LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 2785
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 31, 2020

SUMMARY

Synopsis:	Requires DOH to implement and oversee Isolation Prevention Project in long-term care facilities.
Type of Impact:	Annual increase in State expenditures; annual increase in county expenditures; potential annual increase in State revenues.
Agencies Affected:	Department of Health, Office of the Long-Term Care Ombudsman, Department of Military and Veterans Affairs, County-operated nursing homes.

Office of Legislative Services Estimate

Fiscal Impact	**Annual**
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate
County Cost Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the State would incur an indeterminate increase in annual costs for the Department of Health (DOH) and the New Jersey Long-Term Care Ombudsman (LTCO) to enforce the Isolation Prevention Program policies, protocols, and procedures required pursuant to this bill. The DOH would realize additional annual costs to determine, as part of the department's periodic inspections of long-term care facilities, whether facilities are in compliance with the Isolation Prevention Program requirements.

- The OLS also finds that nursing homes operated by the Department of Military and Veterans Affairs (DMAVA) and by six New Jersey counties would incur significant additional costs to comply with the requirements established under this bill. In particular, the DMAVA and county nursing homes would face substantial costs to purchase or lease, maintain, and replace the devices and technology required to enable nursing home residents to engage in virtual communications and activities with other facility residents, family members, and friends when in-person interactions are limited, prohibited, or restricted by federal or State statute, regulation, or rules.

- Under the bill, State revenues could increase from a requirement that the DOH establish, through regulation, a schedule of financial penalties for long-term care facilities that fail to comply with the Isolation Prevention Program policies and protocols. The DOH could impose enhanced penalties for facilities that repeatedly fail to comply with these requirements. However, without specific information on these penalties, or the number of long-term care facilities likely to face such penalties, the OLS is unable to determine the increase in State revenues.

BILL DESCRIPTION

This bill would provide for each long-term care facility in the State, as a condition of State licensure, to adopt and implement written policies, and have appropriate technology, staff, and other capabilities in place, to prevent the social isolation of facility residents at all times during operation. The bill would require the social isolation prevention policies adopted by each long-term care facility to authorize, and include specific protocols and procedures to enable, residents of the facility to engage in in-person contact, communications, and religious and recreational activities with other facility residents, family members, friends, and other external support systems, except when such in-person contact, communication, or activities are prohibited, restricted, or limited, as permitted by federal and State statute, rule, or regulation. The social isolation prevention policies would additionally be required to:

1) authorize, and include protocols and procedures to enable residents to engage in face-to-face or verbal/auditory-based contact, communication, and activities through the use of electronic or virtual means and methods, whenever the residents are subject to restrictions on in-person contact, communications, or activities;

2) include policies, procedures, and protocols governing the acquisition, maintenance, and replacement of the devices and equipment needed to enable residents to engage in electronic communications and activities, as well as the regular cleaning of such devices and equipment;

3) include specific protocols and procedures to ensure that the quantity of devices and equipment maintained on-site remains sufficient to meet the social and activities needs and preferences of each resident;

4) designate at least one staff member, as determined by facility management, to train other appropriate employees to assist residents, as needed, to ensure that each resident is able to successfully access and use the technology, devices, and equipment acquired pursuant to the bill.

The bill would require the DOH to distribute civil monetary penalty funds, as approved by the federal Centers for Medicare and Medicaid Services, and other available federal and State funds, to facilities for the necessary communicative technologies and accessories. The bill would further require the DOH, whenever it conducts an inspection of a long-term care facility, to determine whether the long-term care facility is in compliance with the bill's provisions and the policies, protocols, and procedures adopted pursuant thereto.

In addition to any other applicable penalties provided by law, a long-term care facility that fails to comply with the bill's provisions or properly implement the policies adopted pursuant thereto, will be liable to pay an administrative penalty and may be subject to adverse licensure action, as deemed appropriate by the DOH. The amount of the administrative penalty imposed is to be determined in accordance with a schedule established by department regulation; the schedule is to provide for an enhanced administrative penalty in the case of a repeat or ongoing violation.

The bill would require the DOH to adopt rules and regulations, on an emergency basis, within 60 days after the bill's effective date, in order to implement the bill's provisions. These emergency rules and regulations would remain in effect for a period of not more than one year before being subject to readoption or amendment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the State would incur an indeterminate increase in annual costs for the DOH and the LTCO to enforce the Isolation Prevention Program requirements established pursuant to this bill. The DOH would realize additional costs to determine, as part of the department's periodic inspection, whether a facility is complying with the isolation prevention requirements, procedures, and protocols mandated for all long-term care facilities in the State. The DOH would bear additional costs associated with adopting, within 60 days of the bill's effective date, rules and regulations to establish, among other requirements, the minimum standards for isolation prevention policies adopted under the bill, as well as a penalty schedule for long-term care facilities that violate the bill's requirements. The New Jersey LTCO would incur additional costs for investigating and taking enforcement actions against any long-term care facility that the LTCO discovers, as part of an official investigation, is not in compliance with the mandated isolation prevention policies, protocols, or procedures.

Nursing homes operated by the DMAVA and six New Jersey counties would incur significant additional expenditures to comply with the isolation prevention program mandates. The DMAVA, which operates three long-term care facilities, and the six counties, which operate a total of nine facilities, would face significant capital, personnel, and administrative costs to develop, communicate to residents and their families, and implement the isolation prevention program. Costs associated with the purchase or lease, maintenance, and replacement of the devices, technology and equipment required to implement the distance-based communication protocols mandated under the bill would be significant for any one of the DMAVA- or county-operated long-term care facilities, even if these expenses were partially offset by civil monetary penalty funds and other federal and State funds, which the bill requires the DOH to distribute for this purpose, provided such distribution is approved by the federal Centers for Medicare and Medicaid Services. While privately-operated long-term care facilities may be able to pass a portion of these new technology costs on to private-pay residents, DMAVA- and county-operated facilities are largely unable to do so. To the extent that State- and county-operated facilities can negotiate bulk-purchasing agreements with technology suppliers, State costs for the purchase of technology could be reduced.

Additional State and county costs would stem from any administrative penalties imposed upon DMAVA- or county-operated nursing homes for noncompliance with the isolation prevention policies, procedures, and protocols. At the same time, these same administrative penalties imposed on State, county, and private nursing homes would also increase State revenues, to the extent that long-term care facilities operating in the State are unable to implement the isolation prevention policies, protocols, and procedures, or are repeatedly noncompliant with these requirements. However, until the DOH establishes the schedule of penalties, the OLS is unable to determine the cost of the penalties to the State or the counties, or estimate the magnitude of the increase in State revenues derived from such penalties.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).