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:
Senator Pou

SYNOPSIS
Establishes additional requirements for DOH to assess sanctions and impose penalties on long-term care facilities; revises reporting requirements for facilities.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 8/13/2020)
AN ACT concerning long-term care facilities and supplementing Title 26 of the Revised Statutes.

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

1. No later than 60 days after the effective date of this act, the Department of Health shall develop a system of scaling actions and penalties for repeat violations of State and federal requirements for long-term care facility administration and operations, which actions and penalties shall include:
   a. Conducting a licensure survey of a long-term care facility with three or more violations in a single year at least once every two years for the next four years, or at more frequent intervals for a period longer than four years, if circumstances warrant greater or more frequent oversight; and
   b. Assessing enhanced sanctions and other penalties for continued or repeat noncompliance with department regulations, particularly when the facility is cited multiple times for the same violation or when violations involve noncompliance with infection control requirements, which enhanced sanctions and penalties shall include:
      (1) a series of escalating fines for repeated violations or multiple violations by the same facility, as well as increased fines when a violation results in severe adverse health consequences for a resident or staff member of the facility; and
      (2) a series of escalating licensure actions for repeated violations or multiple violations by the same facility, particularly in cases where a violation results in severe adverse health consequences for a resident or staff member at the facility, which licensure actions shall include: suspending, terminating, or revoking the facility’s license; restricting new admissions to the facility; requiring the transfer of residents to another facility; or, in the case of a nursing home, petitioning a court of competent jurisdiction for appointment of a receiver in accordance with the provisions of P.L.1977, c.238 (C.26:2H-36 et seq.).
   c. The department shall evaluate staffing levels and competency by resident acuity and complexity, and establish a system to impose greater responsibility on each long-term care facility’s medical director for quality outcomes at the facility, including imposing specific penalties or sanctions against the medical director for repeated failure to produce improvements in quality outcomes at the facility.

2. To facilitate enforcement of department rules and requirements concerning long-term care facility operations, no later than 60 days after the effective date of this act, the department shall request and consolidate data concerning long-term care facilities
reported to other State and federal authorities, including the federal Centers for Medicare and Medicaid Services, the Department of Human Services, Medicaid managed care plans, and the Long-Term Care Ombudsman, in order to identify long-term care facilities with consistent or repeated performance issues, ongoing compliance issues, or high numbers of substantiated complaints. The department shall make the consolidated data collected under this subsection available upon request to other State and federal entities having jurisdiction over long-term care facilities in the State.

3. a. No later than 60 days after the effective date of this act, the department shall undertake a review of reporting requirements for long-term care facilities and shall take steps to standardize and consolidate the reporting requirements for the purpose of: reducing the administrative demand on the facilities of complying with reporting requirements; developing updated standardized data reporting requirements; and improving the utility of the reported data and the ability to share the data across systems, including systems maintained by other State departments and agencies, county and local agencies, and federal authorities. The department’s review shall include:

   (1) identifying and eliminating duplicative reporting;
   (2) establishing standardized formats, requirements, protocols, and systems for data reporting, which may include requiring facilities to report data in machine-readable formats to facilitate the processing and analysis of reported data;
   (3) establishing a centralized, cross-agency workgroup to monitor long-term care facility reporting;
   (4) assessing State health information technology needs to support technology-enabled and data-driven regulatory oversight across State departments and agencies, anticipate potential uses for the enhanced technologies and systems, enable systems to readily accept and analyze additional data metrics required pursuant to subsection b. of this section, and identify opportunities to centralize and modernize State health data infrastructure, processes, and analytic capabilities;
   (5) assessing long-term care facility health information technology needs to support population health management, interoperability, and modernized reporting requirements; and
   (6) identifying and applying for federal funding to support health information technology infrastructure development.

b. (1) The department shall require all long-term care facilities to file with the department monthly and quarterly unaudited financial information, quarterly unaudited financial statements, annual audited financial statements, and such other financial information as the department may request. The information and statements reported by facilities pursuant to this paragraph shall be
posted on the department’s Internet website and updated as the
information or statements become available.

(2) The department shall require all long-term care facilities to
annually report to the department the number and severity of
facility-acquired infections occurring among residents of the long-
term care facility in the preceding year involving:
(a) Methicillin-resistant Staphylococcus aureus (MRSA);
(b) Clostridium difficile (C.Diff);
(c) Surgical Site Infections After Colon Surgery (SSI-Colon);
(d) Central Line-Associated Bloodstream Infections (CLABSI);
(e) Catheter-Associated Urinary Tract Infections (CAUTI); and
(f) any other facility-acquired infection for which the
department requires annual reporting pursuant to regulations
adopted by the Commissioner of Health.

c. The department shall develop additional data reporting
requirements for long-term care facilities as are necessary to
improve market transparency and facilitate the department’s ability
to oversee and regulate operations in long-term care facilities,
including, but not limited to, data related to occupancy, operating
expenses and other appropriate financial metrics, and utilization and
staffing data. In developing additional reporting requirements
pursuant to this subsection, the department shall solicit feedback
from long-term care facilities and managed care plans concerning
proposed new data metrics, methods of maximizing the efficiency
of data collection and specification, minimizing duplicative data
reporting, and identifying ways to consolidate, automate, or
streamline the data required to be reported by State and federal
agencies and managed care plans.

d. No later than 30 days after the effective date of this act, the
department shall establish centralized State protocols for long-term
care facility communications to reduce duplicative outreach and
enhance information sharing capabilities.

e. The department shall require long-term care facilities to:
(1) post on their Internet websites any policies or plans required
to be in place at the facility pursuant to State law; and
(2) have a dedicated staff person available at all times to
respond to questions from the public concerning the policies and
plans required to be posted on the facility’s Internet website under
paragraph (1) of this subsection. The contact information for the
facility’s designated staff person shall be posted on the facility’s
Internet website.

f. The department shall analyze data reported by long-term
care facilities for oversight purposes and shall make the results of
its analysis public whenever possible. At a minimum, the
department shall:
(1) develop, make available on its Internet website, and update
at least monthly, a data dashboard that includes the data reported by
each long-term care facility licensed in the State, including:
(a) an overall performance score;
(b) the total number of complaints involving the facility, the number and nature of substantiated complaints involving the facility, the number of open investigations of complaints involving the facility, and the total number of outstanding complaints involving the facility that have not been investigated or resolved;
(c) the facility’s star rating issued by the federal Centers for Medicare and Medicaid Services;
(d) the dates and results of inspections of the facility by the Department of Health, the Department of Human Services, and the federal Centers for Medicare and Medicaid Services, including links to any deficiencies or violations for which the facility was cited and to any corrective action plans in place at the facility;
(e) a breakdown of any costs and financial data reported by the facility;
(f) general staffing levels at the facility and rates of compliance with mandatory staffing ratios, along with the average and overall number of shifts during which the facility was out of compliance with staffing ratios;
(g) the frequency with which antipsychotic medication was administered to facility residents;
(h) the number of residents who developed a pressure ulcer, including the number of residents who developed multiple pressure ulcers;
(i) the number of facility-acquired infections at the facility as reported pursuant to paragraph (2) of subsection b. of this section, including details concerning the relative severity of the facility-acquired infections; and
(j) such other data as the department determines appropriate to allow the public to make informed choices when evaluating and selecting a long-term care facility; and

(2) prepare and publish on its Internet website annual reports on New Jersey’s long-term care system of care.

4. a. There is established in the Department of Health the “Long-Term Care Facility Advisory Council.” The purpose of the council shall be to advise the department on matters related to the oversight of long-term care facilities and on issues concerning long-term care facility residents and their families, as well as to foster communication with the public regarding long-term care facilities. The responsibilities of the advisory council shall include:
(1) analyzing and reviewing the results of inspections of long-term care facility conducted by the department, including the penalties assessed against long-term care facilities and the department’s adherence to federal guidance concerning state inspections of long-term care facilities;
(2) receiving public comment on the results of long-term care facility inspections; and
(3) consulting with the New Jersey Long-Term Care Ombudsman as necessary.

b. The advisory council shall consist of seven members, as follows:

(1) the New Jersey Long-Term Care Ombudsman and the Assistant Commissioner for the Division of Medical Assistance and Health Services in the Department of Human Services, or their designees, who shall serve ex officio;

(2) one public member, to be appointed by the Governor, who shall be a representative of the long-term care facility industry; and

(3) four public members who are advocates for residents of long-term care facilities, with two of the public members to be appointed by the Senate President and two of the public members to be appointed by the Speaker of the General Assembly.

c. The public members of the advisory council shall be appointed, and the advisory council shall first organize, no later than 45 days after the effective date of this act. Upon organizing, the advisory council shall select a chairperson and a vice-chairperson from among its members. The chairperson shall appoint a secretary to the advisory council, who need not be a member of the advisory council.

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

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

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

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

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

5. This act shall take effect immediately.

STATEMENT

This bill requires the Department of Health (DOH) to establish,
no later than 60 days after the effective date of the bill, a scaling
system of actions and penalties for long-term care facilities in
violation of State and federal requirements for long-term care
facility operation, establishes various requirements concerning
reporting requirements for long-term care facilities, and establishes
the Long-Term Care Facility Advisory Council.

The system of scaling actions and penalties to be developed by
the DOH will include: mandatory licensure surveys of long-term
care facilities with three or more violations in a single year, with at
least one survey to be completed every two years for the succeeding
four years unless more frequent surveys are warranted; and
assessing enhanced sanctions and other penalties for continued or
repeat noncompliance with DOH regulations, particularly when the
facility is cited multiple times for the same violation or when
violations involve noncompliance with infection control
requirements.

The enhanced sanctions and penalties will include a series of
escalating fines for severe violations or multiple violations by the
same facility, as well as a series of escalating licensure actions for
repeated violations or multiple violations by the same facility.
These licensure actions may include suspending, terminating, or
revoking the facility’s license, restricting new admissions to the
facility, requiring the transfer of residents to another facility, or, in
the case of a nursing home, petitioning a court of competent
jurisdiction for the appointment of a receiver.

No later than 60 days after the effective date of the bill, the DOH
will be required to evaluate staffing levels and competency by
resident acuity and complexity and establish a system to impose
greater responsibility on each long-term care facility’s medical
director for quality outcomes at the facility, including imposing
specific penalties or sanctions against the medical director for
repeated failure to produce improvements in quality outcomes at the facility.

To facilitate enforcement of the rules and requirements for long-term care facility operations, no later than 60 days after the effective date of the bill, the DOH is to request and consolidate data concerning long-term care facilities reported to other State and federal authorities in order to identify long-term care facilities with consistent or repeated performance issues, ongoing compliance issues, or high numbers of substantiated complaints. The DOH is to make the consolidated data available upon request to other State and federal entities having jurisdiction over long-term care facilities in New Jersey.

The bill additionally requires the DOH, within 60 days after the effective date of the bill, to undertake a review of reporting requirements for long-term care facilities and take steps to standardize and consolidate the reporting requirements for the purpose of reducing the administrative demand on the facilities of complying with reporting requirements, developing updated standardized data reporting requirements, and improving the utility of the reported data and the ability to share the data across systems, including systems maintained by other State departments and agencies, county and local agencies, and federal authorities. The DOH’s review is to include:

(1) identifying and eliminating duplicative reporting;
(2) establishing standardized formats, requirements, protocols, and systems for data reporting, which may include requiring facilities to report data in machine-readable formats;
(3) establishing a centralized, cross-agency workgroup to monitor long-term care facility reporting;
(4) assessing State health information technology needs to support technology-enabled and data-driven regulatory oversight across State departments and agencies, anticipate potential uses for the enhanced technologies and systems, enable systems to readily accept and analyze additional data metrics, and identify opportunities to centralize and modernize State health data infrastructure, processes, and analytic capabilities;
(5) assessing long-term care facility health information technology needs to support population health management, interoperability, and modernized reporting requirements; and
(6) identifying and applying for federal funding to support health information technology infrastructure development.

The bill requires all long-term care facilities to file with the DOH monthly and quarterly unaudited financial information, quarterly unaudited financial statements, annual audited financial statements, and such other financial information as the department may request. The information and statements will be posted on the department’s Internet website and updated as they become available.
The bill additionally requires all long-term care facilities to annually report to the DOH the number and severity of facility-acquired infections occurring among residents of the long-term care facility in the preceding year involving: Methicillin-resistant Staphylococcus aureus (MRSA); Clostrum difficile (C.Diff); Surgical Site Infections After Colon Surgery (SSi-Colon); Central Line-Associated Bloodstream Infections (CLABSI); Catheter-Associated Urinary Tract Infections (CAUTI); and any other facility-acquired infection for which the DOH requires annual reporting by regulation.

The DOH will be required to develop additional data reporting requirements for long-term care facilities as are necessary to improve market transparency and facilitate the department’s ability to oversee and regulate operations in long-term care facilities, including, but not limited to, data related to occupancy, operating expenses and other appropriate financial metrics, and utilization and staffing data. In developing additional reporting requirements, the department is to solicit feedback from long-term care facilities and managed care plans concerning proposed new data metrics, methods of maximizing the efficiency of data collection and specification, minimizing duplicative data reporting, and identifying ways to consolidate, automate, or streamline reported data.

The DOH will also be required to establish, no later than 30 days after the effective date of the bill, centralized State protocols for long-term care facility communications to reduce duplicative outreach and enhance information sharing capabilities.

Long-term care facilities will be required to post on their Internet websites any policies or plans required to be in place at the facility pursuant to State law and have a dedicated staff person available at all times to respond to questions from the public concerning the policies and plans required to be posted on the facility’s Internet website.

The DOH will be required to analyze data reported by long-term care facilities for oversight purposes and make the results of its analysis public whenever possible. At a minimum, the DOH will be required to develop, make available on its Internet website, and update at least monthly, a data dashboard that includes the data reported by each long-term care facility licensed in the State. The data dashboard will include: an overall performance score; details concerning the number and status of complaints involving the facility; the facility’s star rating issued by the federal Centers for Medicare and Medicaid Services (CMS); the dates and results of inspections of the facility by the DOH, the Department of Human Services, and CMS, including links to any deficiencies or violations for which the facility was cited and to any corrective action plans in place at the facility; a breakdown of any costs and financial data reported by the facility; general staffing levels at the facility and rates of compliance with mandatory staffing ratios; the frequency
with which antipsychotic medication was administered to facility residents; information concerning pressure ulcers and facility-acquired infections; and any other data required by the DOH. The DOH will additionally be required to prepare and publish on its Internet website annual reports on New Jersey’s long-term care system of care.

The bill establishes in the DOH the “Long-Term Care Facility Advisory Council.” The purpose of the council will be to advise the DOH on matters related to the oversight of long-term care facilities and on issues concerning long-term care facility residents and their families, as well as to foster communication with the public regarding long-term care facilities. The responsibilities of the advisory council will include:

1. analyzing and reviewing the results of long-term care facility inspection conducted by the DOH, including the penalties assessed against long-term care facilities and the department’s adherence to federal guidance concerning state inspections of long-term care facilities;
2. receiving public comment on the results of long-term care facility inspections; and
3. consulting with the New Jersey Long-Term Care Ombudsman as necessary.

The advisory council will consist of seven members, including: the New Jersey Long-Term Care Ombudsman and the Assistant Commissioner for the Division of Medical Assistance and Health Services in the Department of Human Services, or their designees, who will serve ex officio; one public member, to be appointed by the Governor, who is to be a representative of the long-term care facility industry; and four public members who are advocates for residents of long-term care facilities, with two of the public members to be appointed by the Senate President and two of the public members to be appointed by the Speaker of the General Assembly.

The public members of the advisory council are to be appointed, and the advisory council is to organize, no later than 45 days after the effective date of the bill.

The advisory council will meet on a quarterly basis at times and places as may be designated by the chairperson. All meetings of the advisory council will be open to the public, and agendas, minutes, documents, and testimony from all meeting will be posted on the DOH’s Internet website. The advisory council will be required to invite the Attorney General or a representative of the Office of the Attorney General, the State Auditor, the State Comptroller, and a representative of the SOH to be present at each meeting.

The advisory council will be required to prepare and submit biannual reports concerning its analysis of the DOH’s oversight and inspections of long-term care facilities along with any recommendations for legislative or administrative action to the
Governor and to the Legislature. The advisory council will be authorized to provide additional recommendations to the DOH at any time upon request.