Introduction

On April 7, 2021, a law was passed in New York establishing new requirements for how much the state's nursing homes must spend on care for their residents and setting forth limits on what nursing homes may spend on other categories of expenses. These requirements, also known as the **direct care minimum spending ratio**, are intended to ensure that the bulk of funds received by nursing homes, most of which are taxpayer dollars, are spent on resident care and not for items such as administrative costs, salaries, profits, or syphoned away for the benefit of nursing home operators and the entities they own or control. Similar laws were passed in 2020 in Massachusetts and New Jersey.

> The law will improve oversight of and accountability for the vast sums of taxpayer money nursing homes receive, and to ensure the bulk of it is spent for care and staffing.

Policymakers and advocates for nursing home residents and workers in New York called for the law's enactment to address the longstanding and persistent failure of many nursing homes to meet even the basic needs of their residents, a situation which the pandemic has exacerbated and further exposed. With over 15,000 nursing home resident COVID-related deaths in NY[1] and millions of dollars of new taxpayer funds[2,3] having been distributed to the state's over 600 nursing homes, the law will improve oversight of and accountability for the vast sums of taxpayer money nursing homes receive, and to ensure the bulk of it is spent on care and staffing.

The law was set to go into effect on January 1, 2022. However, New York Governor Kathy Hochul, by executive order,[4] temporarily suspended the law through January 30, after nursing homes and industry trade groups filed suit to block its implementation. The executive order delaying enforcement was extended for another 30 days, until March 1, 2022.[5] A third executive order postponed implementation until March 31, 2022.[6] Then, on March 31, 2022,

---

[1] *New York State Department of Health*, "Nursing Home COVID Related Deaths Statewide," (data downloaded March 10, 2022). Available at https://www.health.ny.gov/statistics/diseases/covid-19/fatalities_nh.pdf.

[2] *Long Term Care Community Coalition*, "LTC Medicaid Funding: Separating Fact from Fiction," (January 11, 2021). Available at https://nursinghome411.org/ltc-medicaid-funding/.

[3] Edelman, T. and Edelman, M., *Center for Medicare Advocacy*, "Nursing Facilities Have Received Billions of Dollars in Direct Financial and Non-Financial Support During Coronavirus Pandemic," (March 17, 2021). Available at https://medicareadvocacy.org/report-snf-financial-support-during-covid/.

[4] State of New York Executive order 4.4, (December 31, 2021). Available at https://www.governor.ny.gov/executive-order/no-44-continuing-declaration-statewide-disaster-emergency-due-healthcare-staffing.

[5] State of New York Executive Order 4.5, (January 30, 2022). Available at https://www.governor.ny.gov/executive-order/no-45-continuing-declaration-statewide-disaster-emergency-due-healthcare-staffing.

[6] State of New York Executive Order 4.6, (March 1, 2022). Available at https://www.governor.ny.gov/executive-order/no-46-continuing-declaration-statewide-disaster-emergency-due-healthcare-staffing.

Governor Hochul issued Executive Order 4.7 which reinstated these minimum direct resident care spending provisions.[7]

Despite claims by the nursing home industry, COVID has had little negative impact on nursing home finances.[8] In response to the pandemic, New York's nursing homes have received millions of dollars of funds from the Provider Relief Fund, the Paycheck Protection Program and Medicare accelerated payment funds. These funds are in addition to the large sums of money nursing homes regularly receive from Medicare, Medicaid, and private pay residents.

On February 28, 2022, the Biden Administration outlined an expansive series of nursing home reform proposals[9] which were highlighted the next day in the President's State of the Union address. These critical proposals underscore the urgent need for more accountability for the billions of taxpayer dollars that flow to nursing homes. Among the accountability measures outlined are the establishment of a minimum nursing home staffing requirement within one year, greater scrutiny of private equity firms and poor performing facilities, and increased authority to regulate corporate and chain owners of nursing homes.[10]

Policymakers and the public are entitled to know how these funds are being used and to ensure that these funds are spent largely on resident care and on beefing up staffing levels. Similar laws, requiring health insurers to spend a set minimum amount on healthcare have existed for decades. These laws, called Medical Loss Ratios (MLRs), have given policymakers and regulators the ability to ensure accountability for taxpayer funds and ensure that these funds are used for health care. Requiring nursing homes to spend an appropriate amount of revenue on the direct care of their residents will likewise improve safety, quality of care and quality of life for New York's nursing home residents. **Effective implementation of this law and expert monitoring of compliance is needed to ensure sorely needed transparency and accountability.**

Requiring nursing homes to spend an appropriate amount of revenue on the direct care of their residents will likewise improve safety, quality of care and quality of life for New York's nursing home residents.

[7] State of New York Executive Order 4.7, (March 31, 2022). Available at https://www.governor.ny.gov/executive-order/no-47-continuing-declaration-statewide-disaster-emergency-due-healthcare-staffing. (This Executive Order also lifted the pause on important staffing legislation.)

[8] Kingsley, D.E. and Harrington, C., *Journal of the American Geriatrics Society*, "COVID-19 had little financial impact on publicly traded nursing home companies," (May 24, 2021). Available at https://agsjournals.onlinelibrary.wiley.com/doi/10.1111/jgs.17288.

[9] Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes (February 28, 2022). Available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.

[10] *Long Term Care Community Coalition*, "LTCCC Applauds White House's Proposed Nursing Home Reforms," (February 28, 2022). Available at https://nursinghome411.org/alert-white-house-reform-2022/.