PA 26-103—sSB 125
Aging Committee
Judiciary Committee
Appropriations Committee

AN ACT REQUIRING NURSING HOMES TO ANNUALLY REPORT CERTAIN OWNERSHIP INFORMATION REGARDING INVESTMENT ENTITIES, ACQUIRE, IF FEASIBLE, A SURETY BOND OR A SIMILAR FORM OF SECURITY IN AN AMOUNT EQUAL TO NINETY DAYS OF OPERATING COSTS, MAINTAIN FULL GOVERNANCE CONTROL AND AUTHORITY OVER NURSING HOME ASSETS AND ACTIVITIES AND ANNUALLY ATTEST THAT NO INVESTMENT ENTITY HAS CONTROL OVER NURSING HOME RESIDENT HEALTH, SAFETY OR CARE

SUMMARY: This act establishes new requirements for state-contracted nursing homes that serve Medicaid recipients. Beginning by February 1, 2028, it requires each home to annually attest that no investment entity has control over resident health, safety, or care. And, starting on that date, it generally requires each nursing home's licensee to have full control over the home's governance, assets, and activities. The act also requires each home to annually report to the Department of Social Services (DSS) on any investment entity that has at least a 5% beneficial ownership interest in it.

Under the act, homes that are owned by investment entities generally must have a surety bond in favor of the state, equal to 90-days of its operating costs, but the bond requirement does not apply if DSS is unable to identify a financially feasible bond or security instrument as the act requires the department to do.

Under the act, an "investment entity" collects capital investments from individuals or other entities and purchases an ownership share of a nursing home, either directly as a parent company or through another entity it at least partially owns or controls. This term includes real estate investment trusts, which are generally companies that own or finance income-producing commercial real estate.

Lastly, the act requires DSS to study and report on certain topics related to investment entity ownership of nursing homes and the possible effects of establishing limitations on the sale of property on which a nursing home is located.
EFFECTIVE DATE: October 1, 2026, except the DSS reporting requirement is effective upon passage.

LICENSEE'S CONTROL OVER THE HOME AND ATTESTATION

Beginning February 1, 2028, the act requires each nursing home licensee to have full control over the home's governance, assets, and activities, including clinical, operational, managerial, financial, and human resource matters. And, beginning by that date, nursing homes must annually attest to the Department of Public Health (DPH) that no investment entity has control over resident health, safety, or care.

Waiver

If a nursing home thinks it will not be able to comply with the act's governance requirements, it may apply to the DSS commissioner for a one-year waiver through a process the act establishes. Any home that needs a waiver must apply for it at least six months before the compliance deadline. The commissioner may only grant a waiver if she thinks it will benefit or maintain access to resident care or make the home's operations more stable. She may request any information or documentation she needs to assess the application and may place any necessary terms or conditions in granting a waiver.

Attestation Penalty

Under the act, DPH may impose a civil penalty of up to $2,000 per violation on nursing homes that do not provide the required attestation. A nursing home may file a written request for a hearing to contest the fine within 10 business days after receiving DPH's order imposing the penalty. If the home requests a hearing, DPH must schedule one as a contested case held as the Uniform Administrative Procedures Act requires.

SURETY BOND

Under the act, if an investment entity has a beneficial ownership interest in a nursing home of at least 5%, the home generally must have a surety bond, or similar security, in favor of the state covering 90 days of the home's operating costs in case it enters a receivership, starts an emergency closure, or faces imminent financial distress. This requirement applies only if DSS identifies a security instrument, as described below. (Generally, an owner of a beneficial interest may receive financial benefits from an asset even if not recorded as a legal owner.)

The act requires DSS to identify security instruments (like surety bonds, escrow accounts, and insurance products) that nursing homes may use to meet this requirement. DSS must tell the nursing homes about any suitable, financially feasible security instruments it identifies by January 1, 2028. If DSS does not identify any, this requirement does not go into effect.

If DSS identifies a security instrument, beginning July 1, 2028, covered homes must have secured a bond or security when applying for an initial license or to renew its license with DSS or DPH. When applying for licensure, the nursing home must submit proof (for DPH, a copy of the bond or security) it has one that will remain in effect for the entire licensure period.

REPORTING REQUIREMENT AND PENALTY

Beginning by February 15, 2027, the act requires each nursing home to annually give DSS certain information about each investment entity that has a beneficial ownership interest of at least 5% in the nursing home, including:

1. its name and business address and whether it is an individual, partnership, corporation, or other type of legal entity;
2. the names of individuals holding certain leadership positions (directors, officers, trustees, managing partners, and general partners);
3. each partner's ownership share;
4. a certificate of good standing from a secretary of state, if it is incorporated in another state;
5. audited and certified financial statements, if applicable, that must at least include certain information (for example, income statements and a cash flow statement from the most recent fiscal year);
6. a description of financing (for example, mortgage loans) used to acquire or construct the home and any subsequent debt refinancing;
7. a copy of the purchase agreement for the nursing home and any agreement to transfer ownership interests in it (for example, real estate, asset, or stock agreements); and
8. documentation on any escrow or contingency accounts.

If a nursing home does not submit this information within 30 days after it is due and DSS notifies the home within 14 days after the missed deadline, the DSS commissioner may impose a $1,000 per day fine on the home, which may contest the fine in an administrative hearing through a process established in existing law for DSS decisions.

DSS REPORTING REQUIREMENT

The act requires DSS, consulting with DPH, to review and evaluate the:

1. disclosures nursing homes provided, as required under the act;
2. quality of care at nursing homes where an investment entity has a beneficial interest compared to the care provided at homes without this ownership interest; and
3. potential implications of requiring the owners of land or buildings where nursing homes are operating to get DPH's approval if the owner wants to sell or convey the property within five years after getting it.

DSS must report its findings to the Aging, Appropriations, Human Services, and Public Health committees by February 15, 2028.