevention or any other guidance required by the Department of
22 Health concerning infection prevention and control in long-term
23 care facilities, including any requirements concerning the use of
24 personal protective equipment. Consistent with applicable guidance
25 and current practices adopted in response to the outbreak, epidemic,
26 or pandemic, the facility may require the individual to acquire the
27 personal protective equipment at the individual's own expense,
28 prohibit the reuse of personal protective equipment, maintain a
29 supply of the personal protective equipment at the facility, and
30 establish and enforce requirements concerning proper doffing and
31 disposal of the personal protective equipment.

32 Residents who travel outside a long-term care facility for
33 medical or non-medical reasons are to be roomed in a separate area
34 of the facility and subject to appropriate procedures and protocols to
35 ensure that those residents are isolated from, and do not have
36 contact with, residents who do not travel outside the facility.
37 Facilities are to further establish separate rooming areas and
38 appropriate procedures and protocols to ensure that residents who
39 travel outside the facility only for medical reasons are isolated
40 from, and do not have contact with, residents who travel outside the
41 facility for non-medical reasons. All residents who travel outside
42 the facility for any reason are to be tested for the infectious disease
43 at least once per week, regardless of whether the resident exhibits
44 any signs or symptoms of having contracted the infectious disease;
45 the resident and the facility will share the costs of any portion of
46 this weekly test that is not covered by the resident's health benefits
47 plan.

1 The bill additionally provides that any person employed by or
2 providing services at a long-term care facility, other than a
3 physician, may only be employed by or provide services at that one
4 facility, and will be prohibited from employment with or providing
5 professional services to any other entity. This restriction will not
6 apply to physicians and care providers authorized to provide care to
7 residents by an individual designated by the resident as otherwise
8 provided under the bill.

9 Any person employed by or providing services at a long-term
10 care facility who exhibits signs or symptoms of the infectious
11 disease is to be immediately removed from patient contact, tested
12 for the infectious disease or referred for testing, and may not return
13 to the facility until the person provides the facility with the results
14 of two tests, administered three days apart, establishing the person
15 is negative for active infection with the infectious disease. Any
16 person employed by or providing services at a long-term care
17 facility who tests positive for active infection with the infectious
18 disease will be required to self-isolate or quarantine at home until
19 the person's symptoms resolve and the person provides the facility
20 with the results of two negative tests for active infection for the
21 infectious disease, which tests are to be administered three days
22 apart. Nothing in the bill will prohibit a person who tests positive
23 for an infectious disease from seeking treatment in a general acute
24 care hospital or from another licensed health care provider.

25 A long-term care facility employing or utilizing the services of a
26 person who is prohibited from attending work under the bill will be
27 required to pay the person the full wages the person would
28 otherwise have earned working at the facility during the period of
29 mandatory exclusion. If the person does not work a regular number
30 of hours at the facility, the wages due will equal the wages due for
31 the average number of hours per week the person typically works at
32 the facility.

33 This bill is designated as "Sally's Law" in memory of Sally
34 Griscavage Florek, who would have celebrated her 100th birthday
35 on August 1, 2020. After experiencing a fall in the nursing home
36 where she resided, Sally was transported to a hospital for treatment.
37 Although she tested positive for coronavirus disease 2019 (COVID-
38 19) prior to discharge from the hospital, she was released back to
39 the nursing facility, where she eventually succumbed to COVID-19.

40 It is the sponsor's belief that this bill will help address the
41 underlying issues that may have contributed to Sally's death,
42 including staffing shortages, lack of necessary personal protective
43 equipment and oxygen machines, restricted visitation with friends
44 and family, and inadequate access to needed medical care, and
45 thereby help families to avoid the pain and trauma of losing a loved
46 one under circumstances that could have been avoided.