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## CLIENT ALERT: New Public Health Law Section 2828

### FEATURED ATTORNEY

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### **New Public Health Law Section 2828:**

#### **Requiring Mandatory Spending Minimum and Maximum Profits**

On April 7, 2021, the New York State legislature passed the New York State Budget for Health and Mental Hygiene. Following the Governor's signature, nursing homes will be required to spend at least 70% of their operating revenue on Direct Resident Care, with 40% of operating revenue focused on Resident-Facing Staffing. The provisions of the legislative text would enact a new section 2828 to the Public Health Law and is expected to be signed by Governor Cuomo.

Direct Resident Care is defined narrowly to include only certain cost centers from the facility cost report.

Resident Facing Staffing is also narrowly defined to mean the staffing expenses in the ancillary and program services category on the facility cost reports. New York State Department of Health will be required to deduct 15% of Resident-Facing Staffing costs that are contracted with outside vendors for the performance of services provided by RNs, LPNs, or CNAs from the total calculation of the amount spent on Resident-Facing Staffing and Direct Resident Care.

In addition, this new law mandates that a nursing home's total operating revenues must not exceed its total operating and non-operating expenses by more than 5%.

Nursing homes that do not meet the minimum spending requirement or who have income that exceeds the 5% are required to pay New York State the difference. The New York State Department of Health may collect these excess funds by either bringing an action against the nursing home or through Medicaid deductions.

This new law does not apply to nursing homes serving medically fragile children, HIV/AIDS residents, facilities caring for residents who require behavioral intervention and other specialized populations determined by the New York State Health Commissioner. The New York State Department of Health may waive these requirements for certain nursing homes unable to comply due to unexpected circumstances that prevented compliance.

These changes are expected to take effect on January 1, 2022.

The [healthcare attorneys](#) at Abrams Fensterman, LLP are committed to providing you with the most current and accurate information and guidance. If you have any questions, please contact [Patrick Formato, Esq.](#), [Michael Gurman, Esq.](#), [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.