

SENATE, No. 2813

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 10, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

Authorizes temporary rate adjustment for certain nursing facilities; appropriates \$62.3 million.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/25/2020)

1 AN ACT concerning nursing facilities and making an appropriation.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. a. Notwithstanding the provisions of any law or regulation
7 to the contrary, and subject to any federal approvals as may be
8 required, effective October 1, 2020 through June 30, 2021, the
9 reimbursement rate for Class I, Class II, and Class III nursing
10 facilities shall be equal to the rate received on September 30, 2020,
11 plus a 10 percent adjustment. Each facility shall use no less than 60
12 percent of the rate adjustment provided under this section for the
13 sole purpose of increasing wages or supplemental pay for certified
14 nurse aides providing direct care. The remainder of the rate
15 adjustment shall be used for other costs related to coronavirus
16 disease 2019 preparedness and response, including enhancing
17 infection control measures, cleaning, reconfiguration of the facility
18 to support cohorting, procurement of personal protective equipment,
19 testing, or other staff wages and needs.

20 b. To ensure compliance with the provisions of this section,
21 any facility receiving the rate adjustment pursuant to this section
22 shall provide:

23 (1) wage and cost data in a manner and form prescribed by the
24 Commissioner of Human Services; and

25 (2) attestations from the facility owner of adherence to the
26 following infection control protocols, which shall be submitted in a
27 manner and form as shall be prescribed the Commissioner of
28 Health, and which may be required on an ongoing basis:

29 (a) the facility has an outbreak response plan in place as
30 required pursuant to section 1 of P.L.2019, c.243 (C.26:2H-12.87),
31 which plan shall be made available to the public through the
32 facility's Internet website and include effective communication
33 methods for conveying information concerning outbreaks of
34 infectious diseases consistent with the requirements of paragraph
35 (2) of subsection b. of section 1 of P.L.2019, c.243 (C.26:2H-12.87)
36 and guidance issued by the Department of Health; provided that,
37 facilities certified by the federal Centers for Medicare and Medicaid
38 Services may effect notification in compliance with the provisions
39 of subsection (g) of 42 CFR s.483.80;

40 (b) the facility has used the personal protective equipment burn
41 rate calculator made available by the federal Centers for Disease
42 Control and Prevention and:

43 (i) if the facility is not part of a system with eight or more
44 facilities, the facility has at least a two-month supply of personal
45 protective equipment on hand, in accordance with Executive
46 Directive No. 20-026; or

47 (ii) if the facility is part of a system of eight or more facilities,
48 the facility has at least a one-month supply of personal protective

1 equipment on hand, in accordance with Executive Directive No. 20-
2 026;

3 (c) the facility has registered with the Department of Health,
4 authorized the department to access data, and is providing
5 information in accordance with the requirements of Executive
6 Directive No. 20-026; and

7 (d) the facility has implemented a respiratory protection
8 program that complies with the respiratory protection standard for
9 employees established by the federal Occupational Safety and
10 Health Administration, including fit testing and training in donning
11 and doffing personal protective equipment.

12 c. A facility receiving a rate adjustment pursuant to this section
13 that has been cited by the Department of Health for two repeat
14 infection control violations during the period from October 1, 2020
15 through June 30, 2021, including, but not limited to, citations for
16 repeat violations of the staff and resident testing requirements
17 outlined in Executive Directive No. 20-026, may be subject to
18 recoupment of the rate adjustment by the State in an amount not to
19 exceed the total value of the rate adjustment.

20 d. A facility that fails to meet any requirement of this section
21 may be subject to recoupment of the adjustment by the State in an
22 amount not to exceed the total value of the rate adjustment. Any
23 attestation required under paragraph (2) of subsection b. of this
24 section that is filed after a deadline established by the Department
25 of Health or June 30, 2021, whichever is earlier, shall be considered
26 a failure to meet the requirements of this section.

27 e. The Commissioner of Health shall transmit to the
28 Commissioner of Human Services information on any facility that
29 may be subject to recoupment of the rate adjustment as provided in
30 subsection c. or subsection d. of this section.

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32 2. The Commissioner of Human Services shall apply for such
33 State plan amendments or waivers as may be necessary to
34 implement the provisions of this act and to secure federal financial
35 participation for State Medicaid expenditures under the federal
36 Medicaid program and shall receive approval for such State plan
37 amendments or waivers prior to the implementation of this act.

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39 3. There is appropriated from the General Fund to the
40 Department of Human Services \$62.3 million for the purpose of
41 effectuating the provisions of this act.

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43 4. The provisions of this act shall be severable, and if any
44 phrase, clause, sentence, or provision is deemed unenforceable, the
45 decision of the court shall not affect the validity of the remaining
46 provisions of this act.

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48 5. This act shall take effect immediately.

STATEMENT

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This bill establishes a temporary rate adjustment for certain nursing facilities to support certain wage increases and to cover costs related to coronavirus disease 2019 (COVID-19) preparedness.

Specifically, the bill would, subject to any federal approvals as may be required, make the reimbursement rate for Class I, Class II, and Class III nursing facilities equal to the rate received on September 30, 2020, plus a 10 percent adjustment, for the period running from October 1, 2020 through June 30, 2021. Facilities receiving the rate adjustment will be required to use at least 60 percent of the rate adjustment for the sole purpose of increasing wages or supplemental pay for certified nurse aides providing direct care. The remainder of the rate adjustment will be used for other costs related to coronavirus disease 2019 preparedness and response, including enhancing infection control measures, cleaning, reconfiguration of the facility to support cohorting, procurement of personal protective equipment, testing, or other staff wages and needs.

Any facility receiving the rate adjustment under the bill will be required to provide wage and cost data to the Department of Human Services, and attestations from the facility owner to the Department of Health of adherence to certain infection control protocols, including:

(1) the facility has an outbreak response plan in place as required pursuant to section 1 of P.L.2019, c.243 (C.26:2H-12.87), which plan is available to the public through the facility's Internet website and is to include effective communication methods for conveying information concerning outbreaks of infectious diseases at the facility;

(2) the facility has used the personal protective equipment burn rate calculator made available by the federal Centers for Disease Control and Prevention and is maintaining certain minimum supplies of personal protective equipment;

(3) the facility has registered with the Department of Health, authorized the department to access data, and is providing information in accordance with the requirements of Executive Directive No. 20-026, which sets forth requirements for long-term care facilities to reopen; and

(4) the facility has implemented a respiratory protection program is complies with the respiratory protection standard for employees established by the federal Occupational Safety and Health Administration.

A facility receiving a rate adjustment under the bill may be subject to recoupment of the rate adjustment by the State if the facility is cited by the Department of Health for two repeat infection control violations during the period from October 1, 2020 through

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1 June 30, 2021, or if the facility fails to meet any of the requirements
2 set forth in the bill, including failing to file a required attestation on
3 time.

4 The Commissioner of Human Services is to apply for State plan
5 amendments or waivers as may be necessary to implement the
6 provisions of the bill and to secure federal financial participation
7 for State Medicaid expenditures under the federal Medicaid
8 program. The bill will not take effect until the commissioner
9 receives approval for the State plan amendments or waivers.

10 The bill appropriates from the General Fund to the Department
11 of Human Services \$62.3 million for the purpose of effectuating the
12 provisions of the bill.

13 The provisions of the bill will be held severable, and if any
14 phrase, clause, sentence, or provision is deemed unenforceable, the
15 decision of the court will not affect the validity of the remaining
16 provisions of the bill.