

New Year, New Laws: An Overview of New Laws Impacting New York Nursing Homes in January 2022

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Throughout 2021, former Governor Andrew Cuomo introduced sweeping legislation to initiate reform in nursing homes licensed under Article 28 of the New York Public Health Law. While many of these laws took effect this past year, some are set to take effect in the New Year and beyond. Below we provide a brief overview of three that are taking effect in January 2022:

Nursing Home Staffing Levels

On January 1, 2022, N.Y. Public Health Law § [2895-b\(3\)\(a\)](#) will take effect. This section sets forth a minimum standard for staffing hours in nursing homes. Generally, nursing homes report staffing hours to the Centers for Medicare and Medicaid Services (CMS) through a payroll based journal. Under this new standard, nursing homes are required to maintain daily average staffing hours equal to 3.5 hours of care per resident per day. A certified nurse aide, a licensed nurse, or a nurse aide must provide this care. Section 2895-b(3)(a) also specifies how much care each professional must provide. A certified nurse aide or a nurse aide must provide no less than 2.2 hours of care, and a licensed nurse must provide no less than 1.1 hour of care per resident per day. This standard will change again on January 1, 2023, after which the law will require a certified nursing aide to provide at least 2.2 hours of care per resident per day.

Minimum Direct Resident Care Spending Requirements

N.Y. Public Health Law § [2828](#) will take effect on January 1, 2022, and will result in increased budget oversight of nursing homes in New York. Under Section 2828, every nursing home is required to spend at least 70% of revenue on direct resident care, of which the nursing home is required to spend 40% of revenue on resident-facing staffing. Section 2828 also provides that nursing homes may deduct from the resident-facing staffing requirement at least 15% of the cost of the amount spent on staffing that is contracted out for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides.

The law defines the terms “direct resident care,” “resident-facing staffing,” and “revenue” as follows:

“Direct resident care” is defined as the cost centers listed in the residential health care facility cost report. The legislation specifically excludes administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales taxes or payroll taxes), capital depreciation, rent and leases, and fiscal services from the definition of direct resident care.

“Resident-facing staffing” includes all staffing expenses in the ancillary and program services categories on exhibit h of the residential health care reports as in effect on February 15, 2021.

“Revenue” is defined as the total operating revenue received from nursing home residents, government payers, or third-party payers, to pay for a resident’s occupancy of the nursing home, resident care, and the operation of nursing home as reported in the residential health care facility cost reports submitted to the Department of Health.

Notably, Section 2828 further provides that a nursing home’s total operating revenue must not exceed its total operating and non-operating expenses by 5%. In the event that a nursing home does not meet the spending requirements described above or has a total operating revenue in excess of 5%, the nursing home is required to pay New York State the excess amount. The Department of Health may collect such excess amount through a lawsuit or deductions or offsets from payments made pursuant to the Medicaid program. The Department of Health will deposit the excess amounts collected in a nursing home quality pool.

This Section 2828 does not apply to nursing homes that provide primary care for people with HIV/AIDS, medically fragile children, personally requiring behavioral intervention, or persons requiring neurodegenerative service.

Publication of Nursing Home Ratings

Finally, on January 6, 2022, N.Y. Public Health Law § [2808-e](#) will take effect. CMS assigns ratings to nursing homes through its Five-Star Quality Rating System. Nursing homes receive an overall star rating and separate star ratings based on health inspections, staffing, and quality measures. Under Section 2808-e, the Department of Health will be required to post each nursing home’s most recent overall star rating or a link to access such information on the homepage of its website.. Nursing homes will also be required to post the rating on the homepage of their website and conspicuously in the nursing home so that it is visible to residents and the public. Additionally, any entity that owns or operates a nursing home must also post the rating on the homepage of any website that it maintains related to the nursing home.

Conclusion

As the New Year approaches, it is important for nursing homes in New York to ensure that they have appropriate mechanisms and procedures established to ensure compliance with these new regulations.

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National Law Review, Volume XI, Number 355

Source URL: <https://natlawreview.com/article/new-year-new-laws-overview-new-laws-impacting-new-york-nursing-homes-january-2022>

