

New Laws In New Jersey Tell Assisted Living Facilities: "Stay In Business . . . Or Else!"

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If you own or operate an assisted living facility in New Jersey you need to be aware of the “spend down” provisions in your resident agreements. Or face the possibility of having to pay for the care of residents for the remainder of their life in the event that your assisted living facility closes or relocates.

New Jersey has recently passed legislation requiring assisted living facilities that relocate or surrender its license and have agreed to not discharge a Medicaid-eligible resident, to escrow funds to cover the costs associated with transferring and providing care for that resident in another state licensed facility. Although the legislation may appear to be limited in scope, the collateral and long term impacts may be underestimated.

For years, New Jersey has required that the assisted living facility, through its administrator, notify residents (or his or her legal representative) and the Department of Health and Senior Services, in writing, of the closure or relocation of any facility. The statute has an emergency exception which allows the Commissioner of Health and Senior Services to shorten the time period in his or her discretion.

The purpose of the legislation is to afford New Jersey’s senior citizens with further protection from disputable assisted living facilities. In addition, the legislation attempts to reign in practices of certain assisted living facilities who had accepted private pay residents and allowed the residents to exhaust their personal finances, transition to Medicaid, and then close the facility rather than continuing to accept Medicaid payments which are often far less than what they would receive from private pay residents.

It is important to note that the legislation only applies to circumstances where the facility has promised a resident, through a resident agreement, condition or licensure, or certificate of need with the Department of Health and Senior Services, that it will not discharge a resident who becomes Medicaid eligible. In the event that the facility has made such a promise, the facility is now required to escrow sufficient funds to cover the cost of providing the resident with care in a New Jersey licensed facility for as long as the resident shall require care. Immediately following the notice of closure or surrender, the facility will be required to pay for actuarial services to determine the amount that the facility will be required to escrow for the resident's future care.

Finally, the legislation provides that in the event of bankruptcy, all monies left over after creditors have been paid in full shall be used to cover the costs of care for a resident when a facility chooses to surrender its license.

Although this legislation was passed in an effort to curb unfair practices by unscrupulous facilities, it is likely to have a far wider impact on struggling facilities. All assisted living facilities should be aware of the contents of their resident agreements and conditions of licensure with the Department of Health and Senior Services. Failure to do so or the front end can result in substantial liability at a time when the facility is already straddled with a substantial financial burden. Perhaps now is the time for you or your [attorney](#) to review the resident agreement and certificate of need to make sure that you will not be on the hook for residents in the unfortunate event that the facility closes or relocates.