STATE OF NEW YORK

5685--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 23, 2021

Introduced by M. of A. GOTTFRIED, GUNTHER, GALEF, CLARK, TAYLOR, PAULIN, ABINANTI, BICHOTTE HERMELYN, McDONALD, HEVESI, BRONSON, WALLACE, STECK, DINOWITZ, THIELE, PERRY, JACOBSON, ENGLEBRIGHT, JACKSON, CUSICK, ANDERSON, SIMON, BARRETT, SILLITTI, COOK, COLTON, McMAHON, AUBRY, RICHARDSON, FORREST, KELLES, BUTTENSCHON, SANTABARBARA, DURSO -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to establishing a required resident care spending ratio for nursing homes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2805-aa to read as follows:

§ 2805-aa. Nursing home resident care ratio. 1. As used in this section, the following terms have the following meanings:

(a) "Resident care" means: (i) direct care provided by certified nurse aides, licensed practical nurses, and registered nurses; (ii) support services including housing, laundry, housekeeping, food service, nurse administration, activity program, social services and transportation as identified in reports required by the department; (iii) ancillary program services including medical, dental, podiatric and laboratory services, inhalation and other physical, mental, occupational therapeutics as identified in reports required by the department; and (iv) program services for residents including personal grooming, as identified in reports required by the department. Resident care does not include administrative costs (other than nurse administration), capital costs, rent, or debt service.

(b) "Resident care amount" means the amount spent by the nursing home for care of residents of the nursing home; provided that for any amount

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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spent for contracted or purchased personal services, only eighty percent of that amount shall count as spending on resident care.

(c) "Total operating revenue" means the revenue received by the nursing home from or on behalf of residents of the nursing home, government payers, or third-party payers, to pay for a resident's occupancy of the nursing home, resident care, and the operation of the nursing home.

(d) "Required resident care percentage" means the ratio of a nursing home's resident care amount to its total operating revenue, required by subdivision two of this section.

(e) "Resident care deficit" means the amount, in dollars, by which the nursing home's resident care amount is less than the required resident care percentage.

(f) "Direct care service" means the amount, in dollars, spent on direct care by certified nurse aides, licensed practical nurses, and registered nurses which shall be at least sixty percent of the required resident care percentage.

2. Every nursing home shall, in every calendar year, spend at least (a) the resident care amount necessary to achieve the required resident care percentage and (b) the sufficient direct care service amount. For the calendar year two thousand twenty-two, and every year thereafter, the required resident care percentage shall be seventy percent.

3. For any calendar year in which a nursing home has a resident care deficit or direct care service deficit, it shall pay to the department an amount equal to the deficit, payable in a manner and time determined by the commissioner in regulations. Where a nursing home does not pay as required by this subdivision, the commissioner shall sue (represented by the state attorney general) the nursing home to obtain the unpaid amount, or deduct the unpaid amount from medical assistance payments otherwise due to the nursing home, or a combination of those methods. Moneys so collected shall be transferred to the nursing home quality improvement demonstration program, to be used under subdivision six of section twenty-eight hundred eight-d of this article in support of projects or programs designed to improve specific areas of quality of care.

4. For purposes of this section, a nursing home's spending, revenue and percentages of various amounts shall be calculated on an accrual basis, under regulations of the commissioner.

5. The commissioner shall make regulations, make medical assistance state plan amendments, seek waivers from the federal centers for Medicare and Medicaid services, and take other actions reasonably necessary to implement this section.

6. The commissioner shall, by regulations and otherwise, make sure that reports by nursing homes under section twenty-eight hundred five-e of this article include information as to all items referred to in this section and organize that information consistent with the terms of this section.

§ 2. This act shall take effect immediately.