PA 24-141—sHB 5046
Aging Committee
Judiciary Committee
Appropriations Committee

AN ACT PROMOTING NURSING HOME RESIDENT QUALITY OF LIFE

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SUMMARY: This act makes changes related to the management and oversight of long-term care and similar licensed facilities as described in the section-by-section analysis below.
EFFECTIVE DATE: Upon passage, unless otherwise specified below.

§ 1 — NURSING HOME ROOM CAPACITY LIMITATIONS

Prohibits each licensed chronic and convalescent nursing home and rest home with nursing supervision from placing newly admitted residents in a room with more than two beds starting on July 1, 2026; correspondingly allows DSS to recalculate Medicaid rates to reflect any associated bed reduction

The act prohibits each licensed chronic and convalescent nursing home and rest home with nursing supervision (i.e., nursing home) from placing newly admitted residents in a room with more than two beds beginning July 1, 2026.

A violation is a class B violation and may result in a civil penalty of up to $10,000. Nursing homes may only incur one violation per newly admitted resident in a calendar year.

The act allows the Department of Social Services (DSS) commissioner to recalculate a nursing home's Medicaid rate each fiscal year (FY) starting in FY 26 to reflect any bed reductions associated with the elimination of three and four bed rooms. The act requires fair rent to reflect the costs for building modifications or additions incurred in FY 25 or after associated with the elimination of three and four bed rooms.

§ 2 — NURSING HOME WAITING LIST AND TRANSFERS

Generally requires nursing homes, without regard for the waiting list, to admit transferring residents from a nursing home that is closing, subject to certain exemptions, such as (1) homes with no more than 30% self-pay patients if the transferring patient is indigent or (2) when the applicant has been denied Medicaid eligibility and has no payor source

Under prior law, nursing homes receiving state funds for providing care for the indigent generally had to admit applicants on a first-come, first-served basis and could not discriminate against indigent applicants based on their source of payment.

However, under state law, a nursing home with 30% or fewer self-pay residents is not required to admit an indigent person on a waiting list when a bed becomes available in the next six months, as long as a bed is not held open for more than 30 days. Under prior law, a home taking advantage of this waiver was required to notify DSS and the regional long-term care ombudsman on a quarterly basis. The act instead requires the home to notify these entities on the date the exemption began and quarterly after that.

Prior law permitted nursing homes to admit transferring residents from a nursing home that was closing without regard for the waiting list. The act generally makes this mandatory, with certain exceptions (see below). This specifically applies to applicants wishing to transfer from a nursing home (1) that is closing or (2) in which they were placed after the nursing home where they previously resided closed (or for homes in receivership, was anticipated to close).

Under the act, nursing homes that qualify for the waiting list exemption described above (i.e., homes with no more than 30% self-pay patients), or nursing homes with vacancies in private rooms, are not required to admit indigent people who are transferring under these provisions except when they are being transferred from a nursing home that is closing due to an emergency.

Under the act, nursing homes are also not required to disregard the waiting list when admitting people from other homes that are closing if the nursing home has determined that the applicant (1) does not have a payor source because they have been denied Medicaid eligibility, (2) has not paid a nursing home that is closing for the three months prior to the date of the application for admittance and does not have a Medicaid application pending, (3) is subject to a Medicaid penalty period, or (4) does not require nursing home level of care according to applicable state and federal law.

EFFECTIVE DATE: July 1, 2024

§§ 3 & 4 — DISCONTINUATION OF REST HOME WITH NURSING SUPERVISION LICENSES

Prohibits the DPH commissioner from granting new rest home with nursing supervision licenses; exempts these homes from DSS certificate of need requirements when changing their licensure to a chronic and convalescent nursing home

The act prohibits the Department of Public Health (DPH) commissioner from granting new licenses to establish or operate a rest home with nursing supervision. A rest home with nursing supervision is a residential facility that provides

intermediate care services to residents. (In practice, nursing homes generally have been phasing out these beds or converting them to chronic and convalescent nursing home beds.)

The DPH commissioner is authorized to approve a one-time license renewal for one year or less if the applicant follows the existing criteria for renewal.

Additionally, long-term care facilities generally must seek certificate of need (CON) approval from DSS before various activities. The act exempts rest homes with nursing supervision from this requirement when changing their licensure to a chronic and convalescent nursing home.

§ 5 — NURSING FACILITIES AND STATE ENFORCEMENT AUTHORITY

Extends certain existing procedures and penalties for nursing home violations of federal law to violations of state laws or regulations

Under the act, if a Medicaid-participating nursing facility is found to be noncompliant with applicable state statutes or regulations during a DPH survey, it is treated as noncompliant with specified federal law under existing procedures.

Under this law, among other things:

1. if DPH finds that this noncompliance poses an imminently serious threat to patient well-being, it must issue a statement of the charges to the facility, file it with DSS, and request a summary order from DSS, which (if issued) must include termination of Medicaid participation or the appointment of a temporary manager and may include other corrections (e.g., having patients transferred to other facilities or civil penalties);
2. if DPH finds that this noncompliance does not pose an immediate threat, it must issue a statement of the charges, file it with DSS, and request that DSS impose any of a range of remedies similar to those for imminently serious charges; and
3. the facility may request a hearing with DSS within 10 days of the statement of charges or summary order's issuance.

As under existing law, DPH may impose a range of sanctions on nursing homes that violate applicable state laws or regulations.

§ 6 — PENALTIES FOR HEALTHCARE INSTITUTIONS FAILING TO COMPLY WITH CORRECTIVE ACTION PLANS

Subjects DPH-licensed healthcare institutions to potential disciplinary action for failing to comply with an accepted plan of corrective action

By law, a DPH-licensed health care institution (such as a hospital or nursing home) must submit a correction plan to DPH if the department, after an inspection, issues a notice that the institution was out of compliance with applicable state laws or regulations. DPH may impose disciplinary action on these institutions if they fail to submit a plan of correction meeting the law's requirements.

The act authorizes DPH to impose disciplinary action on these institutions if they fail to comply with a plan of correction accepted by the department. These

actions may only be imposed after a hearing and may include, among other things:

1. revocation, suspension, or censure of a license;
2. placement of a licensee on probationary status;
3. a restriction on acquiring other facilities for a period set by the commissioner; or
4. issuance of an order compelling compliance with applicable laws or regulations of the department.

§§ 7 & 8 — MANAGED RESIDENTIAL COMMUNITY RESIDENCY AGREEMENTS AND FEES

Generally requires MRCs to (1) include information in written residency agreements on how they may adjust monthly or other recurring fees; (2) give residents or their representatives 90 days' notice of any fee increases; (3) give residents prorated or full refunds of certain fees if the facility cannot meet the resident's needs within the first 45 days of occupancy; exempts elderly housing complexes participating in certain federal and state programs from these and certain related requirements

Existing law requires managed residential communities (MRC) to give each resident a written residency agreement clearly setting out the resident's and the MRC's rights and responsibilities. The act modifies the contents of the agreement and establishes notification and reimbursement requirements for certain resident fees.

EFFECTIVE DATE: October 1, 2024, except the provisions on the residency agreements (§ 7) are effective upon passage.

Written Residency Agreement

Beginning October 1, 2024, the act generally adds to the required contents of the agreement the way that MRCs may adjust monthly or other recurring fees, including (1) how often fees may increase, (2) the schedule or specific dates of these increases, and (3) the history of fee increases over the past three calendar years.

Under existing law, written residency agreements must include, among other things, a full and fair disclosure of all charges, fees, expenses, and costs to be borne by the resident. The act also requires that agreements entered into on or after October 1, 2024, specify any nonrefundable charges, fees, expenses, and costs.

Fee Notifications and Reimbursement

The act generally requires MRCs to give residents or their representatives 90 days' advance notice of any increase in monthly or recurring fees and written disclosure of any nonrefundable charges.

It also generally requires MRCs to give residents prorated or full reimbursement of certain charges if it determines it can no longer meet the resident's needs during the first 45 days of the resident's occupancy (e.g., prorated first month's rent, prorated community fee, full last month's rent, and full security deposit).

Exemption

The act exempts MRCs from these requirements, as well existing requirements that agreements include a payment schedule and disclosure of all late fees or potential penalties, if they are (1) an elderly housing complex receiving assistance and funding through the U.S. Department of Housing and Urban Development's (HUD) Assisted Living Conversion Program (ALCP) or (2) a DSS demonstration project to provide subsidized assisted living services.

§ 9 — ALSA FEES

Requires ALSAs to (1) disclose fee increases to residents or their representatives at least 60 days before they take effect and (2) upon request, give them the history of fee increases over the past three years

Existing law requires an assisted living services agency (ALSA) to ensure all services provided individually to clients are fully understood by the client or the client's representative, and that the client or representative is made aware of their cost.

In addition, the act requires an ALSA to (1) disclose fee increases to the client or representative at least 60 days before they take effect and (2) upon request, give the resident or representative the history of fee increases over the past three calendar years.

The act specifies that this requirement does not limit an ALSA from immediately adjusting fees if (1) they are directly related to a change in the level of care or services necessary to meet the resident's safety needs at the time of a scheduled resident care meeting or (2) the resident's condition changes, resulting in a required change in services.

EFFECTIVE DATE: October 1, 2024

§§ 10 & 11 — APPOINTMENT OF RECEIVERS OF NURSING HOMES OR RESIDENTIAL CARE HOMES

Requires nursing home or residential care home receiver applications to be granted if the facility sustains any type of serious financial loss or failure and updates the criteria for who may be appointed as a receiver of these facilities

Under prior law, courts were required to grant an application for the appointment of a receiver for a nursing home facility or residential care home (facility) if they found, among other things, the facility had sustained a serious financial loss or failure that jeopardizes the health, safety, and welfare of the patients. The act eliminates the requirement that the serious financial loss or failure jeopardize the health, safety, and welfare of the patients.

The act also specifically allows entities to serve as a receiver of a facility, in addition to individuals, and subjects these entities to the same ethical requirements to which individuals are subject. It requires receiver candidates to either (1) be a licensed nursing home facility administrator or (2) have substantial experience in

the delivery of high-quality health care services and management of long-term care facilities and have a level of education or licensure customarily commensurate with people who manage facilities like the one under receivership.

Under prior law, a receiver candidate had to be a person that either (1) was a licensed nursing home facility administrator, to serve as a receiver of a nursing home facility, or (2) had experience as a residential care home administrator, or if someone with that experience could not be found, other similar experience, in order to be a receiver of a residential care home.

The act prohibits individuals employed by a private equity company or entity owned or controlled by a private equity company from being appointed to act as a receiver of a nursing home facility or residential care home.

The act also removes the requirement that DSS adopt regulations on receiver qualifications.

§ 12 — NURSING FACILITY MANAGEMENT SERVICES

Requires each entity seeking a nursing facility management certificate to disclose additional information in its application; revises the criteria upon which DPH can base its certificate issuance decisions; expands the penalties and grounds upon which DPH can impose disciplinary action against these certificate holders

The act requires nursing facility management services certificate applicants who have beneficial owners to include the name of everyone with a 5% or greater ownership interest in the applying entity and a description of their relationship to the applicant. Under prior law, the threshold to disclose a beneficial owner was 10%.

In addition, state law requires applicants to disclose the location and description of any nursing facility to which the applicant currently provides, or provided within the past five years, management services. The act expands this requirement to cover the applicant's beneficial owners and requires disclosure of facilities where the applicant or an owner is or has been the owner, operator, or administrator within the past five years.

Similarly, under existing law, people required to be listed on the application (see above) must sign an affidavit disclosing certain information about their criminal history, civil cases, or health care business-related disciplinary actions.

The act requires applicants to disclose if any such nursing facility associated with the applicant or beneficial owner has been subject to any of the following:

1. three or more civil penalties imposed through DPH final orders within the two years preceding the application date;
2. any civil penalties imposed under the laws or regulations of another state within the same period;
3. Medicare or Medicaid sanctions in any state, other than civil penalties of $20,000 or less; or
4. nonrenewal or termination of a Medicare or Medicaid provider agreement.

Providing Nursing Facility Management Services to Facilities Not Listed on the Original Certificate

The act requires nursing facility management certificate holders to request DPH approval to provide management services to a facility not listed on their certificate at least 30 days before doing so. The department may grant the request subject to conditions or deny the request based on the certificate holder's compliance history with state and federal regulatory requirements at the facilities it manages.

Adjudication of Applications

The act requires DPH to base its decision to renew or issue a certificate on information otherwise available to DPH, in addition to the information submitted to DPH by the applicant and the managed facilities' compliance status as under existing law.

The act expands the conditions under which DPH may deny a nursing facility management certificate. Existing law allows DPH to do so based on substantial failure to comply with the Public Health Code. The act additionally allows DPH to deny issuing a certificate if the applicant or a beneficial owner has an evidentially demonstrable unacceptable history of compliance with (1) state licensure requirements; (2) federal requirements; and (3) state regulatory requirements for each licensed health care facility owned, operated, or managed by the applicant or beneficial owner in the United States in the five years before the application.

The act states that an unacceptable history of compliance can be evidenced by:

1. licensed health care facilities being subject to the adverse actions described above that must be listed on the application (e.g., three or more civil penalties);
2. licensed health care facilities having continuing violations, or a pattern of violations, of state licensure standards or federal certification standards; or
3. the criminal conviction or guilty pleas by an applicant or beneficial owner to charges of fraud, patient or resident abuse or neglect, or a crime of violence or moral turpitude.

The act requires renewal applicants to submit satisfactory evidence that any nursing facilities that the applicant provides management services to has been, and is, in substantial compliance with federal regulatory requirements. The law also still requires the applicant to submit evidence that they are, and have been, in substantial compliance with state law governing health care institutions, the Public Health Code, and licensing regulations, in addition to any other information DPH requires.

Disciplinary Action for Failing to Comply With State and Federal Requirements

Existing law authorizes DPH to impose disciplinary action (e.g., suspension or revocation of the certificate) on a nursing facility management services certificate holder for substantial failure to comply with statutory requirements. The act specifically authorizes DPH to also impose discipline on them if, at any of the facilities they manage, there is a substantial failure to comply with state licensure requirements, state regulatory requirements, or federal requirements.

The act authorizes DPH, after a hearing, to impose a civil penalty on a nursing home facility management certificate holder of $20,000 or less if three or more

facilities managed by the certificate holder are subject to civil penalties imposed by DPH final orders during a 12-month period.

Additionally, DPH can require a certificate holder and the nursing facility licensee to submit a plan of corrective action to DPH when the commissioner finds there has been a substantial failure to comply with requirements applicable to nursing home facility management certificate holders. Under the act, a plan of correction accepted by DPH is considered an order of the department, and violations of these orders can result in disciplinary action against the certificate holder.

§ 13 — WORKING GROUP

Establishes a working group to study the impact of prohibiting nursing homes from placing newly admitted residents in rooms with no more than two beds

The act establishes a working group to study the impact of prohibiting licensed chronic and convalescent nursing homes and rest homes with nursing supervision (nursing homes) from placing newly admitted residents in rooms with more than two beds without consent of the resident. The working group must examine methods to (1) assist facilities affected, including identifying opportunities to support their financial sustainability, and (2) ensure that these facilities are able to comply.

The working group consists of:

1. six members, one appointed by each of the six top legislative leaders;
2. the Office of Policy and Management secretary or his designee;
3. the DSS commissioner or her designee;
4. the DPH commissioner or her designee; and
5. the Aging Committee chairpersons and ranking members.

The act allows any member of the working group appointed by the legislative leaders to be a member of the General Assembly. Furthermore, the act requires all initial appointments to the working group be made no later than July 4, 2024.

The act makes the House chairperson and ranking member the working group chairpersons and they must hold the first meeting by August 3, 2024. The act requires the Aging Committee administrative staff to serve in that role for the working group.

The working group must submit a report of its findings and recommendations to the Aging Committee no later than January 1, 2026. The working group ends on the date it submits the report, or January 1, 2026, whichever is later.