

The Commonwealth of Massachusetts

House of Representatives,

The committee on Bills in the Third Reading, to whom was referred the

Engrossed Bill establishing a special commission to examine the department of public health's nursing home licensure process and requirements (see House, No. 4017) being section 129 contained in the bill making appropriations for the fiscal year 2022 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 4002), which was returned by His Excellency the Governor pursuant to Article LVI with recommendation of amendment specified by him, (see Attachment Q of House, No. 4019)

Reports recommending that the amendment recommended by His Excellency, the Governor, be considered in the following form:

By striking all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out section 71 and inserting in place thereof the following section:-

Section 71. For purposes of this section and sections 71A½ to 73, inclusive, the following terms shall have the following meanings unless the context or subject matter clearly requires otherwise:

“Applicant”, any person who applies to the department for a license to establish or maintain and operate a long-term care facility.

“Charitable home for the aged”, any institution, however named, conducted for charitable purposes and maintained for the purpose of providing a retirement home for elderly persons and which may provide nursing care within the home for its residents.

“Convalescent or nursing home or skilled nursing facility”, any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for 4 or more persons admitted thereto for the purpose of nursing or convalescent care.

“Infirmity maintained in a town”, an infirmity which hitherto the department of transitional assistance has been directed to visit by section 7 of chapter 121.

“Intermediate care facility for persons with an intellectual disability”, any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the purpose of providing rehabilitative services and active treatment to persons with an intellectual disability or persons with related conditions, as defined in regulations promulgated pursuant to Title XIX of the federal Social Security Act (Public Law 89–97); which is not both owned and operated by a state agency; and which makes application to the department for a license for the purpose of participating in the federal program established by said Title XIX.

“License”, an initial or renewal license to establish or maintain and operate a long-term care facility issued by the department.

“Licensee”, a person to whom a license to establish or maintain and operate a long-term care facility has been issued by the department.

“Long-term care facility”, a charitable home for the aged, a convalescent or nursing home, an infirmary maintained in a town, an intermediate care facility for persons with an intellectual disability or a rest home.

“Owner”, any person with an ownership interest of 5 per cent or more, or with a controlling interest in an applicant, potential transferee or the real property on which a long-term care facility is located provided that the real property owner is related to the applicant or potential transferee as defined in 42 CFR 413.17(b)

“Person”, an individual, a trust, estate, partnership, association, company or corporation.

“Potential transferee”, a person who submits to the department a notice of intent to acquire the facility operations of a currently operating long-term care facility.

“Rest home”, any institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing care incident to old age to 4 or more persons who are ambulatory and who need supervision.

“Transfer of facility operations”, a transfer of the operations of a currently operating long-term care facility from the current licensee of the long-term care facility to a potential transferee, pending licensure, pursuant to a written transfer of operations agreement.

To each applicant it deems suitable and responsible to establish or maintain and operate a long-term care facility and which meets all other requirements for long-term care facility licensure, the department shall issue for a term of 2 years, and shall renew for like terms, a license, subject to the restrictions set forth in this section or revocation by it for cause;

provided, however, that each convalescent or nursing home and each intermediate care facility for persons with an intellectual disability shall be inspected at least once a year.

No license shall be issued to establish or maintain an intermediate care facility for persons with an intellectual disability, unless there is a determination by the department that there is a need for such facility at the designated location; provided, however, that in the case of a facility previously licensed as an intermediate care facility for persons with an intellectual disability in which there is a change in ownership, no such determination shall be required and in the case of a facility previously licensed as an intermediate care facility for persons with an intellectual disability in which there is a change in location, such determination shall be limited to consideration of the suitability of the new location.

In the case of the transfer of facility operations of a long-term care facility, a potential transferee shall submit a notice of intent to acquire to the department at least 90 days prior to the proposed transfer date. The notice of intent to acquire shall be on a form supplied by the department and shall be deemed complete upon submission of all information which the department requires on the notice of intent form and is reasonably necessary to carry out the purposes of this section. In the case of the transfer of facility operations of a long-term care facility, a potential transferee shall provide notice to the current staff of the facility and to the labor organizations that represents the facility's workforce at the time the potential transferee submits a notice of intent to acquire, of the potential transferee's plans regarding retaining the facility workforce, to recognize any current collective bargaining agreements or both.

No license shall be issued to an applicant and no potential transferee may submit an application for a license unless the department makes a determination that the applicant or potential transferee is responsible and suitable for licensure.

For purposes of this section, the department's determination of responsibility and suitability shall be limited to the following factors:

(i) the civil litigation history including litigation related to the operation of a long-term care facility, such as quality of care, safety of residents or staff, employment and labor issues, fraud, unfair or deceptive business practices, landlord/tenant issues, and the criminal history of the applicant or the potential transferee, including their respective owners, which may include pending or settled litigation or other court proceedings in the commonwealth and in other states. Any information related to criminal or civil litigation obtained by the department pursuant to this section shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

(ii) the financial capacity of the applicant or potential transferee, including their respective owners, to establish or maintain and operate a long-term care facility, which may include any recorded liens and unpaid fees or taxes in the commonwealth and in other states.

(iii) the history of the applicant or potential transferee, including their respective owners, in providing long-term care in the commonwealth, measured by compliance with applicable statutes and regulations governing the operation of long-term care facilities; and

(iv) the history of the applicant or potential transferee, including their respective owners, in providing long-term care in states other than the commonwealth, if any, measured by

compliance with the applicable statutes and regulations governing the operation of long term care facilities in said states.

With respect to potential transferees, upon determination by the department that a potential transferee is responsible and suitable for licensure, the potential transferee may file an application for a license. In the case of a potential transfer of facility operations, the filing of an application for a license shall have the effect of a license until the department takes final action on such application.

If the department determines that an applicant or potential transferee is not suitable and responsible, the department's determination shall take effect on the date of the department's notice. In such cases, the applicant or potential transferee shall upon the filing of a written request with the department be afforded an adjudicatory hearing pursuant to chapter 30A.

During the pendency of such appeal, the applicant or potential transferee shall not operate the facility as a licensee, or, without prior approval of the department, manage such facility.

Each applicant, potential transferee and licensee shall keep all information provided to the department current. After the applicant, potential transferee or licensee becomes aware of any change to information related to information it provided or is required to provide to the department, such person shall submit to the department written notice of the changes as soon as practicable and without unreasonable delay. Changes include, but are not limited to, changes in financial status, such as filing for bankruptcy, any default under a lending agreement or under a lease, the appointment of a receiver, or the recording of any lien. Failure to provide timely

notice of such change may be subject to the remedies or sanctions available to the department under sections 71 to 73, inclusive.

An applicant, potential transferee or licensee and their respective owners shall be in compliance with all applicable federal, state and local laws, rules and regulations.

Prior to engaging a company to manage the long-term care facility, hereinafter a “management company”, a licensee shall notify the department in writing of the name of and provide contact information for the proposed management company and any other information on the management company and its personnel that may be reasonably requested by the department. Any such engagement must be pursuant to a written agreement between the licensee and the management company. Such written agreement shall include a requirement that the management company and its personnel shall comply with all applicable federal, state and local laws, regulations and rules. Promptly after the effective date of any such agreement, the licensee shall provide to the department a copy of the valid, fully executed agreement. Any payment terms included in the agreement shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

No license shall be issued hereunder unless there shall be first submitted to the department by the authorities in charge of the long-term care facility with respect to each building occupied by residents (1) a certificate of inspection of the egresses, the means of preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the office of public safety and inspections of the division of professional licensure; provided, however, that with respect to convalescent or nursing homes only, the division of health care

quality of the department of public health shall have sole authority to inspect for and issue such certificate, and (2) a certificate of inspection issued by the head of the local fire department certifying compliance with the local ordinances.

Any applicant who is aggrieved, on the basis of a written disapproval of a certificate of inspection by the head of the local fire department or by the office of public safety and inspections of the division of professional licensure, may, within 30 days from such disapproval, appeal in writing to the division of professional licensure. With respect to certificates of inspection that the division of health care quality of the department of public health has the sole authority to issue, an applicant may, within 30 days from disapproval of a certificate of inspection, appeal in writing to the department of public health only. Failure to either approve or disapprove within 30 days, after a written request by an applicant, shall be deemed a disapproval.

If the division of professional licensure or, where applicable, the department of public health approves the issuance of a certificate of inspection, it shall forthwith be issued by the agency that failed to approve. If said department disapproves, the applicant may appeal therefrom to the superior court. Failure of said department to either approve or disapprove the issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a disapproval. No license shall be issued by the department until issuance of an approved certificate of inspection, as required in this section.

Nothing in this section or in sections 72 or 73 shall be construed to revoke, supersede or otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning, registration or maintenance of a long-term care facility.

For cause, the department may limit, restrict, suspend or revoke a license. Grounds for cause on which the department may take such action shall include substantial or sustained failure to provide adequate care to residents, or substantial or sustained failure to maintain compliance with applicable statutes, rules and regulations, or the lack of financial capacity to maintain and operate a long-term care facility. Limits or restrictions include requiring a facility to limit new admissions. Suspension of a license includes suspending the license during a pending license revocation action, or suspending the license to permit the licensee a period of time, not shorter than 60 days, to wind down operations, and discharge and transfer, if applicable, all residents.

The department may, when public necessity and convenience require, or to prevent undue hardship to an applicant or licensee, under such rules and regulations as it may adopt, grant a temporary provisional or probationary license under this section; provided, however, that no such license shall be for a term exceeding 1 year.

With respect to an order to limit, restrict or suspend a license, within 7 days of receipt of the written order, the licensee may file a written request with the department for administrative reconsideration of the order or any portion thereof.

Upon a written request by a licensee who is aggrieved by the revocation of a license or the adoption of a probationary license, or by an applicant who is aggrieved by the refusal of the department to renew a license, the commissioner and the council shall hold a public hearing, after due notice, and thereafter they may modify, affirm or reverse the action of the department; provided, however, that the department may not refuse to renew and may not revoke the license of a long-term care facility until after a hearing before a hearings officer, and

any such applicant so aggrieved shall have all the rights provided in chapter 30A with respect to adjudicatory proceedings.

In no case shall the revocation of such a license take effect in less than 30 days after written notification by the department to the licensee.

The fee for a license to establish or maintain or operate a long-term care facility shall be determined annually by the secretary of administration and finance pursuant to section 3B of chapter 7, and the license shall not be transferable or assignable and shall be issued only for the premises named in the application.

Nursing institutions licensed by the department of mental health, or the department of developmental services for persons with intellectual disabilities shall not be licensed or inspected by the department of public health. The inspections herein provided shall be in addition to any other inspections required by law.

In the case of new construction, or major addition, alteration, or repair with respect to any facility subject to this section, preliminary architectural plans and specifications and final architectural plans and specifications shall be submitted to a qualified person designated by the commissioner. Written approval of the final architectural plans and specifications shall be obtained from said person prior to said new construction, or major addition, alteration, or repair.

Notwithstanding any of the foregoing provisions of this section, no license to establish or maintain and operate a long-term care facility shall be issued by the department

unless the applicant for such license submits to the department a certificate that each building to be occupied by patients of such convalescent or nursing home or skilled nursing facility meets the construction standards of the state building code, and is of at least type 1-B fireproof construction; provided, however, that this paragraph shall not apply in the instance of a transfer of facility operations of a convalescent or nursing home or skilled nursing facility whose license had not been revoked as of the time of such transfer; and provided, further, that a public medical institution as defined under section 2 of chapter 118E, which meets the construction standards as defined herein, shall not be denied a license as a nursing home under this section because it was not of new construction and designed for the purpose of operating a convalescent or nursing home or skilled nursing facility at the time of application for a license to operate a nursing home. An intermediate care facility for persons with an intellectual disability shall be required to meet the construction standards established for such facilities by Title XIX of the Social Security Act (Public Law 89-97) and any regulations promulgated pursuant thereto, and by regulations promulgated by the department.

Every applicant for a license and every potential transferee shall provide on or with its application or notice of intent to acquire a sworn statement of the names and addresses of any owner as defined in this section. As used herein, the phrase “person with an ownership or control interest” shall have the definition set forth in 42 U.S.C. section 1320a-3 and in regulations promulgated hereunder by the department.

The department shall notify the secretary of elder affairs forthwith of the pendency of any proceeding of any public hearing or of any action to be taken under this section relating to any convalescent or nursing home, rest home, infirmary maintained in a town, or charitable home for the aged. The department shall notify the commissioner of mental health

forthwith of the pendency of any proceeding, public hearing or of any action to be taken under this section relating to any intermediate care facility for persons with an intellectual disability.

SECTION 2. Said chapter 111 is hereby further amended by striking out section 72E and inserting in place thereof the following section:-

Section 72E. The department shall, after every inspection by its agent made under authority of section 72, give the licensee of the inspected long-term care facility notice in writing of every violation of the applicable statutes, rules and regulations of the department found upon said inspection. With respect to the date by which the licensee shall remedy or correct each violation, referred to in this section as the “correct by date”, the department in such notice shall specify a reasonable time, not more than 60 days after receipt thereof, by which time the licensee shall remedy or correct each violation cited therein or, in the case of any violation which in the opinion of the department is not reasonably capable of correction within 60 days, the department shall require only that the licensee submit a written plan for the timely correction of the violation in a reasonable manner. The department may modify any nonconforming plan upon notice in writing to the licensee.

Absent good faith efforts to remedy or correct, failure to remedy or correct a cited violation by the agreed upon correct by date shall be cause to pursue or impose the remedies or sanctions available to it under sections 71 to 73, inclusive, unless the licensee shall demonstrate to the satisfaction of the department or the court, as the case may be, that such failure was not due to any neglect of its duty and occurred despite an attempt in good faith to make correction by the agreed upon correct by date. The department may pursue or impose any remedy or sanction or combination of remedies or sanctions available to it under said sections 71

to 73, inclusive. An aggrieved licensee may pursue the remedies available to it under said sections 71 to 73, inclusive.

In addition, if the licensee fails to maintain substantial or sustained compliance with applicable statutes, rules and regulations, in addition to imposing any of the other remedies or sanctions available to it, the department may require the licensee to engage, at the licensee's own expense, a temporary manager to assist the licensee with bringing the facility into substantial compliance and with sustaining such compliance. Such manager is subject to the department's approval, provided that such approval shall not be unreasonably withheld. Any such engagement of a temporary manager shall be for a period of not less than 3 months and shall be pursuant to a written agreement between the licensee and the management company. A copy of such agreement shall be provided by the licensee to the department promptly after execution. Any payment terms included in the agreement shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

Nothing in this section shall be construed to prohibit the department from enforcing a statute, rule or regulation, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the department, the violation of such statute, rule or regulation jeopardizes the health or safety of residents or the public or seriously limits the capacity of a licensee to provide adequate care, or where the violation of such statute, rule or regulation is the second such violation occurring during a period of 12 full months.

SECTION 3. Said chapter 111 is hereby further amended by striking out section 73 and inserting in place thereof the following section:-

Section 73. Whoever advertises, announces, establishes or maintains, or is concerned in establishing or maintaining a long-term care facility, or is engaged in any such business, without a license granted under section 71, or whoever being licensed under said section 71 violates any provision of sections 71 to 73, inclusive, shall for a first offense be punished by a fine of not more than \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or by imprisonment for not more than 2 years.

Whoever violates any rule or regulation made under sections 71, 72 and 72C shall be punished by such fine, not to exceed \$500, as the department may establish. If any person violates any such rule or regulation by allowing a condition to exist which may be corrected or remedied, the department shall order him, in writing, to correct or remedy such condition, and if such person fails or refuses to comply with such order by the agreed upon correct by date, as defined in section 72E, each day after the agreed upon correct by date during which such failure or refusal to comply continues shall constitute a separate offense. A failure to pay the fine imposed by this section shall be a violation of this section.

SECTION 4. (a) There shall be a special commission to examine the department of public health's nursing home licensure process and requirements. The commission shall consist of the following 15 members: the commissioner of public health, or a designee, who shall serve as chair; the chairs of the joint committee of public health; the chairs of the joint committee on elder affairs; the secretary of elder affairs, or a designee; the secretary of health and human services, or a designee; the assistant secretary for MassHealth, or a designee; and 7 persons to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Senior Care

Association, Inc., 1 of whom shall be a representative of LeadingAge Massachusetts, Inc., 1 of whom shall be a representative of Massachusetts Association of Residential Care Homes, Inc., 1 of whom shall be a representative of the Massachusetts Senior Action Council, Inc., 1 of whom shall be a representative of 1199 SEIU United Health Care Workers East, 1 of whom shall be a representative of the Massachusetts chapter of AARP and 1 of whom shall be an expert on long-term care and aging policy. In making appointments, the governor shall, to the maximum extent feasible, ensure that the commission represents a broad distribution of diverse perspectives and geographic regions throughout the commonwealth.

(b) The commission shall review current licensure requirements for nursing homes in the commonwealth, current licensure practices for other healthcare industries in the commonwealth and successful nursing home licensure programs in other states and best practices. The commission shall make recommendations to modify nursing home licensure requirements including, but not limited to: (i) strengthening suitability review; (ii) improving processes for review of new owners; and (iii) increasing transparency of the department of public health's licensure and suitability determination process. The commission shall make recommendations based on successful licensure programs in other healthcare industries in the commonwealth and other successful licensing programs in other states.

(c) The commission shall hold not less than 3 public meetings in different geographic regions throughout the commonwealth and solicit feedback from various stakeholders.

(d) Not later than October 1, 2023, the commission shall submit a report and recommendations, if any, together with drafts of legislation necessary to carry those

recommendations into effect by filing the same with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on public health.”;

And by striking out the title and inserting in place thereof the following title:-

“An Act regulating long-term care facilities.”.

And that when so amended the same will be correctly drawn.

.....,
For the Committee.