

# STATE OF NEW YORK

5685

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 -- read once and referred to the Committee on Health

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-ee to read as follows:

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

(a) "Resident care" means: (i) direct care 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 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

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

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1 payers, or third-party payers, to pay for a resident's occupancy of the  
2 nursing home, resident care, and the operation of the nursing home.

3 (d) "Required resident care percentage" means the ratio of a nursing  
4 home's resident care amount to its total operating revenue, expressed as  
5 a percentage, for a calendar year, required by subdivision two of this  
6 section.

7 (e) "Direct care service amount" means the portion of the resident  
8 care amount attributable to costs under subparagraph (i) of paragraph  
9 (a) of this subdivision.

10 (f) "Resident care deficit" means the amount, in dollars, by which the  
11 nursing home's resident care amount is less than the amount necessary to  
12 achieve the required resident care percentage, where it is less.

13 (g) "Direct care service deficit" means the amount, in dollars, by  
14 which the nursing home's direct service amount is less than sixty  
15 percent of the resident care amount, in dollars, necessary to achieve  
16 the required resident care percentage, where it is less.

17 2. Every nursing home shall, in every calendar year, spend at least  
18 (a) the resident care amount necessary to achieve the required resident  
19 care percentage and (b) a sufficient direct care service amount so it  
20 does not have a direct care service deficit. For the calendar year two  
21 thousand twenty-two, the required resident care percentage shall be  
22 seventy percent. For the calendar year two thousand twenty-three, the  
23 required resident care percentage shall be eighty percent. For the  
24 calendar year two thousand twenty-four and every year thereafter, the  
25 required resident care percentage shall be ninety percent.

26 3. For any calendar year in which a nursing home has a resident care  
27 deficit or direct care service deficit, it shall pay to the department  
28 an amount equal to what the nursing home would have had to spend to  
29 avoid having either deficit, payable in a manner and time determined by  
30 the commissioner in regulations. Where a nursing home does not pay as  
31 required by this subdivision, the commissioner shall sue the nursing  
32 home to obtain the unpaid amount, deduct the unpaid amount from medical  
33 assistance payments otherwise due to the nursing home, or a combination  
34 of those methods. Moneys so collected shall be transferred to the nurs-  
35 ing home quality improvement demonstration program, to be used under  
36 subdivision six of section twenty-eight hundred eight-d of this article  
37 in support of projects or programs designed to improve specific areas of  
38 quality of care.

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

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

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

51 § 2. This act shall take effect immediately.