

## New State Nursing Home Requirements Enacted in 2021-2022

LeadingAge New York has created this reference tool to assist nursing home members to comply with the many statutory requirements enacted in New York in 2021 and 2022. Please note that this tool evolving and is up-to-date as of March 6, 2022. Bills are still pending for action by the Legislature and Governor.

Enacted Legislation	Requirements	Effective Date	Regulations	LANY article/summary
<b>Personal/Compassionate Caregiving</b>				
Ch. <a href="#">89 of 2021</a>	<ul style="list-style-type: none"> <li>• Requires nursing homes and ACFs to collect resident designations of personal caregiving and compassionate caregiving visitors from residents and to allow these visitors broader access to visitation.</li> </ul>	5/13/2021	Emergency regulation. Available <a href="#">here</a> .	Available <a href="#">here</a> .
<b>Resident Transfer and Discharge Requirements</b>				
Chs. <a href="#">80, 138 of 2021</a>	<ul style="list-style-type: none"> <li>• No transfer or discharge unless necessary for resident's or other residents' health, safety, welfare, facility ceases operation, or resident has failed to pay for stay.</li> <li>• Use best efforts to secure appropriate placement other than temporary housing assistance.</li> <li>• Notice and written consent requirements for discharge to another person's home.</li> <li>• 30-day notice to resident, representative and Ombudsman prior to facility-initiated discharge/transfer, or as soon as practicable, when transferred or discharged because cannot be cared for safely or is danger to others.</li> <li>• May transfer or discharge if facility is unable to meet resident needs or resident doesn't need nursing home care.</li> <li>• Notice to representative and/or family when transfer or discharge is initiated by resident, unless resident requests no notice.</li> <li>• Document reason the resident is seeking transfer or discharge when resident-initiated.</li> </ul>	6/17/2021		Available <a href="#">here</a> .

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<b>Establishment/Change in Control: Notice and Character &amp; Competence Standards</b>				
Chs. <a href="#">102, 141 of 2021</a> ; Codified at <a href="#">PHL 2801-a</a>	<ul style="list-style-type: none"> <li>Requires notice to residents, staff and union representative regarding CON applications proposing changes in ownership.</li> <li>Clarifies and expands character and competence standards for nursing home applicants.</li> <li>Prohibits approval when more than 40% of homes in an applicant individual's portfolio has a 2-star rating or lower, and individual has held an interest for 48 months or more.</li> </ul>	Statute effective 10/24/21; regulations effective March 9, 2022.	Adopted regulation available <a href="#">here</a> .	LANY summary of legislation is <a href="#">here</a> and summary of regulations <a href="#">here</a> .  Hinman summary available <a href="#">here</a> .
<b>Retention of Employees</b>				
Ch. <a href="#">102 of 2021</a> ; Codified at <a href="#">PHL 2803-x</a>	<ul style="list-style-type: none"> <li>New owners/operators must retain all employees for 60 days (except for cause and except for Admin, DONs, controlling persons.)</li> </ul>	10/24/21		Available <a href="#">here</a> .
<b>Disclosure and Notice of Related Entity Agreements</b>				
Chs. <a href="#">102, 141 of 2021</a> ; Codified at <a href="#">PHL 2803-x</a>	<p>Adds to prior requirement to notify DOH of any common or familial ownership of any entity providing services to facility or operator, by requiring:</p> <ul style="list-style-type: none"> <li>Disclosure of related-entity providing services in residency agreements or addendums;</li> <li>90-day notice to DOH, prior to entering into service agreement with related entity;</li> <li>Notice to residents, staff, union prior to entering into service agreement with related entity.</li> <li>Attest annually on DOH form to accuracy of information provided to DOH.*</li> </ul>	10/24/21		Hinman summary available <a href="#">here</a> .

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<b>Notice of Sale, Mortgage, Consulting, Staffing, Management Agreements</b>				
Chs. <a href="#">102</a> , <a href="#">141 of 2021</a> ; Codified at <a href="#">PHL 2803-x</a>	Notify DOH and Ombudsman 90 days prior to execution of letter of intent or agreement for: <ul style="list-style-type: none"> <li>• sale, mortgage of real property of facility;</li> <li>• consulting, staffing agency, or other entity involved facility operations.</li> </ul>	10/24/21		Hinman summary available <a href="#">here</a> .
	Notify residents, staff, union, Ombudsman within 5 days of execution of binding letter of intent or agreement for: <ul style="list-style-type: none"> <li>• sale, mortgage of real property of facility;</li> <li>• consulting, staffing agency, or other entity involved facility operations.</li> </ul>	10/24/21		Hinman summary available <a href="#">here</a> .
<b>Disclosure and Notice of Owners, Rates, Landlord, Contracts</b>				
Chs. <a href="#">102</a> , <a href="#">141 of 2021</a> ; Codified at <a href="#">PHL 2829</a> .	Provide DOH with list of owners for posting on DOH website, updated within 30 days of any change.	10/24/21		Available <a href="#">here</a> .
Chs. <a href="#">102</a> , <a href="#">141 of 2021</a> Codified at: <a href="#">PHL 2829</a>	Post on nursing home website: <ul style="list-style-type: none"> <li>• maximum rates for residency and services, including rates for each non-governmental payer, to be updated by April 1 annually;</li> <li>• list of owners, to be updated within 30 days of any change;</li> <li>• name and address of any landlord of the facility, to be updated regularly;</li> <li>• summary of all contracts for goods and services for which a facility uses Medicaid or Medicare funds, to be updated within 30 days of execution.</li> </ul>	10/24/21		Available <a href="#">here</a> .
<b>Posting of CMS Star Ratings</b>				
Ch. <a href="#">441 of 2021</a> ;	Nursing homes must post:	01/06/22		Available <a href="#">here</a> .

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Codified at <a href="#">PHL 2808-e</a>	<ul style="list-style-type: none"> <li>• overall CMS star rating on the homepage of its website and website of entity that owns or operates it;</li> <li>• conspicuously post most recent overall star rating so it is visible to residents and public.</li> </ul> DOH must post most recent star rating of every nursing homes on home page of DOH website or by an accessible link.			
	<b>Minimum Nursing Hours Requirements</b>			
Ch. <a href="#">156 of 2021</a> ; Codified at <a href="#">PHL 2895-B</a>	<ul style="list-style-type: none"> <li>• <b>1/1-12/31/22:</b> Requires daily average staffing hours equal to 3.5 hours of care per resident per day by CNA, RN, LPN, or NA. No less than 2.2 hours per resident per day may be provided by a CNA or NA, and no less than 1.1 hours of care per resident per day provided by RN or LPN.</li> <li>• <b>1/1/23:</b> NA hours do not count; must be provided by CNA.</li> <li>• Requires homes to post in form approved by DOH and in accessible manner nurse staffing required by 2805-t and a summary of the minimum staffing statute provided by DOH.</li> </ul>	01/01/22; no penalties may be imposed until 4/1/22. Suspended by <a href="#">EO 4.4</a> , and extended by <a href="#">EO 4.6</a> until 3/31/22. Enforcement effective 4/1/22 by <a href="#">EO 4.7</a> .	Proposed. Available <a href="#">here</a> .	Available <a href="#">here</a> and <a href="#">here</a>
	<b>Minimum Direct Care Spending Requirements</b>			
Ch. <a href="#">57 of 2021</a> (Part GG); Codified at <a href="#">PHL 2828</a> .	<ul style="list-style-type: none"> <li>• Requires nursing homes to spend at least 70% of operating revenue on direct resident care, of which at least 40% must be spent on resident-facing staffing.</li> <li>• Caps profits at 5 percent.</li> <li>• Exempts CCRCs, specialty facilities.</li> </ul>	Applies to spending on and after 1/1/22. Excess revenue to be remitted by 11/1 of next year.	Proposed. Available <a href="#">here</a> .	Available <a href="#">here</a> .

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		Suspended by <a href="#">EO 4.4</a> , and extended by <a href="#">EO 4.6</a> until 3/31/22. Enforcement effective 4/1/22 by <a href="#">EO 4.7</a> .		
	<b>Antimicrobial Stewardship Program</b>			
Ch. <a href="#">737 of 2021</a> <a href="#">Amended, Ch. 83 of 2022</a> Codified at: <a href="#">PHL 2803-z</a>	<ul style="list-style-type: none"> <li>Requires hospitals and nursing homes to comply with CMS requirements governing antimicrobial stewardship, including training in antimicrobial resistance and infection prevention and control.</li> </ul>	3/23/22		
	<b>Infection Control Inspection Audit</b>			
Ch. <a href="#">768 of 2021</a> ; <a href="#">Ch. 152 of 2022</a> ; Codified at: <a href="#">PHL 2803-aa</a>	<ul style="list-style-type: none"> <li>Requires nursing homes to comply with all of the CMS Focused Infection Control survey elements, to be determined by an annual survey conducted by DOH.</li> <li>If facilities fail to be compliant with all elements of the survey, they will be subject to recurring state infection control surveys every 90 days until they are in full compliance.</li> <li>Requires staffing and cohorting plan that may include dedicated staffing teams for residents who may be infectious and not rotating staff during outbreaks and dedicated space for residents with infectious disease.</li> <li>Providers not meeting all of the criteria may be subject to penalties.</li> </ul>	3/22/22; audits to be initiated as of 12/1/2022.		Available <a href="#">here</a> .

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	<b>Long Term Care (LTC) Ombudsman Program Reforms</b>			
<p>Ch. <a href="#">705 of 2021</a>, amended by Ch. <a href="#">66 of 2022</a>. Ch. <a href="#">759 of 2021</a>, amended by <a href="#">Ch. 19 of 2022</a>.</p> <p>Codified at: <a href="#">PHL 2803-c(6)</a>; <a href="#">2803-c-1</a>; <a href="#">2803(12)(a)</a>; <a href="#">2803(13)</a></p>	<ul style="list-style-type: none"> <li>• Requires nursing homes to prominently post in conspicuous places and provide each staff member, resident, resident representative contact information for the state and regional offices of the LTC ombudsman program and nursing home complaint hotline.</li> <li>• Requires nursing homes to provide updated contact information for the state and regional offices of LTC ombudsman program to all residents and representatives twice a year.</li> <li>• Requires nursing homes to post conspicuously, give to resident at admission, give to representative at time of appointment, and give to staff the resident rights statement provided by the DOH which is translated into the 10 most common non-English languages spoken in NYS.</li> <li>• Requires nursing homes to include in their pandemic emergency plans a method to provide all residents with access, at no cost, to state LTC ombudsman program.</li> <li>• Requires nursing homes to provide state long-term care ombudsman program staff and volunteers with access to the facility, even during a declared public health emergency.</li> <li>• Requires DOH to provide process for LTC ombudsman staff to report issues to DOH and reporting by DOH to ombudsman program.</li> <li>• Requires DOH to notify local ombudsman after DOH conducts recertification survey.</li> </ul>	705, 66 effective date 4/20/22; 759 effective date 3/22/22.		
	<b>NH Complaints and Violations</b>			
<p>Ch. <a href="#">344 of 2021</a>; Codified at <a href="#">PHL 2803(13)</a></p>	<ul style="list-style-type: none"> <li>• Requires nursing homes to provide residents and their families with a separate document that includes information on how a potential resident or family member can look up complaints, citations,</li> </ul>	10/1/22		

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	inspections, enforcement actions, and penalties taken against the facility. <ul style="list-style-type: none"> <li>The document must be in no less than 12-point font, must be included as part of an intake application and must also include the web address for the NYS nursing home profiles website.</li> </ul>			
	<b>Health Equity in CON Process</b>			
Ch. <a href="#">766 of 2021</a> ; amended by <a href="#">Ch. 137 of 2022</a> ; Codified at <a href="#">PHL 2802-b</a> .	<ul style="list-style-type: none"> <li>Adds health equity impact assessment to the CON application process for construction, establishment, change in ownership, substantial reduction, expansion or addition of service.</li> <li>Excludes establishment, merger, acquisition applications from requirement, if no elimination, expansion, or change in location of services is proposed.</li> <li>Health equity assessments must include whether and how the project will improve access to services and health equity with respect to medically underserved groups.</li> <li>Assessment must be prepared by an independent entity with engagement by public health experts and representatives of other stakeholders.</li> </ul>	06/22/2023		Available <a href="#">here</a> .

\*No DOH form has been developed for this attestation.

April 11, 2022