

SENATE, No. 2892

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 20, 2022

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes requirements for sanctions and other actions involving low-performing nursing homes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning nursing homes and supplementing P.L.1976,
2 c120 (C.30:13-1 et seq.).

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. a. In the event that a nursing home receives a one-star rating
8 from the federal Centers for Medicare and Medicaid Services, and
9 the nursing home received a rating of two stars or higher in the
10 preceding quarter, the Division of Medical Assistance and Health
11 Services in the Department of Human Services shall issue a warning
12 to the nursing home:

13 (1) urging the nursing home to improve the quality of care
14 provided to residents;

15 (2) advising the nursing home that a second or subsequent one-
16 star rating may result in the division requiring the nursing home to
17 take specific steps to improve the quality of care; and

18 (3) advising the nursing home that the failure to improve quality
19 of care at the nursing home may result in the division imposing
20 sanctions against the nursing home.

21 b. In the event a nursing home receives a one-star rating from
22 the federal Centers for Medicare and Medicaid Services in two
23 consecutive quarters, the division shall evaluate whether to impose
24 sanctions against the nursing home, which sanctions may include,
25 but shall not be limited to: issuing an order prohibiting the nursing
26 home from admitting new Medicaid enrollees; limiting the total
27 number of Medicaid enrollees who may be admitted to the nursing
28 home; and reducing or limiting payments to the nursing home under
29 the Department of Human Services' quality incentive payment
30 program.

31 c. In the event a nursing home receives a one-star rating from
32 the federal Centers for Medicare and Medicaid Services in three
33 consecutive quarters, the division shall evaluate whether to impose
34 additional sanctions against the nursing home, which sanctions shall
35 be in addition to, and more severe than, any sanctions imposed
36 pursuant to subsection b. of this section. Sanctions imposed
37 pursuant to this subsection may include, but shall not be limited to:
38 issuing an order prohibiting the nursing home from admitting new
39 residents; removing current residents who are Medicaid enrollees
40 from the nursing home; stopping all payments to the nursing home
41 under the Department of Human Services' quality incentive
42 payment program; declining to approve or revoking the approval of
43 the owner or operator of the nursing home to participate in
44 Medicaid; and, in consultation with the Department of Health,
45 prohibiting the owner or operator of the nursing home from
46 obtaining an interest in, or contracting with, any other nursing home
47 in the State.

1 d. (1) In addition to any other actions taken pursuant to
2 subsection b. or c. of this section, the division shall require a
3 nursing home that receives a one-star rating from the federal
4 Centers for Medicare and Medicaid Services in three or more
5 consecutive quarters to submit an improvement plan to the division,
6 in a manner and method to be determined by division, providing a
7 description of the action steps to be taken by the nursing home over
8 an 18-month period to resolve the quality issues indicated by
9 facility's consecutive one-star ratings.

10 (2) The division, in consultation with the Department of Health,
11 shall review a plan submitted by a nursing home pursuant to
12 paragraph (1) of this subsection. A nursing home shall immediately
13 commence implementing the plan upon written approval by the
14 division. If the division does not approve a nursing home's
15 improvement plan, the division shall return the disapproved plan to
16 the nursing home with a written explanation of the plan's
17 deficiencies. The nursing home shall have 30 days from receipt of a
18 disapproved plan to submit an updated improvement plan to the
19 division for approval. If the division determines a nursing home's
20 updated improvement plan cannot be approved, the division shall
21 have the discretion to return the plan to the nursing home with a
22 written explanation of the plan's deficiencies and allow the nursing
23 home to submit a second updated plan, or to make a determination
24 that the nursing home is noncompliant with the requirements of this
25 subsection.

26 (3) Within 60 days of the completion of the nursing home's
27 approved improvement plan, the nursing home shall submit a report
28 to the division documenting the execution of the plan, as well as the
29 outcomes of the action steps. The division, in consultation with the
30 Department of Health, shall evaluate the report and determine the
31 whether the nursing home was compliant in implementing the plan
32 as approved by the division. At the division's discretion, a nursing
33 home determined to be noncompliant with the implementation of its
34 improvement plan may be provided additional time to fulfill the
35 actions steps outlined in the plan.

36 (4) A nursing home that fails to comply with the requirements of
37 this subsection shall be ineligible to receive reimbursement under
38 the Medicaid program, provided that reimbursement for services
39 shall continue until all Medicaid beneficiaries residing at the
40 nursing home have been relocated. The nursing home shall be
41 responsible for informing Medicaid residents, in writing, of the
42 nursing home's non-compliance with the requirements of this
43 subsection, and shall provide the division with a patient-centered
44 discharge plan for current Medicaid residents within 30 days of the
45 receipt of the division's written determination of noncompliance
46 with the requirements of this subsection. The division shall include
47 information on an appeals process, to be established by the division,

1 in the written documentation provided to a noncompliant nursing
2 home.

3 e. When evaluating whether to impose sanctions against a
4 nursing home as provided under subsection b. and subsection c. of
5 this section, the division shall consult with the Department of
6 Health concerning its recommendations for action against the
7 nursing home, and shall review the information concerning the
8 nursing home that is available on the data dashboard maintained by
9 the Department of Health pursuant to subsection f. of section 3 of
10 P.L.2021, c.457 (C.). In the event the division does not take
11 action against a nursing home as authorized under subsection b. or
12 subsection c. of this section, the division shall document the reason
13 why action was not taken.

14 f. In addition to any actions taken pursuant to subsections b.,
15 c., or d. of this section, the division may, at any time, institute any
16 actions as shall be necessary to protect the health and well-being of
17 residents and staff at a nursing home.

18 g. Commencing one year after the effective date of this act, and
19 annually thereafter, the Assistant Commissioner for the Division of
20 Medical Assistance and Health Services in the Department of
21 Human Services shall prepare and submit a report to the Governor
22 and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
23 Legislature, outlining the sanctions imposed pursuant to this act in
24 each quarter of the preceding year, providing the reasons why
25 sanctions were not imposed against any nursing home for which
26 sanctions were authorized pursuant to subsection b. or subsection c.
27 of this act, and outlining the results of any improvement plans
28 required pursuant to subsection d. of this section and actions taken
29 against nursing homes determined to be non-compliant with the
30 requirements of subsection d. of this section.

31 h. Nothing in this section shall be construed to diminish the
32 authority of the Department of Health or any other department or
33 agency having regulatory authority over nursing homes. A sanction
34 or other action imposed against a nursing home pursuant to this
35 section shall be in addition to any other penalties as may be
36 imposed against the nursing home for violations of State or federal
37 law by the Department of Health or any other department or agency
38 having jurisdiction.

39 i. The Assistant Commissioner for the Division of Medical
40 Assistance and Health Services in the Department of Human
41 Services shall adopt rules and regulations, pursuant to the
42 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
43 seq.), establishing the criteria the division shall consider when
44 determining whether to impose sanctions against a nursing home
45 pursuant to this section and when determining which sanctions are
46 appropriate for the nursing home, which criteria shall include, at a
47 minimum, the preferences of nursing home residents and the
48 availability of other nursing homes in the same region.

1 2. The Commissioner of Human Services shall apply for such
2 State plan amendments or waivers as may be necessary to
3 implement the provisions of this act and to secure federal financial
4 participation for State Medicaid expenditures under the federal
5 Medicaid program.

6
7 3. This act shall take effect 90 days after the date of enactment.

8
9
10 STATEMENT

11
12 This bill requires the Division of Medical Assistance and Health
13 Services in the Department of Human Services (DHS) to take
14 certain actions involving nursing homes that receive a one-star
15 quality rating from the federal Centers for Medicare and Medicaid
16 Services (CMS). The CMS currently rates the quality of care in
17 nursing homes on a scale of one to five stars.

18 Specifically, if the nursing home did not receive a one-star rating
19 in the preceding quarter, the division will be required to issue a
20 warning to the nursing home: 1) urging the nursing home to
21 improve the quality of care provided to residents; 2) advising the
22 nursing home that a second or subsequent one-star rating may result
23 in the division requiring the nursing home to take specific steps to
24 improve the quality of care; and 3) advising the nursing home that
25 the failure to improve quality of care at the nursing home may result
26 in the division imposing sanctions against the nursing home.

27 If the nursing home receives a one-star CMS rating in two
28 consecutive quarters, the division will be required to evaluate
29 whether to impose sanctions against the nursing home, which
30 sanctions may include, but will not be limited to: issuing an order
31 prohibiting the nursing home from admitting new Medicaid
32 enrollees; limiting the total number of Medicaid enrollees who may
33 be admitted to the nursing home; and reducing or limiting payments
34 to the nursing home under the DHS quality incentive payment
35 program.

36 If the nursing home receives a one-star CMS rating in three
37 consecutive quarters, the division will be required to evaluate
38 whether to impose additional sanctions against the nursing home,
39 which sanctions will be in addition to, and more severe than, any
40 sanctions imposed for a one-star CMS rating in two consecutive
41 quarters. The sanctions may include, but will not be limited to:
42 issuing an order prohibiting the nursing home from admitting new
43 residents; removing current residents who are Medicaid enrollees
44 from the nursing home; stopping all payments to the nursing home
45 under the DHS quality incentive payment program; declining to
46 approve or revoking the approval of the owner or operator of the
47 nursing home to participate in Medicaid; and, in consultation with
48 the Department of Health (DOH), prohibiting the owner or operator

1 of the nursing home from obtaining an interest in, or contracting
2 with, any other nursing home in the State. The division may
3 additionally institute any actions as are necessary to protect the
4 health and well-being of residents and staff at the nursing home.

5 When evaluating whether to impose sanctions against a nursing
6 home, the division will be required to consult with the DOH
7 concerning its recommendations for action against the nursing home
8 and review the information concerning the nursing home that is
9 available on the DOH's nursing home data dashboard. In the event
10 the division does not take action against a nursing home as
11 authorized under the bill, the division will be required to document
12 the reason why action was not taken.

13 In addition to any other actions taken against a nursing home
14 under the bill, the division is to require a nursing home that receives
15 a one-star CMS rating in three or more consecutive quarters to
16 submit an improvement plan to the division, in a manner and
17 method to be determined by division, providing a description of the
18 action steps to be taken by the nursing home over an 18-month
19 period to resolve the quality issues indicated by nursing home's
20 consecutive one-star ratings. The division, in consultation with the
21 DOH, will review the plan and either approve it or return it to the
22 nursing home with a description of the changes needed for the plan
23 to be approved. Upon approval of its improvement plan, a nursing
24 home will be required to begin implementing the plan immediately.

25 If an improvement plan is returned to the nursing home for
26 revision, the nursing home will then have 30 days to submit an
27 updated plan to the division for approval. If the division determines
28 the updated plan cannot be approved, it will have the discretion to
29 allow the nursing home to submit a second updated plan or to make
30 a determination that the nursing home is noncompliant with
31 improvement plan requirements, which will result in the division
32 removing all Medicaid enrollees from the nursing home, as outlined
33 below.

34 Within 60 days after completing its improvement plan, a nursing
35 home will be required to submit a report to the division
36 documenting the execution of the plan, as well as the outcomes of
37 the action steps. The division, in consultation with the DOH, will
38 evaluate the report and determine the nursing home's compliance in
39 implementing the plan as approved by the division. At the
40 division's discretion, a nursing home determined to be
41 noncompliant with the implementation of the facility's
42 improvement plan may be provided additional time to fulfill the
43 actions steps outlined in the plan.

44 A nursing home that fails to comply with the requirements
45 concerning the submission and implementation of an improvement
46 plan will be ineligible to receive reimbursement under the Medicaid
47 program, although reimbursement for services will continue until all
48 Medicaid beneficiaries residing at the nursing home have been

1 relocated. The nursing home will be responsible for: 1) informing
2 Medicaid residents, in writing, of the nursing home's
3 noncompliance with the improvement plan requirements; and 2)
4 providing the division with a patient-centered discharge plan for
5 current Medicaid residents within 30 days of the determination of
6 noncompliance. Nursing homes will have the right to appeal the
7 determination of non-compliance.

8 Commencing one year after the effective date of the bill, and
9 annually thereafter, the division will be required to prepare and
10 submit a report to the Governor and the Legislature outlining the
11 sanctions imposed against nursing homes under the bill in each
12 quarter of the preceding year, explaining the reason why sanctions
13 were not imposed against any nursing home for which sanctions
14 were authorized under the bill, and outlining the results of any
15 nursing home improvement plans required under to the bill and the
16 actions taken against each nursing home that was determined to be
17 noncompliant with the improvement plan requirements established
18 under the bill.

19 In addition to the sanctions authorized under the bill, the bill
20 specifies that the division may, at any time, institute any actions
21 necessary to protect the health and well-being of residents and staff
22 at a nursing home.

23 Nothing in the bill is to be construed to diminish the authority of
24 the DOH or any other department or agency having regulatory
25 authority over nursing homes, and a sanction or other action
26 imposed against a nursing home under the bill will be in addition to
27 any other penalties imposed against the nursing home for violations
28 of State or federal law.

29 The division will be required to promulgate regulations
30 establishing the criteria the division will consider when determining
31 whether to impose sanctions against a nursing home and which
32 sanctions are appropriate for the nursing home. These criteria will
33 include, at a minimum, consideration of the preferences of nursing
34 home residents and the availability of other nursing homes in the
35 same region.

36 This bill implements the recommendations of the Office of the
37 State Comptroller outlined in its February 2022 report titled, "An
38 Examination of the Lowest-Rated Long Term Care Facilities
39 Participating in New Jersey's Medicaid Program."