

**SENATE, No. 3606**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

INTRODUCED FEBRUARY 13, 2023

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**SYNOPSIS**

Provides certain protections to residents of long-term care facilities.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning individuals in long-term care facilities and  
2 supplementing Titles 26 and 46 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. a. For the purposes of this section:

8 “Long-term care facility” means a nursing home, assisted living  
9 residence, comprehensive personal care home, residential health  
10 care facility, or dementia care home licensed pursuant to P.L.1971,  
11 c.136 (C.26:2H-1 et seq.).

12 “Principal” means a resident of a long-term care facility or an  
13 individual who is in the admission process to enter a long-term care  
14 facility.

15 b. No owner, administrator, director, officer, or employee of a  
16 long-term care facility, person or entity affiliated with or related to  
17 an owner, administrator, director, officer, or employee of a long-  
18 term care facility, or other person who benefits financially from a  
19 long-term care facility shall be authorized to manage the affairs of a  
20 principal except pursuant to an order of the Superior Court  
21 appointing that person guardian of the principal. The determination  
22 whether to appoint a long-term care facility owner, administrator,  
23 director, officer, employee, or affiliated or related person or entity  
24 as guardian for a principal pursuant to this subsection shall be made  
25 by the Superior Court in consultation with the Office of the Public  
26 Guardian for Elderly Adults.

27 c. No owner, administrator, director, officer, or employee of a  
28 long term care facility, person or entity affiliated with or related to  
29 an owner, administrator, director, officer, or employee of a long-  
30 term care facility, or other person who benefits financially from a  
31 long-term care facility, shall be eligible to act as an attorney-in-fact  
32 for a principal. Any power of attorney instrument executed by a  
33 principal naming an owner, administrator, director, officer, or  
34 employee of a long term care facility, a person or entity affiliated  
35 with or related to an owner, administrator, director, officer, or  
36 employee of a long-term care facility, or another person who  
37 benefits financially from a long-term care facility shall be deemed  
38 invalid.

39 d. Nothing in subsection b. of this section shall be construed to  
40 prohibit the appointment of a guardian of the body or estate of a  
41 resident of a long-term care facility by a court of competent  
42 jurisdiction.

43

44 2. As used in sections 2 through 5 of P.L. , c. (C. )  
45 (pending before the Legislature as this bill):

46 “Long-term care facility” means a nursing home, assisted living  
47 residence, comprehensive personal care home, residential health

1 care facility, or dementia care home licensed pursuant to P.L.1971,  
2 c.136 (C.26:2H-1 et seq.).

3 “Medicaid application assistance” means any assistance provided  
4 in connection with the Medicaid enrollment process, including  
5 providing information on insurance programs and coverage options,  
6 assistance completing a Medicaid application, assistance identifying  
7 and calculating income and assets, assistance submitting a Medicaid  
8 application, attending and participating in or representing the  
9 applicant at hearings on a Medicaid application, and assistance with  
10 communications pertaining to a Medicaid application. “Medicaid  
11 application assistance” may include estate planning, developing  
12 spend-down plans, tax planning, developing plans to transfer assets  
13 and property, and, provided the individual providing the services is  
14 an attorney licensed in this State, related legal services.

15 “Representative” means any person who is authorized to make  
16 decisions on behalf of a resident of a long-term care facility,  
17 including, but not limited to, the resident’s guardian or a friend or  
18 family member of the resident.

19

20 3. a. No later than four months after the effective date of this  
21 act, the Department of Health shall develop a standard resident  
22 admission agreement form for use by long-term care facilities.  
23 Commencing on the first day of the sixth month next following the  
24 effective date of this act, each long-term care facility shall use the  
25 standard resident admission form developed by the department for  
26 each new admission to the long-term care facility. A long-term care  
27 facility shall not alter the standard resident admission agreement  
28 unless directed and approved by the department.

29 b. The department may develop an abbreviated standard  
30 resident admission agreement for residents whose length of stay in a  
31 long-term care facility is anticipated to be 14 days or less. If the  
32 resident’s stay exceeds 14 days, the long-term care facility shall  
33 obtain agreement to the remainder of the stay pursuant to a standard  
34 resident admission agreement.

35 c. A resident or representative of a resident shall not be  
36 required to sign any document at the time of, or as a condition of,  
37 admission to a long-term care facility, or as a condition of  
38 continued stay in the facility, other than the standard resident  
39 admission agreement developed pursuant to this section and the  
40 acknowledgement required pursuant to section 4 of this act.

41 d. A long-term care facility shall not present any arbitration  
42 agreement to a prospective resident as part of the standard resident  
43 admission agreement. Any arbitration agreement between a long-  
44 term care facility and a resident of the facility shall be executed in a  
45 document that is separate from the standard resident admission  
46 agreement, and shall contain the following advisory in a prominent  
47 place at the top of the proposed arbitration agreement, in bold-face  
48 font of not less than 12 point type: “Residents shall not be required

1 to sign this arbitration agreement as a condition of admission to this  
2 facility.”

3 e. The department shall publish on its Internet website a copy  
4 of the standard resident admission agreement developed pursuant to  
5 this section, which agreement shall be made available in English,  
6 Spanish, and Chinese, as well as in any other language the  
7 department deems appropriate.

8  
9 4. a. Commencing on the first day of the sixth month next  
10 following the effective date of this act, each operator of a long-term  
11 care facility shall provide each resident and the resident’s  
12 representative, if any, at the time of the admission to the facility, a  
13 notice, separate from the standard resident admission agreement  
14 required pursuant to section 3 of this act, which notice shall be  
15 typed or printed using letters which are legible or of clear type in a  
16 font of not less than 12 point size, and shall state:

17 “YOU HAVE THE OPTION TO HIRE AN ATTORNEY TO  
18 ASSIST WITH APPLYING FOR MEDICAL ASSISTANCE  
19 LONG-TERM CARE BENEFITS:

20 Relying on a non-attorney service might expose you and your  
21 family to unnecessary financial risk. There are non-attorney  
22 agencies and companies which may offer to prepare and submit a  
23 Medicaid application. These entities are not permitted to give legal  
24 advice or to implement legal strategies that may best protect your  
25 interests, and they are not obligated to advise you of your rights.  
26 Moreover, these entities may have conflicts of interest, such as a  
27 financial relationship with the long-term care facility. Federal law  
28 restricts these non-attorney services from charging a fee in  
29 connecting with a Medicaid application.

30 New Jersey does not mandate that a Medicaid applicant obtain  
31 the assistance of an attorney when completing an application.

32 You may, however, seek the assistance of an attorney who is  
33 knowledgeable about elder law and Medicaid eligibility rules. If  
34 you wish to identify such an attorney, you may contact the State or  
35 local bar association attorney referral service.”

36 b. A resident of a long-term care facility, or the resident’s  
37 representative, shall acknowledge receipt of the notice provided  
38 pursuant to subsection a. of this section by signing the bottom of the  
39 notice at the time of admission to the facility. A copy of the signed  
40 notice shall be furnished to the resident or the resident’s  
41 representative, and a copy of the signed notice shall be retained by  
42 the long-term care facility for the duration of the resident’s stay at  
43 the facility.

44 c. The operator of a long-term facility shall prominently  
45 display the notice described in subsection a. of this section at the  
46 entrance to the facility and in such other locations as the department  
47 may require.

1 d. A person providing Medicaid application assistance to a  
2 resident or prospective resident of a long-term care facility shall,  
3 prior to providing any application assistance services to the resident  
4 or prospective resident, disclose any financial relationship between  
5 the application assistance provider and any long-term care facility,  
6 including financial relationships with any parent companies or  
7 subsidiaries of the long-term care facility. The person providing  
8 Medicaid application assistance shall additionally advise that the  
9 resident or prospective resident has the right to seek the advice of  
10 an attorney prior to signing any legal documents.

11

12 5. a. The Commissioner of Health may adopt rules and  
13 regulations, pursuant to the "Administrative Procedure Act,"  
14 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions  
15 of this act.

16 b. The Commissioner of Human Services shall adopt rules and  
17 regulations, pursuant to the "Administrative Procedure Act,"  
18 P.L.1968, c.410 (C.52:14B-1 et seq.), establishing uniform  
19 standards of care for non-attorney individuals providing Medicaid  
20 application assistance, including, but not limited to:

21 (1) defining who is permitted to act as a Medicaid application  
22 assistor before Medicaid agencies and the Office of Administrative  
23 Law;

24 (2) outlining the scope and nature of the services that non-  
25 attorney Medicaid application assistants are authorized to provide;

26 (3) requiring Medicaid application assistants to complete training  
27 on: Medicaid program rules; handling confidential financial and  
28 medical information; conflicts of interest; and what constitutes the  
29 unauthorized practice of law; and

30 (4) prohibiting non-attorney Medicaid application assistants from  
31 charging any fee for providing Medicaid application assistance  
32 services.

33

34 6. This act shall take effect immediately.

35

36

37

#### STATEMENT

38

39 This bill prohibits an owner, administrator, director, officer, or  
40 employee of a long-term care facility or any person or entity  
41 affiliated or related to the owner, administrator, director, officer, or  
42 employee from being eligible to act as an attorney-in-fact for a  
43 resident of a long-term care facility or an individual who is in the  
44 admission process to enter a long-term care facility. Further, the  
45 bill prohibits any person who benefits financially from a long-term  
46 care facility from acting as an attorney-in-fact.

47 The determination as to whether to appoint an individual  
48 affiliated with a long-term care facility as guardian of a resident or

1 individual in the admission process to enter a long-term care facility  
2 is required to be made by the Superior Court in consultation with  
3 the Office of the Public Guardian for Elderly Adults. Under the  
4 bill, a power of attorney instrument executed by a principal naming  
5 an enumerated person is deemed invalid.

6 “Long-term care facility” is defined as a nursing home, assisted  
7 living residence, comprehensive personal care home, residential  
8 health care facility, or dementia care home licensed pursuant to  
9 P.L.1971, c.136 (C.26:2H-1 et seq.). Finally, a principal is defined  
10 in the bill as a resident of a long-term care facility or an individual  
11 who is in the admission process to enter a long-term care facility.

12 The bill requires the Department of Health to develop a standard  
13 resident admission contract. Long-term care facilities are required  
14 to use the admission contract developed by the department  
15 beginning on the first day next following the sixth month of the date  
16 of enactment. The bill prohibits a long-term care facility from  
17 requiring a resident to sign any other document at the time of, or as  
18 a condition of, admission into care. A long-term care facility is  
19 prohibited from presenting any arbitration agreement to a  
20 prospective resident as part of the standard resident admission  
21 agreement.

22 The bill requires an operator of a long-term facility to provide  
23 each resident, or a resident’s representative, notice that they may  
24 use an attorney to apply for Medicaid long term care benefits at the  
25 time of admission. Further, the notice is required to be posted  
26 conspicuously in the nursing home or health care facility.

27 Finally, the bill requires the Commissioner of Human Services to  
28 promulgate rules establishing uniform standards of care for non-  
29 attorney individuals providing Medicaid application assistance,  
30 including, but not limited to: (1) defining who is permitted to act as  
31 a Medicaid application assistor before Medicaid agencies and the  
32 Office of Administrative Law; (2) outlining the scope and nature of  
33 the services that non-attorney Medicaid application assistors are  
34 authorized to provide; (3) requiring Medicaid application assistors  
35 to complete training on: Medicaid program rules; handling  
36 confidential financial and medical information; conflicts of interest;  
37 and what constitutes the unauthorized practice of law; and (4)  
38 prohibiting non-attorney Medicaid application assistors from  
39 charging any fee for providing Medicaid application assistance  
40 services.