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Assemblywomen Reynolds-Jackson, McKnight, Assemblymen Johnson,
Caputo, Tully, Assemblywomen Swain, Jasey, Lampitt, Lopez, Senators
Diegnan, Greenstein, O'Scanlon, Pou and Ruiz

SYNOPSIS
Establishes minimum wage requirements for certain long-term care
facility staff; establishes direct care ratio requirements for nursing homes;
requires nursing home care rate study.

CURRENT VERSION OF TEXT
As reported by the Assembly Appropriations Committee on August 24,
2020, with amendments.

(Sponsorship Updated As Of: 8/27/2020)
AN ACT concerning long-term care facilities, amending P.L.1966, c.113, and supplementing Title 30 of the Revised Statutes.

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

1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to read as follows:
2. As used in this act:
(a) "Commissioner" means the Commissioner of Labor and Workforce Development.
(b) "Director" means the director in charge of the bureau referred to in section 3 of this act.
(c) "Wage board" means a board created as provided in section 10 of this act.
(d) "Wages" means any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including the fair value of any food or lodgings supplied by an employer to an employee, and, until December 31, 2018, "wages" includes any gratuities received by an employee for services rendered for an employer or a customer of an employer. The commissioner may, by regulation, establish the average value of gratuities received by an employee in any occupation and the fair value of food and lodging provided to employees in any occupation, which average values shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.
(e) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.
(f) "Employ" includes to suffer or to permit to work.
(g) "Employer" includes any individual, partnership, association, corporation, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
(h) "Employee" includes any individual employed by an employer.
(i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

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 ASE committee amendments adopted August 24, 2020.
2Assembly AAP committee amendments adopted August 24, 2020.
(j) "Minimum fair wage order" means a wage order promulgated pursuant to this act.

(k) "Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

(l) "Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.

(m) "Limousine" means a motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

(n) "Seasonal employment" means employment during a year by an employer that is a seasonal employer, or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.

(o) "Seasonal employer" means an employer who exclusively provides its services in a continuous period of not more than ten weeks during the months of June, July, August, and September, or an employer for which, during the immediately previous calendar year, not less than two thirds of the employer's gross receipts were received in a continuous period of not more than sixteen weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

(p) "Small employer" means any employer who employed less than six employees for every working day during each of a majority
of the calendar workweeks in the current calendar year and less than
six employees for every working day during not less than 48
calendar workweeks in the preceding calendar year, except that, if
the employer was newly established during the preceding calendar
year, the employer shall be regarded as a "small employer" if the
employer employed less than six employees for every working day
during all of the weeks of that year, and during a majority of the
calendar workweeks in the current calendar year, and, if the
employer is newly established during the current calendar year, the
employer shall be regarded as a "small employer" if the employer
employed less than six employees for every working day during a
majority of the calendar workweeks in the current calendar year.

(q) “Long-term care facility direct care staff member” means
any health care professional licensed or certified pursuant to Title
26 or Title 45 of the Revised Statutes who is employed by a long-
term care facility and who provides personal care, assistance, or
treatment services directly to residents of the facility in the course
of the professional’s regular duties.

(cf: P.L.2019, c.32, s.1)

2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
read as follows:

5. a. Except as provided in subsections c., d., e. [and] g., and
i. of this section, each employer shall pay to each of his employees
wages at a rate of not less than $8.85 per hour as of January 1,
2019 and, on January 1 of 2020 and January 1 of each subsequent
year, the minimum wage shall be increased by any increase in the
consumer price index for all urban wage earners and clerical
workers (CPI-W) as calculated by the federal government for the 12
months prior to the September 30 preceding that January 1, except
that any of the following rates shall apply if it exceeds the rate
determined in accordance with the applicable increase in the CPI-W
for the indicated year: on July 1, 2019, the minimum wage shall be
$10.00 per hour; on January 1, 2020, the minimum wage shall be
$11.00 per hour; and on January 1 of each year from 2021 to 2024,
inclusive, the minimum wage shall be increased from the rate of the
preceding year by $1.00 per hour. If the federal minimum hourly
wage rate set by section 6 of the federal "Fair Labor Standards Act
of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
level higher than the State minimum wage rate set by this
subsection, then the State minimum wage rate shall be increased to
the level of the federal minimum wage rate and subsequent
increases based on increases in the CPI-W pursuant to this section
shall be applied to the higher minimum wage rate. If an applicable
wage order has been issued by the commissioner under section 17
(C.34:11-56a16) of this act, the employer shall also pay not less
than the wages prescribed in said order. The wage rates fixed in
this section shall not be applicable to part-time employees primarily
engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

b. (1) An employer shall also pay each employee not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week, except that this overtime rate shall not apply: to any individual employed in a bona fide executive, administrative, or professional capacity; or to employees engaged to labor on a farm or employed in a hotel; or to an employee of a common carrier of passengers by motor bus; or to a limousine driver who is an employee of an employer engaged in the business of operating limousines; or to employees engaged in labor relative to the raising or care of livestock.

(2) Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the applicable minimum hourly wage rate multiplied by the total number of hours worked.

(3) Full-time students may be employed by the college or university at which they are enrolled at not less than 85% of the effective applicable minimum wage rate.

c. Employees of a small employer, and employees who are engaged in seasonal employment, except for employees who customarily and regularly receive gratuities or tips who shall be subject to the provisions of subsections a. and d. of this section, shall be paid $8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on January 1, 2020, the minimum wage shall be $10.30 per hour; and on January 1 of each year from 2021 to 2025, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in 2026, the minimum wage shall be increased from the rate of the preceding year by seventy cents per hour, and, in each year from 2027 to 2028 inclusive, the minimum wage for employees subject to this subsection c. shall be increased by the same amount as the increase
for employees subject to subsection a. of this section based on CPI-W increases, plus one half of the difference between $15.00 per hour and the minimum wage in effect in 2026 for employees pursuant to subsection a. of this section, so that, by 2028, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.  

  d. Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid $8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: 

(1) on January 1, 2020, the minimum wage shall be $10.30 per hour; on January 1, 2022, the minimum wage shall be $10.90 per hour; and on January 1 of each year from 2023 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour; and 

(2) subject to the provisions of paragraph (3) of this subsection d., minimum wage rates shall be increased as follows: on January 1 of 2025, the minimum wage shall be increased to $13.40, and on January 1 of each year from 2026 to 2027, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in each year from 2028 to 2030 inclusive, the minimum wage for employees subject to this subsection d. shall be increased during that year by the same amount as the increase in that year for employees subject to subsection a. of this section based on CPI-W increases, plus one third of the difference between $15.00 per hour and the minimum wage in effect in 2027 for employees pursuant to subsection a. of this section, so that, by 2030, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section. 

(3) Not later than March 31, 2024, the commissioner and the Secretary of Agriculture shall review the report issued by the commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32 (C.34:11-56a4.10) and shall consider any information provided
by the secretary regarding the impact on farm employers and the
viability of the State's agricultural industry of the increases of the
minimum wage made pursuant to paragraph (1) of this subsection,
and the potential impact of the increases which would be set by
paragraph (2) of this subsection, including comparisons with the
wage rates in the agricultural industries in other states, and shall
recommend: approval of the increases set forth in paragraph (2) of
this subsection; disapproval of the increases set forth in paragraph
(2) of this subsection; or an alternative manner of changing the
minimum wage after 2024 for employees engaged on a piece-rate or
regular hourly rate basis to labor on a farm. In contemplation of the
possibility that the commissioner and the secretary are unable to
agree on the recommendation required by this paragraph, by
December 31, 2021, the Governor shall appoint a public member
subject to advice and consent by the Senate, who will serve as a tie-
breaking member if needed. The increases set forth in paragraph (2)
of this subsection shall take effect unless there is a recommendation
pursuant to this paragraph to disapprove the increases or for an
alternative manner of changing the minimum wage after 2024 for
employees engaged on a piece-rate or regular hourly rate basis to
labor on a farm and the Legislature, not later than June 30, 2024,
enacts a concurrent resolution approving the implementation of that
recommendation. Beginning in 2024, the commissioner, secretary,
and public member shall meet biennially to make either a one or
two year recommendation to the Legislature for implementation by
way of concurrent resolution.

(4) If the federal minimum hourly wage rate set by section 6 of
the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
a successor federal law, is raised to a level higher than the State
minimum wage rate set by this subsection, then the State minimum
wage rate shall be increased to the level of the federal minimum
wage rate and subsequent increases based on increases in the CPI-
W pursuant to this subsection shall be applied to the higher
minimum wage rate.

e. With respect to an employee who customarily and regularly
receives gratuities or tips, every employer is entitled to a credit for
the gratuities or tips received by the employee against the hourly
wage rate that would otherwise be paid to the employee pursuant to
subsection a. of this section of the following amounts: after
December 31, 2018 and before July 1, 2019, $6.72 per hour; after
June 30, 2019 and before January 1, 2020, $7.37 per hour; during
calendar years 2020, 2021 and 2022, $7.87 per hour; during
calendar year 2023, $8.87 per hour; and during calendar year 2024
and subsequent calendar years, $9.87 per hour.
f. Notwithstanding the provisions of this section to the
contrary, every trucking industry employer shall pay to all drivers,
helpers, loaders and mechanics for whom the Secretary of
Transportation may prescribe maximum hours of work for the safe
operation of vehicles, pursuant to section 31502(b) of the federal
Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
than 1 1/2 times the minimum wage required pursuant to this
section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
industry shall be paid no less than the minimum wage rate as
provided in this section and N.J.A.C. 12:56-3.1. As used in this
section, "truck industry employer" means any business or
establishment primarily operating for the purpose of conveying
property from one place to another by road or highway, including
the storage and warehousing of goods and property. Such an
employer shall also be subject to the jurisdiction of the Secretary of
Transportation pursuant to the federal Motor Carrier Act, 49
U.S.C.s.31501 et seq., whose employees are exempt under section
213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
U.S.C. s.213(b)(1), which provides an exemption to employees
regulated by section 207 of the federal "Fair Labor Standards Act of
U.S.C. s.501 et al.

Commencing on January 1, 2020, a training wage of not less
than 90 percent of the minimum wage rate otherwise set pursuant to
subsection a. of this section may be paid to an employee who is
enrolled in an established employer on-the-job or other training
program which meets standards set by regulations adopted by the
commissioner. The period during which an employer may pay the
training wage to the employee shall be the first 120 hours of work
after hiring the employee in employment in an occupation in which
the employee has no previous similar or related experience. An
employer shall not utilize any employee paid the training wage in a
manner which causes, induces, encourages or assists any
displacement or partial displacement of any currently employed
worker, including any previous recipient of the training wage, by
reducing hours of a currently employed worker, replacing a current
or laid off employee with a trainee, or by relocating operations
resulting in a loss of employment at a previous workplace, or in a
manner which replaces, supplants, competes with or duplicates any
approved apprenticeship program. An employer who pays an
employee a training wage shall make a good faith effort to continue
to employ the employee after the period of the training wage
expires and shall not hire the employee at the training wage unless
there is a reasonable expectation that there will be regular
employment, paying at or above the effective minimum wage, for
the trainee upon the successful completion of the period of the
training wage. If the commissioner determines that an employer
has made repeated, knowing violations of the provisions of this
subsection regarding the payment of a training wage, the
commissioner shall suspend the employer's right to pay a training
wage for a period set pursuant to regulations adopted by the
commissioner, but not less than three years.
h. The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

i. Effective on the first day of the second month next following the effective date of P.L. ____, c. ____ (pending before the Legislature as this bill), the minimum wage for long-term care facility direct care staff members shall be in an amount that is $3 higher than the prevailing minimum wage established pursuant to subsection a. of this section 1[.] which minimum wage rate shall be annually increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, plus any amount as is necessary to ensure that the minimum wage established pursuant to this subsection is $3 higher than the prevailing minimum wage then in effect under subsection a. of this section 1[.]

(cf: P.L.2019, c.32, s.2)

3. (New section) a. The Commissioner of Human Services shall submit recommendations to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), 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 as provided in subsection i. of section 5 of P.L.1966, c.113 (C.34:11-56a4). The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics 1[.] including, but not limited to:

(1) meeting nursing home staffing requirements; and

(2) implementing policies for improved communication between the nursing home and Managed Long Term Services and Supports and care managers]

b. No later than 90 days after the effective date of this act, the Commissioner of Human Services shall 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, and shall review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

c. (1) [No later than 90 days after the effective date of this act, the] The Commissioner of Human Services shall establish a direct care \(^1\) loss \(^1\) ratio reporting and rebate requirement \(^1\), which shall take effect no later than July 1, 2021 \(^1\), pursuant to which nursing homes shall 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 \(^1\), and any other factors as the commissioner shall require \(^1\).

(2) [The] The direct care ratio shall require 90 percent, or such higher percentage as the commissioner may establish by regulation, of a facility’s aggregate revenue in a fiscal year to be expended on the direct care of residents. \(^1\) The commissioner shall determine \([\text{the maximum proportion of revenues that may be dedicated to}]\) which components of the reporting requirements shall be attributed to direct patient care, \(\text{administrative costs}\), \(\text{and profits}\). The commissioner \([\text{shall determine the exact ratio based on historical cost reports, and}]\) 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.

(3) The commissioner \(\text{or an entity designated by the commissioner}\) may conduct an audit of the financial information reported by nursing homes pursuant to this section to ensure the accuracy of the information reported and compliance with the requirements of this section, as well as to identify and recover any payments that exceed the allowed cost ratio for administrative costs and profits.

(4) In each case where the direct care loss ratio fails to substantially comply with the ratio requirement established pursuant to this subsection, the nursing home shall 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, \(\text{and other factors}\), plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit shall 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
shall be distributed by [December 31] June 30 of the year
following the calendar year in which the ratio requirements were
not satisfied.

4. No later than 60 days after the effective date of this act, the
Commissioner of Human Services or an entity designated by the
commissioner shall initiate a study of the costs and payments
associated with nursing home care, which study shall focus on, and
include recommendations concerning, adjusting reimbursement
rates to account for differences in resident acuity levels, as well as
other factors as may be relevant to nursing home costs and
payments. The commissioner shall prepare and submit an interim
report concerning the status of the study no later than one year after
the effective date of this act, and shall prepare and submit a final
report of the findings and recommendations of the study to the
Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
19.1), to the Legislature, no later than January 1, 2022.

5. The Commissioner of Human Services shall apply for
such State plan amendments or waivers as may be necessary to
implement the provisions of this act and to secure federal financial
participation for State Medicaid expenditures under the federal
Medicaid program.

This act shall take effect immediately.