ASSEMBLY, No. 358

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:
Assemblywoman AURA K. DUNN
District 25 (Morris and Somerset)
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)
Assemblywoman ANGELA V. MCKNIGHT
District 31 (Hudson)

Co-Sponsored by:
Assemblymen McGuckin and Catalano

SYNOPSIS
“Sally’s law”; establishes testing and visitation requirements and employment restrictions for long-term care facilities in response to outbreaks of infectious disease.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 9/15/2022)
AN ACT concerning infectious disease control and prevention in 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. As used in this act:

   “Infectious disease” means a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, virus, or prion. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

   “Long-term care facility” means a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

   “Rapid-result test” means a test for active infection with an infectious disease, the results of which are, to the extent possible, available within 24 hours after the test is administered.

2. During an outbreak, epidemic, or pandemic of an infectious disease affecting or likely to affect one or more long-term care facilities:

   a. All staff employed by or providing services at an affected long-term care facility shall be tested for active infection with the infectious disease at least once per week and immediately upon showing any signs or symptoms of having contracted the infectious disease.

   b. No later than seven days after the date a state of emergency or public health emergency, if any, is declared in response to the outbreak, epidemic, or pandemic of the infectious disease or as soon as rapid-result testing for the infectious disease becomes available, all long-term care facilities in the State shall have access to rapid-result testing for the infectious disease, as follows:

      (1) For long-term care facilities with more than 100 authorized resident beds, the facility shall have sufficient on-site rapid response testing resources available to make the test available to all staff, residents, and first-time visitors at the facility. The facility may seek reimbursement for the cost of administering and processing the test from a staff member’s or resident’s health benefits plan; provided that in no case shall the facility charge a staff member or resident for any portion of the cost of a rapid-result test that is not covered by a health benefits plan, if the test was conducted pursuant to subsection a. of this section. For any test not conducted pursuant to subsection a. of this section, the facility may seek reimbursement from the staff member or resident in an amount
equal to the actual cost to the facility of administering and
processing the test; and

(2) For long-term care facilities with 100 or fewer authorized
resident beds, subject to the provisions of subsection c. of this
section, the facility shall have access to rapid-result testing for the
infectious disease for staff, residents, and first-time visitors at the
facility through the county board of health for the county in which
the facility is located.

c. (1) No later than seven days after the date a state of
emergency or public health emergency, if any, is declared in
response to the outbreak, epidemic, or pandemic of the infectious
disease or as soon as rapid-result testing for the infectious disease
becomes available, each county board of health shall obtain and
make available to staff, residents, and first-time visitors at long-
term care facilities located in the county that have 100 or fewer
authorized beds, as well as to members of the public residing in that
county, a rapid-result test for the infectious disease.

(2) In situations where the current or anticipated demand for
rapid-result test resources through the county board of health
exceeds the county board of health’s current supply of test
resources, the county board of health shall prioritize tests as
follows:

(a) tests shall first be made available to staff and residents of
long-term care facilities with fewer than 100 beds when the staff
member or resident currently exhibit signs or symptoms of the
infectious disease or was recently exposed to the infectious disease;

(b) if the county board of health can satisfy current and
anticipated demand for rapid-result tests under subparagraph (a) of
this paragraph from available testing resources, the county board of
health may make rapid-result tests available to staff members of
long-term care facilities with 100 or fewer authorized beds for the
purposes of performing weekly tests for the infectious disease as
provided in subsection a. of this section, as well as for performing
other medically-indicated tests for the infectious disease among
staff members of long-term care facilities; and

(c) if the county board of health can satisfy current and
anticipated demand for rapid-result tests under both subparagraphs
(a) and (b) of this paragraph from available testing resources, the
county board of health may make rapid-result tests available on a
first-come, first served basis to first-time visitors to a long-term
care facility with 100 or fewer authorized beds that is located in the
county, as well as to any resident of the county.

(3) County boards of health may charge a reasonable fee for the
administration of a rapid-result test administered to any person,
which fee shall not exceed the reasonable cost to the county board
of health of administering and processing the test. In the case of
tests provided to staff and residents of long-term care facilities with
100 or fewer authorized beds, the county board of health shall seek
reimbursement from the facility, and shall be prohibited from charging any fee for the test to the staff member or resident. The facility may seek reimbursement for the cost of the test from a staff member’s or resident’s health benefits plan; provided that in no case shall the facility charge a staff member or resident for any portion of the cost of a rapid-result test that is not covered by a health benefits plan, if the test was conducted pursuant to subsection a. of this section. For any test not conducted pursuant to subsection a. of this section, the facility may seek reimbursement from the staff member or resident in an amount equal to the actual cost of the test to the facility.

d. Long-term care facilities shall establish designated spaces for the isolation of residents who have tested positive for the infectious disease or who were exposed to the infectious disease, and shall take appropriate steps to ensure, to the extent possible, that no more than one resident is housed in each residential room in the facility.

3. During an outbreak, epidemic, or pandemic of an infectious disease affecting or likely to affect one or more long-term care facilities:

   a. (1) Residents of a long-term care facility may designate up to two individuals who shall be authorized to engage in indoor visitation with the resident. The designation of authorized visitors pursuant to this paragraph shall remain in effect until the outbreak, epidemic, or pandemic is no longer affecting or likely to affect the long-term care facility, and a resident shall not be permitted to make any changes to the individuals designated for visitation during this period except in the event of the death of a designated individual.

   (2) An individual designated by a resident of a long-term care facility for indoor visitation with the resident pursuant to paragraph (1) of this subsection shall:

      (a) be allowed to visit the resident inside the long-term care facility once per day, at any time, day or night, for any duration of time, provided the individual schedules a visitation appointment with the facility at least 24 hours in advance;

      (b) be screened for the signs and symptoms of the infectious disease prior to being allowed entry to the facility;

      (c) undergo a rapid-result test for the infectious disease in connection with that individual’s first visit to the facility under this subsection. Consistent with the requirements of subsections b. and c. of section 2 of this act, the facility or the county board of health, as applicable, may administer the test to the individual and seek reimbursement from the individual for administration of the rapid-result test, which reimbursement shall not exceed the actual cost of administering and processing the test;
(d) for a second or subsequent visit to the facility as authorized under this subsection, submit a written attestation to the facility that, during the period between the individual’s last visit to the facility and the current visit, the individual has adhered to guidance from the federal Centers for Disease Control and Prevention, the Department of Health, and the county or local board of health, if any, with regard to infection control and prevention measures to prevent transmission of the infectious disease, including, as applicable, maintaining social distancing, wearing a face mask or facial covering while in public, avoiding large group gatherings, avoiding contact with others while present in indoor settings, and any other measures as may be in place; and

(e) be allowed to bring in food and beverage items for exclusive consumption by the visitor and the resident, which food and beverage items shall be screened by the facility and may be excluded by the facility if the food or beverage item presents a risk of transmitting an infectious disease or otherwise violates facility policies concerning outside food and beverages.

(3) Long-term care facilities shall limit in-person visitation as authorized under this subsection to one visitor per resident at a time. Visitation shall take place in the resident’s room, if the resident does not have a roommate, or in a designated visitation area, if the resident has one or more roommates. Designated visitation areas shall be thoroughly cleaned and sanitized after each use. The facility shall implement protocols and procedures to ensure that visitors to the facility have as little contact as possible with staff and residents of the facility, are kept away from common areas within the facility to the extent possible, and do not touch any surfaces in the facility except as may be otherwise unavoidable.

(4) No visitation in a long-term care facility shall be authorized pursuant to this subsection unless the Department of Health has completed an in-person inspection of the facility during the current outbreak, epidemic, or pandemic involving an infectious disease, made a written determination that the facility is in compliance with the requirements of this act and all applicable infection prevention and control requirements as are currently applicable to the facility, and expressly approves indoor visitation to take place at the facility consistent with the requirements of this subsection.

b. Residents of a long-term care facility may designate a family member or other individual who shall be authorized to approve the resident’s personal physician, or a care provider whose services are paid for directly by the resident or the resident’s family, to enter the facility for up to four hours per week to provide direct care services to the resident, which direct care services may be provided over the course of multiple visits within the week; provided that the physician or care provider may request approval from the facility to provide more than four hours of direct care services to the patient per week, which request shall be granted if supported by medical
need. A physician or care provider who enters a facility pursuant to this subsection shall not be considered to be employed by or providing services at the long-term care facility for the purposes of section 5 of this act. The designated family member or other individual may, but not need not, be an individual designated for visitation pursuant to subsection a. of this section.

c. An individual designated by a resident of a long-term care facility for indoor visitation with the resident pursuant to paragraph (1) of subsection a. of this section, or who is a personal physician or care provider allowed access to the long-term care facility pursuant to subsection b. of this section, shall be required to comply with current guidance issued by the federal Centers for Disease Control and Prevention or any other guidance required by the Department of Health concerning infection prevention and control in long-term care facilities, including any requirements concerning the use of personal protective equipment. Consistent with applicable guidance and current practices adopted in response to the outbreak, epidemic, or pandemic, the facility may require the individual to acquire the personal protective equipment at the individual’s own expense, prohibit the reuse of personal protective equipment, maintain a supply of the personal protective equipment at the facility, and establish and enforce requirements concerning proper doffing and disposal of the personal protective equipment.

4. During an outbreak, epidemic, or pandemic of an infectious disease affecting or likely to affect one or more long-term care facilities:

   a. Residents who travel outside a long-term care facility for medical or non-medical reasons shall be roomed in a separate area of the facility, and shall be subject to appropriate procedures and protocols as are necessary to ensure that those residents are isolated from, and do not have contact with, residents who do not travel outside the facility. The facility shall further establish separate rooming areas and appropriate procedures and protocols to ensure that residents who travel outside the facility only for medical reasons are isolated from, and do not have contact with, residents who travel outside the facility for non-medical reasons.

   b. All residents who travel outside the facility for any reason shall be tested for the infectious disease at least once per week, regardless of whether the resident exhibits any signs or symptoms of having contracted the infectious disease. The long-term care facility and the resident shall split the costs of any portion of a test required pursuant to this subsection that are not otherwise covered under the resident’s health benefits plan.

5. During an outbreak, epidemic, or pandemic of an infectious disease affecting or likely to affect one or more long-term care facilities:
a. A person employed by or providing services at a long-term care facility, other than a physician, may only be employed by or provide services at that one facility, and shall be prohibited from employment with, or providing professional services to, any other entity.

b. (1) Any person employed by or providing services at a long-term care facility who exhibits signs or symptoms of the infectious disease shall be immediately removed from contact with residents, tested for the infectious disease or referred for testing, and prohibited from returning to the facility until the person provides the facility with the results of two tests, administered three days apart, establishing the person is negative for active infection with the infectious disease.

(2) Any person employed by or providing services at a long-term care facility who tests positive for active infection with the infectious disease shall be required to self-isolate or quarantine at home until the person’s symptoms resolve and the person provides the facility with the results of two tests, administered three days apart, establishing the person is negative for active infection with the infectious disease; provided that nothing in this paragraph shall be construed to prohibit a person who tests positive for the infectious disease from seeking treatment in a general acute care hospital or from another licensed health care provider.

c. A long-term care facility employing or utilizing the services of a person who is prohibited from attending work under paragraph (1) or paragraph (2) of subsection b. of this section shall pay the person the full wages the person would otherwise have earned working at the facility during that period of time when the person is prohibited from attending work. If the person does not work a regular number of hours at the facility, the wages due shall equal the wages due for the average number of hours per week the person worked at the facility during the preceding six months, or, if the person has worked at the facility for fewer than six months, for the average number of weekly hours worked by the person for the total time the person worked at the facility. Wages provided to a person under this subsection may be adjusted on a pro rata basis for any work actually performed at the facility during the week in which the person was prohibited from attending work.

6. This act shall take effect immediately.

STATEMENT

This bill, which is designated as “Sally’s Law,” establishes certain requirements concerning operational procedures and visitation at long-term care facilities, which requirements would remain in effect for the duration of the state of emergency and
public health emergency declared in response to an outbreak, epidemic, or pandemic involving an infectious disease.

Specifically, the bill requires that all staff employed by or providing services at a long-term care facility be tested for active infection with the infectious disease at least once per week and immediately upon showing any signs or symptoms of having contracted the infectious disease. For facilities with more than 100 authorized beds, the test is to be made available on-site. For facilities with 100 or fewer authorized beds, the test may be made available through the county board of health. County boards of health and facilities with more than 100 authorized beds will have seven days from the date a state of emergency or public health emergency, if any, is declared in response to the outbreak, epidemic, or pandemic, or as soon as rapid-result tests become available, to acquire rapid-result testing materials.

With regard to county boards of health, in situations where the current or anticipated demand for rapid-result testing resources through the county board of health exceeds the current supply of test resources, the county board of health will be required to give priority to testing staff and residents at facilities with 100 or fewer authorized beds who currently exhibit signs or symptoms of the infectious disease or have been recently exposed to the infectious disease, followed by routine, weekly and medically-indicated testing of staff members of facilities with 100 or fewer authorized beds, followed by first-time visitors to the facility and members of the public, who would be tested on a first-come, first served basis.

County boards of health may charge a reasonable fee for the administration of a rapid-result test, which fee may not exceed the reasonable cost to the county board of health of administering and processing the test. In the case of tests provided to staff and residents of long-term care facilities with 100 or fewer authorized beds, the county board of health may only seek reimbursement from the facility, and will be prohibited from charging any testing fee to the staff member or resident. The facility would be permitted to seek reimbursement from the staff member’s or resident’s health benefits plan for the costs of the test, provided that, in the case of weekly screening tests and tests for individuals showing signs or symptoms of the infectious disease or who were exposed to the infectious disease, the facility will be prohibited from charging staff or residents for any portion of the cost of a test that is not covered under a health benefits plan.

The bill requires long-term care facilities to establish designated spaces for the isolation of residents who have tested positive for the infectious disease or who were exposed to the infectious disease, and further requires facilities to take appropriate steps to ensure, to the extent possible, that no more than one resident is housed in each residential room in the facility.
The bill allows long-term care facility residents to designate up to two individuals who will be authorized to engage in indoor visitation with the resident. The designation will remain in effect until the outbreak, epidemic, or pandemic is no longer affecting or likely to affect the long-term care facility, a resident may not change the designated visitors during this period except in the case of the death of a designated visitor.

Designated visitors will be allowed to visit the resident inside the long-term care facility once per day, at any time, day or night, for any duration of time, provided the individual schedules a visitation appointment with the facility at least 24 hours in advance.

Long-term care facilities are to limit in-person visitation to one visitor per resident at a time. Visitation is to take place in the resident’s room, if the resident does not have a roommate, or in a designated visitation area, if the resident has one or more roommates. Designated visitation areas are to be thoroughly cleaned and sanitized after each use. Facilities will be required to implement protocols and procedures to ensure that visitors to the facility have as little contact as possible with staff and residents of the facility, are kept away from common areas within the facility to the extent possible, and do not touch any surfaces in the facility except as may be otherwise unavoidable.

All visitors will be screened for the signs and symptoms of the infectious disease prior to being allowed entry to the facility. In addition, the first time a designated visitor visits the facility, the visitor will be required to undergo a rapid-result test for the infectious disease, which may be provided by the facility or by the county board of health, depending on whether rapid-result tests for the disease are made available through the facility. The entity administering the test may charge the visitor a reasonable reimbursement fee for the test, which fee may not exceed the actual cost of administering and processing the test. For a second or subsequent visit to the facility, designated visitors will be required to submit a written attestation to the facility that, during the period between the individual’s last visit to the facility and the current visit, the individual adhered to guidance from the federal Centers for Disease Control and Prevention, the Department of Health, and the county or local board of health as may apply with regard to infection prevention and control, including, as applicable, maintaining social distancing, wearing a face mask or facial covering while in public, avoiding large group gatherings, and avoiding contact with others while present in indoor settings.

Designated visitors will be allowed bring in food and beverage items for exclusive consumption by the visitor and the resident, which food and beverage items will be screened by the facility and may be excluded by the facility if the food or beverage item presents a risk of transmitting the infectious disease or otherwise violates facility policies concerning outside food and beverages.
No visitation in a long-term care facility will be allowed unless the Department of Health has completed an in-person inspection of the facility during the current outbreak, epidemic, or pandemic, made a written determination that the facility is in compliance with the requirements of the bill and all applicable infection prevention and control requirements as are currently applicable to the facility, and expressly approves indoor visitation to take place at the facility.

Additionally, residents of a long-term care facility may designate a family member or other individual who may approve the resident’s personal physician or a care provider whose services are paid for directly by the resident or the resident’s family, to enter the facility for up to four hours per week to provide direct care services to the resident, which care may be provided during multiple visits over the course of the week. The physician or care provider may request approval from the facility to provide more than four hours of direct care services per week, which request is to be granted based on demonstrated medical need.

Designated visitors and personal physicians and care providers accessing a facility will be required to comply with current guidance issued by the federal Centers for Disease Control and Prevention or any other guidance required by the Department of Health concerning infection prevention and control in long-term care facilities, including any requirements concerning the use of personal protective equipment. Consistent with applicable guidance and current practices adopted in response to the outbreak, epidemic, or pandemic, the facility may require the individual to acquire the personal protective equipment at the individual’s own expense, prohibit the reuse of personal protective equipment, maintain a supply of the personal protective equipment at the facility, and establish and enforce requirements concerning proper donning and disposal of the personal protective equipment.

Residents who travel outside a long-term care facility for medical or non-medical reasons are to be roomed in a separate area of the facility and subject to appropriate procedures and protocols to ensure that those residents are isolated from, and do not have contact with, residents who do not travel outside the facility. Facilities are to further establish separate rooming areas and appropriate procedures and protocols to ensure that residents who travel outside the facility only for medical reasons are isolated from, and do not have contact with, residents who travel outside the facility for non-medical reasons. All residents who travel outside the facility for any reason are to be tested for the infectious disease at least once per week, regardless of whether the resident exhibits any signs or symptoms of having contracted the infectious disease; the resident and the facility will share the costs of any portion of this weekly test that is not covered by the resident’s health benefits plan.
The bill additionally provides that any person employed by or providing services at a long-term care facility, other than a physician, may only be employed by or provide services at that one facility, and will be prohibited from employment with or providing professional services to any other entity. This restriction will not apply to physicians and care providers authorized to provide care to residents by an individual designated by the resident as otherwise provided under the bill.

Any person employed by or providing services at a long-term care facility who exhibits signs or symptoms of the infectious disease is to be immediately removed from patient contact, tested for the infectious disease or referred for testing, and may not return to the facility until the person provides the facility with the results of two tests, administered three days apart, establishing the person is negative for active infection with the infectious disease. Any person employed by or providing services at a long-term care facility who tests positive for active infection with the infectious disease will be required to self-isolate or quarantine at home until the person’s symptoms resolve and the person provides the facility with the results of two negative tests for active infection for the infectious disease, which tests are to be administered three days apart. Nothing in the bill will prohibit a person who tests positive for an infectious disease from seeking treatment in a general acute care hospital or from another licensed health care provider.

A long-term care facility employing or utilizing the services of a person who is prohibited from attending work under the bill will be required to pay the person the full wages the person would otherwise have earned working at the facility during the period of mandatory exclusion. If the person does not work a regular number of hours at the facility, the wages due will equal the wages due for the average number of hours per week the person typically works at the facility.

This bill is designated as “Sally’s Law” in memory of Sally Griscavage Florek, who would have celebrated her 100th birthday on August 1, 2020. After experiencing a fall in the nursing home where she resided, Sally was transported to a hospital for treatment. Although she tested positive for coronavirus disease 2019 (COVID-19) prior to discharge from the hospital, she was released back to the nursing facility, where she eventually succumbed to COVID-19.

It is the sponsor’s belief that this bill will help address the underlying issues that may have contributed to Sally’s death, including staffing shortages, lack of necessary personal protective equipment and oxygen machines, restricted visitation with friends and family, and inadequate access to needed medical care, and thereby help families to avoid the pain and trauma of losing a loved one under circumstances that could have been avoided.