

# STATE OF NEW YORK

8047

## IN SENATE

January 5, 2024

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law and a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, in relation to a demonstration project to reduce the use of temporary staffing agencies in residential healthcare facilities

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

1 Section 1. Subparagraphs (ii) and (iii) of paragraph (c) of subdivi-  
2 sion 1 of section 2828 of the public health law, as added by a chapter  
3 of the laws of 2023 amending the public health law relating to estab-  
4 lishing a four-year demonstration project and workgroup to reduce the  
5 use of temporary staffing agencies in residential healthcare facilities,  
6 as proposed in legislative bills numbers S. 6897 and A. 7328, are  
7 amended to read as follows:

8 (ii) [~~The commissioner shall establish a four-year (January first, two~~  
9 ~~thousand twenty-three -- December thirty-first, two thousand twenty-six)~~  
10 ~~demonstration project to reduce the use of temporary staffing agencies.~~  
11 ~~Any remittance or amounts owed to the state pursuant to subparagraph (i)~~  
12 ~~of this paragraph, including, but not limited to, amounts owed relating~~  
13 ~~to excess revenue, or the difference between the minimum spending~~  
14 ~~requirement and the actual amount of spending on resident-facing staff-~~  
15 ~~ing or direct care staffing, as the case may be, shall be reduced as~~  
16 ~~follows for reporting periods beginning on January first, two thousand~~  
17 ~~twenty-three and ending on December thirty-first, two thousand twenty-~~  
18 ~~six, and, to the extent the demonstration project continues, years ther-~~  
19 ~~eafter.~~

20 ~~(A) a fifty percent reduction, if a residential healthcare facility~~  
21 ~~which has a fifty percent or lower use of resident-facing staffing~~  
22 ~~contracted out to a temporary staffing agency for services provided by~~  
23 ~~registered professional nurses, licensed practical nurses, or certified~~

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

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~~nurse aids, has reduced its use of such contracted agency services by at least thirty percent during any year in which such remittance or amounts owed to the state are payable, as measured by subparagraph (iii) of this paragraph.~~

~~(B) a twenty-five percent reduction, if a residential healthcare facility which has a fifty percent or lower use of resident-facing staffing contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides, has reduced its use of such contracted agency services by at least twenty percent, but less than thirty percent, during any year in which such remittance or amounts owed to the state are payable, as measured by subparagraph (iii) of this paragraph.~~

~~(iii) In measuring temporary staffing agency usage for purposes of determining the reductions provided for in clauses (A) and (B) of subparagraph (ii) of this paragraph, the following measuring periods shall apply: in two thousand twenty three, the fourth calendar quarter of two thousand twenty two shall be compared to the fourth calendar quarter of two thousand twenty three; for two thousand twenty four and years thereafter, the average of the four calendar quarters of the previous year shall be compared to the average of the four calendar quarters of the current year. Temporary staffing shall be measured using the publicly available U.S. Centers for Medicare and Medicaid Services (CMS) Payroll Based Journal (PBJ) facility reported data.] Notwithstanding the requirements prescribed by subparagraph (i) of this paragraph, the provisions of a demonstration project established pursuant to a chapter of the laws of two thousand twenty-three that amended this subparagraph shall apply to those residential health care facilities who qualify for such demonstration project.~~

§ 2. Paragraph (a) of subdivision 2 of section 2828 of the public health law, as amended by a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, is amended to read as follows:

(a) "Revenue" shall mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the department; provided, however, that revenue shall exclude:

(i) the capital portion of the Medicaid reimbursement rate;

(ii) funding received as reimbursement for the assessment under subparagraph (vi) of paragraph (b) of subdivision two of section twenty-eight hundred seven-d of this article, as reconciled pursuant to paragraph (c) of subdivision ten of section twenty-eight hundred seven-d of this article; and

(iii) any grant funds from the federal government for reimbursement of COVID-19 pandemic-related expenses, including but not limited to funds received from the federal emergency management agency or health resources and services administration[;]

~~(iv) for the first year of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in the fourth quarter of two thousand twenty-three, a residential health care facility uses ten percent or less of its resident-facing~~

~~staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides;~~

~~(v) for the second year of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in two thousand twenty-four, a residential health care facility uses nine percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides; and~~

~~(vi) for the third and fourth years, respectively, and, to the extent the demonstration project continues, years thereafter, respectively, of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in two thousand twenty-five and two thousand twenty-six, respectively, and, to the extent the demonstration project continues, years thereafter, respectively, a residential health care facility uses eight percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides].~~

§ 3. Section 2 of a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, is amended to read as follows:

~~§ 2. [Joint labor management nursing home staffing workgroup. Beginning no later than July 1, 2025, the commissioner shall convene an eight-member labor management nursing home staffing workgroup that shall review and assess the impact of the demonstration program. The workgroup shall consist of an equal number of nursing home operators and representatives of organized labor who represent nursing home staff. The four nursing home operator appointees shall consist of a proportionate representation of operators, including: (i) both for-profit and not-for-profit operators; and (ii) appointees from various regions of the state. In making such nursing home operator appointments, the commissioner shall seek recommendations from regional or statewide associations representing predominantly for-profit and not-for-profit nursing home operators. The commissioner and a representative of the office of long-term care ombudsman shall also be members of the workgroup as ex officio, non-voting members.~~

~~The workgroup shall study, evaluate, and make recommendations with respect to the demonstration program, including whether or not to continue or modify the program. The workgroup shall also assess at least the following issues: (i) the impact of the demonstration program on reducing the use of staffing agencies; (ii) the impact of reduced staffing agencies on continued staffing shortages and meeting required staffing levels in various regions of the state; and (iii) the impact of reduced staffing agency employees on quality of care and nursing home operations. In conducting its duties the workgroup shall solicit input and recommendations from representatives of consumers, and persons with experience in nursing home data.~~

~~The workgroup shall prepare a report reflecting a majority of the voting members' recommendations no later than October 1, 2026.] 1. Notwithstanding the requirements of paragraph (c) of subdivision 1 and~~

1 paragraph (a) of subdivision 2 of section 2828 of the public health law,  
2 the commissioner of health shall establish a four-year (January 1, 2023  
3 through December 31, 2026) demonstration project to reduce the use of  
4 temporary staffing agencies. Any remittance or amounts owed to the state  
5 pursuant to subparagraph (i) of paragraph (c) of subdivision 1 and para-  
6 graph (a) of subdivision 2 of section 2828 of the public health law,  
7 including, but not limited to, amounts owed relating to excess revenue,  
8 or the difference between the minimum spending requirement and the actu-  
9 al amount of spending on resident-facing staffing or direct care staff-  
10 ing, as the case may be, shall be reduced as follows for reporting peri-  
11 ods beginning on January 1, 2023 and ending on December 31, 2026, and,  
12 to the extent the demonstration project continues, years thereafter:

13 (A) a fifty percent reduction, if a residential healthcare facility  
14 which has a fifty percent or lower use of resident-facing staffing  
15 contracted out to a temporary staffing agency for services provided by  
16 registered professional nurses, licensed practical nurses, or certified  
17 nurse aides, has reduced its use of such contracted agency services by  
18 at least thirty percent during any year in which such remittance or  
19 amounts owed to the state are payable, as measured by paragraph (C) of  
20 this subdivision.

21 (B) a twenty-five percent reduction, if a residential healthcare  
22 facility which has a fifty percent or lower use of resident-facing  
23 staffing contracted out to a temporary staffing agency for services  
24 provided by registered professional nurses, licensed practical nurses,  
25 or certified nurse aides, has reduced its use of such contracted agency  
26 services by at least twenty percent, but less than thirty percent,  
27 during any year in which such remittance or amounts owed to the state  
28 are payable, as measured by paragraph (C) of this subdivision.

29 (C) In measuring temporary staffing agency usage for purposes of  
30 determining the reductions provided for in this section, the following  
31 measuring periods shall apply: in 2023, the fourth calendar quarter of  
32 2022 shall be compared to the fourth calendar quarter of 2023; for 2024  
33 and years thereafter, the average of the 4 calendar quarters of the  
34 previous year shall be compared to the average of the four calendar  
35 quarters of the current year. Temporary staffing shall be measured using  
36 the publicly available U.S. Centers for Medicare and Medicaid Services  
37 (CMS) Payroll Based Journal (PBJ) facility reported data.

38 2. (A) For the first year of the demonstration project established  
39 pursuant to this section, the definition of "revenue" as defined in  
40 paragraph (a) of subdivision 2 of section 2828 of the public health law  
41 shall exclude all revenue, other than total Medicaid operating revenue,  
42 if, in the fourth quarter of 2023, a residential health care facility  
43 uses ten percent or less of its resident-facing staffing who are  
44 contracted out to a temporary staffing agency for services provided by  
45 registered professional nurses, licensed practical nurses, or certified  
46 nurse aides.

47 (B) For the second year of the demonstration project established  
48 pursuant to this section, all revenue, other than total Medicaid operat-  
49 ing revenue, if, in 2024, a residential health care facility uses nine  
50 percent or less of its resident-facing staffing who are contracted out  
51 to a temporary staffing agency for services provided by registered  
52 professional nurses, licensed practical nurses, or certified nurse  
53 aides; and

54 (C) for the third and fourth years, respectively, and, to the extent  
55 the demonstration project continues, years thereafter, respectively, of  
56 the demonstration project established pursuant to this section, all

1 revenue, other than total Medicaid operating revenue, if, in 2025 and  
2 2026 respectively, and, to the extent the demonstration project contin-  
3 ues, years thereafter, respectively, a residential health care facility  
4 uses eight percent or less of its resident-facing staffing who are  
5 contracted out to a temporary staffing agency for services provided by  
6 registered professional nurses, licensed practical nurses, or certified  
7 nurse aides.

8 3. For purposes of implementing the demonstration program, after a  
9 determination by the commissioner of health that a residential health  
10 care facility is not in compliance with paragraph (c) of subdivision 1  
11 of section 2828 of the public health law, but prior to the remittance or  
12 payment of any funds by such facility, a residential health care facili-  
13 ty shall submit documentation to the commissioner of health that it has  
14 met the provisions of the demonstration project. Such documentation  
15 shall be supported by a verification by a certified public accountant  
16 that, based on the PBJ facility reported data and other necessary  
17 supporting documentation, such facility is eligible for a reduction in  
18 payments pursuant to this section. Upon receipt of such documentation  
19 and verification, the commissioner will reduce any payments pursuant to  
20 this section.

21 § 4. This act shall take effect on the same date and in the same  
22 manner as a chapter of the laws of 2023 amending the public health law  
23 relating to establishing a four-year demonstration project and workgroup  
24 to reduce the use of temporary staffing agencies in residential health-  
25 care facilities, as proposed in legislative bills numbers S. 6897 and A.  
26 7328, takes effect.