

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2758

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 21, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2758.

As amended by the committee, this bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the facility's equipment and physical plant, profits, and any other factors as the commissioner requires. The direct care ratio will

require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits. The commissioner may adjust the components of the ratio as appropriate based on current financial information reported by nursing homes and overall performance by the nursing home related to patient safety and quality of care.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services in an amount sufficient to assure that the aggregate amount paid for direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the nursing home's equipment and physical plant, profits, and other factors as may be required by the commissioner, plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit will be equal to the percentage of payments made by the payor to the nursing home in the previous calendar year out of all payments made to the nursing home for services provided in the previous calendar year from all payment sources. All dividends and credits are to be distributed by June 30 of the year following the calendar year in which the ratio requirements were not satisfied.

The commissioner will be required to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

COMMITTEE AMENDMENTS:

The committee amendments remove language concerning specific metrics to be considered by the Commissioner of Human Services when recommending that increases in nursing home reimbursement rates be tied to specific quality and safety metrics.

The committee amendments revise the requirements for the direct care ratio to require that it be established by July 1, 2021, rather than 90 days after the effective date of the bill, and to remove the word "loss" from references the ratio. The amendments further specify that

the factors to be considered will include taxes paid by the facility and other factors as the commissioner may require.

The committee amendments require that the direct care ratio be at least 90 percent, with the option for the commissioner to increase the ratio by regulation.

The committee amendments provide that audits may be performed by the commissioner or by a designated entity.

The committee amendments provide that, when a facility fails to meet the direct care ratio, the dividends and credits the facility is required to pay will be paid to the State, as well as to other entities making payments to the facility. The amendments further provide that the credits and dividends are to be paid by June 30, rather than by December 31, in the calendar year following the calendar year in which the ratio was not met.

The committee amendments add a provision requiring the commissioner to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

The committee amendments remove certain language from the amendatory provisions of the bill concerning increases based on the consumer price index that duplicate current statutory language.

The committee amendments revise the synopsis of the bill to reflect the changes made by committee amendment.