

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2785 (SCS)

# STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2785 (SCS).

The bill provides for each long-term care facility in the State, as a condition of facility 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 requires the social isolation prevention policies adopted by each long-term care facility to authorize, and include specific protocols and procedures to encourage and enable, residents of the facility to engage in in-person contact, communications, and religious and recreational activities with other facility residents and with 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 specific protocols and procedures to encourage and enable, residents to engage in face-to-face or verbal/auditory-based contact, communication, and religious and recreational activities with other facility residents and with family members, friends, and other external support systems, through the use of electronic or virtual means and methods, including, but not limited to, computer technology, the Internet, social media, videoconferencing, and other innovative technological means or methods, whenever such residents are subject to restrictions that limit their ability to engage in in-person contact, communications, or religious and recreational activities;

- 2) provide for residents of the facility who have disabilities that impede their ability to communicate to be given access to assistive and supportive technology as may be necessary to facilitate the residents' engagement in social interactions and religious and recreational activities with other residents, family members, friends, and other external support systems, through electronic means;

- 3) include specific administrative policies, procedures, and protocols governing: a) the acquisition, maintenance, and replacement of computers, videoconferencing equipment, distance-based communications technology, assistive and supportive technology and

devices, and other technological equipment, accessories, and electronic licenses, as may be necessary to enable residents to engage in electronic communications and activities, as specified in the bill; b) the use of environmental barriers and other controls when the equipment and devices acquired pursuant to this section are in use, especially in cases where the equipment or devices are likely to become contaminated with bodily substances, are touched frequently with gloved or ungloved hands, or are difficult to clean; and c) the regular cleaning of the equipment and devices acquired pursuant to this paragraph and any environmental barriers or other physical controls used in association therewith;

4) require appropriate staff to assess and regularly reassess the individual needs and preferences of facility residents with respect to their participation in social interactions and religious and recreational activities, and include specific protocols and procedures to ensure that the quantity of devices and equipment maintained on-site at the facility remains sufficient, at all times, to meet the assessed social and activities needs and preferences of each facility resident;

5) require appropriate staff, upon the request of a resident or the resident's family members or guardian, to develop an individualized visitation plan for the resident, which plan is to: a) identify the assessed needs and preferences of the resident and any preferences specified by the resident's family members; b) address the need for a visitation schedule, and establish a visitation schedule if deemed to be appropriate; c) describe the location and modalities to be used in visitation; and d) describe the respective responsibilities of staff, visitors, and the resident when engaging in visitation pursuant to the individualized visitation plan;

6) include specific policies, protocols, and procedures governing a resident's requisition, use, and return of devices and equipment maintained pursuant to the bill, and require appropriate staff to communicate those policies, protocols, and procedures to residents; and

7) designate at least one member of the therapeutic recreation or activities department, or, if the facility does not have a relevant department, designate at least one senior staff member, as determined by facility management, to train other appropriate facility employees, including, but not limited to, activities professionals and volunteers, social workers, occupational therapists, and therapy assistants, to provide direct assistance to residents, upon request and on an as-needed basis, as necessary to ensure that each resident is able to successfully access and use the technology, devices, and equipment acquired pursuant to the bill.

The bill requires the DOH to distribute civil monetary penalty (CMP) funds, as approved by the federal Centers for Medicare and Medicaid Services, and other available federal and State funds, upon request, to facilities for communicative technologies and accessories

needed for the bill's purposes. The bill further requires the DOH, whenever it conducts an inspection of a long-term care facility, to determine whether the long-term 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, protocols, and procedures adopted pursuant thereto, will be liable to pay an administrative penalty and may be subject to adverse licensure action, as deemed by the DOH to be appropriate. The amount of the administrative penalty imposed is to be determined in accordance with a schedule established by department regulation, which schedule is to provide for an enhanced administrative penalty in the case of a repeat or ongoing violation.

The bill further specifies that, whenever a complaint received or an investigation conducted by the Office of the State Long-Term Care Ombudsman discloses evidence that a long-term care facility has failed to comply with the bill's provisions or has failed to properly implement the policies, protocols, and procedures adopted pursuant thereto, the Office of the State Long-Term Care Ombudsman will be required to refer the matter to the DOH, as provided by existing law, and, notwithstanding such referral, may take any other appropriate investigatory or enforcement action, with respect to the matter, as may be authorized by P.L.1977, c.239 (C.52:27G-1 et seq.).

The bill requires 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. The rules and regulations are to include, but need not be limited to, minimum standards for social isolation prevention policies adopted under the bill and a penalty schedule to be used when penalizing violations of the bill. The 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 IMPACT:

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 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.