

SENATE, No. 2088

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator JOSEPH P. CRYAN
District 20 (Union)

SYNOPSIS

Requires certain facilities to set aside beds for Medicaid-eligible individuals.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring certain facilities to set aside beds for Medicaid-
2 eligible individuals and amending and supplementing Title 26 of
3 the Revised Statutes.

4

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

7

8 1. Section 8 of P.L.1975, c.305 (C.26:2B-14) is amended to
9 read as follows:

10 The department shall issue for a term of 2 years, and may renew
11 for like terms, a license, subject to revocation by it for cause, to any
12 person, partnership, corporation, society, association or other
13 agency or entity of any kind, other than a licensed general hospital,
14 a department, agency, or institution of the **【Federal Government】**
15 federal government, the State or any political subdivision thereof,
16 deemed by it to be responsible and suitable to establish and
17 maintain a facility and to meet applicable licensure standards and
18 requirements. In the case of a department, agency or institution of
19 the State or any political subdivision thereof, the department shall
20 grant approval to establish and maintain a facility for a term of 2
21 years, and may renew such approval for like terms, subject to
22 revocation by it for cause.

23 The department shall in the cases of public facilities, private
24 facilities which contract on a fee-for-service basis with the State,
25 and private facilities which accept for treatment persons assisted
26 pursuant to section 10 of P.L.1975, c.305 (C.26:2B-16), promulgate
27 rules and regulations establishing licensure and approval standards
28 and requirements including, but not limited to:

- 29 a. the need for a facility in the community;
30 b. the financial and other qualifications of the applicant;
31 c. the proper operation of facilities;
32 d. the health and safety standards to be met by a facility;
33 e. the quality and nature of the treatment to be afforded
34 patients at a facility;
35 f. licensing fees, and procedures for making and approving
36 license and approval applications; and
37 g. the obligation of the facility to meet the Medicaid-eligible
38 utilization requirements pursuant to section 4 of P.L. c. (C.)
39 (pending before the Legislature as this bill).

40 In the case of private facilities that neither contract on a fee-for-
41 service basis with the State nor accept for treatment persons assisted
42 by police officers pursuant to section 10 of P.L.1975, c.305
43 (C.26:2B-16), the department shall promulgate rules and regulations
44 establishing licensure standards and requirements but such
45 standards and requirements shall concern only:

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.

- 1 a. the health and safety standards to be met by a facility;
- 2 b. misrepresentations as to the treatment to be afforded patients
- 3 at a facility;
- 4 c. licensing fees**【, and】**;
- 5 d. procedures for making and approving license applications;
- 6 and
- 7 e. the obligation of the facility to meet the Medicaid-eligible
- 8 utilization requirements pursuant to section 4 of P.L. c. (C.)
- 9 (pending before the Legislature as this bill).

10 All facilities shall be individually licensed or approved.
11 Different kinds of licenses or approvals may be granted for different
12 kinds of facilities.

13 Each facility shall file with the department from time to time, on
14 request, such data, statistics, schedules or information as the
15 department may reasonably require for the purposes of this section,
16 and any licensee or other person operating a private facility who
17 fails to furnish any such data, statistics, schedules or information as
18 requested, or who files fraudulent returns thereof, shall be punished
19 by a fine of not more than **【\$500.00】** \$500.

20 The department, after holding a hearing, may refuse to grant,
21 suspend, revoke, limit or restrict the applicability of or refuse to
22 renew any license or approval for any failure to meet the
23 requirements of its rules and regulations or standards concerning
24 such facilities. However, in the case of private facilities which
25 neither contract on a fee-for-service basis with the State nor accept
26 for treatment persons assisted by police officers pursuant to section
27 10 of P.L.1975, c.305 (C.26:2B-16), the department, after holding a
28 hearing may refuse to grant, suspend, revoke, limit or restrict the
29 applicability of or refuse to renew any license for the following
30 reasons only:

31 a. for failure to meet the requirements of its rules and
32 regulations concerning the health and safety standards of such
33 facilities or

34 b. f there is a reasonable basis for the department to conclude
35 that there is a discrepancy between representations by a facility as
36 to the treatment services to be afforded patients and the treatment
37 services actually rendered or to be rendered.

38 The department may temporarily suspend a license or approval in
39 an emergency without holding a prior hearing; provided, however,
40 that upon request of an aggrieved party, a hearing shall be held as
41 soon after the license or approval is suspended as possible. Any
42 party aggrieved by a final decision of the department pursuant to
43 this section may petition for judicial review thereof.

44 No person, partnership, corporation, society, association, or other
45 agency or entity of any kind, other than a licensed general hospital,
46 a department, agency or institution of the **【Federal Government】**
47 federal government, the State or any political subdivision thereof,

1 shall operate a facility without a license and no department, agency
2 or institution of the State or any political subdivision thereof shall
3 operate a facility without approval from the department pursuant to
4 this section. The Superior Court shall have jurisdiction in equity
5 upon petition of the department to restrain any violation of the
6 provisions of this section and to take such other action as equity and
7 justice may require to enforce its provisions. Whoever knowingly
8 establishes or maintains a private facility without a license granted
9 pursuant to this section shall, for a first offense, be punished by a
10 fine of not more than ~~【\$500.00】~~ \$500 and for each subsequent
11 offense by a fine of not more than ~~【\$1,000.00】~~ \$1,000 or
12 imprisonment for not more than 2 years, or both.

13 Each facility shall be subject to visitation and inspection by the
14 department and the department shall inspect each facility prior to
15 granting or renewing a license or approval. The department may
16 examine the books and accounts of any facility if it deems such
17 examination necessary for the purposes of this section. The
18 department is hereby authorized to make a complaint to a judge of
19 any court of record, who may thereupon issue a warrant to any
20 officers or employees of the department authorizing them to enter
21 and inspect at reasonable times, and to examine the books and
22 accounts of, any private facility refusing to consent to such
23 inspection or examination by the department which the department
24 has reason to believe is operating in violation of the provisions of
25 this act. Refusal by the operator or owner to allow such entry and
26 inspection pursuant to such a warrant shall for a first offense be
27 punishable by a fine of not more than ~~【\$100.00】~~ \$100 and for each
28 subsequent offense by a fine of not more than ~~【\$1,000.00】~~ \$1,000
29 or imprisonment for not more than 2 years, or both.

30 The director may require public facilities, private facilities which
31 contract on a fee-for-service basis with the State, and private
32 facilities which accept for treatment persons assisted pursuant to
33 section 10 of P.L.1975, c.305 (C.26:2B-16) to admit as an inpatient
34 or outpatient any person to be afforded treatment pursuant to this
35 act. The department shall promulgate rules and regulations
36 governing the extent to which the department may require other
37 private facilities to admit as an inpatient or outpatient any person to
38 be afforded treatment pursuant to this act; provided, however, that
39 no licensed general hospital shall refuse treatment for intoxication
40 or alcoholism.

41 (cf: P.L.1975, c.305, s.8)

42

43 2. Section 5 of P.L.1970, c.334 (C.26:2G-25) is amended to
44 read as follows:

45 5. The commissioner shall adopt, amend, promulgate and
46 enforce such rules, regulations and minimum standards for the
47 treatment of patients of narcotic and substance use disorder

1 treatment centers as may be reasonably necessary to accomplish the
2 purposes of P.L.1970, c.334 (C.26:2G-21 et seq.). Such narcotic
3 and substance use disorder treatment centers may be classified into
4 two or more classes with appropriate rules, regulations and
5 minimum standards for each such class. No narcotic or drug abuse
6 treatment center, transitional sober living home, halfway house, or
7 other residential aftercare facility shall be permitted to deny
8 admission to a prospective client on the basis that the person is
9 currently receiving medication assisted treatment for a substance
10 use disorder administered by a licensed treatment provider,
11 including but not limited to methadone, buprenorphine, naltrexone,
12 or any other medication approved by the Food and Drug
13 Administration for the treatment of a substance use disorder.

14 The rules and regulations adopted pursuant to this section shall,
15 at a minimum, require;

16 a. a transitional sober living home, halfway house, or other
17 residential aftercare facility to provide notice to a patient's spouse,
18 parent, legal guardian, designated next of kin, or other designated
19 emergency contact, whenever the patient voluntarily withdraws, or
20 is involuntarily evicted from, such facility, provided that: (1) such
21 notice is provided in a manner that is consistent with federal
22 requirements under 42 CFR Part 2 and federal HIPAA requirements
23 under 45 CFR Parts 160 and 164; and (2) the patient, if an adult, has
24 not withheld consent for such notice or expressly requested that
25 notification not be given. If a patient who is not incapacitated
26 withholds consent for such notice, or expressly requests that
27 notification not be given, the department shall require the patient's
28 wishes to be respected unless the patient is a minor child or
29 adolescent, in which case, the department shall require the minor's
30 parent, legal guardian, designated next of kin, or other designated
31 emergency contact to be notified, provided that such notification is
32 not inconsistent with, and would not violate, federal requirements
33 under 42 CFR Part 2 and federal HIPAA requirements under 45
34 CFR Parts 160 and 164; and

35 b. the obligation of the facility to meet the Medicaid-eligible
36 utilization requirements pursuant to section 4 of P.L. c. (C.)
37 (pending before the Legislature as this bill).
38 (cf: P.L.2017, c.256, s.1)
39

40 3. Section 1 of P.L.2015, c.293 (C.26:2G-25.1) is amended to
41 read as follows:

42 1. a. The Division of Mental Health and Addiction Services in
43 the Department of Human Services shall oversee the development
44 and maintenance of a database, which shall collect and track the
45 daily information received pursuant to section 2 of **[this act]**
46 P.L.2015, c.293 (C.26:2G-25.2) about the number of open beds that
47 are available for treatment in each residential substance use

1 disorders treatment facility in the State that receives State or county
2 funding.

3 b. The information maintained in the database shall include, by
4 county:

5 (1) the address and telephone number of the residential
6 substance use disorders treatment facility;

7 (2) the type of services provided by the facility;

8 (3) the licensed bed capacity of the facility; **and**

9 (4) the number of open beds that are available for treatment,
10 based on the information received pursuant to section 2 of this act;

11 (5) the number of beds in the facility reserved to meet the
12 requirement established in section 4 of P.L. c. (C.)
13 (pending before the Legislature as this bill); and

14 (6) the number of open beds that are available for treatment and
15 meet the requirement established in section 4 of P.L. c. (C.)
16 (pending before the Legislature as this bill).

17 c. The information described in subsection b. of this section
18 shall be:

19 (1) prominently displayed on the website of the department;

20 (2) made available to the public, upon request, through the
21 addictions telephone hotline and the Statewide 2-1-1 telephone
22 system; and

23 (3) made available using any other means that the
24 Commissioner of Human Services deems appropriate.

25 d. The commissioner is authorized to solicit, receive, and
26 accept grants, funds, or anything of value from any public or private
27 entity and receive and accept contributions of money, property,
28 labor, or any other thing of value from any legitimate source for the
29 purpose of the development and maintenance of a database pursuant
30 to this act.

31 (cf: P.L.2015, c.293, s.1)

32

33 4. (New section) a. As used in this act:

34 "Facility" means a residential treatment facility licensed by the
35 State pursuant to Section 8 of P.L.1975, c.305 (C.26:2B-14) or
36 P.L.1970, c.334 (C.26:2G-21 et seq.)

37 "Medicaid" means the program established pursuant to P.L.1968,
38 c.413 (C.30:4D-1 et seq.) or the NJ FamilyCare program established
39 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

40 "Medicaid-eligible" means that a person is determined to meet
41 the eligibility standards for medical assistance under the State
42 Medicaid program.

43 b. A facility that is licensed to operate pursuant to Section 8 of
44 P.L.1975, c.305 (C.26:2B-14) or P.L.1970, c.334 (C.26:2G-
45 21 et seq.) shall reserve 10 percent of its total bed compliment for
46 use by Medicaid-eligible persons. The 10 percent utilization by
47 Medicaid-eligible persons may be met through Medicaid conversion

1 of persons who enter the facility as private paying persons and
2 subsequently become eligible for Medicaid, or through direct
3 admission of Medicaid-eligible persons.

4 c. A facility shall achieve this 10 percent utilization within one
5 year of the effective date of this act to operate and shall maintain
6 this level of utilization thereafter.

7 d. Existing facilities that add additional beds shall be required,
8 as a condition of licensure approval, to maintain 10 percent of the
9 additional beds for Medicaid-eligible persons through Medicaid
10 conversion of persons who enter the facility as private paying
11 persons and subsequently become eligible for Medicaid, or through
12 direct admission of Medicaid-eligible persons. If the total number
13 of additional beds is less than 10, at least one of the additional beds
14 shall be reserved for a Medicaid-eligible person.

15 e. The Commissioner of Human Services may waive the 10
16 percent utilization requirement or reduce the required percentage by
17 regulation for specific regions of the State or Statewide if the
18 commissioner determines that sufficient numbers of facility beds
19 are available in the State to meet the needs of Medicaid-eligible
20 persons.

21
22 5. (New section) Nothing in P.L. c. (C.) (pending
23 before the Legislature as this bill) shall be construed to: prohibit a
24 facility, which is not affected by P.L. c. (C.) (pending
25 before the Legislature as this bill) from participating in the
26 Medicaid program; or create an entitlement to financing under the
27 Medicaid program for services provided at facilities.

28
29 6. The Commissioner of Human Services, pursuant to the
30 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
31 1 et seq.), shall adopt rules and regulations as the commissioners
32 determine necessary to effectuate the purposes of this act.

33
34 7. This act shall take effect on the first day of the sixth month
35 next following the date of the enactment, except the Commissioner
36 of Human Services may take any anticipatory action in advance as
37 shall be necessary for the implementation of this act.

40 STATEMENT

41
42 This bill would require all residential facilities which are
43 licensed to provide treatment to individuals for substance use
44 disorder and alcohol use disorder to dedicate 10 percent of the
45 facilities’ beds to individuals who are Medicaid beneficiaries.
46 Facilities would be required to meet the standard within one year of
47 the effective date of this act.

1 Furthermore, the residential substance use disorder treatment
2 facilities will be required to report to the Department of Human
3 Services the number of beds which are reserved for Medicaid
4 clients, and the number of these beds which are available for
5 treatment.