

STATE OF NEW YORK

6567

2025-2026 Regular Sessions

IN ASSEMBLY

March 6, 2025

Introduced by M. of A. SIMON -- read once and referred 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 reven-
7 ue, as such term is limited by subparagraph (iii) of paragraph (a) of
8 subdivision two of this section, exceeds total operating and non-operat-
9 ing expenses by more than five percent of total operating and non-oper-
10 ating expenses or that fails to spend the minimum amount necessary to
11 comply with the minimum spending standards for resident-facing staffing
12 or direct resident care, calculated on an annual basis, or for the year
13 two thousand twenty-two, on a pro-rata basis for only that portion of
14 the year during which the failure of a residential health care facility
15 to spend a minimum of seventy percent of revenue on direct resident
16 care, and forty percent of revenue on resident-facing staffing, may be
17 held to be a violation of this chapter, shall remit such excess revenue,
18 or the difference between the minimum spending requirement and the actu-
19 al amount of spending on resident-facing staffing or direct care staff-
20 ing, as the case may be, to the state, with such excess revenue which
21 shall be payable, in a manner to be determined by such regulations, by
22 November first in the year following the year in which the expenses are
23 incurred. The department shall collect such payments by methods includ-
24 ing, but not limited to, bringing suit in a court of competent jurisdic-
25 tion on its own behalf after giving notice of such suit to the attorney

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

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1 general, deductions or offsets from payments made pursuant to the Medi-
2 caid program, and shall deposit such recouped funds into the nursing
3 home quality pool, as set forth in paragraph (d) of subdivision two-c of
4 section twenty-eight hundred eight of this article. Provided further
5 that such payments of excess revenue shall be in addition to and shall
6 not affect a residential health care facility's obligations to make any
7 other payments required by state or federal law into the nursing home
8 quality pool, including but not limited to medicaid rate reductions
9 required pursuant to paragraph (g) of subdivision two-c of section twenty-
10 eight hundred eight of this article and department regulations
11 promulgated pursuant thereto. The commissioner or their designees shall
12 have authority to audit the residential health care facilities' reports
13 for compliance in 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 twenty-
27 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 not-
37 for-profit facilities authorized by chapter 53 of the laws of 2022,
38 enacting the aid to localities budget, and pursuant to the Medicaid
39 State Plan Amendment 22-0007, this act shall be deemed to have been in
40 full force and effect on and after January 1, 2020.