SENATE DOCKET, NO. 1822 FILED ON: 2/18/2021

SENATE . . . . . No. 418

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

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 expanding the availability of personal care homes for older adults.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Joan B. Lovely	*Second Essex*	
Bradley H. Jones, Jr.	*20th Middlesex*	*3/12/2021*
Mike Connolly	*26th Middlesex*	*3/19/2021*
Steven S. Howitt	*4th Bristol*	*4/6/2021*

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SENATE . . . . . No. 418

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 418) of Joan B. Lovely, Bradley H. Jones, Jr., Mike Connolly and Steven S. Howitt for legislation relative to expanding the availability of personal care homes for older adults. Elder Affairs.

The Commonwealth of Massachusetts

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

An Act relative to expanding the availability of personal care homes for older adults.

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

SECTION 1. The General Laws are hereby amended by inserting after Chapter 19D, the following new chapter: –

Chapter 19D1/2

Section 1: Purpose

(a) The purpose of this chapter is to enable a setting of care that is referred to as personal care homes. This chapter establishes licensing requirements to protect the health, safety and wellbeing of personal care home residents.

(b) Personal care homes are designed to provide safe, humane, comfortable and supportive residential settings for adults who require assistance or supervision with activities of daily living or instrumental activities of daily living, and qualify for the State Home Care Program. Residents who live in personal care homes that meet the requirements in this chapter

will receive the encouragement and assistance they need to develop and maintain maximum independence and self-determination.

Section 2: Definitions

When used in this chapter, unless the context requires otherwise, the following terms shall have the following meanings:

"Aging services access point" or "ASAP", any agency designated by the executive office of elder affairs pursuant to section 4B of chapter 19A.

"Commissioner", the commissioner of the department of transitional assistance as established by section 3 of chapter 18, or her designee.

“License”, a certificate of compliance issued by the Secretary permitting the operation of a personal care home, at a given location, for a specific period of time, for a specified capacity.

"MassHealth Senior Care Options" or “SCO program", a program of medical, health and support services covered under Title XIX or Title XVIII of the Social Security Act, provided through senior care organizations.

“Personal care home” or “home”, a premise in which food, shelter and personal assistance or supervision are provided for a period exceeding 24 hours, for no more than six adults who are not relatives of the sponsor, who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision in activities of daily living or instrumental activities of daily living. The term includes a premise that has held or presently holds itself out as a personal care home and provides food and shelter to no more than six adults who need personal care services, but who are not receiving the services.

“Personal care home administrator” or “administrator”, an individual who is charged with the general administration of a personal care home, whether the individual has an ownership interest in the personal care home, and whether functions and duties are shared with other individuals.

“Secretary”, the secretary of the department of elder affairs as established by section 1 of chapter 19A, or her designee.

“Sponsor”, a person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a personal care home.

“State Home Care Program”, an array of programs enabled by section 4 of chapter 19A that create a continuum of long-term care supports that shall also include the MassHealth Senior Care Options program.

Section 3: Regulations

The secretary may promulgate regulations for the implementation, administration and enforcement of this chapter; provided that regulations pursuant to section four are separate and distinct from regulations pursuant to sections five and six.

Section 4: Licensing of personal care homes

The secretary shall issue for a term of two years, and shall renew for like terms, a license, subject to revocation by it for cause, to any sponsor whom it deems responsible and suitable to establish or maintain a personal care home, which meets the requirements that the secretary established in accordance with her rules and regulations; provided, however, that each personal care home shall be inspected at least once a year.

The secretary may delegate the duty of inspection to an ASAP, and the results of said inspection will inform the secretary's determination on the issuance or renewal of a license.

For purposes of this section, the secretary's determination of responsibility and suitability shall include the following factors:

(i) the criminal history of the prospective sponsor, or any officer, director, shareholder or general or limited partner thereof, to which the secretary has been granted access or certification or may be subsequently granted access or certification by the department of criminal justice information services;

(ii) the financial capacity of the prospective sponsor to operate the personal care home in accordance with applicable laws;

(iii) the history of the prospective sponsor in providing home and community based long term care services within the commonwealth measured by compliance with applicable statutes and regulations governing the operation of such services; and

(iv) the history of the prospective sponsor in providing home and community based long term care services in states other than the commonwealth, if any, measured by compliance with the applicable statutes and regulations governing the operation of such services in said states.

(v) any other factors deemed reasonable and necessary by the secretary and promulgated in regulations pursuant to this chapter.

The secretary may, when public necessity and convenience require, or to prevent undue hardship to a sponsor or potential sponsor, 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 one year.

Section 4A: Exemptions

No person shall advertise, operate or maintain a personal care home without the license required by this chapter; provided, however, that the provisions of this chapter shall not apply to such entities for the original facilities and services for which said entities were originally licensed or organized to provide:

(1) assisted living residence as defined by section 1 of chapter 19D;

(2) convalescent homes, nursing homes, rest homes, charitable homes for the aged or intermediate care facilities for persons with an intellectual disability licensed pursuant to section 71 of chapter 111;

(3) hospices licensed pursuant to the provisions of section 57D of chapter 111;

(4) facilities providing continuing care to residents as defined by section 76 of chapter 93;

(5) congregate housing authorized by section 39 of chapter 121B;

(6) group homes operating under contract with the department of mental health or the department of developmental services;

(7) housing operated for only those duly ordained priests, or for the members of the religious orders of the Roman Catholic church in their own locations, buildings, residences or headquarters to provide care, shelter, treatment and medical assistance for any of the said duly ordained priests or members of the said religious orders; or

(8) Premises where the owner of the real property of the premises has no ownership, control or affiliation with any provider of home-based and community-based personal assistance services at those premises.

Section 4B: Transfer of Ownership

In the case of the transfer of ownership of a personal care home, a prospective transferee, in the capacity of a prospective sponsor, shall submit a notice of intent to acquire such a home to the secretary at least ninety days prior to the transfer of ownership. The notice of intent shall be on a form supplied by the secretary and shall be deemed complete upon submission of all information that the department requires on the notice of intent form and is reasonably necessary to carry out the purposes of this section. Within ninety days of the submission of a completed notice of intent form, the secretary shall determine whether such prospective sponsor is responsible and suitable for licensure. Requests by the secretary for information other than the information required on the notice of intent form shall not extend the ninety day period. Notwithstanding the foregoing, the secretary with the consent of said prospective licensee may extend the ninety day determination period for one additional period not to exceed thirty days.

The prospective sponsor shall be deemed responsible and suitable upon the expiration of the ninety day period, or upon the expiration of said period as extended, if the secretary fails to notify said prospective sponsor in writing of its decision within the ninety day period or within the expiration of the extension period, whichever is applicable.

Upon determination by the secretary that the prospective sponsor is responsible and suitable for licensure, or upon the failure of the department to notify said prospective sponsor in writing of its decision within the required period, and upon a transfer of ownership, the

prospective sponsor may file an application for a license that shall have the effect of a license until the secretary takes final action on the application.

If the secretary determines that the prospective sponsor is not suitable for licensure, the secretary's determination shall take effect on the date of the secretary's notice. In such cases, the prospective sponsor shall upon the filing of a written request with the secretary be afforded an adjudicatory hearing pursuant to chapter thirty A. During the pendency of such appeal, the prospective sponsor shall neither operate the facility as a sponsor, nor, without prior approval of the secretary, manage such personal care home.

No transfer of ownership of a personal care home shall occur unless the prospective sponsor has been deemed suitable for licensure in accordance with the provisions of this section.

Section 4C: Denial, suspension, or revocation of license

The secretary may deny, suspend or revoke a license in any case after finding a failure or refusal to comply with the requirements established under this chapter or the regulations promulgated thereunder. Notice of denial, revocation, suspension or modification and the sponsor's or prospective sponsor’s right to an adjudicatory proceeding shall be governed by the provisions of chapter 30A.

In no case shall the revocation of such a license take effect in less than thirty days after written notification by the Secretary to the personal care home.

Section 4D: Licensing Fee

The fee for the issue or renewal of each license shall be determined annually by the commissioner of administration under the provision of section 3B of chapter 7. The fee shall be

sufficient to support the direct and indirect costs incurred by the department of elder affairs related to the duties established by section 4, including, but not limited to, costs incurred when the secretary delegates inspection to an ASAP.

Section 4E: Access

The Sponsor or Administrator shall provide, upon request, immediate access to the home, the residents and records to agents of the department of elder affairs, representatives of the ASAP and representatives of the long-term care ombudsman program.

Section 5: Delivery of long-term services and supports

Consistent with the powers enumerated in section 4 of chapter 19A, the secretary shall mobilize the human, physical and financial resources available to develop and implement innovative programs and service models to support residents of personal care homes. The secretary shall encourage the development and availability of personal care homes as a care setting option for individuals who require assistance or supervision with activities of daily living, instrumental activities of daily living or both.

All residents of personal care homes who meet the eligibility requirements of the state home care program as defined in section 2 shall have access to the services and supports provided by the program.

When a personal care home resident is enrolled in the state home care program, a sponsor must accept as full payment for cost of care services the amount of the combined service revenues resulting from the state home care program, and any other formal and informal resources being coordinated through the service plan as maintained by the ASAP. All residents

of personal care homes shall have a person-centered care plan maintained and authorized by an ASAP.

Section 6: Resident Contract

The personal care home shall have a signed contract with each resident that specifies the terms of his or her agreement. The secretary shall establish the minimum requirements of the resident contract between the personal care home administrator and the personal care home resident.

The resident contract shall include, but not be limited to, the following:

(1) Information regarding services the resident will receive covered under the ASAP service plan. The ASAP service plan will account for both formal and informal services coordinated for the resident, and in consideration of the service schedules of the other residents within the particular personal care home;

(2) Arrangements for payment, including cost-sharing requirements of the ASAP service plan;

(3) A grievance procedure that requires the initial grievance to be presented to the personal care home administrator, and includes an escalation process for the grievance to be further reviewed first by the ASAP and then by the executive office of elder affairs;

(4) The conditions under which either party may terminate the resident contract; and

(5) Information and acknowledged disclosure regarding how the resident may contact the community care ombudsman.

The term of a resident contract shall not exceed one year and may be renewable for one year at the option of the personal care home resident. A condition of the option is for a person-centered care plan maintained and authorized by the ASAP and approved by the personal care home resident to be in place at the time of extension.

Section 6A: Discharge

The secretary shall establish the procedural requirements for an involuntary discharge, including the notice requirements and the related appeal process, in furtherance of this section.

If a personal care home resident does not meet the terms for occupancy as stated in the resident contract, the personal care home shall not commence involuntary discharge until the administrator has discussed the reasons for the involuntary discharge with the designated representative of the personal care home resident and the ASAP care manager responsible for the service plan. Documentation of the discussions shall be placed in the resident's record.

A resident may be involuntarily discharged only if one or more of the following occurs:

(1) The resident poses an immediate threat to self or others;

(2) The resident needs mental health services to prevent harm to self or others;

(3) The resident has substantially breached the conditions of the residential contract;

(4) The personal care home sponsor has had its license terminated, suspended, not renewed, or voluntarily surrendered; or

(5) The personal care home can no longer meet the resident's needs with available support services. Triggering this occurrence requires a signed affirmation by the ASAP

responsible for maintaining the service plan. Furthermore, triggering this occurrence requires the clinical review of an ASAP from a contiguous service area with a signed statement confirming that the reviewing ASAP does not object to the involuntary discharge for the reason of no longer being able to meet the resident's needs with available support services.

The secretary shall establish the procedural requirements for an involuntary discharge, including the notice requirements and the related appeal process.

The administrator shall prepare plans, in consultation with the ASAP, to ensure safe and orderly involuntary discharge while protecting resident health, safety and rights.

Section 7: Supports for Room and Board

The secretary shall coordinate with the commissioner to develop an optional state supplement for recipients of supplemental security income who reside in personal care homes. The optional state supplement shall be no less than the supplement for assisted living. The optional state supplement may exceed the assisted living supplement by no more than ten percent.

The secretary shall recommend, and the commissioner shall establish and routinely revise, a personal needs allowance for residents of personal care homes.

A personal care home shall accept as full payment for room and board the amount of the combined optional state supplement and the supplemental security income payment, minus the personal needs allowance.

Section 8: ASAP Performing as Sponsor

Consistent with section 4B of chapter 19A, an ASAP may, in its role of a nonprofit agency capable of marshaling resources from within the community it serves, serve as sponsor to a personal care home. In such an instance, for the purpose of paragraph six in section 4 of chapter 19A, an ASAP coordinating and receiving the supports for room and board payments related to section 7 of said chapter shall not be considered a direct service.

When performing as a personal care home sponsor, the ASAP shall submit a plan for the review and approval of the secretary that specifies the measures taken to ensure adherence to the requirements of paragraph six in section 4 of chapter 19A.