

[Second Reprint]

SENATE, No. 2759

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

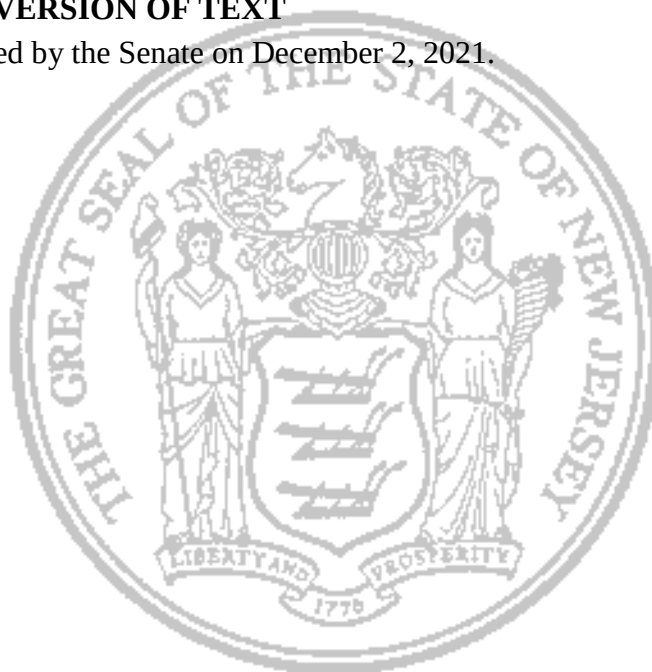
Senators Pou and Singleton

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on December 2, 2021.



(Sponsorship Updated As Of: 1/21/2021)

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 ²**1.** ¹**No later than 60 days after the effective date of this act,**
 8 **the** a. The¹ Department of Health shall develop a system of scaling
 9 actions and penalties for repeat violations of State and federal
 10 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 cycles,
 16 of chronic, repeat¹ violations ¹**in a single year at least once every two**
 17 **years for the next four years, or at more frequent intervals for a period**
 18 **longer than four years, if circumstances warrant greater or more**
 19 **frequent oversight** of State or federal requirements for nursing home
 20 administration and operations or a history of noncompliance with
 21 corrective plans or other disciplinary actions instituted by the
 22 department, which program shall include the use of additional, focused
 23 surveys to determine whether the nursing home is taking appropriate
 24 steps to remediate the conditions that contributed to the violations that
 25 resulted in the nursing home being included in the program and
 26 violations occurring while the nursing home is in the program. The
 27 program shall incorporate more-stringent penalties, sanctions, and
 28 corrective measures, including suspension or revocation of the nursing
 29 home's license or issuing a recommendation that the nursing home's
 30 contract with the federal Centers for Medicare and Medicaid Services
 31 be terminated, for issues that are of longer duration or where the
 32 nursing home fails to demonstrate improvement following the
 33 imposition of less-stringent penalties, sanctions, or corrective
 34 measures. A nursing home included in the program shall remain in the
 35 program for a period of at least 18 months. Any nursing home that
 36 qualifies for inclusion in the federal Centers for Medicare and
 37 Medicaid Services' Special Focus Facility Program that is not placed
 38 in that program shall be automatically included in the special focus
 39 survey program established pursuant to this subsection¹ ; and

40 ¹**b.] (2)**¹ Assessing enhanced sanctions and other penalties for
 41 continued or repeat noncompliance with department regulations,
 42 particularly when the ¹**facility** nursing home¹ is cited ¹**multiple**
 43 two or more¹ times for the same violation ¹within a six-month period¹
 44 or when violations involve noncompliance with infection control

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:

¹Senate SBA committee amendments adopted January 21, 2021.

²Senate floor amendments adopted December 2, 2021.

1 requirements, which enhanced sanctions and penalties shall include:

2 ¹[(1)] (a) a series of escalating fines for repeated violations or
3 multiple violations by the same ¹[facility] nursing home¹, as well as
4 increased fines when a violation results in severe adverse health
5 consequences for a resident or staff member of the ¹[facility] nursing
6 home¹; and

7 ¹[(2)] (b) a series of escalating licensure actions for repeated
8 violations or multiple violations by the same ¹[facility] nursing home¹
9, particularly in cases where a violation results in severe adverse health
10 consequences for a resident or staff member at the ¹[facility] nursing
11 home¹, which licensure actions shall include: suspending,
12 terminating, or revoking the ¹[facility's] nursing home's¹ license;
13 issuing a recommendation that the nursing home's contract with the
14 federal Centers for Medicare and Medicaid Services be terminated;
15 requiring the appointment of an independent manager to assume
16 control over operations at the nursing home on a temporary basis;
17 denying payment for all Medicaid claims submitted by the nursing
18 home;¹ restricting new admissions to the ¹[facility] nursing home,
19 which may include prohibiting the nursing home from accepting any
20 new residents who are Medicaid beneficiaries¹; requiring the transfer
21 of residents to another ¹[facility] nursing home; requiring closure of
22 the nursing home and immediate transfer of all the nursing home's
23 residents to another nursing home; requiring additional monitoring of
24 the nursing home, which may include placing the nursing home in the
25 special focus survey program established pursuant to paragraph (1) of
26 this subsection; establishing a directed plan of correction; requiring
27 nursing home staff and administrators to undergo directed in-service
28 training¹; ¹[Or, in the case of a nursing home,]¹ petitioning a court of
29 competent jurisdiction for appointment of a receiver in accordance
30 with the provisions of P.L.1977, c.238 (C.26:2H-36 et seq.) ¹; or
31 taking any other administrative or disciplinary actions as may be
32 established by the Commissioner of Health by regulation, which may
33 be subject to approval by the federal Centers for Medicare and
34 Medicaid Services, if such approval is required¹.

35 ¹[c.] b.¹ The department shall ¹[evaluate staffing levels and
36 competency by resident acuity and complexity, and]¹ establish a
37 system to impose greater responsibility on each ¹[long-term care
38 facility's] nursing home's¹ medical director for quality outcomes at
39 the ¹[facility, including imposing specific penalties or sanctions
40 against the medical director for repeated failure to produce
41 improvements in quality outcomes at the facility] nursing home,
42 consistent with standards and guidelines promulgated by the federal
43 Centers for Medicare and Medicaid Services for state surveys of
44 nursing home medical directors¹.]²

45
46 ²1. A nursing home, as defined under section 1 of P.L.1975,
47 c.397 (C.26:2H-29), cited for the same or a substantially similar F-

1 level deficiency or higher, as outlined in federal Centers for
2 Medicare and Medicaid Services guidance, at any point over a
3 three-year period during any standard or special survey conducted
4 pursuant to 42 U.S.C. s.488.308 or any other inspection conducted
5 by the Department of Health, or any third-party contractor or
6 instrumentality thereof, pursuant to State or federal law or
7 regulation, including in response to a complaint, shall be subject to
8 a penalty that shall be more severe than the penalty imposed for the
9 previous violation. The department may impose additional
10 penalties, sanctions, or corrective measures pursuant to regulation
11 when such deficiencies or violations involve noncompliance with
12 infection control requirements or result in severe adverse health
13 consequences for a resident or staff member of the nursing home.
14 This section shall not be construed to diminish any authority of the
15 Department of Health or any other department that exists pursuant
16 to any other law, rule, or regulation.²

17
18 2. To facilitate enforcement of department rules and requirements
19 concerning ¹‘[long-term care facility] nursing home¹ operations, ¹‘[no
20 later than 60 days after the effective date of this act,]’ the department
21 shall request and consolidate data concerning ¹‘[long-term care
22 facilities] nursing homes¹ reported to other State and federal
23 authorities, including the federal Centers for Medicare and Medicaid
24 Services, the Department of Human Services, Medicaid managed care
25 ¹‘[plans] organizations¹’, and the Long-Term Care Ombudsman, in
26 order to identify ¹‘[long-term care facilities] nursing homes¹ with
27 consistent or repeated performance issues, ongoing compliance issues,
28 or high numbers of substantiated complaints. The department shall
29 make the consolidated data collected under this subsection available
30 upon request to other State and federal entities having jurisdiction over
31 ¹‘[long-term care facilities] nursing homes¹ in the State.

32
33 3. a. ¹‘[No later than 60 days after the effective date of this act,
34 the] The¹ the department shall undertake a review of reporting
35 requirements for ¹‘[long-term care facilities] nursing homes¹ and
36 shall take steps to standardize and consolidate the reporting
37 requirements for the purpose of: reducing the administrative
38 demand on ¹‘[the facilities of] nursing homes in¹ complying with
39 reporting requirements; developing updated standardized data
40 reporting requirements; and improving the utility of the reported
41 data and the ability to share the data across systems, including ², as
42 appropriate,² systems maintained by other State departments and
43 agencies, county and local agencies, and federal authorities. The
44 department’s review shall include:

- 45 (1) identifying and eliminating duplicative reporting;
46 (2) establishing standardized formats, requirements, protocols,
47 and systems for data reporting, which may include requiring

- 1 **‘[facilities] nursing homes’** to report data in machine-readable
2 formats to facilitate the processing and analysis of reported data;
- 3 (3) establishing a centralized, cross-agency workgroup to
4 monitor **‘[long-term care facility] nursing home’** reporting;
- 5 (4) assessing State health information technology needs to
6 support technology-enabled and data-driven regulatory oversight
7 across State departments and agencies, anticipate potential uses for
8 the enhanced technologies and systems, enable systems to readily
9 accept and analyze additional data metrics required pursuant to
10 subsection b. of this section, and identify opportunities to centralize
11 and modernize State health data infrastructure, processes, and
12 analytic capabilities;
- 13 (5) assessing **‘[long-term care facility] nursing home’** health
14 information technology needs to support population health
15 management, interoperability, and modernized reporting
16 requirements; and
- 17 (6) identifying and applying for federal funding to support
18 health information technology infrastructure development.
- 19 b. (1) The department shall require all **‘[long-term care**
20 **facilities to file with the department monthly and quarterly**
21 **unaudited financial information, quarterly unaudited financial**
22 **statements, annual audited financial statements, and such other**
23 **financial information as the department may request. The**
24 **information and statements reported by facilities pursuant to this**
25 **paragraph shall be posted on the department’s] nursing homes to**
26 **post on their’** Internet **‘[website and updated as the information or**
27 **statements become available] websites annual owner-certified**
28 **financial statements along with the nursing home’s most recent cost**
29 **reports submitted to the federal Centers for Medicare and Medicaid**
30 **Services. The department shall include on its Internet website a**
31 **link to the page where each nursing home’s certified financial**
32 **statements and cost reports are posted. Nursing homes that are part**
33 **of a health care system may post financial statements and cost**
34 **reports pursuant to this paragraph that aggregate the financial data**
35 **across all nursing homes that are a part of that health care system’** .
- 36 (2) The department shall require all **‘[long-term care facilities]**
37 **nursing homes’** to **‘[annually report to the department the**
38 **number]’**² **‘[and severity]’**¹ **‘[of facility-acquired infections**
39 **occurring among residents of the]’**² **‘[long-term care facility]**
40 **nursing home’** in the preceding year involving]² :
- 41 (a) **‘[Methicillin-resistant Staphylococcus aureus (MRSA);**
42 (b) Clostrum difficile (C.Diff);
- 43 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);
- 44 (d) Central Line-Associated Bloodstream Infections (CLABSI);
- 45 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and
- 46 (f) any other facility-acquired infection for which the
47 department requires annual reporting pursuant to regulations

1 adopted by the Commissioner of Health **】** participate in the National
2 Health Care Safety Network’s Long-term Care Facility Component;

3 (b) complete the network’s long-term care facility annual facility
4 survey; and

5 (c) participate in the network’s long-term care facility monthly
6 reporting plan, including:

7 (i) the healthcare-associated infection reporting modules for
8 urinary tract infections, the laboratory-identified event module for
9 Clostrum difficile (C.diff) infection and multidrug-resistant
10 organisms, and prevention measures; and

11 (ii) the monthly reporting plan for prevention process measures,
12 including hand hygiene, gloves, and gown adherence² .

13 c. The department ²**【shall】** may² develop additional data
14 reporting requirements for ¹**【long-term care facilities】** nursing
15 homes¹ as are necessary to improve ²**【market】**² transparency and
16 facilitate the department’s ability to oversee and regulate operations
17 in ¹**【long-term care facilities】** nursing homes¹ , including, but not
18 limited to, data related to occupancy, operating expenses and other
19 appropriate financial metrics, and utilization and staffing data. In
20 developing additional reporting requirements pursuant to this
21 subsection, the department shall solicit feedback from ¹**【long-term**
22 **care facilities】** nursing homes^{1 2}, advocacy groups for nursing home
23 residents and their families, the New Jersey Long-Term Care
24 Ombudsman,² and ¹Medicaid¹ managed care ¹**【plans】**
25 organizations¹ concerning proposed new data metrics, methods of
26 maximizing the efficiency of data collection and specification,
27 minimizing duplicative data reporting, and identifying ways to
28 consolidate, automate, or streamline the data required to be reported
29 by State and federal agencies and managed care ¹**【plans】**
30 organizations¹ .

31 d. ¹**【No later than 30 days after the effective date of this act,**
32 **the】** The¹ department shall establish centralized State protocols for
33 ¹**【long-term care facility】** nursing home¹ communications to reduce
34 duplicative outreach and enhance information sharing capabilities.

35 e. The department shall require ¹**【long-term care facilities】**
36 nursing homes¹ to:

37 (1) post on their Internet websites ¹**【any policies or plans**
38 **required to be in place at the facility pursuant to State law】** a link to
39 the dashboard developed and maintained by the department
40 pursuant to paragraph (1) of subsection f. of this section¹ ; and

41 (2) ¹**【have a dedicated】** designate a¹ staff person ¹**【available at**
42 **all times to respond】** who shall be responsible for responding¹ to
43 questions from the public concerning the ¹nursing home, including
44 questions about the nursing home’s¹ policies ¹**【and plans required**
45 **to be posted on the facility’s Internet website under paragraph (1) of**
46 **this subsection】** , procedures, and operations¹ . The contact
47 information for ¹**【the facility’s designated staff person】** members of

1 the public to direct questions and request information¹ shall be
2 posted on the ¹**['facility's] nursing home's**¹ Internet website.

3 f. ²(1)² The department shall ²**['analyze data reported by]**²
4 ¹**['long-term care facilities]** ²**['nursing homes**¹ for oversight
5 purposes and shall make the results of its analysis public whenever
6 possible ¹, provided that in no case shall the department make
7 public any data or information it deems to be confidential or
8 proprietary in nature or that it deems to be a trade secret¹. At a
9 minimum, the department shall:

10 (1)² develop, make available on its Internet website, and
11 update at least ¹**['monthly] quarterly**¹, a data dashboard that
12 ²**['includes the]** provides a separate page or listing for each nursing
13 home licensed in the State with links to the sites where information
14 and² data ²**['reported by each]** relevant to the² ¹**['long-term care**
15 **facility]** nursing home¹ ²**['licensed in the State, including]** may be
16 found, as well as a description of the data and information that is
17 accessible through each link. The data dashboard shall be
18 searchable by nursing home. The data and information links
19 available through the dashboard shall include, at a minimum, for
20 each nursing home²:

21 (a) ¹**['an overall performance score]** the nursing home's star
22 rating issued by the federal Centers for Medicare and Medicaid
23 Services¹;

24 (b) the total number of complaints involving the ¹**['facility]**
25 nursing home¹, the number and nature of substantiated complaints
26 involving the ¹**['facility]** nursing home¹, the number of open
27 investigations of complaints involving ¹**['facility]** the nursing
28 home¹, and the total number of outstanding complaints involving
29 the ¹**['facility]** nursing home¹ that have not been investigated or
30 resolved;

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

33 (d)¹ the dates and results of inspections ¹and surveys¹ of the
34 ¹**['facility]** nursing home¹ by the Department of Health, the
35 Department of Human Services, and the federal Centers for
36 Medicare and Medicaid Services, including links to any deficiencies
37 or violations for which the ¹**['facility]** nursing home¹ was cited and
38 to any corrective action plans in place at the ¹**['facility]** nursing
39 home¹;

40 ¹**['(e)]** (d)¹ a ¹**['breakdown of any costs and financial data**
41 **reported by the facility]** link to the website where each nursing
42 home's certified financial statements and the nursing home's cost
43 reports submitted to the federal Centers for Medicare and Medicaid
44 Services are posted¹;

45 ¹**['(f)]** (e)¹ general staffing levels at the ¹**['facility]** nursing
46 home¹ and ², to the extent feasible,² rates of compliance with

1 mandatory staffing ratios ²], along with the average and overall
2 number of shifts during which the ¹[facility] nursing home¹ was
3 out of compliance with staffing ratios]² ;

4 ¹[(g)] (f)¹ the frequency with which antipsychotic medication
5 was administered to ¹[facility]¹ residents ¹of the nursing home¹ ;

6 ¹[(h)] (g)¹ the number of residents who developed a pressure
7 ulcer, including the number of residents who developed multiple
8 pressure ulcers;

9 ¹[(i)] (h)¹ the number of ²each type of² facility-acquired
10 ²[infections] infection² at the ¹[facility] nursing home¹ as reported
11 ²to the National Health Care Safety Network's Long-term Care
12 Facility Component² pursuant to paragraph (2) of subsection b. of
13 this section ¹], including details concerning the relative severity of
14 the facility-acquired infections]¹ ; and

15 ¹[(j)] (i)¹ such other data as the department determines
16 appropriate to allow the public to make informed choices when
17 evaluating and selecting a ¹[long-term care facility] nursing home¹
18 ²]; and]² .²

19 (2) ²The department shall² prepare and publish on its Internet
20 website annual reports on New Jersey's ¹[long-term care] nursing
21 home¹ system of care.

22 ²[(1)g. The department shall utilize the data dashboard established
23 pursuant to paragraph (1) of subsection f. of this section to develop
24 a performance improvement plan for all nursing homes throughout
25 the State, as well as to identify areas in need of improvement and
26 strategies to facilitate performance improvement in individual
27 nursing homes. In developing a Statewide performance
28 improvement plan, the department may consult with the Nursing
29 Home Advisory Council established pursuant to section 4 of this
30 act.¹]

31 (3) For the purposes of making available to the public the data
32 described in subparagraph (h) of paragraph (1) of this subsection,
33 the department shall: request from the National Healthcare Safety
34 Network, on a quarterly basis, data concerning the number of
35 infections reported to the network by New Jersey nursing homes
36 pursuant to paragraph (2) of subsection b. of this section; make the
37 data available on the department's Internet website; and update the
38 data at least quarterly using the most current data obtained from the
39 National Healthcare Safety Network. The data shall provide details
40 concerning the number of reported infections, by infection type, for
41 each nursing home licensed in the State. The department shall
42 additionally provide on its Internet website data concerning the
43 Statewide and national averages for each type of reported infection
44 in nursing homes.²

45
46 ²[(4. a. There is established in the Department of Health the
47 ¹["Long-Term Care Facility] "Nursing Home"¹ Advisory Council."

1 The purpose of the council shall be to advise the department on
2 matters related to the oversight of ¹~~["long-term care facilities"]~~ nursing
3 homes¹ and on issues concerning ¹~~["long-term care facility"]~~ nursing
4 home¹ residents and their families, as well as to foster communication
5 with the public regarding ¹~~["long-term care facilities"]~~ nursing homes¹ .
6 The responsibilities of the advisory council shall include:
7 (1) analyzing and reviewing the results of inspections ¹and
8 surveys¹ of ¹~~["long-term care facility"]~~ nursing homes¹ conducted by
9 the department, including the penalties assessed against ¹~~["long-term~~
10 ~~care facilities"]~~ nursing homes¹ and the department's adherence to
11 federal guidance concerning state inspections of ¹~~["long-term care~~
12 ~~facilities"]~~ nursing homes¹ ;
13 (2) receiving public comment on the results of ¹~~["long-term care~~
14 ~~facility"]~~ nursing home¹ inspections ¹and surveys¹ ; ¹~~["and"]~~¹
15 (3) consulting with the New Jersey Long-Term Care Ombudsman
16 as necessary ¹; and
17 (4) reviewing the data dashboard established pursuant to paragraph
18 (1) of subsection f. of section 3 of this act to identify areas of concern
19 within the nursing home industry and develop recommendations for
20 policies, plans, or strategies to foster improvements in quality of care,
21 resident and staff safety, and overall performance in nursing homes
22 licensed in the State¹ .
23 b. The advisory council shall consist of ¹~~["seven"]~~ nine¹ members,
24 as follows:
25 (1) the New Jersey Long-Term Care Ombudsman and the
26 Assistant Commissioner for the Division of Medical Assistance and
27 Health Services in the Department of Human Services, or their
28 designees, who shall serve ex officio;
29 (2) one ¹nursing home surveyor employed by the Department of
30 Health, to be named by the Commissioner of Health, who shall serve
31 ex officio;
32 (3) two¹ public ¹~~["member"]~~ members¹ , to be appointed by the
33 Governor, ¹~~["who shall be a representative of the long-term care~~
34 ~~facility industry"]~~ one of whom shall be a representative of a for-profit
35 nursing home and one of whom shall be a representative of a nonprofit
36 nursing home¹ ; and
37 ¹~~["(3)"]~~ ¹(4)¹ four public members who are advocates for residents
38 of ¹~~["long-term care facilities"]~~ nursing homes¹ , with two of the public
39 members to be appointed by the Senate President and two of the public
40 members to be appointed by the Speaker of the General Assembly.
41 c. The public members of the advisory council shall be appointed,
42 and the advisory council shall first organize, no later than 45 days after
43 the effective date of this act. Upon organizing, the advisory council
44 shall select a chairperson and a vice-chairperson from among its
45 members. The chairperson shall appoint a secretary to the advisory
46 council, who need not be a member of the advisory council.

1 d. Public members of the advisory council shall serve for a term
2 of five years, except that, of the members first appointed, ¹~~one~~ two¹
3 shall serve for a term of three years, two shall serve for a term of four
4 years, and two shall serve for a term of five years. Vacancies in the
5 membership shall be filled in the same manner in which the original
6 appointments were made. Public members shall be eligible for
7 reappointment to the advisory council.

8 e. The advisory council shall meet on a quarterly basis at such
9 times and places as shall be designated by the chairperson. A majority
10 of the authorized membership shall constitute a quorum for the
11 purposes of the advisory council taking official action. All meetings
12 of the advisory council shall be open to the public. Agendas, minutes,
13 documents, and testimony from ¹~~all~~ each¹ meeting shall be posted
14 on the Internet website of the Department of Health. The advisory
15 council shall invite the Attorney General or a representative of the
16 Office of the Attorney General, the State Auditor, the State
17 Comptroller, and a representative of the Department of Health to be
18 present at each meeting.

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

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

29 h. The advisory council shall biannually prepare and submit a
30 report concerning its analysis of the Department of Health's oversight
31 and inspections of ¹~~long-term care facilities~~ nursing homes¹ along
32 with any recommendations for legislative or administrative action to
33 the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
34 19.1), to the Legislature. The advisory council may provide additional
35 recommendations to the Department of Health at any time upon
36 request by the department.]²

37
38 ²4. The department may adopt any regulations necessary to
39 effectuate the purposes of this act on an expedited basis, which
40 regulations shall be effective immediately upon filing with the
41 Office of Administrative Law for a period not to exceed 18 months,
42 and may, thereafter, be amended, adopted or readopted in
43 accordance with the provisions of the "Administrative Procedure
44 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).²

45
46 5. ¹~~This~~ ²~~Sections 1 through 3 of this~~ This² act shall take
47 effect ²~~180 days~~ on the first day of the 10th month² after the date
48 of enactment, ²~~and~~ except that² section 4 of this¹ act shall take
49 effect immediately.