

# 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)**

1 AN ACT concerning long-term care facilities and supplementing  
2 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 1. No later than 60 days after the effective date of this act, the  
8 Department of Health shall develop a system of scaling actions and  
9 penalties for repeat violations of State and federal requirements for  
10 long-term care facility administration and operations, which actions  
11 and penalties shall include:

12 a. Conducting a licensure survey of a long-term care facility  
13 with three or more violations in a single year at least once every  
14 two years for the next four years, or at more frequent intervals for a  
15 period longer than four years, if circumstances warrant greater or  
16 more frequent oversight; and

17 b Assessing enhanced sanctions and other penalties for  
18 continued or repeat noncompliance with department regulations,  
19 particularly when the facility is cited multiple times for the same  
20 violation or when violations involve noncompliance with infection  
21 control requirements, which enhanced sanctions and penalties shall  
22 include:

23 (1) a series of escalating fines for repeated violations or multiple  
24 violations by the same facility, as well as increased fines when a  
25 violation results in severe adverse health consequences for a  
26 resident or staff member of the facility; and

27 (2) a series of escalating licensure actions for repeated  
28 violations or multiple violations by the same facility, particularly in  
29 cases where a violation results in severe adverse health  
30 consequences for a resident or staff member at the facility, which  
31 licensure actions shall include: suspending, terminating, or  
32 revoking the facility's license; restricting new admissions to the  
33 facility; requiring the transfer of residents to another facility; or, in  
34 the case of a nursing home, petitioning a court of competent  
35 jurisdiction for appointment of a receiver in accordance with the  
36 provisions of P.L.1977, c.238 (C.26:2H-36 et seq.).

37 c. The department shall evaluate staffing levels and  
38 competency by resident acuity and complexity, and establish a  
39 system to impose greater responsibility on each long-term care  
40 facility's medical director for quality outcomes at the facility,  
41 including imposing specific penalties or sanctions against the  
42 medical director for repeated failure to produce improvements in  
43 quality outcomes at the facility.

44

45 2. To facilitate enforcement of department rules and  
46 requirements concerning long-term care facility operations, no later  
47 than 60 days after the effective date of this act, the department shall  
48 request and consolidate data concerning long-term care facilities

1 reported to other State and federal authorities, including the federal  
2 Centers for Medicare and Medicaid Services, the Department of  
3 Human Services, Medicaid managed care plans, and the Long-Term  
4 Care Ombudsman, in order to identify long-term care facilities with  
5 consistent or repeated performance issues, ongoing compliance  
6 issues, or high numbers of substantiated complaints. The  
7 department shall make the consolidated data collected under this  
8 subsection available upon request to other State and federal entities  
9 having jurisdiction over long-term care facilities in the State.

10

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

22 (1) identifying and eliminating duplicative reporting;

23 (2) establishing standardized formats, requirements, protocols,  
24 and systems for data reporting, which may include requiring  
25 facilities to report data in machine-readable formats to facilitate the  
26 processing and analysis of reported data;

27 (3) establishing a centralized, cross-agency workgroup to  
28 monitor long-term care facility reporting;

29 (4) assessing State health information technology needs to  
30 support technology-enabled and data-driven regulatory oversight  
31 across State departments and agencies, anticipate potential uses for  
32 the enhanced technologies and systems, enable systems to readily  
33 accept and analyze additional data metrics required pursuant to  
34 subsection b. of this section, and identify opportunities to centralize  
35 and modernize State health data infrastructure, processes, and  
36 analytic capabilities;

37 (5) assessing long-term care facility health information  
38 technology needs to support population health management,  
39 interoperability, and modernized reporting requirements; and

40 (6) identifying and applying for federal funding to support  
41 health information technology infrastructure development.

42 b. (1) The department shall require all long-term care facilities  
43 to file with the department monthly and quarterly unaudited  
44 financial information, quarterly unaudited financial statements,  
45 annual audited financial statements, and such other financial  
46 information as the department may request. The information and  
47 statements reported by facilities pursuant to this paragraph shall be

1 posted on the department's Internet website and updated as the  
2 information or statements become available.

3 (2) The department shall require all long-term care facilities to  
4 annually report to the department the number and severity of  
5 facility-acquired infections occurring among residents of the long-  
6 term care facility in the preceding year involving:

7 (a) Methicillin-resistant Staphylococcus aureus (MRSA);

8 (b) Clostrum difficile (C.Diff);

9 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);

10 (d) Central Line-Associated Bloodstream Infections (CLABSI);

11 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and

12 (f) any other facility-acquired infection for which the  
13 department requires annual reporting pursuant to regulations  
14 adopted by the Commissioner of Health.

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

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

33 e. The department shall require long-term care facilities to:

34 (1) post on their Internet websites any policies or plans required  
35 to be in place at the facility pursuant to State law; and

36 (2) have a dedicated staff person available at all times to  
37 respond to questions from the public concerning the policies and  
38 plans required to be posted on the facility's Internet website under  
39 paragraph (1) of this subsection. The contact information for the  
40 facility's designated staff person shall be posted on the facility's  
41 Internet website.

42 f. The department shall analyze data reported by long-term  
43 care facilities for oversight purposes and shall make the results of  
44 its analysis public whenever possible. At a minimum, the  
45 department shall:

46 (1) develop, make available on its Internet website, and update  
47 at least monthly, a data dashboard that includes the data reported by  
48 each long-term care facility licensed in the State, including:

- 1 (a) an overall performance score;
- 2 (b) the total number of complaints involving the facility, the  
3 number and nature of substantiated complaints involving the  
4 facility, the number of open investigations of complaints involving  
5 facility, and the total number of outstanding complaints involving  
6 the facility that have not been investigated or resolved;
- 7 (c) the facility's star rating issued by the federal Centers for  
8 Medicare and Medicaid Services;
- 9 (d) the dates and results of inspections of the facility by the  
10 Department of Health, the Department of Human Services, and the  
11 federal Centers for Medicare and Medicaid Services, including links  
12 to any deficiencies or violations for which the facility was cited and  
13 to any corrective action plans in place at the facility;
- 14 (e) a breakdown of any costs and financial data reported by the  
15 facility;
- 16 (f) general staffing levels at the facility and rates of compliance  
17 with mandatory staffing ratios, along with the average and overall  
18 number of shifts during which the facility was out of compliance  
19 with staffing ratios;
- 20 (g) the frequency with which antipsychotic medication was  
21 administered to facility residents;
- 22 (h) the number of residents who developed a pressure ulcer,  
23 including the number of residents who developed multiple pressure  
24 ulcers;
- 25 (i) the number of facility-acquired infections at the facility as  
26 reported pursuant to paragraph (2) of subsection b. of this section,  
27 including details concerning the relative severity of the facility-  
28 acquired infections; and
- 29 (j) such other data as the department determines appropriate to  
30 allow the public to make informed choices when evaluating and  
31 selecting a long-term care facility; and
- 32 (2) prepare and publish on its Internet website annual reports on  
33 New Jersey's long-term care system of care.

34  
35 4. a. There is established in the Department of Health the  
36 "Long-Term Care Facility Advisory Council." The purpose of the  
37 council shall be to advise the department on matters related to the  
38 oversight of long-term care facilities and on issues concerning long-  
39 term care facility residents and their families, as well as to foster  
40 communication with the public regarding long-term care facilities.  
41 The responsibilities of the advisory council shall include:

- 42 (1) analyzing and reviewing the results of inspections of long-  
43 term care facility conducted by the department, including the  
44 penalties assessed against long-term care facilities and the  
45 department's adherence to federal guidance concerning state  
46 inspections of long-term care facilities;
- 47 (2) receiving public comment on the results of long-term care  
48 facility inspections; and

- 1 (3) consulting with the New Jersey Long-Term Care  
2 Ombudsman as necessary.
- 3 b. The advisory council shall consist of seven members, as  
4 follows:
- 5 (1) the New Jersey Long-Term Care Ombudsman and the  
6 Assistant Commissioner for the Division of Medical Assistance and  
7 Health Services in the Department of Human Services, or their  
8 designees, who shall serve ex officio;
- 9 (2) one public member, to be appointed by the Governor, who  
10 shall be a representative of the long-term care facility industry; and
- 11 (3) four public members who are advocates for residents of  
12 long-term care facilities, with two of the public members to be  
13 appointed by the Senate President and two of the public members to  
14 be appointed by the Speaker of the General Assembly.
- 15 c. The public members of the advisory council shall be  
16 appointed, and the advisory council shall first organize, no later  
17 than 45 days after the effective date of this act. Upon organizing,  
18 the advisory council shall select a chairperson and a vice-  
19 chairperson from among its members. The chairperson shall  
20 appoint a secretary to the advisory council, who need not be a  
21 member of the advisory council.
- 22 d. Public members of the advisory council shall serve for a  
23 term of five years, except that, of the members first appointed, one  
24 shall serve for a term of three years, two shall serve for a term of  
25 four years, and two shall serve for a term of five years. Vacancies  
26 in the membership shall be filled in the same manner in which the  
27 original appointments were made. Public members shall be eligible  
28 for reappointment to the advisory council.
- 29 e. The advisory council shall meet on a quarterly basis at such  
30 times and places as shall be designated by the chairperson. A  
31 majority of the authorized membership shall constitute a quorum for  
32 the purposes of the advisory council taking official action. All  
33 meetings of the advisory council shall be open to the public.  
34 Agendas, minutes, documents, and testimony from all meeting shall  
35 be posted on the Internet website of the Department of Health. The  
36 advisory council shall invite the Attorney General or a  
37 representative of the Office of the Attorney General, the State  
38 Auditor, the State Comptroller, and a representative of the  
39 Department of Health to be present at each meeting.
- 40 f. The members of the advisory council shall serve without  
41 compensation, but shall be eligible for reimbursement for necessary  
42 and reasonable expenses incurred in the performance of their duties  
43 on the council, within the limits of funds appropriated or otherwise  
44 made available to the advisory council for its purposes.
- 45 g. The advisory council shall be entitled to receive assistance  
46 and services from any State, county, or municipal department,  
47 board, commission, or agency, as may be available to it for its

1 purposes. The Department of Health shall provide staff and  
2 administrative support to the advisory council.

3 h. The advisory council shall biannually prepare and submit a  
4 report concerning its analysis of the Department of Health's  
5 oversight and inspections of long-term care facilities along with any  
6 recommendations for legislative or administrative action to the  
7 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
8 19.1), to the Legislature. The advisory council may provide  
9 additional recommendations to the Department of Health at any  
10 time upon request by the department.

11

12 5. This act shall take effect immediately.

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#### STATEMENT

16

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

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

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

43 No later than 60 days after the effective date of the bill, the DOH  
44 will be required to evaluate staffing levels and competency by  
45 resident acuity and complexity and establish a system to impose  
46 greater responsibility on each long-term care facility's medical  
47 director for quality outcomes at the facility, including imposing  
48 specific penalties or sanctions against the medical director for

1 repeated failure to produce improvements in quality outcomes at the  
2 facility.

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

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

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

42 The bill requires all long-term care facilities to file with the  
43 DOH monthly and quarterly unaudited financial information,  
44 quarterly unaudited financial statements, annual audited financial  
45 statements, and such other financial information as the department  
46 may request. The information and statements will be posted on the  
47 department's Internet website and updated as they become  
48 available.



1 The bill additionally requires all long-term care facilities to  
2 annually report to the DOH the number and severity of facility-  
3 acquired infections occurring among residents of the long-term care  
4 facility in the preceding year involving: Methicillin-resistant  
5 Staphylococcus aureus (MRSA); Clostrum difficile (C.Diff);  
6 Surgical Site Infections After Colon Surgery (SSi-Colon); Central  
7 Line-Associated Bloodstream Infections (CLABSI); Catheter-  
8 Associated Urinary Tract Infections (CAUTI); and any other  
9 facility-acquired infection for which the DOH requires annual  
10 reporting by regulation.

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

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

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

33 The DOH will be required to analyze data reported by long-term  
34 care facilities for oversight purposes and make the results of its  
35 analysis public whenever possible. At a minimum, the DOH will be  
36 required to develop, make available on its Internet website, and  
37 update at least monthly, a data dashboard that includes the data  
38 reported by each long-term care facility licensed in the State. The  
39 data dashboard will include: an overall performance score; details  
40 concerning the number and status of complaints involving the  
41 facility; the facility's star rating issued by the federal Centers for  
42 Medicare and Medicaid Services (CMS); the dates and results of  
43 inspections of the facility by the DOH, the Department of Human  
44 Services, and CMS, including links to any deficiencies or violations  
45 for which the facility was cited and to any corrective action plans in  
46 place at the facility; a breakdown of any costs and financial data  
47 reported by the facility; general staffing levels at the facility and  
48 rates of compliance with mandatory staffing ratios; the frequency

1 with which antipsychotic medication was administered to facility  
2 residents; information concerning pressure ulcers and facility-  
3 acquired infections; and any other data required by the DOH. The  
4 DOH will additionally be required to prepare and publish on its  
5 Internet website annual reports on New Jersey's long-term care  
6 system of care.

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

14 (1) analyzing and reviewing the results of long-term care facility  
15 inspection conducted by the DOH, including the penalties assessed  
16 against long-term care facilities and the department's adherence to  
17 federal guidance concerning state inspections of long-term care  
18 facilities;

19 (2) receiving public comment on the results of long-term care  
20 facility inspections; and

21 (3) consulting with the New Jersey Long-Term Care  
22 Ombudsman as necessary.

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

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

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

45 The advisory council will be required to prepare and submit  
46 biannual reports concerning its analysis of the DOH's oversight and  
47 inspections of long-term care facilities along with any  
48 recommendations for legislative or administrative action to the

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- 1 Governor and to the Legislature. The advisory council will be
- 2 authorized to provide additional recommendations to the DOH at
- 3 any time upon request.