

HOUSE No. 727

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balsler

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 to ensure the quality of care in nursing homes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/18/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/24/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>2/26/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/3/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/4/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>5/12/2021</i>

HOUSE No. 727

By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 727) of Ruth B. Balsler and others relative to care in nursing homes. Elder Affairs.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to ensure the quality of care in nursing homes.

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 111 of the General Laws is hereby amended by inserting after
2 section 72BB the following section:-

3 Section 72CC

4 For the purpose of this section, “hours of care per resident per day” shall mean the total
5 number of hours worked by registered nurses, licensed practical nurses, and nursing assistants,
6 including certified nurse aides with direct resident care responsibilities, for each 24 hour period,
7 divided by the total census of the facility for each day.

8

9 Long-term care facilities providing Level I, II, or III care shall provide sufficient nursing
10 personnel to meet resident nursing care needs, based on acuity, resident assessments, care plans,
11 census and other relevant factors as determined by the facility. Sufficient staffing must include a
12 minimum number of hours of care per resident per day of 4.1 hours, of which at least 0.75 hours

13 must be care provided per resident by a registered nurse. The facility must provide adequate
14 nursing care to meet the needs of each resident, which may necessitate staffing that exceeds the
15 minimum required hours of care per resident per day.

16 SECTION 2. Chapter 111 of the General Laws is hereby amended by inserting after
17 section 72CC the following section:-

18

19 Section 72DD

20 1. As used in this section:

21 “Cohorting” means the practice of grouping patients who are or are not colonized or
22 infected with the same organism in order to confine their care to one area and prevent contact
23 with other patients.

24 “Department” means the Department of Public Health.

25 “Endemic level” means the usual level of given disease in a geographic area.

26 “Isolating” means the process of separating persons colonized or infected with a
27 communicable disease from those who are not colonized or infected with a communicable
28 diseases.

29 “Outbreak” means any unusual occurrence of disease or any disease above background or
30 endemic levels.

31

32 b. Notwithstanding any provision of law to the contrary, the department shall require
33 long-term care facilities to develop an outbreak response plan which shall be customized to the
34 facility. At a minimum, each facility's plan shall include, but shall not be limited to:

35

36 (1) a protocol for isolating and cohorting infected and at-risk patients in the event of
37 an outbreak of a contagious disease until the cessation of the outbreak;

38 (2) clear policies for the notification of residents, residents' families, visitors, and
39 staff in the event of an outbreak of a contagious disease at a facility;

40 (3) information on the availability of laboratory testing, protocols for assessing
41 whether facility visitors are colonized or infected with a communicable disease, protocols to
42 require those staff who are colonized or infected with a communicable disease to not present at
43 the facility for work duties, and processes for implementing evidence-based outbreak response
44 measures;

45 (4) policies to conduct routine monitoring of residents and staff to quickly identify
46 signs of a communicable disease that could develop into an outbreak; and

47 (5) policies for reporting outbreaks to public health officials in accordance with
48 applicable laws and regulations.

49

50 c. (1) In addition to the requirements set forth in subsection b. of this section, the
51 department shall require long-term care facilities to include in the facility's outbreak response
52 plan written policies to meet staffing, training, and facility demands during an infectious disease

53 outbreak and to successfully implement the outbreak response plan, including either employing
54 on a full-time or part-time basis, or contracting with on a consultative basis, the following
55 individuals:

56

57 (a) an individual certified by the Certification Board of Infection Control and
58 Epidemiology; or

59 (b) a physician who has completed an infectious disease fellowship.

60 (2) Each long-term care facility shall submit its outbreak response plan to the
61 department within 180 days of the effective date of this act.

62

63 (3) The department shall verify that the outbreak response plans submitted by long-
64 term care facilities are in compliance with the requirements of subsection b. of this section and
65 with the requirements of paragraph (1) of subsection c.

66

67 d. (1) Each long-term care facility that submits an outbreak response plan to the
68 department pursuant to subsection c. of this section shall review the plan on an annual basis.

69

70 (2) If a long-term care facility makes any material changes to its outbreak response
71 plan, the facility shall submit to the department an updated outbreak response plan within 30

72 days. The department shall, upon receiving an updated outbreak response plan, verify that the
73 plan is compliant with the requirements of subsections b. and c. of this section.

74 e. The department shall promulgate regulations necessary to implement this section.

75

76 SECTION 3. Chapter 111 of the General Laws is hereby amended by inserting after
77 section 72DD the following section:-

78

79 Section 72EE

80

81 1. As used in this Section:

82 “Cohorting” means the practice of grouping patients who are or are not colonized or
83 infected with the same organism in order to confine their care to one area and prevent contact
84 with other patients.

85 “Commissioner” means the Commissioner of the Department of Public Health.

86 “Religious and recreational activities” includes any religious, social, or recreational
87 activity that is consistent with the resident’s preferences and choosing, regardless of whether the
88 activity is coordinated, offered, provided, or sponsored by facility staff or by an outside activities
89 provider.

90 “Resident” means a person who resides in a long-term care facility.

91 “Social isolation” means a state of isolation wherein a resident of a long-term care facility
92 is unable to engage in social interactions and religious and recreational activities with other
93 facility residents or with family members, friends, and external support systems.

94

95 2. a. The Department of Public Health shall require each long-term care facility in the
96 state, as a condition of facility licensure, to adopt and implement written policies, to provide
97 technology to facility residents, and to provide appropriate staff to prevent the social isolation of
98 facility residents.

99

100 b. The social isolation prevention policies adopted by each long-term care facility
101 pursuant to this section shall:

102 (1) authorize and include specific protocols and procedures to encourage and enable
103 residents of the facility to engage in in-person contact, communications, and religious and
104 recreational activities with other facility residents and with family members, friends, and other
105 external support systems, except when such in-person contact, communication, or activities are
106 prohibited, restricted, or limited, as permitted by federal or state statute, rule, or regulation;

107 (2) authorize and include specific protocols and procedures to encourage and enable,
108 residents to engage in face-to-face or verbal/auditory-based contact, communication, and
109 religious and recreational activities with other facility residents and with family members,
110 friends, and other external support systems, through the use of electronic or virtual means and
111 methods, including, but not limited to, computer technology, the internet, social media,

112 videoconferencing, and other innovative technological means or methods, whenever such
113 residents are subject to restrictions that limit their ability to engage in in-person contact,
114 communications, or religious and recreational activities as authorized by paragraph (1) of this
115 subsection;

116 (3) provide for residents of the facility who have disabilities that impede their ability to
117 communicate, including, but not limited to, residents who are blind, deaf, or deaf-blind, residents
118 who have Alzheimer's disease or other related dementias, and residents who have developmental
119 disabilities, to be given access to assistive and supportive technology as may be necessary to
120 facilitate the residents' engagement in face-to-face or verbal/auditory-based contact,
121 communications, and religious and recreational activities with other residents, family members,
122 friends, and other external support systems, through electronic means, as provided by paragraph
123 (2) of this subsection;

124 (4) include specific administrative policies, procedures, and protocols governing: (a) the
125 acquisition, maintenance, and replacement of computers, videoconferencing equipment,
126 distance-based communications technology, assistive and supportive technology and devices,
127 and other technological equipment, accessories, and electronic licenses, as may be necessary to
128 ensure that residents are able to engage in face-to-face or verbal/auditory-based contact,
129 communications, and religious and recreational activities with other facility residents and with
130 family members, friends, and external support systems, through electronic means, in accordance
131 with the provisions of paragraphs (2) and (3) of this subsection; (b) the use of environmental
132 barriers and other controls when the equipment and devices acquired pursuant to this section are
133 in use, especially in cases where the equipment or devices are likely to become contaminated
134 with bodily substances, are touched frequently with gloved or ungloved hands, or are difficult to

135 clean; and (c) the regular cleaning of the equipment and devices acquired pursuant to this
136 paragraph and any environmental barriers or other physical controls used in association
137 therewith;

138 (5) require appropriate staff to assess and regularly reassess the individual needs and
139 preferences of facility residents with respect to the residents' participation in social interactions
140 and religious and recreational activities, and include specific protocols and procedures to ensure
141 that the quantity of devices and equipment maintained on-site at the facility remains sufficient, at
142 all times, to meet the assessed social and activities needs and preferences of each facility
143 resident;

144 (6) require appropriate staff, upon the request of a resident or the resident's family
145 members or guardian, to develop an individualized visitation plan for the resident, which plan
146 shall: (a) identify the assessed needs and preferences of the resident and any preferences
147 specified by the resident's family members; (b) address the need for a visitation schedule, and
148 establish a visitation schedule if deemed to be appropriate; (c) describe the location and
149 modalities to be used in visitation; and (d) describe the respective responsibilities of staff,
150 visitors, and the resident when engaging in visitation pursuant to the individualized visitation
151 plan;

152 (7) include specific policies, protocols, and procedures governing a resident's requisition,
153 use, and return of devices and equipment maintained pursuant to this act, and require appropriate
154 staff to communicate those policies, protocols, and procedures to residents; and

155 (8) designate at least one member of the therapeutic recreation or activities department,
156 or, if the facility does not have such a department, designate at least one senior staff member, as

157 determined by facility management, to train other appropriate facility employees, including, but
158 not limited to, activities professionals and volunteers, social workers, occupational therapists,
159 and therapy assistants, to provide direct assistance to residents, upon request and on an as-needed
160 basis, as necessary to ensure that each resident is able to successfully access and use, for the
161 purposes specified in paragraphs (2) and (3) of this subsection, the technology, devices, and
162 equipment acquired pursuant to this paragraph.

163

164 c. The department shall distribute civil monetary penalty (CMP) funds, as approved by
165 the federal Centers for Medicare and Medicaid Services, and any other available federal and state
166 funds, upon request, to facilities for communicative technologies and accessories needed for the
167 purposes of this act.

168

169 3. a. Whenever the department conducts an inspection of a long-term care facility, the
170 department's inspector shall determine whether the facility is in compliance with the provisions
171 of this section and the policies, protocols, and procedures adopted pursuant thereto.

172 b. In addition to any other applicable penalties provided by law, a long-term care facility
173 that fails to comply with the provisions of this act or properly implement the policies, protocols,
174 and procedures adopted pursuant thereto:

175 (1) shall be liable to pay an administrative penalty, the amount of which shall be
176 determined in accordance with a schedule established by department regulation, which schedule

177 shall provide for an enhanced administrative penalty in the case of a repeat or ongoing violation;
178 and

179 (2) may be subject to adverse licensure action, as deemed by the department to be
180 appropriate.

181

182 4. Nothing in this section shall be construed as limiting the ability of residents to own or
183 operate a personal electronic device.

184 5. The department of public health shall promulgate regulations necessary to implement
185 this section.

186

187 SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after
188 section 72EE the following section:-

189 Section 72FF

190

191 For all nursing care units in the Commonwealth, resident bedrooms must adhere to the
192 following:

193 1. The floor area of resident bedrooms, excluding closet, vestibule and toilet room
194 areas shall not be less than 125 square feet for single occupancy rooms and 108 square feet per
195 bed for double occupancy rooms.

196 2. No resident bedroom shall contain more than two beds.

197 3. Rooms shall be shaped and sized so that each bed can be placed with a minimum
198 clearance of 4 feet from any lateral wall, window or radiator on the transfer side of the resident
199 bed and 3 feet from any lateral wall, window or radiator on the non-transfer side of the resident
200 bed. In single occupancy rooms, an unobstructed passageway of at least 3 feet shall be
201 maintained at the foot of each bed. In double occupancy rooms, an unobstructed passageway of
202 at least 4 feet shall be maintained at the foot of each bed. In double occupancy rooms, resident
203 beds must be spaced at least 6 feet apart.

204 4. Resident bedrooms shall have a floor level above the grade level adjacent to the
205 building.

206 5. All resident bedrooms shall be along exterior walls with window access to the
207 exterior.

208 6. All resident bedrooms shall open directly to a main corridor and shall be
209 permanently and clearly identified by number on or beside each entrance door.

210 7. Each room with more than one bed shall have cubicle curtains or equivalent built
211 in devices for privacy for each resident.

212 8. Each resident bedroom shall contain closet interior space of not less than two feet
213 by two feet per resident with at least five feet clear hanging space for the storage of personal
214 belongings. In addition, either a built in or freestanding multiple drawer bureau not less than two
215 feet wide with a minimum of one drawer per resident shall be provided.

216 9. Each resident bedroom shall be sized and dimensioned to accommodate hospital
217 type beds of not less than 76 inches long and 36 inches wide, a hospital type bedside cabinet and
218 an easy chair or comfortable straight back armchair.

219

220 SECTION 5.

221 There is hereby established a grant program to be administered by the Corporation for
222 Business Work and Learning, in consultation with the local workforce investment boards and the
223 department of public health, for the development of career ladder programs in long-term care
224 facilities to upgrade skills of certified nurse's aides and entry-level workers in nursing homes, to
225 improve employee retention rates and to improve the quality of care provided in such facilities.
226 Such career ladder programs shall include, but not be limited to, programs that establish a three-
227 level career pathway for certified nurses' aides or that develop employee competencies in
228 specialized areas of care.

229 Said corporation shall award such grants, subject to appropriation, on a competitive basis
230 to nursing homes or consortiums of nursing homes for the development of career ladder
231 programs, including but not limited to curriculum development, instructors, instructional
232 materials and technical assistance. Said corporation shall establish criteria for the selection of
233 grant recipients to effectuate the purposes of this section. Said corporation shall require, as a
234 condition of receipt of such grants, that each participating nursing home shall: (1) provide at least
235 50 per cent paid time for employees participating in training or instruction in connection with
236 said career ladder program; (2) assist each participating employee in developing a career
237 advancement plan; (3) increase employee compensation upon successful completion of each

238 stage of the career ladder program; and (4) report quarterly to said corporation on the progress of
239 the career ladder program implemented including, but not limited to, the number of employees
240 served by the grant and their career progression within the long-term care facility and the
241 certificates, degrees or professional status attained.

242 Said corporation shall develop partnerships with local workforce investment boards,
243 community colleges and other community-based education and training providers and
244 organizations to assist nursing homes and nursing home employees to fulfill training needs,
245 including but not limited to, identifying sources of funding for such training, and to encourage
246 and enhance access to additional and ongoing skill enhancement and career development in long-
247 term care.

248 SECTION 6.

249 Section 4 of this act shall take effect on January 1st 2023.