

ASSEMBLY, No. 5194

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 16, 2023

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman REGINALD W. ATKINS

District 20 (Union)

Co-Sponsored by:

**Assemblymen Stanley, Mukherji, Danielsen, Wimberly and
Assemblywoman Quijano**

SYNOPSIS

Provides certain protections to residents of long-term care facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/23/2023)

1 AN ACT concerning individuals in long-term care facilities and
2 supplementing Titles 46 and 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. a. For the purposes of this section:

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

12 “Principal” means a resident of a long-term care facility or an
13 individual who is in the admission process to enter a long-term care
14 facility.

15 b. No owner, administrator, director, officer, or employee of a
16 long-term care facility, person or entity affiliated with or related to
17 an owner, administrator, director, officer, or employee of a long-
18 term care facility, or other person who benefits financially from a
19 long-term care facility shall be authorized to manage the affairs of a
20 principal except pursuant to an order of the Superior Court
21 appointing that person guardian of the principal. The determination
22 whether to appoint a long-term care facility owner, administrator,
23 director, officer, employee, or affiliated or related person or entity
24 as guardian for a principal pursuant to this subsection shall be made
25 by the Superior Court in consultation with the Office of the Public
26 Guardian for Elderly Adults.

27 c. No owner, administrator, director, officer, or employee of a
28 long term care facility, person or entity affiliated with or related to
29 an owner, administrator, director, officer, or employee of a long-
30 term care facility, or other person who benefits financially from a
31 long-term care facility, shall be eligible to act as an attorney-in-fact
32 for a principal. Any power of attorney instrument executed by a
33 principal naming an owner, administrator, director, officer, or
34 employee of a long term care facility, a person or entity affiliated
35 with or related to an owner, administrator, director, officer, or
36 employee of a long-term care facility, or another person who
37 benefits financially from a long-term care facility shall be deemed
38 invalid.

39 d. Nothing in subsection b. of this section shall be construed to
40 prohibit the appointment of a guardian of the body or estate of a
41 resident of a long-term care facility by a court of competent
42 jurisdiction.

43

44 2. As used in sections 2 through 5 of P.L. , c. (C.)
45 (pending before the Legislature as this bill):

46 “Long-term care facility” means a nursing home, assisted living
47 residence, comprehensive personal care home, residential health

1 care facility, or dementia care home licensed pursuant to P.L.1971,
2 c.136 (C.26:2H-1 et seq.).

3 “Medicaid application assistance” means any assistance provided
4 in connection with the Medicaid enrollment process, including
5 providing information on insurance programs and coverage options,
6 assistance completing a Medicaid application, assistance identifying
7 and calculating income and assets, assistance submitting a Medicaid
8 application, attending and participating in or representing the
9 applicant at hearings on a Medicaid application, and assistance with
10 communications pertaining to a Medicaid application. “Medicaid
11 application assistance” may include estate planning, developing
12 spend-down plans, tax planning, developing plans to transfer assets
13 and property, and, provided the individual providing the services is
14 an attorney licensed in this State, related legal services.

15 “Representative” means any person who is authorized to make
16 decisions on behalf of a resident of a long-term care facility,
17 including, but not limited to, the resident’s guardian or a friend or
18 family member of the resident.

19

20 3. a. No later than four months after the effective date of this
21 act, the Department of Health shall develop a standard resident
22 admission agreement form for use by long-term care facilities.
23 Commencing on the first day of the sixth month next following the
24 effective date of this act, each long-term care facility shall use the
25 standard resident admission form developed by the department for
26 each new admission to the long-term care facility. A long-term care
27 facility shall not alter the standard resident admission agreement
28 unless directed and approved by the department.

29 b. The department may develop an abbreviated standard
30 resident admission agreement for residents whose length of stay in a
31 long-term care facility is anticipated to be 14 days or less. If the
32 resident’s stay exceeds 14 days, the long-term care facility shall
33 obtain agreement to the remainder of the stay pursuant to a standard
34 resident admission agreement.

35 c. A resident or representative of a resident shall not be
36 required to sign any document at the time of, or as a condition of,
37 admission to a long-term care facility, or as a condition of
38 continued stay in the facility, other than the standard resident
39 admission agreement developed pursuant to this section and the
40 acknowledgement required pursuant to section 4 of this act.

41 d. A long-term care facility shall not present any arbitration
42 agreement to a prospective resident as part of the standard resident
43 admission agreement. Any arbitration agreement between a long-
44 term care facility and a resident of the facility shall be executed in a
45 document that is separate from the standard resident admission
46 agreement, and shall contain the following advisory in a prominent
47 place at the top of the proposed arbitration agreement, in bold-face
48 font of not less than 12 point type: “Residents shall not be required

1 to sign this arbitration agreement as a condition of admission to this
2 facility.”

3 e. The department shall publish on its Internet website a copy
4 of the standard resident admission agreement developed pursuant to
5 this section, which agreement shall be made available in English,
6 Spanish, and Chinese, as well as in any other language the
7 department deems appropriate.

8
9 4. a. Commencing on the first day of the sixth month next
10 following the effective date of this act, each operator of a long-term
11 care facility shall provide each resident and the resident’s
12 representative, if any, at the time of the admission to the facility, a
13 notice, separate from the standard resident admission agreement
14 required pursuant to section 3 of this act, which notice shall be
15 typed or printed using letters which are legible or of clear type in a
16 font of not less than 12 point size, and shall state:

17 “YOU HAVE THE OPTION TO HIRE AN ATTORNEY TO
18 ASSIST WITH APPLYING FOR MEDICAL ASSISTANCE
19 LONG-TERM CARE BENEFITS:

20 Relying on a non-attorney service might expose you and your
21 family to unnecessary financial risk. There are non-attorney
22 agencies and companies which may offer to prepare and submit a
23 Medicaid application. These entities are not permitted to give legal
24 advice or to implement legal strategies that may best protect your
25 interests, and they are not obligated to advise you of your rights.
26 Moreover, these entities may have conflicts of interest, such as a
27 financial relationship with the long-term care facility. Federal law
28 restricts these non-attorney services from charging a fee in
29 connecting with a Medicaid application.

30 New Jersey does not mandate that a Medicaid applicant obtain
31 the assistance of an attorney when completing an application.

32 You may, however, seek the assistance of an attorney who is
33 knowledgeable about elder law and Medicaid eligibility rules. If
34 you wish to identify such an attorney, you may contact the State or
35 local bar association attorney referral service.”

36 b. A resident of a long-term care facility, or the resident’s
37 representative, shall acknowledge receipt of the notice provided
38 pursuant to subsection a. of this section by signing the bottom of the
39 notice at the time of admission to the facility. A copy of the signed
40 notice shall be furnished to the resident or the resident’s
41 representative, and a copy of the signed notice shall be retained by
42 the long-term care facility for the duration of the resident’s stay at
43 the facility.

44 c. The operator of a long-term facility shall prominently
45 display the notice described in subsection a. of this section at the
46 entrance to the facility and in such other locations as the department
47 may require.

1 d. A person providing Medicaid application assistance to a
2 resident or prospective resident of a long-term care facility shall,
3 prior to providing any application assistance services to the resident
4 or prospective resident, disclose any financial relationship between
5 the application assistance provider and any long-term care facility,
6 including financial relationships with any parent companies or
7 subsidiaries of the long-term care facility. The person providing
8 Medicaid application assistance shall additionally advise that the
9 resident or prospective resident has the right to seek the advice of
10 an attorney prior to signing any legal documents.

11

12 5. a. The Commissioner of Health may adopt rules and
13 regulations, pursuant to the “Administrative Procedure Act,”
14 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
15 of this act.

16 b. The Commissioner of Human Services shall adopt rules and
17 regulations, pursuant to the “Administrative Procedure Act,”
18 P.L.1968, c.410 (C.52:14B-1 et seq.), establishing uniform
19 standards of care for non-attorney individuals providing Medicaid
20 application assistance, including, but not limited to:

21 (1) defining who is permitted to act as a Medicaid application
22 assistor before Medicaid agencies and the Office of Administrative
23 Law;

24 (2) outlining the scope and nature of the services that non-
25 attorney Medicaid application assistors are authorized to provide;

26 (3) requiring Medicaid application assistors to complete training
27 on: Medicaid program rules; handling confidential financial and
28 medical information; conflicts of interest; and what constitutes the
29 unauthorized practice of law; and

30 (4) prohibiting non-attorney Medicaid application assistors from
31 charging any fee for providing Medicaid application assistance
32 services.

33

34 6. This act shall take effect immediately.

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STATEMENT

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39 This bill prohibits an owner, administrator, director, officer, or
40 employee of a long-term care facility or any person or entity
41 affiliated or related to the owner, administrator, director, officer, or
42 employee from being eligible to act as an attorney-in-fact for a
43 resident of a long-term care facility or an individual who is in the
44 admission process to enter a long-term care facility. Further, the
45 bill prohibits any person who benefits financially from a long-term
46 care facility from acting as an attorney-in-fact.

47 The determination as to whether to appoint an individual
48 affiliated with a long-term care facility as guardian of a resident or

1 individual in the admission process to enter a long-term care facility
2 is required to be made by the Superior Court in consultation with
3 the Office of the Public Guardian for Elderly Adults. Under the
4 bill, a power of attorney instrument executed by a principal naming
5 an enumerated person is deemed invalid.

6 “Long-term care facility” is defined as a nursing home, assisted
7 living residence, comprehensive personal care home, residential
8 health care facility, or dementia care home licensed pursuant to
9 P.L.1971, c.136 (C.26:2H-1 et seq.). Finally, a principal is defined
10 in the bill as a resident of a long-term care facility or an individual
11 who is in the admission process to enter a long-term care facility.

12 The bill requires the Department of Health to develop a standard
13 resident admission contract. Long-term care facilities are required
14 to use the admission contract developed by the department
15 beginning on the first day next following the sixth month of the date
16 of enactment. The bill prohibits a long-term care facility from
17 requiring a resident to sign any other document at the time of, or as
18 a condition of, admission into care. A long-term care facility is
19 prohibited from presenting any arbitration agreement to a
20 prospective resident as part of the standard resident admission
21 agreement.

22 The bill requires an operator of a long-term facility to provide
23 each resident, or a resident’s representative, notice that they may
24 use an attorney to apply for Medicaid long term care benefits at the
25 time of admission. Further, the notice is required to be posted
26 conspicuously in the nursing home or health care facility.

27 Finally, the bill requires the Commissioner of Human Services to
28 promulgate rules establishing uniform standards of care for non-
29 attorney individuals providing Medicaid application assistance,
30 including, but not limited to: (1) defining who is permitted to act as
31 a Medicaid application assistor before Medicaid agencies and the
32 Office of Administrative Law; (2) outlining the scope and nature of
33 the services that non-attorney Medicaid application assistors are
34 authorized to provide; (3) requiring Medicaid application assistors
35 to complete training on: Medicaid program rules; handling
36 confidential financial and medical information; conflicts of interest;
37 and what constitutes the unauthorized practice of law; and (4)
38 prohibiting non-attorney Medicaid application assistors from
39 charging any fee for providing Medicaid application assistance
40 services.