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C.26:2H-46.1 to
26:2H-46.4
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Note to
C.26:2H-46.1 to
26:2H-46.4

P.L. 2021, CHAPTER 457, *approved January 18, 2022*
Assembly, No. 4478 (*Fourth Reprint*)

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 ³**[1. ¹No 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-

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 stringent penalties, sanctions, or corrective measures. A nursing
2 home included in the program shall remain in the program for a
3 period of at least 18 months. Any nursing home that qualifies for
4 inclusion in the federal Centers for Medicare and Medicaid
5 Services' Special Focus Facility Program that is not placed in that
6 program shall be automatically included in the special focus survey
7 program established pursuant to this subsection¹; and

8 ¹**[(b.) (2)]** Assessing enhanced sanctions and other penalties for
9 continued or repeat noncompliance with department regulations,
10 particularly when the ¹**[(facility)] nursing home** is cited ¹**[(multiple]**
11 two or more¹ times for the same violation ¹within a six-month
12 period¹ or when violations involve noncompliance with infection
13 control requirements, which enhanced sanctions and penalties shall
14 include:

15 ¹**[(1)] (a)]** a series of escalating fines for repeated violations or
16 multiple violations by the same ¹**[(facility)] nursing home**¹, as well
17 as increased fines when a violation results in severe adverse health
18 consequences for a resident or staff member of the ¹**[(facility)]**
19 nursing home¹; and

20 ¹**[(2)] (b)]** a series of escalating licensure actions for repeated
21 violations or multiple violations by the same ¹**[(facility)] nursing**
22 home¹, particularly in cases where a violation results in severe
23 adverse health consequences for a resident or staff member at the
24 ¹**[(facility)] nursing home**¹, which licensure actions shall include:
25 suspending, terminating, or revoking the ¹**[(facility's)] nursing**
26 home's¹ license; ¹issuing a recommendation that the nursing
27 home's contract with the federal Centers for Medicare and
28 Medicaid Services be terminated; requiring the appointment of an
29 independent manager to assume control over operations at the
30 nursing home on a temporary basis; denying payment for all
31 Medicaid claims submitted by the nursing home;¹ restricting new
32 admissions to the ¹**[(facility)] nursing home**, which may include
33 prohibiting the nursing home from accepting any new residents who
34 are Medicaid beneficiaries¹; requiring the transfer of residents to
35 another ¹**[(facility)] nursing home**; requiring closure of the nursing
36 home and immediate transfer of all the nursing home's residents to
37 another nursing home; requiring additional monitoring of the
38 nursing home, which may include placing the nursing home in the
39 special focus survey program established pursuant to paragraph (1)
40 of this subsection; establishing a directed plan of correction;
41 requiring nursing home staff and administrators to undergo directed
42 in-service training¹; ¹**[(or , in the case of a nursing home,)]**¹
43 petitioning a court of competent jurisdiction for appointment of a
44 receiver in accordance with the provisions of P.L.1977, c.238
45 (C.26:2H-36 et seq.) ¹; or taking any other administrative or
46 disciplinary actions as may be established by the Commissioner of

1 Health by regulation, which may be subject to approval by the
2 federal Centers for Medicare and Medicaid Services, if such
3 approval is required¹ .

4 ¹~~['c.]~~ b.¹ The department shall ¹~~['evaluate staffing levels and~~
5 ~~competency by resident acuity and complexity, and']~~¹ establish a
6 system to impose greater responsibility on each ¹~~['long-term care~~
7 ~~facility's']~~ nursing home's¹ medical director for quality outcomes at
8 the ¹~~['facility, including imposing specific penalties or sanctions~~
9 ~~against the medical director for repeated failure to produce~~
10 ~~improvements in quality outcomes at the facility']~~ nursing home,
11 consistent with standards and guidelines promulgated by the federal
12 Centers for Medicare and Medicaid Services for state surveys of
13 nursing home medical directors^{1.3}

14
15 ³1. A nursing home, as defined under section 1 of P.L.1975,
16 c.397 (C.26:2H-29), cited for the same or a substantially similar F-
17 level deficiency or higher, as outlined in federal Centers for
18 Medicare and Medicaid Services guidance, at any point over a
19 three-year period during any standard or special survey conducted
20 pursuant to 42 U.S.C. s.488.308 or any other inspection conducted
21 by the Department of Health, or any third-party contractor or
22 instrumentality thereof, pursuant to State or federal law or
23 regulation, including in response to a complaint, shall be subject to
24 a penalty that shall be more severe than the penalty imposed for the
25 previous violation. The department may impose additional
26 penalties, sanctions, or corrective measures pursuant to regulation
27 when such deficiencies or violations involve noncompliance with
28 infection control requirements or result in severe adverse health
29 consequences for a resident or staff member of the nursing home.
30 This section shall not be construed to diminish any authority of the
31 Department of Health or any other department that exists pursuant
32 to any other law, rule, or regulation.³

33
34 2. To facilitate enforcement of department rules and
35 requirements concerning ¹~~['long-term care facility']~~ nursing home¹
36 operations, ¹~~['no later than 60 days after the effective date of this~~
37 ~~act,']~~¹ the department shall request and consolidate data concerning
38 ¹~~['long-term care facilities']~~ nursing homes¹ reported to other State
39 and federal authorities, including the federal Centers for Medicare
40 and Medicaid Services, the Department of Human Services,
41 Medicaid managed care ¹~~['plans']~~ organizations¹ , and the Long-
42 Term Care Ombudsman, in order to identify ¹~~['long-term care~~
43 ~~facilities']~~ nursing homes¹ with consistent or repeated performance
44 issues, ongoing compliance issues, or high numbers of substantiated
45 complaints. The department shall make the consolidated data
46 collected under this subsection available upon request to other State

1 and federal entities having jurisdiction over ¹‘[long-term care
2 facilities] nursing homes¹ in the State.

3
4 3. a. ¹‘[No later than 60 days after the effective date of this act,
5 the] The¹ department shall undertake a review of reporting
6 requirements for ¹‘[long-term care facilities] nursing homes¹ and
7 shall take steps to standardize and consolidate the reporting
8 requirements for the purpose of: reducing the administrative
9 demand on ¹‘[the facilities of] nursing homes in¹ complying with
10 reporting requirements; developing updated standardized data
11 reporting requirements; and improving the utility of the reported
12 data and the ability to share the data across systems, including ³, as
13 appropriate,³ systems maintained by other State departments and
14 agencies, county and local agencies, and federal authorities. The
15 department’s review shall include:

- 16 (1) identifying and eliminating duplicative reporting;
17 (2) establishing standardized formats, requirements, protocols,
18 and systems for data reporting, which may include requiring
19 ¹‘[facilities] nursing homes¹ to report data in machine-readable
20 formats to facilitate the processing and analysis of reported data;
21 (3) establishing a centralized, cross-agency workgroup to
22 monitor ¹‘[long-term care facility] nursing home¹ reporting;
23 (4) assessing State health information technology needs to
24 support technology-enabled and data-driven regulatory oversight
25 across State departments and agencies, anticipate potential uses for
26 the enhanced technologies and systems, enable systems to readily
27 accept and analyze additional data metrics required pursuant to
28 subsection b. of this section, and identify opportunities to centralize
29 and modernize State health data infrastructure, processes, and
30 analytic capabilities;
31 (5) assessing ¹‘[long-term care facility] nursing home¹ health
32 information technology needs to support population health
33 management, interoperability, and modernized reporting
34 requirements; and

- 35 (6) identifying and applying for federal funding to support
36 health information technology infrastructure development.

37 b. (1) The department shall require all ¹‘[long-term care
38 facilities to file with the department monthly and quarterly
39 unaudited financial information, quarterly unaudited financial
40 statements, annual audited financial statements, and such other
41 financial information as the department may request. The
42 information and statements reported by facilities pursuant to this
43 paragraph shall be posted on the department’s] nursing homes to
44 post on their¹ Internet ¹‘[website and updated as the information or
45 statements become available] websites annual owner-certified
46 financial statements ²along with the nursing home’s most recent
47 cost reports submitted to the federal Centers for Medicare and

1 Medicaid Services² . The department shall include on its Internet
 2 website a link to the page where each nursing home's certified
 3 financial statements ²and cost reports² are posted. Nursing homes
 4 that are part of a health care system may post financial statements
 5 ²and cost reports² pursuant to this paragraph that aggregate the
 6 financial data across all nursing homes that are a part of that health
 7 care system¹ . ⁴A nonprofit nursing home that posts a copy of its
 8 most recent Internal Revenue Service Form 990 on its Internet
 9 website shall be deemed to have met the requirement for the nursing
 10 home to post an owner-certified financial statement on its Internet
 11 website pursuant to this paragraph, and the nursing home's posted
 12 Internal Revenue Service Form 990 shall be considered an owner-
 13 certified financial statement for the purposes of this paragraph and
 14 subparagraph (d) of paragraph (1) of subsection f. of this section.⁴

15 (2) The department shall require all ¹**["long-term care facilities]**
 16 nursing homes¹ to ³**["annually report to the department the**
 17 **number]³ ²["and severity]² ³["of facility-acquired infections**
 18 **occurring among residents of the]³ ¹**["long-term care facility]**
 19 **³["nursing home¹ in the preceding year involving]³ :****

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

39 c. The department ³**["shall] may³** develop additional data
 40 reporting requirements for ¹**["long-term care facilities] nursing**
 41 **homes¹** as are necessary to improve ³**["market]³** transparency and
 42 facilitate the department's ability to oversee and regulate operations
 43 in ¹**["long-term care facilities] nursing homes¹** , including, but not
 44 limited to, data related to occupancy, operating expenses and other
 45 appropriate financial metrics, and utilization and staffing data. In
 46 developing additional reporting requirements pursuant to this
 47 subsection, the department shall solicit feedback from ¹**["long-term**

1 care facilities] nursing homes^{1 3}, advocacy groups for nursing home
 2 residents and their families, the New Jersey Long-Term Care
 3 Ombudsman,³ and ¹Medicaid¹ managed care ¹[plans]
 4 organizations¹ concerning proposed new data metrics, methods of
 5 maximizing the efficiency of data collection and specification,
 6 minimizing duplicative data reporting, and identifying ways to
 7 consolidate, automate, or streamline the data required to be reported
 8 by State and federal agencies and managed care ¹[plans]
 9 organizations¹.

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

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

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

20 (2) ¹[have a dedicated] designate a¹ staff person ¹[available at
 21 all times to respond] who shall be responsible for responding¹ to
 22 questions from the public concerning the ¹nursing home, including
 23 questions about the nursing home's¹ policies ¹[and plans required
 24 to be posted on the facility's Internet website under paragraph (1) of
 25 this subsection], procedures, and operations¹. The contact
 26 information for ¹[the facility's designated staff person] members of
 27 the public to direct questions and request information¹ shall be
 28 posted on the ¹[facility's] nursing home's¹ Internet website.

29 f. ³(1)³ The department shall ³[analyze data reported by]³
 30 ¹[long-term care facilities] ³[nursing homes¹ for oversight
 31 purposes and shall make the results of its analysis public whenever
 32 possible ¹, provided that in no case shall the department make
 33 public any data or information it deems to be confidential or
 34 proprietary in nature or that it deems to be a trade secret¹. At a
 35 minimum, the department shall:

36 (1)³ develop, make available on its Internet website, and update
 37 at least ¹[monthly] ²[annually]¹ quarterly², a data dashboard that
 38 ³[includes the] provides a separate page or listing for each nursing
 39 home licensed in the State with links to the sites where information
 40 and³ data ³[reported by each] relevant to the³ ¹[long-term care
 41 facility] nursing home^{1 3} ³[licensed in the State, including] may be
 42 found, as well as a description of the data and information that is
 43 accessible through each link. The data dashboard shall be
 44 searchable by nursing home. The data and information links

1 available through the dashboard shall include, at a minimum, for
 2 each nursing home³ :

3 (a) ¹**an overall performance score** the nursing home's star
 4 rating issued by the federal Centers for Medicare and Medicaid
 5 Services¹ ;

6 (b) the total number of complaints involving the ¹**facility**
 7 nursing home¹ , the number and nature of substantiated complaints
 8 involving the ¹**facility** nursing home¹ , the number of open
 9 investigations of complaints involving ¹**facility** the nursing
 10 home¹ , and the total number of outstanding complaints involving
 11 the ¹**facility** nursing home¹ that have not been investigated or
 12 resolved;

13 (c) ¹**the facility's star rating issued by the federal Centers for**
 14 **Medicare and Medicaid Services**;

15 (d)¹ the dates and results of inspections ¹and surveys¹ of the
 16 ¹**facility** nursing home¹ by the Department of Health, the
 17 Department of Human Services, and the federal Centers for
 18 Medicare and Medicaid Services, including links to any deficiencies
 19 or violations for which the ¹**facility** nursing home¹ was cited and
 20 to any corrective action plans in place at the ¹**facility** nursing
 21 home¹ ;

22 ¹**(e)** (d)¹ a ¹**breakdown of any costs and financial data**
 23 **reported by the facility** link to the website where each nursing
 24 home's certified financial statements² and the nursing home's cost
 25 reports submitted to the federal Centers for Medicare and Medicaid
 26 Services² are posted¹ ;

27 ¹**(f)** (e)¹ general staffing levels at the ¹**facility** nursing
 28 home¹ and ³, to the extent feasible,³ rates of compliance with
 29 mandatory staffing ratios ³**, along with the average and overall**
 30 **number of shifts during which the** ¹**facility** nursing home¹ **was**
 31 **out of compliance with staffing ratios**³ ;

32 ¹**(g)** (f)¹ the frequency with which antipsychotic medication
 33 was administered to ¹**facility**¹ residents ¹of the nursing home¹ ;

34 ¹**(h)** (g)¹ the number of residents who developed a pressure
 35 ulcer, including the number of residents who developed multiple
 36 pressure ulcers;

37 ¹**(i)** (h)¹ the number of ³each type of³ facility-acquired
 38 ³**infections** infection³ at the ¹**facility** nursing home¹ as reported
 39 ³to the National Health Care Safety Network's Long-term Care
 40 Facility Component³ pursuant to paragraph (2) of subsection b. of
 41 this section ²**, including details concerning the relative severity of**
 42 **the facility-acquired infections**² ; and

43 ¹**(j)** (i)¹ such other data as the department determines
 44 appropriate to allow the public to make informed choices when

1 evaluating and selecting a ¹“long-term care facility” nursing home¹
2 ³“; and” .³

3 (2) ³The department shall³ prepare and publish on its Internet
4 website annual reports on New Jersey’s ¹“long-term care” nursing
5 home¹ system of care.

6 ³“¹g. The department shall utilize the data dashboard established
7 pursuant to paragraph (1) of subsection f. of this section to develop
8 a performance improvement plan for all nursing homes throughout
9 the State, as well as to identify areas in need of improvement and
10 strategies to facilitate performance improvement in individual
11 nursing homes. In developing a Statewide performance
12 improvement plan, the department may consult with the Nursing
13 Home Advisory Council established pursuant to section 4 of
14 this act.”¹”

15 (3) For the purposes of making available to the public the data
16 described in subparagraph (h) of paragraph (1) of this subsection,
17 the department shall: request from the National Healthcare Safety
18 Network, on a quarterly basis, data concerning the number of
19 infections reported to the network by New Jersey nursing homes
20 pursuant to paragraph (2) of subsection b. of this section; make the
21 data available on the department’s Internet website; and update the
22 data at least quarterly using the most current data obtained from the
23 National Healthcare Safety Network. The data shall provide details
24 concerning the number of reported infections, by infection type, for
25 each nursing home licensed in the State. The department shall
26 additionally provide on its Internet website data concerning the
27 Statewide and national averages for each type of reported infection
28 in nursing homes.”³

29
30 ³“4. a. There is established in the Department of Health the
31 ¹“Long-Term Care Facility” “Nursing Home”¹ Advisory Council.”
32 The purpose of the council shall be to advise the department on
33 matters related to the oversight of ¹“long-term care facilities”
34 nursing homes¹ and on issues concerning ¹“long-term care facility”
35 nursing home¹ residents and their families, as well as to foster
36 communication with the public regarding ¹“long-term care
37 facilities” nursing homes¹ . The responsibilities of the advisory
38 council shall include:

39 (1) analyzing and reviewing the results of inspections ¹and
40 surveys¹ of ¹“long-term care facility” nursing homes¹ conducted by
41 the department, including the penalties assessed against ¹“long-term
42 care facilities” nursing homes¹ and the department’s adherence to
43 federal guidance concerning state inspections of ¹“long-term care
44 facilities” nursing homes¹ ;

45 (2) receiving public comment on the results of ¹“long-term care
46 facility” nursing home¹ inspections ¹and surveys¹ ; ¹“and”¹

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

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

9 b. The advisory council shall consist of ¹~~['seven']~~ nine¹
10 members, as follows:

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

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

18 (3) two¹ public ¹~~['member']~~ members¹ , to be appointed by the
19 Governor, ¹~~['who shall be a representative of the long-term care~~
20 facility industry] one of whom shall be a representative of a for-
21 profit nursing home and one of whom shall be a representative of a
22 nonprofit nursing home ¹ ; and

23 ¹~~['(3)']~~ (4)¹ four public members who are advocates for residents
24 of ¹~~['long-term care facilities']~~ nursing homes¹ , with two of the
25 public members to be appointed by the Senate President and two of
26 the public members to be appointed by the Speaker of the General
27 Assembly.

28 c. The public members of the advisory council shall be
29 appointed, and the advisory council shall first organize, no later
30 than 45 days after the effective date of this act. Upon organizing,
31 the advisory council shall select a chairperson and a vice-
32 chairperson from among its members. The chairperson shall
33 appoint a secretary to the advisory council, who need not be a
34 member of the advisory council.

35 d. Public members of the advisory council shall serve for a
36 term of five years, except that, of the members first appointed,
37 ¹~~['one']~~ two¹ shall serve for a term of three years, two shall serve for
38 a term of four years, and two shall serve for a term of five years.
39 Vacancies in the membership shall be filled in the same manner in
40 which the original appointments were made. Public members shall
41 be eligible for reappointment to the advisory council.

42 e. The advisory council shall meet on a quarterly basis at such
43 times and places as shall be designated by the chairperson. A
44 majority of the authorized membership shall constitute a quorum for
45 the purposes of the advisory council taking official action. All
46 meetings of the advisory council shall be open to the public.
47 Agendas, minutes, documents, and testimony from ¹~~['all']~~ each¹

meeting shall be posted on the Internet website of the Department of Health. The advisory council shall invite the Attorney General or a representative of the Office of the Attorney General, the State Auditor, the State Comptroller, and a representative of the Department of Health to be present at each meeting.

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

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

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

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

5. ¹~~["This"]~~ ³~~["Sections 1 through 3 of this"]~~ ³This³ act shall take effect ³~~["180 days"]~~ ³on the first day of the 10th month³ after the date of enactment, ³~~["and"]~~ ³except that³ section 4 of this¹ act shall take effect immediately.

Establishes additional requirements for DOH to assess sanctions and impose penalties on nursing homes; revises reporting requirements for nursing homes.