

SENATE No. 288

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to stabilizing the commonwealth’s nursing facilities.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-----------------------|-------------------------------|
| Harriette L. Chandler | First Worcester |
| Richard T. Moore | Worcester and Norfolk |
| Bruce E. Tarr | First Essex and Middlesex |
| Jennifer L. Flanagan | Worcester and Middlesex |
| Michael O. Moore | Second Worcester |
| Michael J. Rodrigues | First Bristol and Plymouth |
| Gale D. Candaras | First Hampden and Hampshire |
| Michael R. Knapik | Second Hampden and Hampshire |
| Stephen Kulik | 1st Franklin |
| Brian A. Joyce | Norfolk, Bristol and Plymouth |
| Daniel A. Wolf | Cape and Islands |
| Barry R. Finegold | Second Essex and Middlesex |
| Katherine M. Clark | Fifth Middlesex |
| Karen E. Spilka | Second Middlesex and Norfolk |
| Eileen M. Donoghue | First Middlesex |
| Marc R. Pacheco | First Plymouth and Bristol |
| John F. Keenan | Norfolk and Plymouth |
| James E. Timilty | Bristol and Norfolk |

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|-----------------------------|------------------------------------|
| <i>Thomas M. McGee</i> | <i>Third Essex</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> |
| <i>Robert L. Hedlund</i> | <i>Plymouth and Norfolk</i> |
| <i>Thomas P. Kennedy</i> | <i>Second Plymouth and Bristol</i> |

SENATE No. 288

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 288) of Harriette L. Chandler, Richard T. Moore, Bruce E. Tarr, Jennifer L. Flanagan and other members of the General Court for legislation relative to the Commonwealth's nursing facilities. Elder Affairs.

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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An Act relative to stabilizing the commonwealth’s nursing facilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1: Chapter 23 of the General Laws, as appearing in the 2010 official edition is
2 hereby amended by inserting after section 9U the following new section:

3 The Commonwealth Corporation shall, subject to appropriation, establish an extended
4 care career ladder grant program, consistent with section 410 of chapter 159 of the Acts of 2000.
5 Grants shall be available for certified nurses’ aides, home health aides, homemakers and other
6 entry level workers in long-term care. The grants may include training for English for speakers
7 of other languages and other language and adult basic education programs to improve quality of
8 care and improve direct care worker access to and participation in career ladder training. The
9 length of such grants shall not exceed a period of 3 years. The Commonwealth Corporation shall
10 submit quarterly reports to the house and senate committees on ways and means on said grant
11 program including, but not limited to, the number of grants awarded, the amount of each grant, a
12 description of the career ladder programs, changes in care-giving and workplace practices that
13 have occurred and their impact on quality of care and worker retention and the certificates,
14 degrees or professional status attained by each participating employee. The administrative and
15 program management costs for the implementation of said grant program shall not exceed 4 per
16 cent of the amount of the grant program. Each grant may include funding for technical
17 assistance and evaluation.

18 Section 2: Chapter 111 of the General Laws, as appearing in the 2010 official edition, is
19 hereby amended by inserting after section 4O the following new section:-

20 4P. The Department shall, subject to appropriation, establish a scholarship
21 program for certified nurses' aide and direct care worker training. The department shall establish
22 appropriate guidelines and application criteria for the administration of the program. The
23 scholarships shall cover the full cost of tuition to an approved certified nurses' aide or long-term
24 care direct worker training program, including approved programs providing for cross-training.
25 Funds may also be available to provide adult basic education and English as a second language
26 training for applicants otherwise meeting criteria for the scholarships, as well as pilot training
27 programs using enhanced curricula designed to support increased retention. The department
28 shall, in consultation with the nursing home industry, consumer groups, the department of labor
29 and workforce development, the Commonwealth Corporation, training providers and other
30 appropriate state and local agencies, conduct outreach regarding the availability of such
31 scholarships. The department shall consult with the scholarship program advisory council to
32 review and recommend new training requirements for certified nurses' aides, home health aides
33 and home care workers to improve the quality of the direct care workforce and the quality of care
34 provided in all long-term care settings by developing skill standards, supporting the transition
35 from training to work, improving retention, promoting portability, recognizing career
36 advancement curricula and addressing language and education barriers. The costs for outreach
37 activities shall not exceed 3 per cent of the amount of the program and administrative costs of the
38 program shall not exceed 3 per cent of the amount of the program.

39 Section 3 Section 14A of chapter 118E of the General Laws as appearing in the official
40 2010 edition is hereby amended by adding the following paragraphs:

41 In the event that a nursing facility resident who is a MassHealth recipient enters a
42 hospital, the division shall pay to preserve his or her bed in the nursing facility for a period of up
43 to 10 days. The division shall reimburse the nursing facility for the medical leave of absence,
44 which shall include an observation stay in a hospital in excess of twenty-four hours, at the
45 recipient's pre-absence rate during the medical leave and upon the resident's return.

46 In the event that a nursing facility resident who is a MassHealth recipient leaves the
47 nursing facility for non-medical reasons, the division shall pay to preserve his or her bed in the
48 facility for a period of up to 15 days. The division shall reimburse the nursing facility for the
49 non-medical leave of absence at the recipient's pre-absence rate during the non-medical leave
50 and upon the resident's return.

51 Section 4: Chapter 118E as amended by section 123 of chapter 224 of the Acts of 2012 is
52 hereby amended by adding at the end thereof the following new section: -

53 Notwithstanding any general or special law to the contrary, the Department, in the
54 calculation of Medicaid payment rates for nursing facility services shall use the wage component
55 of the Medicare Skilled Nursing Facility Prospective Payment System, national Average Hourly
56 Earnings price index, as established in the annual rule published in the Federal Register, to adjust

57 allowable base year labor costs (whether facility-specific or reflected in standard payments) to
58 the rate year; provided further that the Department is required to obtain from IHS Global Insight
59 a wage and salary price index proxy based on New England regional nursing facility labor costs.
60 Upon establishment of the regional labor-based proxy, the Department shall substitute it for the
61 national index cited above.

62 Section 5: Chapter 118E as amended by section 123 of chapter 224 of the acts of 2012 is
63 hereby amended by adding the following new section language:

64 Notwithstanding any general or special law to the contrary, In the event the division
65 conducts or utilizes an audit of nursing facilities' base year costs for the purpose of reducing
66 rates below levels that would be in effect in the absence of the audit, the division shall:—

67 (1) conduct a field audit of 50 per cent of total nursing facilities licensed in the base year
68 in accordance with specified, uniform criteria;

69 (2) inform each audited nursing facility in writing of its right to appeal to the division of
70 administrative law appeals each and every audit disallowance to which the nursing facility is
71 subject;

72 (3) delay implementing the audit until all appeals by nursing facilities have been
73 completely adjudicated by the division of administrative law appeals;

74 (4) delay implementing the audit until the division has conducted a public hearing the
75 notice of which describes with particularity the methodology, audit criteria and substantive
76 standards utilized in the audit and the impact of implementing the audit on quality care for
77 nursing facility residents; and

78 (5) not implement any audit disallowance that is not fully concluded in accordance with
79 the preceding subsections by one year after the conclusion of the base period.

80 Section 6: Notwithstanding any general or special law to the contrary, effective July 1,
81 2013 for the fiscal year ending June 30, 2014 nursing facility MassHealth rates shall be set using
82 2010 costs.