

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Reforms coming for N.J. nursing homes, but big changes stall, Reforms coming to N.J. nursing homes in aftermath of huge number of deaths, but other major changes stalled Nursing," The Star-Ledger, September 17, 2020

"N.J. nursing homes coming, but big changes stall Nursing homes, The Times, September 17, 2020

RWH/CL

P.L. 2020, CHAPTER 89, *approved September 16, 2020*
 Assembly, No. 4482 (*Second Reprint*)

1 **AN ACT** concerning long-term care facilities, amending P.L.1966,
 2 c.113, and supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
 5 of New Jersey:

6

7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
 8 read as follows:

9 2. As used in this act:

10 (a) "Commissioner" means the Commissioner of Labor and
 11 Workforce Development.

12 (b) "Director" means the director in charge of the bureau
 13 referred to in section 3 of this act.

14 (c) "Wage board" means a board created as provided in section
 15 10 of this act.

16 (d) "Wages" means any moneys due an employee from an
 17 employer for services rendered or made available by the employee
 18 to the employer as a result of their employment relationship
 19 including commissions, bonus and piecework compensation and
 20 including the fair value of any food or lodgings supplied by an
 21 employer to an employee, and, until December 31, 2018, "wages"
 22 includes any gratuities received by an employee for services
 23 rendered for an employer or a customer of an employer. The
 24 commissioner may, by regulation, establish the average value of
 25 gratuities received by an employee in any occupation and the fair
 26 value of food and lodging provided to employees in any occupation,
 27 which average values shall be acceptable for the purposes of
 28 determining compliance with this act in the absence of evidence of
 29 the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee
 31 is regularly paid for each hour of work as determined by dividing
 32 the total hours of work during the week into the employee's total
 33 earnings for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership,
 36 association, corporation, and the State and any county,
 37 municipality, or school district in the State, or any agency,
 38 authority, department, bureau, or instrumentality thereof, or any
 39 person or group of persons acting directly or indirectly in the
 40 interest of an employer in relation to an employee.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ASE committee amendments adopted August 24, 2020.

²Assembly AAP committee amendments adopted August 24, 2020.

1 (h) "Employee" includes any individual employed by an
2 employer.

3 (i) "Occupation" means any occupation, service, trade,
4 business, industry or branch or group of industries or employment
5 or class of employment in which employees are gainfully employed.

6 (j) "Minimum fair wage order" means a wage order
7 promulgated pursuant to this act.

8 (k) "Fair wage" means a wage fairly and reasonably
9 commensurate with the value of the service or class of service
10 rendered and sufficient to meet the minimum cost of living
11 necessary for health.

12 (l) "Oppressive and unreasonable wage" means a wage which is
13 both less than the fair and reasonable value of the service rendered
14 and less than sufficient to meet the minimum cost of living
15 necessary for health.

16 (m) "Limousine" means a motor vehicle used in the business of
17 carrying passengers for hire to provide prearranged passenger
18 transportation at a premium fare on a dedicated, nonscheduled,
19 charter basis that is not conducted on a regular route and with a
20 seating capacity in no event of more than 14 passengers, not
21 including the driver, provided, that such a motor vehicle shall not
22 have a seating capacity in excess of four passengers, not including
23 the driver, beyond the maximum passenger seating capacity of the
24 vehicle, not including the driver, at the time of manufacture.
25 "Limousine" shall not include taxicabs, hotel or airport shuttles and
26 buses, buses employed solely in transporting school children or
27 teachers to and from school, vehicles owned and operated directly
28 or indirectly by businesses engaged in the practice of mortuary
29 science when those vehicles are used exclusively for providing
30 transportation related to the provision of funeral services or vehicles
31 owned and operated without charge or remuneration by a business
32 entity for its own purposes.

33 (n) "Seasonal employment" means employment during a year by
34 an employer that is a seasonal employer ,or employment by a non-
35 profit or government entity of an individual who is not employed by
36 that employer outside of the period of that year commencing on
37 May 1 and ending September 30, or employment by a governmental
38 entity in a recreational program or service during the period
39 commencing on May 1 and ending September 30, except that
40 "seasonal employment" does not include employment of employees
41 engaged to labor on a farm on either a piece-rate or regular hourly
42 rate basis .

43 (o) "Seasonal employer" means an employer who exclusively
44 provides its services in a continuous period of not more than ten
45 weeks during the months of June, July, August, and September, or
46 an employer for which, during the immediately previous calendar
47 year, not less than two thirds of the employer's gross receipts were
48 received in a continuous period of not more than sixteen weeks or

1 for which not less than 75 percent of the wages paid by the
2 employer during the immediately preceding year were paid for work
3 performed during a single calendar quarter.

4 (p) "Small employer" means any employer who employed less
5 than six employees for every working day during each of a majority
6 of the calendar workweeks in the current calendar year and less than
7 six employees for every working day during not less than 48
8 calendar workweeks in the preceding calendar year, except that, if
9 the employer was newly established during the preceding calendar
10 year, the employer shall be regarded as a "small employer" if the
11 employer employed less than six employees for every working day
12 during all of the weeks of that year, and during a majority of the
13 calendar workweeks in the current calendar year, and, if the
14 employer is newly established during the current calendar year, the
15 employer shall be regarded as a "small employer" if the employer
16 employed less than six employees for every working day during a
17 majority of the calendar workweeks in the current calendar year.

18 (q) "Long-term care facility direct care staff member" means
19 any health care professional licensed or certified pursuant to Title
20 26 or Title 45 of the Revised Statutes who is employed by a long-
21 term care facility and who provides personal care, assistance, or
22 treatment services directly to residents of the facility in the course
23 of the professional's regular duties.

24 (cf: P.L.2019, c.32, s.1)

25

26 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
27 read as follows:

28 5. a. Except as provided in subsections c., d., e. **[and]** g., and
29 i. of this section, each employer shall pay to each of his employees
30 wages at a rate of not less than \$8.85 per hour as of January 1,
31 2019 and, on January 1 of 2020 and January 1 of each subsequent
32 year, the minimum wage shall be increased by any increase in the
33 consumer price index for all urban wage earners and clerical
34 workers (CPI-W) as calculated by the federal government for the 12
35 months prior to the September 30 preceding that January 1, except
36 that any of the following rates shall apply if it exceeds the rate
37 determined in accordance with the applicable increase in the CPI-W
38 for the indicated year: on July 1, 2019, the minimum wage shall be
39 \$10.00 per hour; on January 1, 2020, the minimum wage shall be
40 \$11.00 per hour; and on January 1 of each year from 2021 to 2024,
41 inclusive, the minimum wage shall be increased from the rate of the
42 preceding year by \$1.00 per hour. If the federal minimum hourly
43 wage rate set by section 6 of the federal "Fair Labor Standards Act
44 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
45 level higher than the State minimum wage rate set by this
46 subsection, then the State minimum wage rate shall be increased to
47 the level of the federal minimum wage rate and subsequent
48 increases based on increases in the CPI-W pursuant to this section

1 shall be applied to the higher minimum wage rate. If an applicable
2 wage order has been issued by the commissioner under section 17
3 (C.34:11-56a16) of this act, the employer shall also pay not less
4 than the wages prescribed in said order. The wage rates fixed in
5 this section shall not be applicable to part-time employees primarily
6 engaged in the care and tending of children in the home of the
7 employer, to persons under the age of 18 not possessing a special
8 vocational school graduate permit issued pursuant to section 15 of
9 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
10 salesmen of motor vehicles, or to persons employed as outside
11 salesmen as such terms shall be defined and delimited in regulations
12 adopted by the commissioner, or to persons employed in a volunteer
13 capacity and receiving only incidental benefits at a county or other
14 agricultural fair by a nonprofit or religious corporation or a
15 nonprofit or religious association which conducts or participates in
16 that fair.

17 b. (1) An employer shall also pay each employee not less than
18 1 1/2 times such employee's regular hourly rate for each hour of
19 working time in excess of 40 hours in any week, except that this
20 overtime rate shall not apply: to any individual employed in a bona
21 fide executive, administrative, or professional capacity; or to
22 employees engaged to labor on a farm or employed in a hotel; or to
23 an employee of a common carrier of passengers by motor bus; or to
24 a limousine driver who is an employee of an employer engaged in
25 the business of operating limousines; or to employees engaged in
26 labor relative to the raising or care of livestock.

27 (2) Employees engaged on a piece-rate or regular hourly rate
28 basis to labor on a farm shall be paid for each day worked not less
29 than the applicable minimum hourly wage rate multiplied by the
30 total number of hours worked.

31 (3) Full-time students may be employed by the college or
32 university at which they are enrolled at not less than 85% of the
33 effective applicable minimum wage rate.

34 c. Employees of a small employer, and employees who are
35 engaged in seasonal employment, except for employees who
36 customarily and regularly receive gratuities or tips who shall be
37 subject to the provisions of subsections a. and d. of this section,
38 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
39 of 2020 and January 1 of each subsequent year, that minimum wage
40 rate shall be increased by any increase in the consumer price index
41 for all urban wage earners and clerical workers (CPI-W) as
42 calculated by the federal government for the 12 months prior to the
43 September 30 preceding that January 1, except that any of the
44 following rates shall apply if it exceeds the rate determined in
45 accordance with the applicable increase in the CPI-W for the
46 indicated year: on January 1, 2020, the minimum wage shall be
47 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
48 inclusive, the minimum wage shall be increased from the rate of the

1 preceding year by eighty cents per hour, and, in 2026, the minimum
2 wage shall be increased from the rate of the preceding year by
3 seventy cents per hour, and, in each year from 2027 to 2028
4 inclusive, the minimum wage for employees subject to this
5 subsection c. shall be increased by the same amount as the increase
6 for employees subject to subsection a. of this section based on CPI-
7 W increases, plus one half of the difference between \$15.00 per
8 hour and the minimum wage in effect in 2026 for employees
9 pursuant to subsection a. of this section, so that, by 2028, the
10 minimum wage for employees subject to this subsection shall be the
11 same as the minimum wage in effect for employees subject to
12 subsection a. of this section. If the federal minimum hourly wage
13 rate set by section 6 of the federal "Fair Labor Standards Act of
14 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
15 level higher than the State minimum wage rate set by this
16 subsection, then the State minimum wage rate shall be increased to
17 the level of the federal minimum wage rate and subsequent
18 increases based on increases in the CPI-W pursuant to this
19 subsection shall be applied to the higher minimum wage rate.

20 d. Employees engaged on a piece-rate or regular hourly rate
21 basis to labor on a farm shall be paid \$8.85 per hour as of January
22 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
23 year, that minimum wage rate shall be increased by any increase in
24 the consumer price index for all urban wage earners and clerical
25 workers (CPI-W) as calculated by the federal government for the 12
26 months prior to the September 30 preceding that January 1, except
27 that any of the following rates shall apply if it exceeds the rate
28 determined in accordance with the applicable increase in the CPI-W
29 for the indicated year:

30 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
31 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
32 hour; and on January 1 of each year from 2023 to 2024, inclusive,
33 the minimum wage shall be increased from the rate of the preceding
34 year by eighty cents per hour; and

35 (2) subject to the provisions of paragraph (3) of this subsection
36 d., minimum wage rates shall be increased as follows: on January 1
37 of 2025, the minimum wage shall be increased to \$13.40, and on
38 January 1 of each year from 2026 to 2027, inclusive, the minimum
39 wage shall be increased from the rate of the preceding year by
40 eighty cents per hour, and, in each year from 2028 to 2030
41 inclusive, the minimum wage for employees subject to this
42 subsection d. shall be increased during that year by the same
43 amount as the increase in that year for employees subject to
44 subsection a. of this section based on CPI-W increases, plus one
45 third of the difference between \$15.00 per hour and the minimum
46 wage in effect in 2027 for employees pursuant to subsection a. of
47 this section, so that, by 2030, the minimum wage for employees

1 subject to this subsection shall be the same as the minimum wage in
2 effect for employees subject to subsection a. of this section.

3 (3) Not later than March 31, 2024, the commissioner and the
4 Secretary of Agriculture shall review the report issued by the
5 commissioner pursuant to subsection b. of section 4 of P.L.2019,
6 c.32 (C.34:11-56a4.10) and shall consider any information provided
7 by the secretary regarding the impact on farm employers and the
8 viability of the State's agricultural industry of the increases of the
9 minimum wage made pursuant to paragraph (1) of this subsection,
10 and the potential impact of the increases which would be set by
11 paragraph (2) of this subsection, including comparisons with the
12 wage rates in the agricultural industries in other states, and shall
13 recommend: approval of the increases set forth in paragraph (2) of
14 this subsection; disapproval of the increases set forth in paragraph
15 (2) of this subsection; or an alternative manner of changing the
16 minimum wage after 2024 for employees engaged on a piece-rate or
17 regular hourly rate basis to labor on a farm. In contemplation of the
18 possibility that the commissioner and the secretary are unable to
19 agree on the recommendation required by this paragraph, by
20 December 31, 2021, the Governor shall appoint a public member
21 subject to advice and consent by the Senate, who will serve as a tie-
22 breaking member if needed. The increases set forth in paragraph (2)
23 of this subsection shall take effect unless there is a recommendation
24 pursuant to this paragraph to disapprove the increases or for an
25 alternative manner of changing the minimum wage after 2024 for
26 employees engaged on a piece-rate or regular hourly rate basis to
27 labor on a farm and the Legislature, not later than June 30, 2024,
28 enacts a concurrent resolution approving the implementation of that
29 recommendation. Beginning in 2024, the commissioner, secretary,
30 and public member shall meet biennially to make either a one or
31 two year recommendation to the Legislature for implementation by
32 way of concurrent resolution.

33 (4) If the federal minimum hourly wage rate set by section 6 of
34 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
35 a successor federal law, is raised to a level higher than the State
36 minimum wage rate set by this subsection, then the State minimum
37 wage rate shall be increased to the level of the federal minimum
38 wage rate and subsequent increases based on increases in the CPI-
39 W pursuant to this subsection shall be applied to the higher
40 minimum wage rate.

41 e. With respect to an employee who customarily and regularly
42 receives gratuities or tips, every employer is entitled to a credit for
43 the gratuities or tips received by the employee against the hourly
44 wage rate that would otherwise be paid to the employee pursuant to
45 subsection a. of this section of the following amounts: after
46 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
47 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
48 calendar years 2020, 2021 and 2022, \$7.87 per hour; during

1 calendar year 2023, \$8.87 per hour; and during calendar year 2024
2 and subsequent calendar years, \$9.87 per hour.

3 f. Notwithstanding the provisions of this section to the
4 contrary, every trucking industry employer shall pay to all drivers,
5 helpers, loaders and mechanics for whom the Secretary of
6 Transportation may prescribe maximum hours of work for the safe
7 operation of vehicles, pursuant to section 31502(b) of the federal
8 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
9 than 1 1/2 times the minimum wage required pursuant to this
10 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
11 industry shall be paid no less than the minimum wage rate as
12 provided in this section and N.J.A.C. 12:56-3.1. As used in this
13 section, "trucking industry employer" means any business or
14 establishment primarily operating for the purpose of conveying
15 property from one place to another by road or highway, including
16 the storage and warehousing of goods and property. Such an
17 employer shall also be subject to the jurisdiction of the Secretary of
18 Transportation pursuant to the federal Motor Carrier Act, 49
19 U.S.C.s.31501 et seq., whose employees are exempt under section
20 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
21 U.S.C. s.213(b)(1), which provides an exemption to employees
22 regulated by section 207 of the federal "Fair Labor Standards Act of
23 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
24 U.S.C. s.501 et al.

25 g. Commencing on January 1, 2020, a training wage of not less
26 than 90 percent of the minimum wage rate otherwise set pursuant to
27 subsection a. of this section may be paid to an employee who is
28 enrolled in an established employer on-the-job or other training
29 program which meets standards set by regulations adopted by the
30 commissioner. The period during which an employer may pay the
31 training wage to the employee shall be the first 120 hours of work
32 after hiring the employee in employment in an occupation in which
33 the employee has no previous similar or related experience. An
34 employer shall not utilize any employee paid the training wage in a
35 manner which causes, induces, encourages or assists any
36 displacement or partial displacement of any currently employed
37 worker, including any previous recipient of the training wage, by
38 reducing hours of a currently employed worker, replacing a current
39 or laid off employee with a trainee, or by relocating operations
40 resulting in a loss of employment at a previous workplace, or in a
41 manner which replaces, supplants, competes with or duplicates any
42 approved apprenticeship program. An employer who pays an
43 employee a training wage shall make a good faith effort to continue
44 to employ the employee after the period of the training wage
45 expires and shall not hire the employee at the training wage unless
46 there is a reasonable expectation that there will be regular
47 employment, paying at or above the effective minimum wage, for
48 the trainee upon the successful completion of the period of the

1 training wage. If the commissioner determines that an employer
2 has made repeated, knowing violations of the provisions of this
3 subsection regarding the payment of a training wage, the
4 commissioner shall suspend the employer's right to pay a training
5 wage for a period set pursuant to regulations adopted by the
6 commissioner, but not less than three years.

7 h. The provisions of this section shall not be construed as
8 prohibiting any political subdivision of the State from adopting an
9 ordinance, resolution, regulation or rule, or entering into any
10 agreement, establishing any standard for vendors, contractors and
11 subcontractors of the subdivision regarding wage rates or overtime
12 compensation which is higher than the standards provided for in
13 this section, and no provision of any other State or federal law
14 establishing a minimum standard regarding wages or other terms
15 and conditions of employment shall be construed as preventing a
16 political subdivision of the State from adopting an ordinance,
17 resolution, regulation or rule, or entering into any agreement,
18 establishing a standard for vendors, contractors and subcontractors
19 of the subdivision which is higher than the State or federal law or
20 which otherwise provides greater protections or rights to employees
21 of the vendors, contractors and subcontractors of the subdivision,
22 unless the State or federal law expressly prohibits the subdivision
23 from adopting the ordinance, resolution, regulation or rule, or
24 entering into the agreement.

25 i. Effective on the first day of the second month next following
26 the effective date of P.L. , c. (C.) (pending before the
27 Legislature as this bill), the minimum wage for long-term care
28 facility direct care staff members shall be in an amount that is \$3
29 higher than the prevailing minimum wage established pursuant to
30 subsection a. of this section ¹], which minimum wage rate shall be
31 annually increased by any increase in the consumer price index for
32 all urban wage earners and clerical workers (CPI-W) as calculated
33 by the federal government for the 12 months prior to the September
34 30 preceding that January 1, plus any amount as is necessary to
35 ensure that the minimum wage established pursuant to this
36 subsection is \$3 higher than the prevailing minimum wage then in
37 effect under subsection a. of this section ¹].

38 (cf: P.L.2019, c.32, s.2)

39

40 3. (New section) a. The Commissioner of Human Services
41 shall submit recommendations to the Legislature, pursuant to
42 section 2 of P.L.1991, c.164 (C.52:14-19.1), for legislative approval
43 of any reimbursement rate increases as may be needed to comply
44 with minimum wage requirements for long-term care facility direct
45 care staff as provided in subsection i. of section 5 of P.L.1966,
46 c.113 (C.34:11-56a4). The commissioner may recommend that
47 increases for nursing homes be tied to improvements in specific
48 quality and safety metrics ¹], including, but not limited to:

1 (1) meeting nursing home staffing requirements; and
2 (2) implementing policies for improved communication between
3 the nursing home and Managed Long Term Services and Supports
4 and care managers¹ .

5 b. No later than 90 days after the effective date of this act, the
6 Commissioner of Human Services shall conduct a review of the
7 Department of Human Services' Medicaid value-based payment
8 strategy, including the Quality Incentive Payment Program, to
9 ensure incentives provided under the strategy focus on priority
10 metrics for quality improvement, and shall review and determine
11 whether incentives are an effective means of driving improvements
12 in quality of care and resident and staff safety in nursing homes.

13 c. (1) ¹~~【No later than 90 days after the effective date of this~~
14 ~~act, the】~~ ¹The Commissioner of Human Services shall establish a
15 direct care ¹~~【loss】~~¹ ratio reporting and rebate requirement ¹, which
16 shall take effect no later than July 1, 2021¹ , pursuant to which
17 nursing homes shall be required to report total revenues collected,
18 along with the portion of revenues that are expended on direct care
19 staff wages, other staff wages, ¹~~taxes,~~¹ administrative costs,
20 investments in improvements to the facility's equipment and
21 physical plant, ¹~~【and】~~¹ profits ¹, and any other factors as the
22 commissioner shall require¹ .

23 (2) ¹The direct care ratio shall require 90 percent, or such higher
24 percentage as the commissioner may establish by regulation, of a
25 facility's aggregate revenue in a fiscal year to be expended on the
26 direct care of residents.¹ The commissioner shall determine ¹~~【the~~
27 ~~maximum proportion of revenues that may be dedicated to】~~ which
28 components of the reporting requirements shall be attributed to
29 direct patient care,¹ administrative costs ¹,¹ and profits. The
30 commissioner ¹~~【shall determine the exact ratio based on historical~~
31 ~~cost reports, and】~~¹ may adjust the ¹components of the¹ ratio as
32 appropriate based on current financial information reported by
33 nursing homes and overall performance by the nursing home related
34 to patient safety and quality of care.

35 (3) The commissioner ¹or an entity designated by the
36 commissioner¹ may conduct an audit of the financial information
37 reported by nursing homes pursuant to this section to ensure the
38 accuracy of the information reported and compliance with the
39 requirements of this section, as well as to identify and recover any
40 payments that exceed the allowed cost ratio for administrative costs
41 and profits.

42 (4) In each case where the direct care loss ratio fails to
43 substantially comply with the ratio requirement established pursuant
44 to this subsection, the nursing home shall issue a pro rata dividend
45 or credit to ¹the State and to¹ all individuals and entities making
46 payments to the nursing home for resident services in an amount

1 sufficient to assure that the aggregate amount paid for direct care
 2 staff wages, other staff wages, ¹taxes,¹ administrative costs,
 3 investments in improvements to the nursing home's equipment and
 4 physical plant, ¹[and]¹ profits, ¹and other factors,¹ plus the amount
 5 of the dividends and credits, equals the mandatory ratio for the
 6 previous calendar year. The pro rata dividend or credit shall be
 7 equal to the percentage of payments made by the payor to the
 8 nursing home in the previous calendar year out of all payments
 9 made to the nursing home for services provided in the previous
 10 calendar year from all payment sources. All dividends and credits
 11 shall be distributed by ¹[December 31] June 30¹ of the year
 12 following the calendar year in which the ratio requirements were
 13 not satisfied.

14
 15 ²4. No later than 60 days after the effective date of this act, the
 16 Commissioner of Human Services or an entity designated by the
 17 commissioner shall initiate a study of the costs and payments
 18 associated with nursing home care, which study shall focus on, and
 19 include recommendations concerning, adjusting reimbursement
 20 rates to account for differences in resident acuity levels, as well as
 21 other factors as may be relevant to nursing home costs and
 22 payments. The commissioner shall prepare and submit an interim
 23 report concerning the status of the study no later than one year after
 24 the effective date of this act, and shall prepare and submit a final
 25 report of the findings and recommendations of the study to the
 26 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
 27 19.1), to the Legislature, no later than January 1, 2022.²

28
 29 ²[¹4.] ⁵2 The Commissioner of Human Services shall apply for
 30 such State plan amendments or waivers as may be necessary to
 31 implement the provisions of this act and to secure federal financial
 32 participation for State Medicaid expenditures under the federal
 33 Medicaid program.¹

34
 35 ¹[4.] ²[5.1] ⁶2 This act shall take effect immediately.

36
 37
 38 _____
 39
 40 Establishes minimum wage requirements for certain long-term
 41 care facility staff; establishes direct care ratio requirements for
 42 nursing homes; requires nursing home care rate study.

ASSEMBLY, No. 4482

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

Co-Sponsored by:

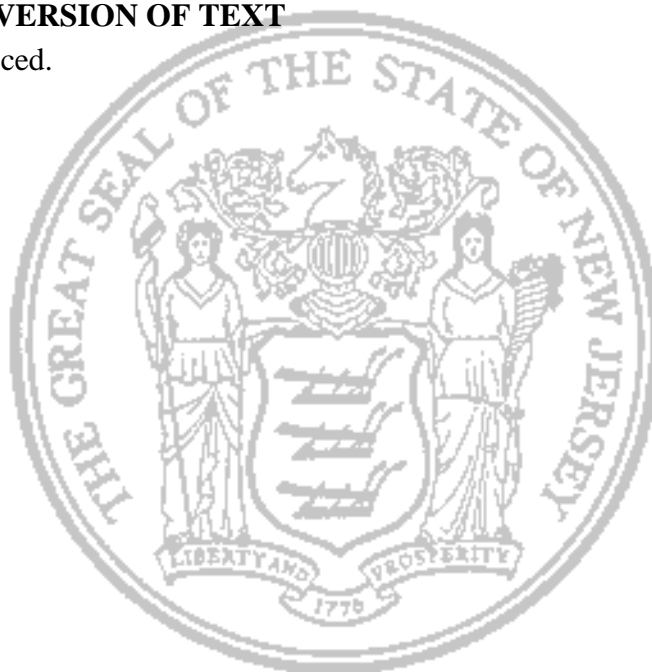
**Assemblywomen Speight, Vainieri Huttle, Assemblyman Benson,
Assemblywomen Reynolds-Jackson and McKnight**

SYNOPSIS

Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care loss ratio requirements for nursing homes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/24/2020)

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25 gratuities received by an employee in any occupation and the fair
26 value of food and lodging provided to employees in any occupation,
27 which average values shall be acceptable for the purposes of
28 determining compliance with this act in the absence of evidence of
29 the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee
31 is regularly paid for each hour of work as determined by dividing
32 the total hours of work during the week into the employee's total
33 earnings for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership,
36 association, corporation, and the State and any county,
37 municipality, or school district in the State, or any agency,
38 authority, department, bureau, or instrumentality thereof, or any
39 person or group of persons acting directly or indirectly in the
40 interest of an employer in relation to an employee.

41 (h) "Employee" includes any individual employed by an
42 employer.

43 (i) "Occupation" means any occupation, service, trade,
44 business, industry or branch or group of industries or employment
45 or class of employment in which employees are gainfully employed.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (j) "Minimum fair wage order" means a wage order
2 promulgated pursuant to this act.

3 (k) "Fair wage" means a wage fairly and reasonably
4 commensurate with the value of the service or class of service
5 rendered and sufficient to meet the minimum cost of living
6 necessary for health.

7 (l) "Oppressive and unreasonable wage" means a wage which is
8 both less than the fair and reasonable value of the service rendered
9 and less than sufficient to meet the minimum cost of living
10 necessary for health.

11 (m) "Limousine" means a motor vehicle used in the business of
12 carrying passengers for hire to provide prearranged passenger
13 transportation at a premium fare on a dedicated, nonscheduled,
14 charter basis that is not conducted on a regular route and with a
15 seating capacity in no event of more than 14 passengers, not
16 including the driver, provided, that such a motor vehicle shall not
17 have a seating capacity in excess of four passengers, not including
18 the driver, beyond the maximum passenger seating capacity of the
19 vehicle, not including the driver, at the time of manufacture.
20 "Limousine" shall not include taxicabs, hotel or airport shuttles and
21 buses, buses employed solely in transporting school children or
22 teachers to and from school, vehicles owned and operated directly
23 or indirectly by businesses engaged in the practice of mortuary
24 science when those vehicles are used exclusively for providing
25 transportation related to the provision of funeral services or vehicles
26 owned and operated without charge or remuneration by a business
27 entity for its own purposes.

28 (n) "Seasonal employment" means employment during a year by
29 an employer that is a seasonal employer ,or employment by a non-
30 profit or government entity of an individual who is not employed by
31 that employer outside of the period of that year commencing on
32 May 1 and ending September 30, or employment by a governmental
33 entity in a recreational program or service during the period
34 commencing on May 1 and ending September 30, except that
35 "seasonal employment" does not include employment of employees
36 engaged to labor on a farm on either a piece-rate or regular hourly
37 rate basis .

38 (o) "Seasonal employer" means an employer who exclusively
39 provides its services in a continuous period of not more than ten
40 weeks during the months of June, July, August, and September, or
41 an employer for which, during the immediately previous calendar
42 year, not less than two thirds of the employer's gross receipts were
43 received in a continuous period of not more than sixteen weeks or
44 for which not less than 75 percent of the wages paid by the
45 employer during the immediately preceding year were paid for work
46 performed during a single calendar quarter.

47 (p) "Small employer" means any employer who employed less
48 than six employees for every working day during each of a majority

1 of the calendar workweeks in the current calendar year and less than
2 six employees for every working day during not less than 48
3 calendar workweeks in the preceding calendar year, except that, if
4 the employer was newly established during the preceding calendar
5 year, the employer shall be regarded as a "small employer" if the
6 employer employed less than six employees for every working day
7 during all of the weeks of that year, and during a majority of the
8 calendar workweeks in the current calendar year, and, if the
9 employer is newly established during the current calendar year, the
10 employer shall be regarded as a "small employer" if the employer
11 employed less than six employees for every working day during a
12 majority of the calendar workweeks in the current calendar year.

13 (q) “Long-term care facility direct care staff member” means
14 any health care professional licensed or certified pursuant to Title
15 26 or Title 45 of the Revised Statutes who is employed by a long-
16 term care facility and who provides personal care, assistance, or
17 treatment services directly to residents of the facility in the course
18 of the professional’s regular duties.

19 (cf: P.L.2019, c.32, s.1)

20

21 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
22 read as follows:

23 5. a. Except as provided in subsections c., d., e. **[and]** g., and i.
24 of this section, each employer shall pay to each of his employees
25 wages at a rate of not less than \$8.85 per hour as of January 1,
26 2019 and, on January 1 of 2020 and January 1 of each subsequent
27 year, the minimum wage shall be increased by any increase in the
28 consumer price index for all urban wage earners and clerical
29 workers (CPI-W) as calculated by the federal government for the 12
30 months prior to the September 30 preceding that January 1, except
31 that any of the following rates shall apply if it exceeds the rate
32 determined in accordance with the applicable increase in the CPI-W
33 for the indicated year: on July 1, 2019, the minimum wage shall be
34 \$10.00 per hour; on January 1, 2020, the minimum wage shall be
35 \$11.00 per hour; and on January 1 of each year from 2021 to 2024,
36 inclusive, the minimum wage shall be increased from the rate of the
37 preceding year by \$1.00 per hour. If the federal minimum hourly
38 wage rate set by section 6 of the federal "Fair Labor Standards Act
39 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
40 level higher than the State minimum wage rate set by this
41 subsection, then the State minimum wage rate shall be increased to
42 the level of the federal minimum wage rate and subsequent
43 increases based on increases in the CPI-W pursuant to this section
44 shall be applied to the higher minimum wage rate. If an applicable
45 wage order has been issued by the commissioner under section 17
46 (C.34:11-56a16) of this act, the employer shall also pay not less
47 than the wages prescribed in said order. The wage rates fixed in
48 this section shall not be applicable to part-time employees primarily

1 engaged in the care and tending of children in the home of the
2 employer, to persons under the age of 18 not possessing a special
3 vocational school graduate permit issued pursuant to section 15 of
4 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
5 salesmen of motor vehicles, or to persons employed as outside
6 salesmen as such terms shall be defined and delimited in regulations
7 adopted by the commissioner, or to persons employed in a volunteer
8 capacity and receiving only incidental benefits at a county or other
9 agricultural fair by a nonprofit or religious corporation or a
10 nonprofit or religious association which conducts or participates in
11 that fair.

12 b. (1) An employer shall also pay each employee not less than
13 1 1/2 times such employee's regular hourly rate for each hour of
14 working time in excess of 40 hours in any week, except that this
15 overtime rate shall not apply: to any individual employed in a bona
16 fide executive, administrative, or professional capacity; or to
17 employees engaged to labor on a farm or employed in a hotel; or to
18 an employee of a common carrier of passengers by motor bus; or to
19 a limousine driver who is an employee of an employer engaged in
20 the business of operating limousines; or to employees engaged in
21 labor relative to the raising or care of livestock.

22 (2) Employees engaged on a piece-rate or regular hourly rate
23 basis to labor on a farm shall be paid for each day worked not less
24 than the applicable minimum hourly wage rate multiplied by the
25 total number of hours worked.

26 (3) Full-time students may be employed by the college or
27 university at which they are enrolled at not less than 85% of the
28 effective applicable minimum wage rate.

29 c. Employees of a small employer, and employees who are
30 engaged in seasonal employment, except for employees who
31 customarily and regularly receive gratuities or tips who shall be
32 subject to the provisions of subsections a. and d. of this section,
33 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
34 of 2020 and January 1 of each subsequent year, that minimum wage
35 rate shall be increased by any increase in the consumer price index
36 for all urban wage earners and clerical workers (CPI-W) as
37 calculated by the federal government for the 12 months prior to the
38 September 30 preceding that January 1, except that any of the
39 following rates shall apply if it exceeds the rate determined in
40 accordance with the applicable increase in the CPI-W for the
41 indicated year: on January 1, 2020, the minimum wage shall be
42 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
43 inclusive, the minimum wage shall be increased from the rate of the
44 preceding year by eighty cents per hour, and, in 2026, the minimum
45 wage shall be increased from the rate of the preceding year by
46 seventy cents per hour, and, in each year from 2027 to 2028
47 inclusive, the minimum wage for employees subject to this
48 subsection c. shall be increased by the same amount as the increase

1 for employees subject to subsection a. of this section based on CPI-
2 W increases, plus one half of the difference between \$15.00 per
3 hour and the minimum wage in effect in 2026 for employees
4 pursuant to subsection a. of this section, so that, by 2028, the
5 minimum wage for employees subject to this subsection shall be the
6 same as the minimum wage in effect for employees subject to
7 subsection a. of this section. If the federal minimum hourly wage
8 rate set by section 6 of the federal "Fair Labor Standards Act of
9 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
10 level higher than the State minimum wage rate set by this
11 subsection, then the State minimum wage rate shall be increased to
12 the level of the federal minimum wage rate and subsequent
13 increases based on increases in the CPI-W pursuant to this
14 subsection shall be applied to the higher minimum wage rate.

15 d. Employees engaged on a piece-rate or regular hourly rate
16 basis to labor on a farm shall be paid \$8.85 per hour as of January
17 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
18 year, that minimum wage rate shall be increased by any increase in
19 the consumer price index for all urban wage earners and clerical
20 workers (CPI-W) as calculated by the federal government for the 12
21 months prior to the September 30 preceding that January 1, except
22 that any of the following rates shall apply if it exceeds the rate
23 determined in accordance with the applicable increase in the CPI-W
24 for the indicated year:

25 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
26 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
27 hour; and on January 1 of each year from 2023 to 2024, inclusive,
28 the minimum wage shall be increased from the rate of the preceding
29 year by eighty cents per hour; and

30 (2) subject to the provisions of paragraph (3) of this subsection
31 d., minimum wage rates shall be increased as follows: on January 1
32 of 2025, the minimum wage shall be increased to \$13.40, and on
33 January 1 of each year from 2026 to 2027, inclusive, the minimum
34 wage shall be increased from the rate of the preceding year by
35 eighty cents per hour, and, in each year from 2028 to 2030
36 inclusive, the minimum wage for employees subject to this
37 subsection d. shall be increased during that year by the same
38 amount as the increase in that year for employees subject to
39 subsection a. of this section based on CPI-W increases, plus one
40 third of the difference between \$15.00 per hour and the minimum
41 wage in effect in 2027 for employees pursuant to subsection a. of
42 this section, so that, by 2030, the minimum wage for employees
43 subject to this subsection shall be the same as the minimum wage in
44 effect for employees subject to subsection a. of this section.

45 (3) Not later than March 31, 2024, the commissioner and the
46 Secretary of Agriculture shall review the report issued by the
47 commissioner pursuant to subsection b. of section 4 of P.L.2019,
48 c.32 (C.34:11-56a4.10) and shall consider any information provided

1 by the secretary regarding the impact on farm employers and the
2 viability of the State's agricultural industry of the increases of the
3 minimum wage made pursuant to paragraph (1) of this subsection,
4 and the potential impact of the increases which would be set by
5 paragraph (2) of this subsection, including comparisons with the
6 wage rates in the agricultural industries in other states, and shall
7 recommend: approval of the increases set forth in paragraph (2) of
8 this subsection; disapproval of the increases set forth in paragraph
9 (2) of this subsection; or an alternative manner of changing the
10 minimum wage after 2024 for employees engaged on a piece-rate or
11 regular hourly rate basis to labor on a farm. In contemplation of the
12 possibility that the commissioner and the secretary are unable to
13 agree on the recommendation required by this paragraph, by
14 December 31, 2021, the Governor shall appoint a public member
15 subject to advice and consent by the Senate, who will serve as a tie-
16 breaking member if needed. The increases set forth in paragraph (2)
17 of this subsection shall take effect unless there is a recommendation
18 pursuant to this paragraph to disapprove the increases or for an
19 alternative manner of changing the minimum wage after 2024 for
20 employees engaged on a piece-rate or regular hourly rate basis to
21 labor on a farm and the Legislature, not later than June 30, 2024,
22 enacts a concurrent resolution approving the implementation of that
23 recommendation. Beginning in 2024, the commissioner, secretary,
24 and public member shall meet biennially to make either a one or
25 two year recommendation to the Legislature for implementation by
26 way of concurrent resolution.

27 (4) If the federal minimum hourly wage rate set by section 6 of
28 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
29 a successor federal law, is raised to a level higher than the State
30 minimum wage rate set by this subsection, then the State minimum
31 wage rate shall be increased to the level of the federal minimum
32 wage rate and subsequent increases based on increases in the CPI-
33 W pursuant to this subsection shall be applied to the higher
34 minimum wage rate.

35 e. With respect to an employee who customarily and regularly
36 receives gratuities or tips, every employer is entitled to a credit for
37 the gratuities or tips received by the employee against the hourly
38 wage rate that would otherwise be paid to the employee pursuant to
39 subsection a. of this section of the following amounts: after
40 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
41 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
42 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
43 calendar year 2023, \$8.87 per hour; and during calendar year 2024
44 and subsequent calendar years, \$9.87 per hour.

45 f. Notwithstanding the provisions of this section to the
46 contrary, every trucking industry employer shall pay to all drivers,
47 helpers, loaders and mechanics for whom the Secretary of
48 Transportation may prescribe maximum hours of work for the safe

1 operation of vehicles, pursuant to section 31502(b) of the federal
2 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
3 than 1 1/2 times the minimum wage required pursuant to this
4 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
5 industry shall be paid no less than the minimum wage rate as
6 provided in this section and N.J.A.C. 12:56-3.1. As used in this
7 section, "trucking industry employer" means any business or
8 establishment primarily operating for the purpose of conveying
9 property from one place to another by road or highway, including
10 the storage and warehousing of goods and property. Such an
11 employer shall also be subject to the jurisdiction of the Secretary of
12 Transportation pursuant to the federal Motor Carrier Act, 49
13 U.S.C.s.31501 et seq., whose employees are exempt under section
14 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
15 U.S.C. s.213(b)(1), which provides an exemption to employees
16 regulated by section 207 of the federal "Fair Labor Standards Act of
17 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
18 U.S.C. s.501 et al.

19 g. Commencing on January 1, 2020, a training wage of not less
20 than 90 percent of the minimum wage rate otherwise set pursuant to
21 subsection a. of this section may be paid to an employee who is
22 enrolled in an established employer on-the-job or other training
23 program which meets standards set by regulations adopted by the
24 commissioner. The period during which an employer may pay the
25 training wage to the employee shall be the first 120 hours of work
26 after hiring the employee in employment in an occupation in which
27 the employee has no previous similar or related experience. An
28 employer shall not utilize any employee paid the training wage in a
29 manner which causes, induces, encourages or assists any
30 displacement or partial displacement of any currently employed
31 worker, including any previous recipient of the training wage, by
32 reducing hours of a currently employed worker, replacing a current
33 or laid off employee with a trainee, or by relocating operations
34 resulting in a loss of employment at a previous workplace, or in a
35 manner which replaces, supplants, competes with or duplicates any
36 approved apprenticeship program. An employer who pays an
37 employee a training wage shall make a good faith effort to continue
38 to employ the employee after the period of the training wage
39 expires and shall not hire the employee at the training wage unless
40 there is a reasonable expectation that there will be regular
41 employment, paying at or above the effective minimum wage, for
42 the trainee upon the successful completion of the period of the
43 training wage. If the commissioner determines that an employer
44 has made repeated, knowing violations of the provisions of this
45 subsection regarding the payment of a training wage, the
46 commissioner shall suspend the employer's right to pay a training
47 wage for a period set pursuant to regulations adopted by the
48 commissioner, but not less than three years.

1 h. The provisions of this section shall not be construed as
2 prohibiting any political subdivision of the State from adopting an
3 ordinance, resolution, regulation or rule, or entering into any
4 agreement, establishing any standard for vendors, contractors and
5 subcontractors of the subdivision regarding wage rates or overtime
6 compensation which is higher than the standards provided for in
7 this section, and no provision of any other State or federal law
8 establishing a minimum standard regarding wages or other terms
9 and conditions of employment shall be construed as preventing a
10 political subdivision of the State from adopting an ordinance,
11 resolution, regulation or rule, or entering into any agreement,
12 establishing a standard for vendors, contractors and subcontractors
13 of the subdivision which is higher than the State or federal law or
14 which otherwise provides greater protections or rights to employees
15 of the vendors, contractors and subcontractors of the subdivision,
16 unless the State or federal law expressly prohibits the subdivision
17 from adopting the ordinance, resolution, regulation or rule, or
18 entering into the agreement.

19 i. Effective on the first day of the second month next following
20 the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill), the minimum wage for long-term care
22 facility direct care staff members shall be in an amount that is \$3
23 higher than the prevailing minimum wage established pursuant to
24 subsection a. of this section, which minimum wage rate shall be
25 annually increased by any increase in the consumer price index for
26 all urban wage earners and clerical workers (CPI-W) as calculated
27 by the federal government for the 12 months prior to the September
28 30 preceding that January 1, plus any amount as is necessary to
29 ensure that the minimum wage established pursuant to this
30 subsection is \$3 higher than the prevailing minimum wage then in
31 effect under subsection a. of this section.

32 (cf: P.L.2019, c.32, s.2)

33

34 3. (New section) a. The Commissioner of Human Services
35 shall submit recommendations to the Legislature, pursuant to
36 section 2 of P.L.1991, c.164 (C.52:14-19.1), for legislative approval
37 of any reimbursement rate increases as may be needed to comply
38 with minimum wage requirements for long-term care facility direct
39 care staff as provided in subsection i. of section 5 of P.L.1966,
40 c.113 (C.34:11-56a4). The commissioner may recommend that
41 increases for nursing homes be tied to improvements in specific
42 quality and safety metrics, including, but not limited to:

43 (1) meeting nursing home staffing requirements; and

44 (2) implementing policies for improved communication between
45 the nursing home and Managed Long Term Services and Supports
46 and care managers.

47 b. No later than 90 days after the effective date of this act, the
48 Commissioner of Human Services shall conduct a review of the

1 Department of Human Services' Medicaid value-based payment
2 strategy, including the Quality Incentive Payment Program, to
3 ensure incentives provided under the strategy focus on priority
4 metrics for quality improvement, and shall review and determine
5 whether incentives are an effective means of driving improvements
6 in quality of care and resident and staff safety in nursing homes.

7 c. (1) No later than 90 days after the effective date of this act,
8 the Commissioner of Human Services shall establish a direct care
9 loss ratio reporting and rebate requirement, pursuant to which
10 nursing homes shall be required to report total revenues collected,
11 along with the portion of revenues that are expended on direct care
12 staff wages, other staff wages, administrative costs, investments in
13 improvements to the facility's equipment and physical plant, and
14 profits.

15 (2) The commissioner shall determine the maximum proportion
16 of revenues that may be dedicated to administrative costs and
17 profits. The commissioner shall determine the exact ratio based on
18 historical cost reports, and may adjust the ratio as appropriate based
19 on current financial information reported by nursing homes and
20 overall performance by the nursing home related to patient safety
21 and quality of care.

22 (3) The commissioner may conduct an audit of the financial
23 information reported by nursing homes pursuant to this section to
24 ensure the accuracy of the information reported and compliance
25 with the requirements of this section, as well as to identify and
26 recover any payments that exceed the allowed cost ratio for
27 administrative costs and profits.

28 (4) In each case where the direct care loss ratio fails to
29 substantially comply with the ratio requirement established pursuant
30 to this subsection, the nursing home shall issue a pro rata dividend
31 or credit to all individuals and entities making payments to the
32 nursing home for resident services in an amount sufficient to assure
33 that the aggregate amount paid for direct care staff wages, other
34 staff wages, administrative costs, investments in improvements to
35 the nursing home's equipment and physical plant, and profits, plus
36 the amount of the dividends and credits, equals the mandatory ratio
37 for the previous calendar year. The pro rata dividend or credit shall
38 be equal to the percentage of payments made by the payor to the
39 nursing home in the previous calendar year out of all payments
40 made to the nursing home for services provided in the previous
41 calendar year from all payment sources. All dividends and credits
42 shall be distributed by December 31 of the year following the
43 calendar year in which the ratio requirements were not satisfied.

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45 4. This act shall take effect immediately.

STATEMENT

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This bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics, including, but not limited to, meeting nursing home staffing requirements and implementing policies for improved communication between the nursing home and Managed Long Term Services and Supports and care managers.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to establish a direct care loss ratio reporting and rebate requirement, pursuant to which nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, administrative costs, investments in improvements to the facility's equipment and physical plant, and profits. The commissioner will determine the maximum proportion of revenues that may be dedicated to administrative costs and profits based on historical cost reports; the ratio may be adjusted as appropriate based on current financial information and overall performance by the nursing home.

The commissioner will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to all individuals and entities making payments to the nursing home for resident services

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1 in an amount sufficient to assure that the aggregate amount paid for
2 direct care staff wages, other staff wages, administrative costs,
3 investments in improvements to the nursing home's equipment and
4 physical plant, and profits, plus the amount of the dividends and
5 credits, equals the mandatory ratio for the previous calendar year.
6 The pro rata dividend or credit will be equal to the percentage of
7 payments made by the payor to the nursing home in the previous
8 calendar year out of all payments made to the nursing home for
9 services provided in the previous calendar year from all payment
10 sources. All dividends and credits are to be distributed by
11 December 31 of the year following the calendar year in which the
12 ratio requirements were not satisfied.

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4482

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 21, 2020

The Assembly Aging and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 4482.

As amended by the committee, this bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the facility's equipment and physical plant, profits, and any other factors as the commissioner requires. The direct care ratio will require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will

determine which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits. The commissioner may adjust the components of the ratio as appropriate based on current financial information reported by nursing homes and overall performance by the nursing home related to patient safety and quality of care.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services in an amount sufficient to assure that the aggregate amount paid for direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the nursing home's equipment and physical plant, profits, and other factors as may be required by the commissioner, plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit will be equal to the percentage of payments made by the payor to the nursing home in the previous calendar year out of all payments made to the nursing home for services provided in the previous calendar year from all payment sources. All dividends and credits are to be distributed by June 30 of the year following the calendar year in which the ratio requirements were not satisfied.

The commissioner will be required to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

COMMITTEE AMENDMENTS:

The committee amendments remove language concerning specific metrics to be considered by the Commissioner of Human Services when recommending that increases in nursing home reimbursement rates be tied to specific quality and safety metrics.

The committee amendments revise the requirements for the direct care ratio to require that it be established by July 1, 2021, rather than 90 days after the effective date of the bill, and to remove the word "loss" from references the ratio. The amendments further specify that the factors to be considered will include taxes paid by the facility and other factors as the commissioner may require.

The committee amendments require that the direct care ratio be at least 90 percent, with the option for the commissioner to increase the ratio by regulation.

The committee amendments provide that audits may be performed by the commissioner or by a designated entity.

The committee amendments provide that, when a facility fails to meet the direct care ratio, the dividends and credits the facility is required to pay will be paid to the State, as well as to other entities making payments to the facility. The amendments further provide that the credits and dividends are to be paid by June 30, rather than by December 31, in the calendar year following the calendar year in which the ratio was not met.

The committee amendments add a provision requiring the commissioner to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

The committee amendments remove certain language from the amendatory provisions of the bill concerning increases based on the consumer price index that duplicate current statutory language.

The committee amendments revise the synopsis of the bill to reflect the changes made by committee amendment.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4482

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4482 (1R).

As amended by the committee, this bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the facility's equipment and physical plant, profits, and any other factors as the commissioner requires. The direct care ratio will require 90 percent, or a higher percentage established by commissioner

by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits. The commissioner may adjust the components of the ratio as appropriate based on current financial information reported by nursing homes and overall performance by the nursing home related to patient safety and quality of care.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services in an amount sufficient to assure that the aggregate amount paid for direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the nursing home's equipment and physical plant, profits, and other factors as may be required by the commissioner, plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit will be equal to the percentage of payments made by the payor to the nursing home in the previous calendar year out of all payments made to the nursing home for services provided in the previous calendar year from all payment sources. All dividends and credits are to be distributed by June 30 of the year following the calendar year in which the ratio requirements were not satisfied.

No later than 60 days after the effective date of the bill, the Commissioner of Human Services or an entity designated by the commissioner will be required to initiate a study of the costs and payments associated with nursing home care, which study will focus on, and include recommendations concerning, adjusting reimbursement rates to account for differences in resident acuity levels, as well as other factors as may be relevant to nursing home costs and payments. The commissioner will prepare and submit an interim report concerning the status of the study no later than one year after the effective date of the bill, and will prepare and submit a final report of the findings and recommendations of the study to the Governor and to the Legislature by January 1, 2022.

The commissioner will be required to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

COMMITTEE AMENDMENTS:

The committee amendments require the Commissioner of Health or another entity designated by the commissioner to complete an analysis of the costs and payments associated with nursing home care that is to focus on and make recommendations concerning adjusting reimbursement rates to account for differences in resident acuity levels, as well as other relevant factors.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill, as amended, will increase costs for nursing homes operated by the Department of Military and Veteran Affairs (DMAVA) and certain county governments due to the implementation of a minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. From 2025 on, per the statutory structure of the exiting prevailing minimum wage, the provisions of the bill will be limited to cost-of-living increases, which will cap annual wage increases for nursing homes.

This estimate does not include any cost increases resulting from Legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State.

The OLS also estimates that: 1) nursing homes operated by the DMAVA and certain county governments may incur expenses due to the direct care ratio reporting requirements established under the bill; and 2) the DHS may incur expenses to implement and administer certain provisions of the bill, such as completing an analysis of the costs and payments associated with nursing home care.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4482

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: AUGUST 31, 2020

SUMMARY

- Synopsis:** Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care ratio requirements for nursing homes; requires nursing home care rate study.
- Type of Impact:** Annual increase in State and local expenditures.
- Agencies Affected:** Department of Human Services; Department of Military and Veterans Affairs; certain county governments.

Office of Legislative Services Estimate

Annual Fiscal Impact	
State Cost Increase	Indeterminate
Local Cost Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will increase annual costs for nursing homes, by an indeterminate amount, that are operated by the Department of Military and Veterans Affairs (DMAVA) and certain county governments due to the implementation of a minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. From 2025 on, per the statutory structure of the exiting prevailing minimum wage, the provisions of the bill will be limited to cost-of-living increases.
- This estimate does not include any cost increases resulting from Legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State.
- The OLS also estimates that: 1) nursing homes operated by the DMAVA and certain county governments may incur expenses due to the direct care ratio reporting requirements established under the bill; and 2) the DHS may incur expenses to implement and administer certain provisions of the bill.

BILL DESCRIPTION

This bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the department's Medicaid value-based payment strategy and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct patient care and various facility costs. The direct care ratio will require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine, and may adjust, which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits. In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services.

No later than 60 days after the effective date of the bill, the Commissioner of Human Services or an entity designated by the commissioner will be required to initiate a study of the costs and payments associated with nursing home care. The commissioner will prepare and submit an interim report concerning the status of the study no later than one year after the effective date of the bill, and will prepare and submit a final report of the findings and recommendations of the study to the Governor and to the Legislature by January 1, 2022.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will increase costs for nursing homes, by an indeterminate amount, operated by the DMAVA and certain county governments due to the implementation of a minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. Such nursing homes may also incur expenses to

comply with the direct care ratio reporting requirements established under the bill. The DMAVA operates three facilities, while there are nine county facilities: three in Bergen County; two in Middlesex County; and one each in Atlantic County, Cape May County, Gloucester County, and Passaic County.

Currently, the prevailing State minimum wage is \$11.00 per hour, with \$1.00 increases to this rate scheduled on January 1 of each year from 2021 to 2024 until the rate is \$15.00 per hour. According to the report published by Manatt Health regarding the State's coronavirus disease 2019 response targeted toward the long-term care system, certified nurse assistants in New Jersey currently earn an average of \$15.00 per hour, while other nursing home staff earn close to minimum wage. The OLS does not have access to specific salary data for direct care staff employed at nursing homes operated by the DMAVA and certain county governments to quantify how this provision of the bill will impact State and local costs.

However, for illustrative purposes, if a facility has 25 direct care staff members currently earning a minimum wage and working 20 hours per week, this bill would cost the nursing home approximately \$78,000 to increase those staff members' wages by \$3.00 per hour in the first year of the bill's implementation. This analysis does not include: 1) those staff members who earn more than the prevailing minimum wage but less than the targeted minimum wage for direct care staff in long-term care facilities under the bill; and 2) the effects of wage compression on the industry, which may require nursing home facilities to increase wages outside of the provisions of this bill to provide that higher earning direct care staff maintain their wage differential compared to lower earning direct care staff. Including such components would increase the cost under this scenario. From 2025 on, the provisions of the bill will be limited to cost-of-living increases, which will cap annual wage increases for nursing homes.

This estimate does not include any cost increases resulting from Legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State.

The OLS also estimates that the DHS may incur expenses to implement and administer certain provisions of the bill. These expenses include: one-time costs to review the department's Medicaid value-based payment strategy and establish a direct care ratio reporting and rebate requirement; time-limited costs to complete an analysis of the costs and payments associated with nursing home care; and annual costs to audit and enforce the nursing home industry's compliance with the direct care ratio and to adjust the direct care ratio as needed. To the extent that these responsibilities overlap with the DHS's current work and can be absorbed by the department's existing budget, these costs will be minimized.

Section: Human Services
Analyst: Sarah Schmidt
Senior Research Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2758

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care loss ratio requirements for nursing homes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/25/2020)

1 AN ACT concerning long-term care facilities, amending P.L.1966,
2 c.113, and supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
8 read as follows:

9 2. As used in this act:

10 (a) "Commissioner" means the Commissioner of Labor and
11 Workforce Development.

12 (b) "Director" means the director in charge of the bureau
13 referred to in section 3 of this act.

14 (c) "Wage board" means a board created as provided in section
15 10 of this act.

16 (d) "Wages" means any moneys due an employee from an
17 employer for services rendered or made available by the employee
18 to the employer as a result of their employment relationship
19 including commissions, bonus and piecework compensation and
20 including the fair value of any food or lodgings supplied by an
21 employer to an employee, and, until December 31, 2018, "wages"
22 includes any gratuities received by an employee for services
23 rendered for an employer or a customer of an employer. The
24 commissioner may, by regulation, establish the average value of
25 gratuities received by an employee in any occupation and the fair
26 value of food and lodging provided to employees in any occupation,
27 which average values shall be acceptable for the purposes of
28 determining compliance with this act in the absence of evidence of
29 the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee
31 is regularly paid for each hour of work as determined by dividing
32 the total hours of work during the week into the employee's total
33 earnings for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership,
36 association, corporation, and the State and any county,
37 municipality, or school district in the State, or any agency,
38 authority, department, bureau, or instrumentality thereof, or any
39 person or group of persons acting directly or indirectly in the
40 interest of an employer in relation to an employee.

41 (h) "Employee" includes any individual employed by an
42 employer.

43 (i) "Occupation" means any occupation, service, trade,
44 business, industry or branch or group of industries or employment
45 or class of employment in which employees are gainfully employed.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (j) "Minimum fair wage order" means a wage order
2 promulgated pursuant to this act.

3 (k) "Fair wage" means a wage fairly and reasonably
4 commensurate with the value of the service or class of service
5 rendered and sufficient to meet the minimum cost of living
6 necessary for health.

7 (l) "Oppressive and unreasonable wage" means a wage which is
8 both less than the fair and reasonable value of the service rendered
9 and less than sufficient to meet the minimum cost of living
10 necessary for health.

11 (m) "Limousine" means a motor vehicle used in the business of
12 carrying passengers for hire to provide prearranged passenger
13 transportation at a premium fare on a dedicated, nonscheduled,
14 charter basis that is not conducted on a regular route and with a
15 seating capacity in no event of more than 14 passengers, not
16 including the driver, provided, that such a motor vehicle shall not
17 have a seating capacity in excess of four passengers, not including
18 the driver, beyond the maximum passenger seating capacity of the
19 vehicle, not including the driver, at the time of manufacture.
20 "Limousine" shall not include taxicabs, hotel or airport shuttles and
21 buses, buses employed solely in transporting school children or
22 teachers to and from school, vehicles owned and operated directly
23 or indirectly by businesses engaged in the practice of mortuary
24 science when those vehicles are used exclusively for providing
25 transportation related to the provision of funeral services or vehicles
26 owned and operated without charge or remuneration by a business
27 entity for its own purposes.

28 (n) "Seasonal employment" means employment during a year by
29 an employer that is a seasonal employer ,or employment by a non-
30 profit or government entity of an individual who is not employed by
31 that employer outside of the period of that year commencing on
32 May 1 and ending September 30, or employment by a governmental
33 entity in a recreational program or service during the period
34 commencing on May 1 and ending September 30, except that
35 "seasonal employment" does not include employment of employees
36 engaged to labor on a farm on either a piece-rate or regular hourly
37 rate basis .

38 (o) "Seasonal employer" means an employer who exclusively
39 provides its services in a continuous period of not more than ten
40 weeks during the months of June, July, August, and September, or
41 an employer for which, during the immediately previous calendar
42 year, not less than two thirds of the employer's gross receipts were
43 received in a continuous period of not more than sixteen weeks or
44 for which not less than 75 percent of the wages paid by the
45 employer during the immediately preceding year were paid for work
46 performed during a single calendar quarter.

47 (p) "Small employer" means any employer who employed less
48 than six employees for every working day during each of a majority

1 of the calendar workweeks in the current calendar year and less than
2 six employees for every working day during not less than 48
3 calendar workweeks in the preceding calendar year, except that, if
4 the employer was newly established during the preceding calendar
5 year, the employer shall be regarded as a "small employer" if the
6 employer employed less than six employees for every working day
7 during all of the weeks of that year, and during a majority of the
8 calendar workweeks in the current calendar year, and, if the
9 employer is newly established during the current calendar year, the
10 employer shall be regarded as a "small employer" if the employer
11 employed less than six employees for every working day during a
12 majority of the calendar workweeks in the current calendar year.

13 (q) “Long-term care facility direct care staff member” means
14 any health care professional licensed or certified pursuant to Title
15 26 or Title 45 of the Revised Statutes who is employed by a long-
16 term care facility and who provides personal care, assistance, or
17 treatment services directly to residents of the facility in the course
18 of the professional’s regular duties.

19 (cf: P.L.2019, c.32, s.1)

20

21 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
22 read as follows:

23 5. a. Except as provided in subsections c., d., e. **[and]** g., and
24 i. of this section, each employer shall pay to each of his employees
25 wages at a rate of not less than \$8.85 per hour as of January 1,
26 2019 and, on January 1 of 2020 and January 1 of each subsequent
27 year, the minimum wage shall be increased by any increase in the
28 consumer price index for all urban wage earners and clerical
29 workers (CPI-W) as calculated by the federal government for the 12
30 months prior to the September 30 preceding that January 1, except
31 that any of the following rates shall apply if it exceeds the rate
32 determined in accordance with the applicable increase in the CPI-W
33 for the indicated year: on July 1, 2019, the minimum wage shall be
34 \$10.00 per hour; on January 1, 2020, the minimum wage shall be
35 \$11.00 per hour; and on January 1 of each year from 2021 to 2024,
36 inclusive, the minimum wage shall be increased from the rate of the
37 preceding year by \$1.00 per hour. If the federal minimum hourly
38 wage rate set by section 6 of the federal "Fair Labor Standards Act
39 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
40 level higher than the State minimum wage rate set by this
41 subsection, then the State minimum wage rate shall be increased to
42 the level of the federal minimum wage rate and subsequent
43 increases based on increases in the CPI-W pursuant to this section
44 shall be applied to the higher minimum wage rate. If an applicable
45 wage order has been issued by the commissioner under section 17
46 (C.34:11-56a16) of this act, the employer shall also pay not less
47 than the wages prescribed in said order. The wage rates fixed in
48 this section shall not be applicable to part-time employees primarily

1 engaged in the care and tending of children in the home of the
2 employer, to persons under the age of 18 not possessing a special
3 vocational school graduate permit issued pursuant to section 15 of
4 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
5 salesmen of motor vehicles, or to persons employed as outside
6 salesmen as such terms shall be defined and delimited in regulations
7 adopted by the commissioner, or to persons employed in a volunteer
8 capacity and receiving only incidental benefits at a county or other
9 agricultural fair by a nonprofit or religious corporation or a
10 nonprofit or religious association which conducts or participates in
11 that fair.

12 b. (1) An employer shall also pay each employee not less than
13 1 1/2 times such employee's regular hourly rate for each hour of
14 working time in excess of 40 hours in any week, except that this
15 overtime rate shall not apply: to any individual employed in a bona
16 fide executive, administrative, or professional capacity; or to
17 employees engaged to labor on a farm or employed in a hotel; or to
18 an employee of a common carrier of passengers by motor bus; or to
19 a limousine driver who is an employee of an employer engaged in
20 the business of operating limousines; or to employees engaged in
21 labor relative to the raising or care of livestock.

22 (2) Employees engaged on a piece-rate or regular hourly rate
23 basis to labor on a farm shall be paid for each day worked not less
24 than the applicable minimum hourly wage rate multiplied by the
25 total number of hours worked.

26 (3) Full-time students may be employed by the college or
27 university at which they are enrolled at not less than 85% of the
28 effective applicable minimum wage rate.

29 c. Employees of a small employer, and employees who are
30 engaged in seasonal employment, except for employees who
31 customarily and regularly receive gratuities or tips who shall be
32 subject to the provisions of subsections a. and d. of this section,
33 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
34 of 2020 and January 1 of each subsequent year, that minimum wage
35 rate shall be increased by any increase in the consumer price index
36 for all urban wage earners and clerical workers (CPI-W) as
37 calculated by the federal government for the 12 months prior to the
38 September 30 preceding that January 1, except that any of the
39 following rates shall apply if it exceeds the rate determined in
40 accordance with the applicable increase in the CPI-W for the
41 indicated year: on January 1, 2020, the minimum wage shall be
42 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
43 inclusive, the minimum wage shall be increased from the rate of the
44 preceding year by eighty cents per hour, and, in 2026, the minimum
45 wage shall be increased from the rate of the preceding year by
46 seventy cents per hour, and, in each year from 2027 to 2028
47 inclusive, the minimum wage for employees subject to this
48 subsection c. shall be increased by the same amount as the increase

1 for employees subject to subsection a. of this section based on CPI-
2 W increases, plus one half of the difference between \$15.00 per
3 hour and the minimum wage in effect in 2026 for employees
4 pursuant to subsection a. of this section, so that, by 2028, the
5 minimum wage for employees subject to this subsection shall be the
6 same as the minimum wage in effect for employees subject to
7 subsection a. of this section. If the federal minimum hourly wage
8 rate set by section 6 of the federal "Fair Labor Standards Act of
9 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
10 level higher than the State minimum wage rate set by this
11 subsection, then the State minimum wage rate shall be increased to
12 the level of the federal minimum wage rate and subsequent
13 increases based on increases in the CPI-W pursuant to this
14 subsection shall be applied to the higher minimum wage rate.

15 d. Employees engaged on a piece-rate or regular hourly rate
16 basis to labor on a farm shall be paid \$8.85 per hour as of January
17 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
18 year, that minimum wage rate shall be increased by any increase in
19 the consumer price index for all urban wage earners and clerical
20 workers (CPI-W) as calculated by the federal government for the 12
21 months prior to the September 30 preceding that January 1, except
22 that any of the following rates shall apply if it exceeds the rate
23 determined in accordance with the applicable increase in the CPI-W
24 for the indicated year:

25 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
26 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
27 hour; and on January 1 of each year from 2023 to 2024, inclusive,
28 the minimum wage shall be increased from the rate of the preceding
29 year by eighty cents per hour; and

30 (2) subject to the provisions of paragraph (3) of this subsection
31 d., minimum wage rates shall be increased as follows: on January 1
32 of 2025, the minimum wage shall be increased to \$13.40, and on
33 January 1 of each year from 2026 to 2027, inclusive, the minimum
34 wage shall be increased from the rate of the preceding year by
35 eighty cents per hour, and, in each year from 2028 to 2030
36 inclusive, the minimum wage for employees subject to this
37 subsection d. shall be increased during that year by the same
38 amount as the increase in that year for employees subject to
39 subsection a. of this section based on CPI-W increases, plus one
40 third of the difference between \$15.00 per hour and the minimum
41 wage in effect in 2027 for employees pursuant to subsection a. of
42 this section, so that, by 2030, the minimum wage for employees
43 subject to this subsection shall be the same as the minimum wage in
44 effect for employees subject to subsection a. of this section.

45 (3) Not later than March 31, 2024, the commissioner and the
46 Secretary of Agriculture shall review the report issued by the
47 commissioner pursuant to subsection b. of section 4 of P.L.2019,
48 c.32 (C.34:11-56a4.10) and shall consider any information provided

1 by the secretary regarding the impact on farm employers and the
2 viability of the State's agricultural industry of the increases of the
3 minimum wage made pursuant to paragraph (1) of this subsection,
4 and the potential impact of the increases which would be set by
5 paragraph (2) of this subsection, including comparisons with the
6 wage rates in the agricultural industries in other states, and shall
7 recommend: approval of the increases set forth in paragraph (2) of
8 this subsection; disapproval of the increases set forth in paragraph
9 (2) of this subsection; or an alternative manner of changing the
10 minimum wage after 2024 for employees engaged on a piece-rate or
11 regular hourly rate basis to labor on a farm. In contemplation of the
12 possibility that the commissioner and the secretary are unable to
13 agree on the recommendation required by this paragraph, by
14 December 31, 2021, the Governor shall appoint a public member
15 subject to advice and consent by the Senate, who will serve as a tie-
16 breaking member if needed. The increases set forth in paragraph (2)
17 of this subsection shall take effect unless there is a recommendation
18 pursuant to this paragraph to disapprove the increases or for an
19 alternative manner of changing the minimum wage after 2024 for
20 employees engaged on a piece-rate or regular hourly rate basis to
21 labor on a farm and the Legislature, not later than June 30, 2024,
22 enacts a concurrent resolution approving the implementation of that
23 recommendation. Beginning in 2024, the commissioner, secretary,
24 and public member shall meet biennially to make either a one or
25 two year recommendation to the Legislature for implementation by
26 way of concurrent resolution.

27 (4) If the federal minimum hourly wage rate set by section 6 of
28 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
29 a successor federal law, is raised to a level higher than the State
30 minimum wage rate set by this subsection, then the State minimum
31 wage rate shall be increased to the level of the federal minimum
32 wage rate and subsequent increases based on increases in the CPI-
33 W pursuant to this subsection shall be applied to the higher
34 minimum wage rate.

35 e. With respect to an employee who customarily and regularly
36 receives gratuities or tips, every employer is entitled to a credit for
37 the gratuities or tips received by the employee against the hourly
38 wage rate that would otherwise be paid to the employee pursuant to
39 subsection a. of this section of the following amounts: after
40 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
41 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
42 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
43 calendar year 2023, \$8.87 per hour; and during calendar year 2024
44 and subsequent calendar years, \$9.87 per hour.

45 f. Notwithstanding the provisions of this section to the
46 contrary, every trucking industry employer shall pay to all drivers,
47 helpers, loaders and mechanics for whom the Secretary of
48 Transportation may prescribe maximum hours of work for the safe

1 operation of vehicles, pursuant to section 31502(b) of the federal
2 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
3 than 1 1/2 times the minimum wage required pursuant to this
4 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
5 industry shall be paid no less than the minimum wage rate as
6 provided in this section and N.J.A.C. 12:56-3.1. As used in this
7 section, "trucking industry employer" means any business or
8 establishment primarily operating for the purpose of conveying
9 property from one place to another by road or highway, including
10 the storage and warehousing of goods and property. Such an
11 employer shall also be subject to the jurisdiction of the Secretary of
12 Transportation pursuant to the federal Motor Carrier Act, 49
13 U.S.C.s.31501 et seq., whose employees are exempt under section
14 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
15 U.S.C. s.213(b)(1), which provides an exemption to employees
16 regulated by section 207 of the federal "Fair Labor Standards Act of
17 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
18 U.S.C. s.501 et al.

19 g. Commencing on January 1, 2020, a training wage of not less
20 than 90 percent of the minimum wage rate otherwise set pursuant to
21 subsection a. of this section may be paid to an employee who is
22 enrolled in an established employer on-the-job or other training
23 program which meets standards set by regulations adopted by the
24 commissioner. The period during which an employer may pay the
25 training wage to the employee shall be the first 120 hours of work
26 after hiring the employee in employment in an occupation in which
27 the employee has no previous similar or related experience. An
28 employer shall not utilize any employee paid the training wage in a
29 manner which causes, induces, encourages or assists any
30 displacement or partial displacement of any currently employed
31 worker, including any previous recipient of the training wage, by
32 reducing hours of a currently employed worker, replacing a current
33 or laid off employee with a trainee, or by relocating operations
34 resulting in a loss of employment at a previous workplace, or in a
35 manner which replaces, supplants, competes with or duplicates any
36 approved apprenticeship program. An employer who pays an
37 employee a training wage shall make a good faith effort to continue
38 to employ the employee after the period of the training wage
39 expires and shall not hire the employee at the training wage unless
40 there is a reasonable expectation that there will be regular
41 employment, paying at or above the effective minimum wage, for
42 the trainee upon the successful completion of the period of the
43 training wage. If the commissioner determines that an employer
44 has made repeated, knowing violations of the provisions of this
45 subsection regarding the payment of a training wage, the
46 commissioner shall suspend the employer's right to pay a training
47 wage for a period set pursuant to regulations adopted by the
48 commissioner, but not less than three years.

1 h. The provisions of this section shall not be construed as
2 prohibiting any political subdivision of the State from adopting an
3 ordinance, resolution, regulation or rule, or entering into any
4 agreement, establishing any standard for vendors, contractors and
5 subcontractors of the subdivision regarding wage rates or overtime
6 compensation which is higher than the standards provided for in
7 this section, and no provision of any other State or federal law
8 establishing a minimum standard regarding wages or other terms
9 and conditions of employment shall be construed as preventing a
10 political subdivision of the State from adopting an ordinance,
11 resolution, regulation or rule, or entering into any agreement,
12 establishing a standard for vendors, contractors and subcontractors
13 of the subdivision which is higher than the State or federal law or
14 which otherwise provides greater protections or rights to employees
15 of the vendors, contractors and subcontractors of the subdivision,
16 unless the State or federal law expressly prohibits the subdivision
17 from adopting the ordinance, resolution, regulation or rule, or
18 entering into the agreement.

19 i. Effective on the first day of the second month next following
20 the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill), the minimum wage for long-term care
22 facility direct care staff members shall be in an amount that is \$3
23 higher than the prevailing minimum wage established pursuant to
24 subsection a. of this section, which minimum wage rate shall be
25 annually increased by any increase in the consumer price index for
26 all urban wage earners and clerical workers (CPI-W) as calculated
27 by the federal government for the 12 months prior to the September
28 30 preceding that January 1, plus any amount as is necessary to
29 ensure that the minimum wage established pursuant to this
30 subsection is \$3 higher than the prevailing minimum wage then in
31 effect under subsection a. of this section.

32 (cf: P.L.2019, c.32, s.2)

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34 3. (New section) a. The Commissioner of Human Services
35 shall submit recommendations to the Legislature, pursuant to
36 section 2 of P.L.1991, c.164 (C.52:14-19.1), for legislative approval
37 of any reimbursement rate increases as may be needed to comply
38 with minimum wage requirements for long-term care facility direct
39 care staff as provided in subsection i. of section 5 of P.L.1966,
40 c.113 (C.34:11-56a4). The commissioner may recommend that
41 increases for nursing homes be tied to improvements in specific
42 quality and safety metrics, including, but not limited to:

43 (1) meeting nursing home staffing requirements; and

44 (2) implementing policies for improved communication between
45 the nursing home and Managed Long Term Services and Supports
46 and care managers.

47 b. No later than 90 days after the effective date of this act, the
48 Commissioner of Human Services shall conduct a review of the

1 Department of Human Services' Medicaid value-based payment
2 strategy, including the Quality Incentive Payment Program, to
3 ensure incentives provided under the strategy focus on priority
4 metrics for quality improvement, and shall review and determine
5 whether incentives are an effective means of driving improvements
6 in quality of care and resident and staff safety in nursing homes.

7 c. (1) No later than 90 days after the effective date of this act,
8 the Commissioner of Human Services shall establish a direct care
9 loss ratio reporting and rebate requirement, pursuant to which
10 nursing homes shall be required to report total revenues collected,
11 along with the portion of revenues that are expended on direct care
12 staff wages, other staff wages, administrative costs, investments in
13 improvements to the facility's equipment and physical plant, and
14 profits.

15 (2) The commissioner shall determine the maximum proportion
16 of revenues that may be dedicated to administrative costs and
17 profits. The commissioner shall determine the exact ratio based on
18 historical cost reports, and may adjust the ratio as appropriate based
19 on current financial information reported by nursing homes and
20 overall performance by the nursing home related to patient safety
21 and quality of care.

22 (3) The commissioner may conduct an audit of the financial
23 information reported by nursing homes pursuant to this section to
24 ensure the accuracy of the information reported and compliance
25 with the requirements of this section, as well as to identify and
26 recover any payments that exceed the allowed cost ratio for
27 administrative costs and profits.

28 (4) In each case where the direct care loss ratio fails to
29 substantially comply with the ratio requirement established pursuant
30 to this subsection, the nursing home shall issue a pro rata dividend
31 or credit to all individuals and entities making payments to the
32 nursing home for resident services in an amount sufficient to assure
33 that the aggregate amount paid for direct care staff wages, other
34 staff wages, administrative costs, investments in improvements to
35 the nursing home's equipment and physical plant, and profits, plus
36 the amount of the dividends and credits, equals the mandatory ratio
37 for the previous calendar year. The pro rata dividend or credit shall
38 be equal to the percentage of payments made by the payor to the
39 nursing home in the previous calendar year out of all payments
40 made to the nursing home for services provided in the previous
41 calendar year from all payment sources. All dividends and credits
42 shall be distributed by December 31 of the year following the
43 calendar year in which the ratio requirements were not satisfied.

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45 4. This act shall take effect immediately.

STATEMENT

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This bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics, including, but not limited to, meeting nursing home staffing requirements and implementing policies for improved communication between the nursing home and Managed Long Term Services and Supports and care managers.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to establish a direct care loss ratio reporting and rebate requirement, pursuant to which nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, administrative costs, investments in improvements to the facility's equipment and physical plant, and profits. The commissioner will determine the maximum proportion of revenues that may be dedicated to administrative costs and profits based on historical cost reports; the ratio may be adjusted as appropriate based on current financial information and overall performance by the nursing home.

The commissioner will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to all individuals and entities making payments to the nursing home for resident services

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1 in an amount sufficient to assure that the aggregate amount paid for
2 direct care staff wages, other staff wages, administrative costs,
3 investments in improvements to the nursing home's equipment and
4 physical plant, and profits, plus the amount of the dividends and
5 credits, equals the mandatory ratio for the previous calendar year.
6 The pro rata dividend or credit will be equal to the percentage of
7 payments made by the payor to the nursing home in the previous
8 calendar year out of all payments made to the nursing home for
9 services provided in the previous calendar year from all payment
10 sources. All dividends and credits are to be distributed by
11 December 31 of the year following the calendar year in which the
12 ratio requirements were not satisfied.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2758

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 21, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2758.

As amended by the committee, this bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the facility's equipment and physical plant, profits, and any other factors as the commissioner requires. The direct care ratio will

require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits. The commissioner may adjust the components of the ratio as appropriate based on current financial information reported by nursing homes and overall performance by the nursing home related to patient safety and quality of care.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services in an amount sufficient to assure that the aggregate amount paid for direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the nursing home's equipment and physical plant, profits, and other factors as may be required by the commissioner, plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit will be equal to the percentage of payments made by the payor to the nursing home in the previous calendar year out of all payments made to the nursing home for services provided in the previous calendar year from all payment sources. All dividends and credits are to be distributed by June 30 of the year following the calendar year in which the ratio requirements were not satisfied.

The commissioner will be required to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

COMMITTEE AMENDMENTS:

The committee amendments remove language concerning specific metrics to be considered by the Commissioner of Human Services when recommending that increases in nursing home reimbursement rates be tied to specific quality and safety metrics.

The committee amendments revise the requirements for the direct care ratio to require that it be established by July 1, 2021, rather than 90 days after the effective date of the bill, and to remove the word "loss" from references the ratio. The amendments further specify that

the factors to be considered will include taxes paid by the facility and other factors as the commissioner may require.

The committee amendments require that the direct care ratio be at least 90 percent, with the option for the commissioner to increase the ratio by regulation.

The committee amendments provide that audits may be performed by the commissioner or by a designated entity.

The committee amendments provide that, when a facility fails to meet the direct care ratio, the dividends and credits the facility is required to pay will be paid to the State, as well as to other entities making payments to the facility. The amendments further provide that the credits and dividends are to be paid by June 30, rather than by December 31, in the calendar year following the calendar year in which the ratio was not met.

The committee amendments add a provision requiring the commissioner to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

The committee amendments remove certain language from the amendatory provisions of the bill concerning increases based on the consumer price index that duplicate current statutory language.

The committee amendments revise the synopsis of the bill to reflect the changes made by committee amendment.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2758

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2758 (1R).

As amended by the committee, this bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. This increase will take effect the first day of the second month next following the effective date of the bill.

The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff. The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement. The commissioner will additionally review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the facility's equipment and physical plant, profits, and any other factors as the commissioner requires. The direct care ratio will require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine which components

of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits. The commissioner may adjust the components of the ratio as appropriate based on current financial information reported by nursing homes and overall performance by the nursing home related to patient safety and quality of care.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits.

In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services in an amount sufficient to assure that the aggregate amount paid for direct care staff wages, other staff wages, taxes, administrative costs, investments in improvements to the nursing home's equipment and physical plant, profits, and other factors as may be required by the commissioner, plus the amount of the dividends and credits, equals the mandatory ratio for the previous calendar year. The pro rata dividend or credit will be equal to the percentage of payments made by the payor to the nursing home in the previous calendar year out of all payments made to the nursing home for services provided in the previous calendar year from all payment sources. All dividends and credits are to be distributed by June 30 of the year following the calendar year in which the ratio requirements were not satisfied.

No later than 60 days after the effective date of the bill, the Commissioner of Human Services or an entity designated by the commissioner will be required to initiate a study of the costs and payments associated with nursing home care, which study will focus on, and include recommendations concerning, adjusting reimbursement rates to account for differences in resident acuity levels, as well as other factors as may be relevant to nursing home costs and payments. The commissioner will prepare and submit an interim report concerning the status of the study no later than one year after the effective date of the bill, and will prepare and submit a final report of the findings and recommendations of the study to the Governor and to the Legislature by January 1, 2022.

The commissioner will be required to apply for State plan amendments and waivers to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

COMMITTEE AMENDMENTS:

The committee amendments require the Commissioner of Health or another entity designated by the commissioner to complete an analysis of the costs and payments associated with nursing home care that is to focus on and make recommendations concerning adjusting reimbursement rates to account for differences in resident acuity levels, as well as other relevant factors.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will increase costs for nursing homes operated by the Department of Military and Veterans Affairs (DMAVA) and certain county governments due to the implementation of a minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. From 2025 on, per the statutory structure of the exiting prevailing minimum wage, the provisions of the bill will be limited to cost-of-living increases, which will decrease the annual cost for nursing homes. This estimate does not include any cost increases resulting from legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State. The OLS also estimates that nursing homes operated by the DMAVA and certain county governments may incur expenses due to the direct care ratio reporting requirements established under the bill and the DHS may incur expenses to implement and administer certain provisions of the bill.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2758

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: AUGUST 31, 2020

SUMMARY

- Synopsis:** Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care ratio requirements for nursing homes; requires nursing home care rate study.
- Type of Impact:** Annual increase in State and local expenditures.
- Agencies Affected:** Department of Human Services; Department of Military and Veterans Affairs; certain county governments.

Office of Legislative Services Estimate

Annual Fiscal Impact	
State Cost Increase	Indeterminate
Local Cost Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will increase annual costs for nursing homes, by an indeterminate amount, that are operated by the Department of Military and Veterans Affairs (DMAVA) and certain county governments due to the implementation of a minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. From 2025 on, per the statutory structure of the exiting prevailing minimum wage, the provisions of the bill will be limited to cost-of-living increases.
- This estimate does not include any cost increases resulting from Legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State.
- The OLS also estimates that: 1) nursing homes operated by the DMAVA and certain county governments may incur expenses due to the direct care ratio reporting requirements established

under the bill; and 2) the DHS may incur expenses to implement and administer certain provisions of the bill.

BILL DESCRIPTION

This bill provides that the minimum wage for direct care staff in long-term care facilities is to be \$3 higher than the prevailing State minimum wage and annually adjusted based on cost-of-living increases. The Commissioner of Human Services will be required to submit recommendations to the Legislature for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff.

No later than 90 days after the effective date of the bill, the Commissioner of Human Services will be required to conduct a review of the department's Medicaid value-based payment strategy and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

The Commissioner of Human Services will be required to establish a direct care ratio reporting and rebate requirement that will take effect no later than July 1, 2021. Under the direct care ratio reporting and rebate requirement, nursing homes will be required to report total revenues collected, along with the portion of revenues that are expended on direct patient care and various facility costs. The direct care ratio will require 90 percent, or a higher percentage established by commissioner by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents. The commissioner will determine, and may adjust, which components of the reporting requirements are to be attributed to direct patient care, administrative costs, and profits.

The commissioner or a designated entity will be authorized to conduct an audit of the financial information reported by nursing homes to ensure the accuracy of the information reported and compliance with the requirements of the bill, as well as to identify and recover any payments that exceed the allowed ratio for administrative costs and profits. In each case where the direct care loss ratio fails to substantially comply with the ratio requirement, the nursing home will be required to issue a pro rata dividend or credit to the State and to all individuals and entities making payments to the nursing home for resident services.

No later than 60 days after the effective date of the bill, the Commissioner of Human Services or an entity designated by the commissioner will be required to initiate a study of the costs and payments associated with nursing home care. The commissioner will prepare and submit an interim report concerning the status of the study no later than one year after the effective date of the bill, and will prepare and submit a final report of the findings and recommendations of the study to the Governor and to the Legislature by January 1, 2022.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will increase costs for nursing homes, by an indeterminate amount, operated by the DMAVA and certain county governments due to the implementation of a

minimum wage for direct care staff in long-term care facilities that is \$3 higher than the prevailing State minimum wage, as outlined under the bill. Such nursing homes may also incur expenses to comply with the direct care ratio reporting requirements established under the bill. The DMAVA operates three facilities, while there are nine county facilities: three in Bergen County; two in Middlesex County; and one each in Atlantic County, Cape May County, Gloucester County, and Passaic County.

Currently, the prevailing State minimum wage is \$11.00 per hour, with \$1.00 increases to this rate scheduled on January 1 of each year from 2021 to 2024 until the rate is \$15.00 per hour. According to the report published by Manatt Health regarding the State's coronavirus disease 2019 response targeted toward the long-term care system, certified nurse assistants in New Jersey currently earn an average of \$15.00 per hour, while other nursing home staff earn close to minimum wage. The OLS does not have access to specific salary data for direct care staff employed at nursing homes operated by the DMAVA and certain county governments to quantify how this provision of the bill will impact State and local costs.

However, for illustrative purposes, if a facility has 25 direct care staff members currently earning a minimum wage and working 20 hours per week, this bill would cost the nursing home approximately \$78,000 to increase those staff members' wages by \$3.00 per hour in the first year of the bill's implementation. This analysis does not include: 1) those staff members who earn more than the prevailing minimum wage but less than the targeted minimum wage for direct care staff in long-term care facilities under the bill; and 2) the effects of wage compression on the industry, which may require nursing home facilities to increase wages outside of the provisions of this bill to provide that higher earning direct care staff maintain their wage differential compared to lower earning direct care staff. Including such components would increase the cost under this scenario. From 2025 on, the provisions of the bill will be limited to cost-of-living increases, which will cap annual wage increases for nursing homes.

This estimate does not include any cost increases resulting from Legislative action to increase the Medicaid reimbursement rate due to the minimum wage provisions of this bill. Under the bill, the Commissioner of Human Services is directed to make recommendations regarding a rate increase; however, such an increase would need to be implemented via separate legislation. The OLS notes, however, that the bill's impact on the nursing home industry will put upward pressure on the Medicaid per diem rate set by the State.

The OLS also estimates that the DHS may incur expenses to implement and administer certain provisions of the bill. These expenses include: one-time costs to review the department's Medicaid value-based payment strategy and establish a direct care ratio reporting and rebate requirement; time-limited costs to complete an analysis of the costs and payments associated with nursing home care; and annual costs to audit and enforce the nursing home industry's compliance with the direct care ratio and to adjust the direct care ratio as needed. To the extent that these responsibilities overlap with the DHS's current work and can be absorbed by the department's existing budget, these costs will be minimized.

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Legislative Package to Strengthen the Resiliency and Preparedness of New Jersey's Long-Term Care Industry

09/16/2020

Legislative Package Enacts Key Recommendations from Manatt Health's Review

TRENTON – Acting on a commitment to reform and build a more resilient long-term care industry, Governor Phil Murphy today signed a legislative package to address systemic challenges, mitigate the impact of COVID-19, and strengthen preparedness for future outbreaks. The legislative package enacts several recommendations made in Manatt Health's rapid review of the state's long-term care facilities, including wage enhancements for frontline staff, improved response coordination, and robust data reporting procedures. The legislative package received bipartisan support.

"The residents and staff of our long-term care facilities have borne an outsized burden of this pandemic," **said Governor Phil Murphy**. "While we know this has not been a tragedy unique to New Jersey, we will learn from this crisis and emerge as a national model for solving immediate challenges and building future resilience. These measures not only support our ongoing efforts to get things right for our long-term care residents, staff, and families, but also ensure we have strong measures in place to deal with bad actors in the industry who put profit before people."

The Governor signed the following bills into law:

A4476/S2790 (Vainieri Huttle, Greenwald, DePhillips/Cryan, Vitale) - Establishes certain requirements concerning State's preparedness and response to infectious disease outbreaks, including the COVID-19 pandemic.

A4481/S2787 (Moen, Sumter, Quijano, Gove/Codey, Rice) - Establishes New Jersey Task Force on Long-Term Care Quality and Safety.

A4482/S2758 (Tucker, Giblin, Chaparro/Cryan, Lagana) - Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care ratio requirements for nursing homes; requires nursing home care rate study.

A4547/S2813 (Vainieri Huttle, Benson, Johnson/Vitale) - Authorizes temporary rate adjustment for certain nursing facilities; appropriates \$62.3 million.

"This package of bills will improve the resiliency and quality of our long-term care facilities and strengthen their emergency preparedness," **said Health Commissioner Judith Persichilli**. "Most importantly, they provide the recognition the Certified Nursing Assistants deserve through wage increases and career ladder opportunities."

"We thank our partners in the Legislature for working together with us to advance our shared goal of supporting nursing home residents and the staff who work tirelessly to care for them," **Human Services Commissioner Carole Johnson said**. "Today's action will deliver new Medicaid funding of \$130 million – a 10 percent increase – over the remainder of the fiscal year to nursing homes to increase wages for the frontline certified nursing aide workforce and to support facilities' compliance with health and safety directives, including COVID-19-related infection control, PPE, cleaning, staffing, and other needs. These are critical steps as we work across the state to continue to fight the virus and prepare for any potential second surge this fall."

"Long-term care centers were woefully underprepared and under-resourced to respond to a global pandemic. Many nursing and veterans homes in New Jersey have been cited for inadequate infection control policies, and few had consistent direct communication with hospitals and health departments before the pandemic. The system as a whole needs to be reformed," **said Assemblywoman Valerie Vainieri Huttle, Chair of the Assembly Aging and Senior Services Committee**. "It is also critically important that we support the certified nurse aides in

long-term care centers who are on the COVID-19 front lines day in and day out. They dedicate their lives to caring for our most vulnerable, and now they put their health at risk every day they're on the job. If there's ever a time to enhance wages for our severely underpaid and overworked nurse aides, it's now."

"COVID-19 has taken an immense toll on our long-term care community. This legislation is a combination of Manatt Health's recommendations and the Senate Health Committee's extensive discussions with stakeholders and concerned residents," **said Senator Joseph Vitale, Chair of the Senate Health, Human Services and Senior Citizens Committee.** "Long-term care facilities service some of our state's most vulnerable communities. At the onset of this pandemic our mothers, fathers and grandparents faced a compromised, exposed and impossible situation. These laws will help ensure that New Jersey does not ever let that happen again."

"Over the past six months, nursing home workers across New Jersey have heroically risen to the challenges of COVID-19 and put their lives on the line to protect their vulnerable patients," **said Milly Silva, Executive Vice President of 1999SEIU United Healthcare Workers East.** "Critically, this legislative package recognizes the essential nature of their work and the need for our state to have a stable, healthy and growing caregiver workforce. We applaud Gov. Murphy and our legislative leadership for taking these important steps to reform the nursing home industry."

"We applaud Governor Murphy and the NJ Legislature for passing this long-term care reform package, which makes significant and necessary improvements to protect residents and staff at New Jersey nursing homes and other long-term care facilities," **said Stephanie Hunsinger, AARP New Jersey State Director.** "It is a tragedy that more than 7,100 residents and staff in New Jersey's long-term care facilities have died due to COVID-19, and we must ensure this never happens again. These bills implement critical measures to save lives."

"These bills are an important part of refocusing our priorities and, as a society, valuing the care delivered to New Jersey residents as they age," **said NJHA President and CEO Cathy Bennett.** "That requires good policy, sufficient resources and the engagement of all stakeholders including the frail elderly, their loved ones, and the healthcare workers and long term care facilities who help care for them."

A-4476

"The COVID-19 pandemic did not create the problems in long-term care; it merely exacerbated them," **said Assembly Majority Leader Lou Greenwald.** "Without adequate staffing, emergency response plans or central channels of communication with health officials, long-term care facilities were unequipped to keep residents and staff safe in the early critical days of the pandemic. Though no one could have predicted the toll COVID-19 would take, long-term care centers could have been more prepared. Going forward, a centralized command center devoted to long-term care will help us make sure these facilities have the resources they need to prepare for and respond to emergencies."

"This necessary bipartisan legislation acts upon the lessons learned from the Covid-19 response," **said Assemblyman Chris DePhillips.** "In particular, the new Long Term Care Emergency Operations Center will provide greater preparation and coordination across the state in the event of a future outbreak. Moreover, the legislation will ensure that long-term care facilities are more closely tied to the system of care in the state and have emergency plans in place to respond to a public health emergency."

"The fatal consequences of the COVID pandemic fell the hardest on nursing homes, veterans' homes and other long term care facilities that are home to our most vulnerable population of residents," **said Senator Joe Cryan.** "It is tragically obvious that there was an absence of safeguards to prevent and respond to the outbreak. We need to use the hard lessons of this experience to help prevent anything like this from happening again. This includes preventive safeguards, action plans to contain any outbreaks and better pay for the frontline workers who care for the residents."

A-4481

In a joint statement, Assemblymembers Bill Moen, Shavonda Sumter, and Annette Quijano said:

"The COVID-19 pandemic has exposed longstanding problems in our long-term care system. Not only do we need to address staffing shortages, quality of care concerns and emergency preparedness, but we will need to assess how we can modernize an outdated system to best fit the needs of our most vulnerable residents. The work of this task force will help us reform long-term care in New Jersey, including the expansion of home and community-based services, enhancing the use of telemedicine and optimizing resident wellness and infection control."

“Without question, our state has an obligation to ensure that those living in long-term care facilities are provided with the highest level of care to maintain their quality-of-life, while also allowing for family members to play an active role in their lives,” **said Assemblywoman Dianne Gove**. “To that end, I’ve supported the establishment of a Task Force on Long-Term Care Quality and Safety so that New Jersey, moving forward, can and will develop and implement more effective policies that benefit our most vulnerable citizens.”

“COVID-19 devastated our long-term care community and it pains me to hear about how helpless the residents and staff members were at the height of this pandemic,” **said Senator Richard Codey**. “Establishing the New Jersey Task Force on Long-Term Care Quality and Safety would allow us to develop and implement improvements across the board. Our most vulnerable residents and their caretakers deserve better and this legislation would make sure improvements are realized.”

“COVID-19 swept through our long-term care facilities with such devastating speed, nobody knew what to do or how to handle the situation,” **said Senator Ronald C. Rice**. “The task force will ensure we develop strict procedures and workplace safety to make sure we are adequately prepared the next time an event like this comes around.”

A-4482

“Nurses in long-term care facilities help residents bathe, dress, eat, use the restroom, and manage their medical care. Though they deliver vital care to our most vulnerable, they are often underpaid and overworked,” **said Assemblywoman Cleopatra Tucker**. “Now amid a global pandemic, they are putting their own health on the line every day. They deserve to be better compensated for their essential work.”

“There are often staffing shortages and retention issues in long-term care facilities, in part because staff are poorly paid and may need to work multiple jobs to make ends meet,” **said Assemblyman Tom Giblin**. “Providing pay increases will undoubtedly attract quality workers to the profession and help facilities retain their staff, which in turn will ensure residents are better cared for.”

“Direct care staff are the unsung heroes of healthcare. Like all frontline workers, they have gone the extra mile to respond to COVID-19,” **said Assemblywoman Annette Chaparro**. “They dedicate their lives to helping our elderly or disabled loved ones live with dignity. It’s time we paid them a dignified wage in return.”

A-4547

“Nursing homes are not only battling a public health emergency; many are also facing a fiscal emergency,” **said Assemblyman Dan Benson**. “Without the resources to adequately pay nursing staff or enforce infection control measures, it will become even more difficult to retain nurses and keep residents and staff safe. By increasing Medicaid reimbursements, we can provide financial relief to nursing homes so that they may improve their COVID-19 response and better care for residents.”

“As we look to a potential second wave of COVID-19 in the fall, we must make sure long-term care facilities have the resources needed to mitigate the spread of the virus,” **said Assemblyman Gordon Johnson**. “This includes, perhaps most importantly, the heroic CNAs who care for elderly and disabled residents in long-term care facilities and often work multiple shifts at several facilities to make ends meet. Increased wages will mean current CNAs won’t have to stretch themselves thin financially, as well as help to attract new staff hires, which in turn will improve quality of care for residents.”