

# STATE OF NEW YORK

4883

2025-2026 Regular Sessions

## IN SENATE

February 13, 2025

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

AN ACT to amend the public health law, in relation to minimum direct resident care spending by residential health care facilities

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

1 Section 1. Subparagraph (i) of paragraph (c) of subdivision 1 of  
2 section 2828 of the public health law, as amended by chapter 747 of the  
3 laws of 2023, is amended to read as follows:  
4 (i) Except as provided in subparagraph (ii) of this paragraph, such  
5 regulations shall further include at a minimum that any residential  
6 health care facility for which the calculation of total operating revenue,  
7 as such term is limited by paragraph (a) of subdivision two of this  
8 section, exceeds total operating and non-operating expenses by more than  
9 five percent of total operating and non-operating expenses or that fails  
10 to spend the minimum amount necessary to comply with the minimum spend-  
11 ing standards for resident-facing staffing or direct resident care,  
12 calculated on an annual basis, or for the year two thousand twenty-two,  
13 on a pro-rata basis for only that portion of the year during which the  
14 failure of a residential health care facility to spend a minimum of  
15 seventy percent of revenue on direct resident care, and forty percent of  
16 revenue on resident-facing staffing, may be held to be a violation of  
17 this chapter, shall remit such excess revenue, or the difference between  
18 the minimum spending requirement and the actual amount of spending on  
19 resident-facing staffing or direct care staffing, as the case may be, to  
20 the state, with such excess revenue which shall be payable, in a manner  
21 to be determined by such regulations, by November first in the year  
22 following the year in which the expenses are incurred. The department  
23 shall collect such payments by methods including, but not limited to,  
24 bringing suit in a court of competent jurisdiction on its own behalf  
25 after giving notice of such suit to the attorney general, deductions or

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

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1 offsets from payments made pursuant to the Medicaid program, and shall  
2 deposit such recouped funds into the nursing home quality pool, as set  
3 forth in paragraph (d) of subdivision two-c of section twenty-eight  
4 hundred eight of this article. Provided further that such payments of  
5 excess revenue shall be in addition to and shall not affect a residen-  
6 tial health care facility's obligations to make any other payments  
7 required by state or federal law into the nursing home quality pool,  
8 including but not limited to Medicaid rate reductions required pursuant  
9 to paragraph (g) of subdivision two-c of section twenty-eight hundred  
10 eight of this article and department regulations promulgated pursuant  
11 thereto. The commissioner or their designees shall have authority to  
12 audit the residential health care facilities' reports for compliance in  
13 accordance with this section.

14 § 2. Paragraph (a) of subdivision 2 of section 2828 of the public  
15 health law, as amended by chapter 27 of the laws of 2024, is amended to  
16 read as follows:

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

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

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

30 (iii) any grant funds from the federal government for reimbursement of  
31 COVID-19 pandemic-related expenses, including but not limited to funds  
32 received from the federal emergency management agency or health  
33 resources and services administration and such other one-time federal  
34 financial assistance.

35 § 3. This act shall take effect immediately; provided, however, for  
36 purposes of distribution of the supplemental payment to qualified facil-  
37 ities authorized by chapter 53 of the laws of 2022, enacting the aid to  
38 localities budget, and pursuant to the Medicaid State Plan Amendment  
39 22-0007, this act shall be deemed to have been in full force and effect  
40 on and after January 1, 2020.