SENATE DOCKET, NO. 1844   FILED ON: 2/18/2021

SENATE . . . . No. 414

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 quality of care in nursing homes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Patricia D. Jehlen	*Second Middlesex*	
Carmine Lawrence Gentile	*13th Middlesex*	*5/12/2021*

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SENATE . . . . No. 414

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 414) of Patricia D. Jehlen for legislation to ensure quality of 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 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 Long-term care facilities providing Level I, II, or III care shall provide sufficient nursing
9 personnel to meet resident nursing care needs, based on acuity, resident assessments, care plans,
10 census and other relevant factors as determined by the facility. Sufficient staffing must include a
11 minimum number of hours of care per resident per day of 4.1 hours, of which at least 0.75 hours
12 must be care provided per resident by a registered nurse. The facility must provide adequate

13 nursing care to meet the needs of each resident, which may necessitate staffing that exceeds the
14 minimum required hours of care per resident per day.

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

17 Section 72DD

18 As used in this section:

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

22 "Department" means the Department of Public Health.

23 "Endemic level" means the usual level of given disease in a geographic area.

24 "Isolating" means the process of separating persons colonized or infected with a
25 communicable disease from those who are not colonized or infected with a communicable
26 diseases.

27 "Outbreak" means any unusual occurrence of disease or any disease above background
28 or endemic levels.

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

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

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

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

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

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

45 c. (1) In addition to the requirements set forth in subsection b. of this section, the
46 department shall require long-term care facilities to include in the facility's outbreak response
47 plan written policies to meet staffing, training, and facility demands during an infectious disease
48 outbreak and to successfully implement the outbreak response plan, including either employing
49 on a full-time or part-time basis, or contracting with on a consultative basis, the following
50 individuals:

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

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

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

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

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

61 (2) If a long-term care facility makes any material changes to its outbreak response
62 plan, the facility shall submit to the department an updated outbreak response plan within 30
63 days. The department shall, upon receiving an updated outbreak response plan, verify that the
64 plan is compliant with the requirements of subsections b. and c. of this section.

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

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

68 Section 72EE

69 1. As used in this Section

70 "Cohorting" means the practice of grouping patients who are or are not colonized or
71 infected with the same organism in order to confine their care to one area and prevent contact
72 with other patients.

73 "Commissioner" means the Commissioner of the Department of Public Health.

74 "Religious and recreational activities" includes any religious, social, or recreational
75 activity that is consistent with the resident's preferences and choosing, regardless of whether the
76 activity is coordinated, offered, provided, or sponsored by facility staff or by an outside activities
77 provider.

78 "Resident" means a person who resides in a long-term care facility.

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

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

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

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

93 (2) authorize and include specific protocols and procedures to encourage and enable,
94 residents to engage in face-to-face or verbal/auditory-based contact, communication, and
95 religious and recreational activities with other facility residents and with family members,
96 friends, and other external support systems, through the use of electronic or virtual means and
97 methods, including, but not limited to, computer technology, the internet, social media,
98 videoconferencing, and other innovative technological means or methods, whenever such
99 residents are subject to restrictions that limit their ability to engage in in-person contact,
100 communications, or religious and recreational activities as authorized by paragraph (1) of this
101 subsection;

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

110 (4) include specific administrative policies, procedures, and protocols governing: (a) the
111 acquisition, maintenance, and replacement of computers, videoconferencing equipment,
112 distance-based communications technology, assistive and supportive technology and devices,
113 and other technological equipment, accessories, and electronic licenses, as may be necessary to
114 ensure that residents are able to engage in face-to-face or verbal/auditory-based contact,
115 communications, and religious and recreational activities with other facility residents and with

116 family members, friends, and external support systems, through electronic means, in accordance
117 with the provisions of paragraphs (2) and (3) of this subsection; (b) the use of environmental
118 barriers and other controls when the equipment and devices acquired pursuant to this section are
119 in use, especially in cases where the equipment or devices are likely to become contaminated
120 with bodily substances, are touched frequently with gloved or ungloved hands, or are difficult to
121 clean; and (c) the regular cleaning of the equipment and devices acquired pursuant to this
122 paragraph and any environmental barriers or other physical controls used in association
123 therewith;

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

130 (6) require appropriate staff, upon the request of a resident or the resident's family
131 members or guardian, to develop an individualized visitation plan for the resident, which plan
132 shall: (a) identify the assessed needs and preferences of the resident and any preferences
133 specified by the resident's family members; (b) address the need for a visitation schedule, and
134 establish a visitation schedule if deemed to be appropriate; (c) describe the location and
135 modalities to be used in visitation; and (d) describe the respective responsibilities of staff,
136 visitors, and the resident when engaging in visitation pursuant to the individualized visitation
137 plan;

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

141 (8) designate at least one member of the therapeutic recreation or activities department,
142 or, if the facility does not have such a department, designate at least one senior staff member, as
143 determined by facility management, to train other appropriate facility employees, including, but
144 not limited to, activities professionals and volunteers, social workers, occupational therapists,
145 and therapy assistants, to provide direct assistance to residents, upon request and on an as-needed
146 basis, as necessary to ensure that each resident is able to successfully access and use, for the
147 purposes specified in paragraphs (2) and (3) of this subsection, the technology, devices, and
148 equipment acquired pursuant to this paragraph.

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

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

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

159 (1) shall be liable to pay an administrative penalty, the amount of which shall be
160 determined in accordance with a schedule established by department regulation, which schedule
161 shall provide for an enhanced administrative penalty in the case of a repeat or ongoing violation;
162 and

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

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

167 5. The department of public health shall promulgate regulations necessary
168 to implement this section.

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

171 Section 72FF

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

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

177 No resident bedroom shall contain more than two beds.

178 Rooms shall be shaped and sized so that each bed can be placed with a minimum
179 clearance of 4 feet from any lateral wall, window or radiator on the transfer side of the resident
180 bed and 3 feet from any lateral wall, window or radiator on the non-transfer side of the resident
181 bed. In single occupancy rooms, an unobstructed passageway of at least 3 feet shall be
182 maintained at the foot of each bed. In double occupancy rooms, an unobstructed passageway of
183 at least 4 feet shall be maintained at the foot of each bed. In double occupancy rooms, resident
184 beds must be spaced at least 6 feet apart.

185 Resident bedrooms shall have a floor level above the grade level adjacent to the building.

186 All resident bedrooms shall be along exterior walls with window access to the exterior.

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

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

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

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

198 SECTION 5. There is hereby established a grant program to be administered by the
199 Corporation for Business Work and Learning, in consultation with the local workforce
200 investment boards and the department of public health, for the development of career ladder
201 programs in long-term care facilities to upgrade skills of certified nurse's aides and entry-level
202 workers in nursing homes, to improve employee retention rates and to improve the quality of
203 care provided in such facilities. Such career ladder programs shall include, but not be limited to,
204 programs that establish a three-level career pathway for certified nurses' aides or that develop
205 employee competencies in specialized areas of care.

206 Said corporation shall award such grants, subject to appropriation, on a competitive basis
207 to nursing homes or consortiums of nursing homes for the development of career ladder
208 programs, including but not limited to curriculum development, instructors, instructional
209 materials and technical assistance. Said corporation shall establish criteria for the selection of
210 grant recipients to effectuate the purposes of this section. Said corporation shall require, as a
211 condition of receipt of such grants, that each participating nursing home shall: (1) provide at least
212 50 per cent paid time for employees participating in training or instruction in connection with
213 said career ladder program; (2) assist each participating employee in developing a career
214 advancement plan; (3) increase employee compensation upon successful completion of each
215 stage of the career ladder program; and (4) report quarterly to said corporation on the progress of
216 the career ladder program implemented including, but not limited to, the number of employees
217 served by the grant and their career progression within the long-term care facility and the
218 certificates, degrees or professional status attained.

219 Said corporation shall develop partnerships with local workforce investment boards,
220 community colleges and other community-based education and training providers and

221 organizations to assist nursing homes and nursing home employees to fulfill training needs,

222 including but not limited to, identifying sources of funding for such training, and to encourage

223 and enhance access to additional and ongoing skill enhancement and career development in long-

224 term care.

225 SECTION 6. Section 4 of this act shall take effect on January 1st 2023.