

[First Reprint]

SENATE, No. 2759

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 30, 2020

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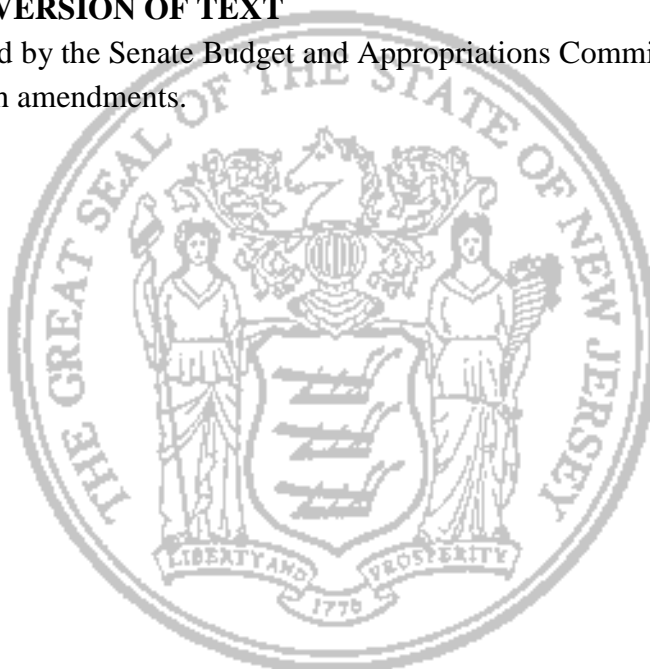
Senators Pou and Singleton

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 reported by the Senate Budget and Appropriations Committee on January 21, 2021, with amendments.



(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 1. ¹**[No later than 60 days after the effective date of this act, the]**
 8 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
 45 requirements, which enhanced sanctions and penalties shall include:

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.

- 1 **1**[(1)] (a)¹ a series of escalating fines for repeated violations or
2 multiple violations by the same **1**[[facility] nursing home]¹ , as well as
3 increased fines when a violation results in severe adverse health
4 consequences for a resident or staff member of the **1**[[facility] nursing
5 home]¹ ; and
- 6 **1**[(2)] (b)¹ a series of escalating licensure actions for repeated
7 violations or multiple violations by the same **1**[[facility] nursing home]¹
8 , particularly in cases where a violation results in severe adverse health
9 consequences for a resident or staff member at the **1**[[facility] nursing
10 home]¹ , which licensure actions shall include: suspending,
11 terminating, or revoking the **1**[[facility's] nursing home's]¹ license;
12 issuing a recommendation that the nursing home's contract with the
13 federal Centers for Medicare and Medicaid Services be terminated;
14 requiring the appointment of an independent manager to assume
15 control over operations at the nursing home on a temporary basis;
16 denying payment for all Medicaid claims submitted by the nursing
17 home;¹ restricting new admissions to the **1**[[facility] nursing home,
18 which may include prohibiting the nursing home from accepting any
19 new residents who are Medicaid beneficiaries¹ ; requiring the transfer
20 of residents to another **1**[[facility] nursing home]; requiring closure of
21 the nursing home and immediate transfer of all the nursing home's
22 residents to another nursing home; requiring additional monitoring of
23 the nursing home, which may include placing the nursing home in the
24 special focus survey program established pursuant to paragraph (1) of
25 this subsection; establishing a directed plan of correction; requiring
26 nursing home staff and administrators to undergo directed in-service
27 training¹ ; **1**[[Or , in the case of a nursing home,]]¹ petitioning a court of
28 competent jurisdiction for appointment of a receiver in accordance
29 with the provisions of P.L.1977, c.238 (C.26:2H-36 et seq.)¹ ; or
30 taking any other administrative or disciplinary actions as may be
31 established by the Commissioner of Health by regulation, which may
32 be subject to approval by the federal Centers for Medicare and
33 Medicaid Services, if such approval is required¹ .
- 34 **1**[[c.] b.]¹ The department shall **1**[[evaluate staffing levels and
35 competency by resident acuity and complexity, and]]¹ establish a
36 system to impose greater responsibility on each **1**[[long-term care
37 facility's] nursing home's]¹ medical director for quality outcomes at
38 the **1**[[facility, including imposing specific penalties or sanctions
39 against the medical director for repeated failure to produce
40 improvements in quality outcomes at the facility] nursing home,
41 consistent with standards and guidelines promulgated by the federal
42 Centers for Medicare and Medicaid Services for state surveys of
43 nursing home medical directors¹ .
- 44
- 45 2. To facilitate enforcement of department rules and requirements
46 concerning **1**[[long-term care facility] nursing home]¹ operations, **1**[[no

1 later than 60 days after the effective date of this act,] the department
2 shall request and consolidate data concerning [long-term care
3 facilities] nursing homes¹ reported to other State and federal
4 authorities, including the federal Centers for Medicare and Medicaid
5 Services, the Department of Human Services, Medicaid managed care
6 [plans] organizations¹, and the Long-Term Care Ombudsman, in
7 order to identify [long-term care facilities] nursing homes¹ with
8 consistent or repeated performance issues, ongoing compliance issues,
9 or high numbers of substantiated complaints. The department shall
10 make the consolidated data collected under this subsection available
11 upon request to other State and federal entities having jurisdiction over
12 [long-term care facilities] nursing homes¹ in the State.

13
14 3. a. [No later than 60 days after the effective date of this act,
15 the] The¹ department shall undertake a review of reporting
16 requirements for [long-term care facilities] nursing homes¹ and shall
17 take steps to standardize and consolidate the reporting requirements
18 for the purpose of: reducing the administrative demand on [the
19 facilities of] nursing homes in¹ complying with reporting
20 requirements; developing updated standardized data reporting
21 requirements; and improving the utility of the reported data and the
22 ability to share the data across systems, including systems maintained
23 by other State departments and agencies, county and local agencies,
24 and federal authorities. The department's review shall include:

- 25 (1) identifying and eliminating duplicative reporting;
26 (2) establishing standardized formats, requirements, protocols, and
27 systems for data reporting, which may include requiring [facilities]
28 nursing homes¹ to report data in machine-readable formats to facilitate
29 the processing and analysis of reported data;
30 (3) establishing a centralized, cross-agency workgroup to monitor
31 [long-term care facility] nursing home¹ reporting;
32 (4) assessing State health information technology needs to support
33 technology-enabled and data-driven regulatory oversight across State
34 departments and agencies, anticipate potential uses for the enhanced
35 technologies and systems, enable systems to readily accept and
36 analyze additional data metrics required pursuant to subsection b. of
37 this section, and identify opportunities to centralize and modernize
38 State health data infrastructure, processes, and analytic capabilities;

39 (5) assessing [long-term care facility] nursing home¹ health
40 information technology needs to support population health
41 management, interoperability, and modernized reporting requirements;
42 and
43 (6) identifying and applying for federal funding to support health
44 information technology infrastructure development.

45 b. (1) The department shall require all [long-term care facilities]
46 to file with the department monthly and quarterly unaudited financial

1 information, quarterly unaudited financial statements, annual audited
2 financial statements, and such other financial information as the
3 department may request. The information and statements reported by
4 facilities pursuant to this paragraph shall be posted on the
5 department's nursing homes to post on their¹ Internet ¹website and
6 updated as the information or statements become available ¹websites
7 annual owner-certified financial statements along with the nursing
8 home's most recent cost reports submitted to the federal Centers for
9 Medicare and Medicaid Services. The department shall include on its
10 Internet website a link to the page where each nursing home's certified
11 financial statements and cost reports are posted. Nursing homes that
12 are part of a health care system may post financial statements and cost
13 reports pursuant to this paragraph that aggregate the financial data
14 across all nursing homes that are a part of that health care system¹ .

15 (2) The department shall require all ¹long-term care facilities
16 nursing homes¹ to annually report to the department the number ¹and
17 severity¹ of facility-acquired infections occurring among residents of
18 the ¹long-term care facility nursing home¹ in the preceding year
19 involving:

20 (a) Methicillin-resistant Staphylococcus aureus (MRSA);
21 (b) Clostrum difficile (C.Diff);
22 (c) Surgical Site Infections After Colon Surgery (SSi-Colon);
23 (d) Central Line-Associated Bloodstream Infections (CLABSI);
24 (e) Catheter-Associated Urinary Tract Infections (CAUTI); and
25 (f) any other facility-acquired infection for which the department
26 requires annual reporting pursuant to regulations adopted by the
27 Commissioner of Health.

28 c. The department shall develop additional data reporting
29 requirements for ¹long-term care facilities nursing homes¹ as are
30 necessary to improve market transparency and facilitate the
31 department's ability to oversee and regulate operations in ¹long-term
32 care facilities nursing homes¹ , including, but not limited to, data
33 related to occupancy, operating expenses and other appropriate
34 financial metrics, and utilization and staffing data. In developing
35 additional reporting requirements pursuant to this subsection, the
36 department shall solicit feedback from ¹long-term care facilities
37 nursing homes¹ and ¹Medicaid¹ managed care ¹plans organizations¹
38 concerning proposed new data metrics, methods of maximizing the
39 efficiency of data collection and specification, minimizing duplicative
40 data reporting, and identifying ways to consolidate, automate, or
41 streamline the data required to be reported by State and federal
42 agencies and managed care ¹plans organizations¹ .

43 d. ¹No later than 30 days after the effective date of this act, the
44 The¹ department shall establish centralized State protocols for ¹long-
45 term care facility nursing home¹ communications to reduce
46 duplicative outreach and enhance information sharing capabilities.

1 e. The department shall require ¹**[long-term care facilities]**
2 nursing homes¹ to:

3 (1) post on their Internet websites ¹**[any policies or plans required**
4 **to be in place at the facility pursuant to State law]** a link to the
5 dashboard developed and maintained by the department pursuant to
6 paragraph (1) of subsection f. of this section¹; and

7 (2) ¹**[have a dedicated]** designate a¹ staff person ¹**[available at**
8 **all times to respond]** who shall be responsible for responding¹ to
9 questions from the public concerning the ¹nursing home, including
10 questions about the nursing home's¹ policies ¹**[and plans required to**
11 **be posted on the facility's Internet website under paragraph (1) of this**
12 **subsection]** , procedures, and operations¹ . The contact information
13 for ¹**[the facility's designated staff person]** members of the public to
14 direct questions and request information¹ shall be posted on the
15 ¹**[facility's]** nursing home's¹ Internet website.

16 f. The department shall analyze data reported by ¹**[long-term**
17 **care facilities]** nursing homes¹ for oversight purposes and shall make
18 the results of its analysis public whenever possible ¹, provided that in
19 no case shall the department make public any data or information it
20 deems to be confidential or proprietary in nature or that it deems to be
21 a trade secret¹ . At a minimum, the department shall:

22 (1) develop, make available on its Internet website, and update at
23 least ¹**[monthly]** quarterly¹ , a data dashboard that includes the data
24 reported by each ¹**[long-term care facility]** nursing home¹ licensed in
25 the State, including:

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

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

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

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

42 ¹**[(e)]** (d)¹ a ¹**[breakdown of any costs and financial data**
43 **reported by the facility]** link to the website where each nursing home's
44 certified financial statements and the nursing home's cost reports

1 submitted to the federal Centers for Medicare and Medicaid Services
2 are posted¹ ;

3 ¹**[(f)]** (e)¹ general staffing levels at the ¹**[facility]** nursing
4 home¹ and rates of compliance with mandatory staffing ratios, along
5 with the average and overall number of shifts during which the
6 ¹**[facility]** nursing home¹ was out of compliance with staffing ratios;

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

9 ¹**[(h)]** (g)¹ the number of residents who developed a pressure
10 ulcer, including the number of residents who developed multiple
11 pressure ulcers;

12 ¹**[(i)]** (h)¹ the number of facility-acquired infections at the
13 ¹**[facility]** nursing home¹ as reported pursuant to paragraph (2) of
14 subsection b. of this section ¹**[**, including details concerning the
15 relative severity of the facility-acquired infections¹ ; and

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

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

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

30

31 4. a. There is established in the Department of Health the
32 ¹**["Long-Term Care Facility]** "Nursing Home¹ Advisory Council."
33 The purpose of the council shall be to advise the department on
34 matters related to the oversight of ¹**[long-term care facilities]** nursing
35 homes¹ and on issues concerning ¹**[long-term care facility]** nursing
36 home¹ residents and their families, as well as to foster communication
37 with the public regarding ¹**[long-term care facilities]** nursing homes¹ .
38 The responsibilities of the advisory council shall include:

39 (1) analyzing and reviewing the results of inspections ¹and
40 surveys¹ of ¹**[long-term care facility]** nursing homes¹ conducted by
41 the department, including the penalties assessed against ¹**[long-term**
42 **care facilities]** nursing homes¹ and the department's adherence to
43 federal guidance concerning state inspections of ¹**[long-term care**
44 **facilities]** nursing homes¹ ;

1 (2) receiving public comment on the results of ¹~~long-term care~~
2 ~~facility~~ nursing home¹ inspections ¹and surveys¹ ; ¹~~and~~¹

3 (3) consulting with the New Jersey Long-Term Care Ombudsman
4 as necessary ¹; and

5 (4) reviewing the data dashboard established pursuant to paragraph
6 (1) of subsection f. of section 3 of this act to identify areas of concern
7 within the nursing home industry and develop recommendations for
8 policies, plans, or strategies to foster improvements in quality of care,
9 resident and staff safety, and overall performance in nursing homes
10 licensed in the State¹ .

11 b. The advisory council shall consist of ¹~~seven~~ nine¹ members,
12 as follows:

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

17 (2) one ¹nursing home surveyor employed by the Department of
18 Health, to be named by the Commissioner of Health, who shall serve
19 ex officio;

20 (3) two¹ public ¹~~member~~ members¹ , to be appointed by the
21 Governor, ¹~~who shall be a representative of the long-term care~~
22 ~~facility industry~~ one of whom shall be a representative of a for-profit
23 nursing home and one of whom shall be a representative of a nonprofit
24 nursing home¹ ; and

25 ¹~~(3)~~ (4)¹ four public members who are advocates for residents
26 of ¹~~long-term care facilities~~ nursing homes¹ , with two of the public
27 members to be appointed by the Senate President and two of the public
28 members to be appointed by the Speaker of the General Assembly.

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

35 d. Public members of the advisory council shall serve for a term
36 of five years, except that, of the members first appointed, ¹~~one~~ two¹
37 shall serve for a term of three years, two shall serve for a term of four
38 years, and two shall serve for a term of five years. Vacancies in the
39 membership shall be filled in the same manner in which the original
40 appointments were made. Public members shall be eligible for
41 reappointment to the advisory council.

42 e. The advisory council shall meet on a quarterly basis at such
43 times and places as shall be designated by the chairperson. A majority
44 of the authorized membership shall constitute a quorum for the
45 purposes of the advisory council taking official action. All meetings
46 of the advisory council shall be open to the public. Agendas, minutes,
47 documents, and testimony from ¹~~all~~ each¹ meeting shall be posted

1 on the Internet website of the Department of Health. The advisory
2 council shall invite the Attorney General or a representative of the
3 Office of the Attorney General, the State Auditor, the State
4 Comptroller, and a representative of the Department of Health to be
5 present at each meeting.

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

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

16 h. The advisory council shall biannually prepare and submit a
17 report concerning its analysis of the Department of Health's oversight
18 and inspections of ¹~~long-term care facilities~~ nursing homes¹ along
19 with any recommendations for legislative or administrative action to
20 the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
21 19.1), to the Legislature. The advisory council may provide additional
22 recommendations to the Department of Health at any time upon
23 request by the department.

24
25 5. ¹~~This~~ Sections 1 through 3 of this act shall take effect 180
26 days after the date of enactment, and section 4 of this¹ act shall take
27 effect immediately.