

**HOUSE . . . . . No. 142**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Josh S. Cutler*

*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 community living for older adults and people with disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/19/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/25/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/2/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/27/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/4/2023</i>

**HOUSE . . . . . No. 142**

By Representative Cutler of Pembroke, a petition (accompanied by bill, House, No. 142) of Josh S. Cutler and others relative to community living for older adults and people with disabilities. Children, Families and Persons with Disabilities.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act relative to community living for older adults and people with disabilities.

*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 30A of the General Laws, as appearing in the 2018 Official  
2 Edition, is hereby amended by striking out paragraph (d) of section 20.

3 SECTION 2. Chapter 30A of the General Laws, as appearing in the 2018 Official  
4 Edition, is hereby amended by inserting after section 20 the following section:-

5 Section 20A. (a) A public body may allow remote participation by any member for any  
6 meeting of the public body. For the purposes of this section, the term remote participation means  
7 participation by a member of a public body during a meeting of that public body where the  
8 member is not physically present at the meeting location.

9 (b) Members remotely participating in a meeting may vote, shall be considered present  
10 and in attendance for all purposes, including for purposes of determining a quorum and for the  
11 purposes of section 23D of chapter 39.

12 (c) All members of the public body participating either remotely or at a meeting location  
13 shall be clearly audible to one another.

14 (d) For any meeting conducted through remote participation, the public body shall make  
15 provisions to ensure public access to the deliberations of the public body for interested members  
16 of the public through adequate, alternative means. Adequate, alternative means of public access  
17 shall mean measures that provide transparency and permit timely and effective public access to  
18 the virtual meeting. Such means may include, without limitation, providing public access  
19 through telephone, Internet or satellite enabled audio or video conferencing or any other  
20 technology that enables the public to clearly follow the proceedings of the virtual meeting while  
21 those proceedings are occurring. Documents used for any such meeting should be made available  
22 to the public before or at the time of the meeting of the public body. Where allowance for active,  
23 real-time participation by members of the public is a specific requirement of a general or special  
24 law or regulation, or a charter, local ordinance or by-law, pursuant to which the proceeding is  
25 conducted, any alternative means of public access shall provide for such participation. A public  
26 body shall offer its selected alternative means of public access to virtual meetings without  
27 subscription, toll, or similar charge to the public.

28 (e) A public body that elects to conduct its proceedings remotely shall ensure that any  
29 party entitled or required to appear before it may do so through remote means, as if the party  
30 were a member of the public body participating remotely.

31 (f) The executive body of a municipality shall develop and adopt standards and  
32 guidelines for remote participation of public bodies that is sufficient for the municipality prior to  
33 any remote meeting held pursuant to this law.

34 SECTION 2. The first paragraph of section 13A of chapter 22 of the General Laws, as  
35 appearing in the 2018 Official Edition, is hereby amended by striking out the second and third  
36 sentences and inserting in place thereof the following 3 sentences:-

37 “Two of the appointive members shall be architects licensed to practice in the  
38 commonwealth. One of the appointive members shall be a licensed building inspector. Three of  
39 the appointive members shall be selected after consultation with advocacy groups on behalf of  
40 persons with disabilities”

41 SECTION 3. The first paragraph of section 13A of chapter 22 of the General Laws, as so  
42 appearing, is hereby further amended by striking out the fourth paragraph, in lines 38 through 63,  
43 and inserting in place thereof the following four paragraphs:-

44 The board shall make and from time to time alter, amend, and repeal, in accordance with  
45 the provisions of chapter thirty A, rules and regulations designed to make multiple dwellings,  
46 and public buildings and facilities, including but not limited to areas that are not generally in  
47 public use, accessible to, functional for and safe for use by persons with disabilities. The board  
48 shall also make rules and regulations requiring that any person who has lawful control of  
49 improved or enclosed private property used as off-street parking areas where the public has a  
50 right of access as invitees or licensees, shall reserve parking spaces in said off-street parking  
51 areas for vehicles authorized to display handicapped plates or placards under section 2 of chapter  
52 90; provided, that the parking requirements shall be consistent with the Americans with  
53 Disabilities Act Standards for Accessible Design. The parking spaces reserved for vehicles of  
54 such handicapped persons shall be clearly marked as such.

55           The rules and regulations of the board shall also establish standards and procedures  
56 designed to make adaptable for persons with physical disabilities for any building, regardless of  
57 the date of construction, (1) all dwelling units in multiple dwellings equipped with an elevator;  
58 (2) all ground floor dwelling units in multiple dwellings not equipped with an elevator; and (3)  
59 all public use and common use portions of such multiple dwellings, providing however, that in  
60 any building constructed before March thirteenth, nineteen hundred and ninety one, such  
61 standards and procedures for dwelling units shall apply only to such units within (1) any non-  
62 residential building undergoing a gut rehabilitation as part of a change in use into a multiple  
63 dwelling facility, or (2) any residential building which is vacant undergoing a gut rehabilitation.

64           The rules and regulations of the board shall establish standards and procedures designed  
65 to make accessible to, functional for and safe for use by persons with physical disabilities  
66 residential buildings whenever constructed and without the restrictions in the above paragraph.  
67 Unless otherwise specified, five percent of the units in lodging or residential facilities for hire,  
68 rent or lease, containing twenty or more units, shall meet this requirement; provided, however,  
69 that accessible units shall allow five feet of turning radius for a wheelchair in the kitchens and  
70 bathrooms. In the event that the board determines that the need, in certain areas of the  
71 commonwealth, for such units either exceeds or does not require said five percent, the board may  
72 require that, in said areas a percentage of units less than five percent or not greater than ten  
73 percent be accessible and safe for persons with disabilities; provided, however, that said  
74 accessible units shall allow five feet of turning radius for a wheelchair in the kitchens and  
75 bathrooms. The board may make such determination only if there is sufficient factual basis,  
76 using data from the central registry of the Massachusetts Rehabilitation Commission and other  
77 sources, to establish with a reasonable degree of certainty the present and future needs for said

78 accessible units in certain areas of the commonwealth. A percentage of less than five percent  
79 shall not be established unless such accessible units, which are not needed by persons with  
80 disabilities cannot be readily hired, rented, or leased to other persons.

81 The rules and regulations of the board shall include, but not be limited to, detailed  
82 architectural standards further defining adaptable and accessible dwelling units, and such other  
83 provisions necessary to provide rights and remedies substantially equivalent to or greater than  
84 the rights and remedies provided by the Federal Fair Housing Act, the Department of Justice's  
85 Americans with Disabilities Act Standards for Accessible Design and regulations thereunder as  
86 they pertain to such multiple dwellings.

87 SECTION 4. Said section 13A of said chapter 22, as so appearing, is hereby further  
88 amended by striking out, in lines 11 and 12, the words "in behalf of the physically handicapped"  
89 and inserting in place thereof the following words:-

90 "on behalf of persons with disabilities".

91 SECTION 5. Said section 13A of said chapter 22, as so appearing, is hereby further  
92 amended by inserting after the word "buildings", in line 67, the following words:-

93 "and facilities".

94 SECTION 6. Said section 13A of said chapter 22, as so appearing, is hereby further  
95 amended by inserting after the word "buildings", in line 75, the following words:-

96 "and facilities".

97 SECTION 7. Said section 13A of said chapter 22, as so appearing, is hereby further  
98 amended by striking out, in lines 80 and 81, the words “handicapped persons,” and inserting in  
99 place thereof the following words:-

100 “persons with a disability”.

101 SECTION 8. Said section 13A of said chapter 22, as so appearing, is hereby further  
102 amended by striking out, in lines 88 and 89 the word “newspaper” and inserting in place thereof  
103 the following words:-

104 “forms of”.

105 SECTION 9. Said section 13A of said chapter 22, as so appearing, is hereby further  
106 amended by inserting after the word “building”, in line 93, the following words:-

107 “or facility, including Areas not generally in Public Use”

108 SECTION 10. Said section 13A of said chapter 22, as so appearing, is hereby further  
109 amended by inserting after the word “building”, in line 94, the following words:-

110 “or facility”.

111 SECTION 11. Said section 13A of said chapter 22, as so appearing, is hereby further  
112 amended by inserting after the word “changed to a”, in line 94, the following words:-

113 “residential use or a”.

114 SECTION 12. Said section 13A of said chapter 22, as so appearing, is hereby further  
115 amended by inserting, in line 94, after the words “which the building” the following words:-

116 “or facility.”

117 SECTION 13. Said section 13A of said chapter 22, as so appearing, is hereby further  
118 amended by inserting after the word “building”, in line 96, the following words:-

119 “or facility”.

120 SECTION 14. Said section 13A of said chapter 22, as so appearing, is hereby further  
121 amended by striking out, in lines 102 and 103, the words “physically handicapped persons” and  
122 inserting in place thereof the following words:-

123 “persons with a disability”.

124 SECTION 15. Said section 13A of said chapter 22, as so appearing, is hereby further  
125 amended by striking out the eighth paragraph, consisting of lines 107 through 127.

126 SECTION 16. Said section 13A of said chapter 22, as so appearing, is hereby further  
127 amended by striking out, in lines 131 and 132, the word “person” and inserting in place thereof  
128 the following words:-

129 “building, or portion thereof.”.

130 SECTION 17. Said section 13A of said chapter 22, as so appearing, is hereby further  
131 amended by inserting after the words “for a building”, in line 150, the following words:-

132 “or facility”.

133 SECTION 18. Said section 13A of said chapter 22, as so appearing, is hereby further  
134 amended by inserting after the word “building”, in line 166, the following word:-



135 “, facility”.

136 SECTION 19. Said section 13A of said chapter 32, as so appearing, is hereby further  
137 amended by striking out, in lines 177, 179 and 187 the words “physically handicapped persons”  
138 and inserting in place thereof, in each instance, the following words:-

139 “persons with a disability”.

140 SECTION 20. Said section 13A of said chapter 22, as so appearing, is hereby further  
141 amended by inserting after the definition of “Alteration”, the following definition:-

142 “Areas that are not generally in public use,” areas not intended for use by the public, as  
143 designated in the 1991 and 2010 Americans with Disabilities Act (ADA) Standards for  
144 Accessible Design, and employee work areas.

145 SECTION 21. Said section 13A of said chapter 22, as so appearing, is hereby further  
146 amended by inserting after the definition of “Construction” the following definitions:-

147 “Employee work area” all or any portion of a space used only by employees and used  
148 only for work. Corridors, toilet rooms, kitchenettes and break rooms are considered “employee  
149 work areas” and shall be made accessible in new construction, or where renovation work being  
150 performed is otherwise subject to the jurisdiction of the Board. Corridors, toilet rooms,  
151 kitchenettes and break rooms are not otherwise considered “employee work areas;” provided  
152 however, that where corridors, toilet rooms, kitchenettes and break rooms constitute the path of  
153 travel to or are essential to the use of employees for work, they shall be, when possible,  
154 adaptable.

155           “Facility”, all or any portion of a building, structure, site improvement, complex,  
156 equipment, road, walk, passageway, parking lot or other real or personal property, including the  
157 site where the building, property, structure or equipment is located.”

158           “Gut rehabilitation,” the general replacement of the interior of a building that may or  
159 may not include changes to structural elements such as flooring systems, columns or load  
160 bearing interior or exterior walls.

161           SECTION 22. Said section 13A of said chapter 22, as so appearing, is hereby further  
162 amended by striking out the definition of “Public building” and inserting in place thereof the  
163 following definition:-

164           “Public building”, buildings constructed by the commonwealth or any political  
165 subdivision thereof with public funds and open to public use, including, but not limited to, those  
166 constructed by public housing authorities, the Massachusetts Port Authority, the Massachusetts  
167 Parking Authority, the Massachusetts Department of Transportation, the Massachusetts Bay  
168 Transportation Authority, or building authorities of any public educational institution, or their  
169 successors; and privately financed buildings that are open to and used by the public, including  
170 but not limited to places of public accommodation listed in section 92A of chapter 272 of the  
171 General Laws, and 42 U.S.C. section 12181(7).

172           SECTION 23. Said section 13A of said chapter 22, as so appearing, is hereby further  
173 amended by striking out, in line 200, the words “Physically handicapped person” and inserting in  
174 place thereof the following words:-

175           “Person with a disability”.

176 SECTION 24. Said section 13A of said chapter 22, as so appearing, is hereby further  
177 amended by striking out, in line 204, the words “Physically handicapped persons” and inserting  
178 in place thereof the following words:-

179 “A person with a disability.”

180 SECTION 25. Not later than ninety days after the effective date of this act, the  
181 Architectural Access Board shall promulgate regulations as necessary pursuant to this act’s  
182 amendments of Chapter 22, section 13A.

183 SECTION 26. Notwithstanding section 5K of chapter 59 of the General Laws or any  
184 other general or special law to the contrary, a city or town that has accepted said section 5K may  
185 reduce the real property tax obligations of persons over the age of 60 who would have otherwise  
186 qualified for such reduction pursuant to said section 5K but for an inability to complete the  
187 volunteer requirements due to a lack of volunteer opportunities resulting from restrictions  
188 imposed in response to the 2019 novel coronavirus pandemic, also known as COVID-19;  
189 provided, that no reduction of said real property tax bill shall exceed \$1,500 in a given tax year.

190 SECTION 27. This act shall expire upon the termination of the governor’s March 10,  
191 2020 declaration of a state of emergency to respond to COVID-19.

192 SECTION 28. Chapter 23B of the General Laws is hereby amended by adding the  
193 following 7 sections:-

194 Section 29. As used in section 31 to 37, inclusive, the following words shall have the  
195 following meanings, unless the context clearly requires otherwise:-

196 “Accessibility features”, accessibility features that meet the specifications of an existing  
197 standard including: (i) accessibility ramp to a zero-step entrance from a driveway or public  
198 sidewalk; (ii) zero-step entrance; (iii) doors with at least 32 inches of clear width; (iv) hallways  
199 and passages with at least 36 inches of clear width; (v) accessible light switches, electrical outlets  
200 and environmental controls; (vi) accessible bathroom; (vii) accessible and useable kitchen  
201 facilities; (viii) retrofitting of an existing unit to include permanently installed lifts or elevators;  
202 (ix) purchase and permanent installation of a backup electric generator for life sustaining  
203 electric-powered medical equipment for devices such as respirators, oxygen concentrators or  
204 dialysis machines; and (x) installation of a permanent home monitoring system for residents with  
205 Alzheimer’s disease and other forms of dementia.

206 “Commission”, the Massachusetts rehabilitation commission established pursuant to  
207 section 74 of chapter 6.

208 “Disability”, a physical or mental impairment that substantially limits one or more major  
209 life activities of an individual.

210 “Dwelling unit”, any house or building, or portion thereof, that is occupied, designed to  
211 be occupied, or is rented, leased or hired out to be occupied, as a home or residence of 1 or more  
212 persons.

213 “Eligible individual”, an individual who has a disability or the caregiver who owns or  
214 rents the residency in which the individual who has a disability will reside.

215 “Existing standards”, adaptability features prescribed by the Massachusetts state building  
216 code, the specifications of the American National Standards Institute, the Uniform Federal

217 Accessibility Standards pursuant to 24 CFR Part 40 or Fair Housing Accessibility Guidelines  
218 pursuant to 24 CFR Part 100.

219 “Post-retrofit documentation”, evidence that the project has been completed including,  
220 but not limited to: (i) before and after pictures of the area that is retrofitted; (ii) copies of  
221 purchase contracts; (iii) invoices; (iv) cancelled checks; and (v) construction contracts.

222 “Sensory modification”, alarms, appliances and controls designed to assist sensory  
223 disabled individuals that are installed as a permanent part of the structure to the dwelling unit;  
224 provided, however that sensory modifications shall not include appliances or alarms that can be  
225 removed and reinstalled in another dwelling unit.

226 Section 30. (a) Any eligible individual, who intends to retrofit or contract with an  
227 individual or company to retrofit an existing dwelling unit; provided, that such retrofitting meets  
228 the qualification criteria as established in section 33, and meets the eligibility requirements  
229 established by guidelines developed by the department in consultation with the commission,  
230 shall be eligible for a livable home modification grant equal to not more than 50 per cent of the  
231 total amount spent; provided, that said livable home modification grant shall not exceed \$5,000.

232 (b) An eligible individual who has a disability, a caregiver or a guardian may apply for a  
233 livable home modification pursuant to section 34.

234 Section 31. (a) To qualify for a livable home modification grant, the proposed  
235 modification or retrofitting of an existing dwelling unit must include at least 1 accessibility  
236 feature or sensory modification and meet the requirements of an existing standard.

237 (b) The eligible individual's income in the prior year shall not exceed 120 per cent of the  
238 area median income, as determined by the United States Department of Housing and Urban  
239 Development. The calculation of an eligible individual's income shall only include the earnings  
240 of the individual with a disability and caregiver, if applicable; provided, that this calculation shall  
241 not include household income.

242 (c) If the eligible individual who has a disability was not required to file a federal tax  
243 return in the prior year, the resident shall be automatically eligible for a livable home  
244 modification grant; provided, however, that the eligible individual does not qualify or is not  
245 eligible for accessibility modifications funded through other local, state or federal programs.

246 Section 32. (a) Eligible individuals shall apply for a livable home modification grant by  
247 making application to the department, which shall issue a certification for an approved  
248 application to the individual who has a disability, caregiver or guardian.

249 (b) The department, in consultation with the commission, shall develop application  
250 guidelines that include, but shall not be limited to: (i) assessment of the individual who has the  
251 disability and the need for the livable home modifications; and (ii) proof of the eligible resident's  
252 income and documentation of any disability related exemptions.

253 (c) All applications shall be submitted and received by the department prior to the  
254 commencement of construction to modify or retrofit an existing residence to install accessibility  
255 features or sensory modifications.

256 Section 33. (a) Livable home modification grants shall only be allowed for the retrofitting  
257 or modification of a residential rental property, provided that the owner agrees to maintain the  
258 accessibility features or sensory modifications for 10 years.

259 (b) Individuals and other entities shall not be eligible to receive a livable home  
260 modification grant if they are:

261 (i) eligible for federal or state disabled access tax credits;

262 (ii) a limited liability company or foreign limited liability company, as defined by section  
263 2 of chapter 156C;

264 (iii) an S Corporation established pursuant to Subchapter S of Chapter 1 of the Internal  
265 Revenue Code, 26 USC §§ 1361 et seq.;

266 (iv) a cooperative housing corporation, as defined by section 4 of chapter 157B; or

267 (v) a corporation or foreign corporation, subject to chapter 156.

268 (c) Accessibility modifications that are eligible to be funded through local, state or  
269 federal programs shall not be eligible for livable home modification grants.

270 (d) Livable home modification grants shall not be used for the purchase or construction of  
271 residential rental property.

272 (e) The department shall not issue more than 1 livable home modification grant to an  
273 eligible individual or in relation to the modification or retrofitting of a dwelling unit.

274 Section 34. Applicants shall submit post-retrofit documentation to the department  
275 following the completion of the modification or retrofitting of the dwelling unit.

276 Section 35. The department shall, not later than August 31, submit an annual report to the  
277 governor, speaker of the house, senate president, and chairs of the joint committee on ways and  
278 means for preceding fiscal year. The annual report shall include, but shall not be limited to:

- 279 (i) number of grants issued to qualifying individuals;
- 280 (ii) number of applications that did not qualify;
- 281 (iii) total dollar amount of grants issued;
- 282 (iv) average dollar amount of the grants issued;
- 283 (v) number of retrofits by accessibility features; and
- 284 (vi) prognosis and estimated expenses for the individual if the retrofit had not been made,
- 285 including: (1) increased likelihood of falls and other related emergency room, hospital or
- 286 rehabilitation expenses; (2) loss of independence; and (3) move into a long-term care facility.

287 SECTION 36. The director of the department of housing and community development  
288 shall promulgate regulations necessary to implement and administer this act.

289 SECTION 37 Section 25 of Chapter 118E of the General Laws, as appearing in the 2010  
290 Official Edition, is hereby amended in subsection (5) by striking the second paragraph and  
291 inserting in place thereof the following paragraph:-

292 In any case where the monthly income of an applicant or recipient is in excess of the  
293 exemptions allowed, the applicant or recipient, if otherwise eligible for Medicaid under this  
294 chapter, shall be liable to pay to the provider of medical care or service an amount which shall be  
295 equal to the excess income for a period of six consecutive months, which includes the period  
296 when such service was provided; provided, however that in such cases where the individual's  
297 gross income is greater than 300% of the federal Supplemental Security Income level but less  
298 than the average monthly cost of nursing home care as calculated by the division and the  
299 individual is participating in a Home and Community Based Waiver, under 42 USC



300 1396a(10)(a)(ii)(VI) or a PACE Program, under 42 USC 1396u-4 or 42 USC 1395eee, the  
301 division shall charge a premium, equal to the difference between the individual's gross income  
302 and 300% of the federal Supplemental Security Income level, on a monthly basis. The division  
303 shall apply for any federal waivers necessary to implement this provision.

304 SECTION 38. The first paragraph of section 13A of chapter 22 of the General Laws, as  
305 appearing in the 2018 Official Edition, is hereby amended by striking out the second and third  
306 sentences and inserting in place thereof the following 3 sentences:-

307 "Two of the appointive members shall be architects licensed to practice in the  
308 Commonwealth. One of the appointive members shall be a licensed building inspector. Three of  
309 the appointive members shall be selected after consultation with advocacy groups on behalf of  
310 persons with disabilities."

311 SECTION 39. The first paragraph of section 13A of chapter 22 of the General Laws, as  
312 appearing in the 2018 Official Edition, is hereby further amended by striking out the fourth  
313 paragraph, consisting of lines 38 through 51, and inserting in place thereof the following  
314 paragraph:

315 The board shall make and from time to time alter, amend, and repeal, in accordance with  
316 the provisions of chapter thirty A, rules and regulations designed to make public buildings and  
317 facilities, including but not limited to areas that are not generally in public use, accessible to,  
318 functional for and safe for use by persons with disabilities. The board shall also make rules and  
319 regulations requiring that any person who has lawful control of improved or enclosed private  
320 property used as off-street parking areas where the public has a right of access as invitees or  
321 licensees, shall reserve parking spaces in said off-street parking areas for vehicles authorized to

322 display handicapped plates or placards under section 2 of chapter 90; provided, that the parking  
323 requirements shall be consistent with the Americans with Disabilities Act Standards for  
324 Accessible Design. The parking spaces reserved for vehicles of such handicapped persons shall  
325 be clearly marked as such.

326 SECTION 40. Said section 13A of said chapter 22, as so appearing, is hereby further  
327 amended by striking out, in lines 11 and 12, the words “in behalf of the physically handicapped”  
328 and inserting in place thereof the following words:-

329 "on behalf of persons with disabilities".

330 SECTION 41. Said section 13A of said chapter 22, as so appearing, is hereby further  
331 amended by inserting after the word “buildings”, in line 67, the following words:-

332 "and facilities".

333 SECTION 42. Said section 13A of said chapter 22, as so appearing, is hereby further  
334 amended by inserting after the word “buildings”, in line 75, the following words:-

335 "and facilities".

336 SECTION 436. Said section 13A of said chapter 22, as so appearing, is hereby further  
337 amended by striking out, in lines 80 and 81, the words “handicapped persons,” and inserting in  
338 place thereof the following words:-

339 "persons with a disability.

340 SECTION 44. Said section 13A of said chapter 22, as so appearing, is hereby further  
341 amended by striking out, in lines 88 and 89 the word “newspaper” and inserting in place thereof  
342 the following words:-

343 "forms of".

344 SECTION 45. Said section 13A of said chapter 22, as so appearing, is hereby further  
345 amended by inserting after the word “building”, in line 93, the following words:-

346 "or facility including Areas not generally in Public Use”

347 SECTION 46. Said section 13A of said chapter 22, as so appearing, is hereby further  
348 amended by inserting after the word “building”, in line 94, the following words:-

349 "or facility".

350 SECTION 47. Said section 13A of said chapter 22, as so appearing, is hereby further  
351 amended by inserting after the word “changed to a”, in line 94, the following words:-

352 "residential use or a".

353 SECTION 48. Said section 13A of said chapter 22, as so appearing, is hereby further  
354 amended by inserting, in line 94, after the words “which the building” the following words:-

355 "or facility."

356 SECTION 49. Said section 13A of said chapter 22, as so appearing, is hereby further  
357 amended by inserting after the word “building”, in line 96, the following words:-

358 "or facility".

359 SECTION 50. Said section 13A of said chapter 22, as so appearing, is hereby further  
360 amended by striking out, in lines 102 and 103, the words “physically handicapped persons” and  
361 inserting in place thereof the following words:-

362 "persons with a disability".

363 SECTION 51. Said section 13A of said chapter 22, as so appearing, is hereby further  
364 amended by striking out the eighth paragraph, consisting of lines 107 through 127.

365 SECTION 52. Said section 13A of said chapter 22, as so appearing, is hereby further  
366 amended by striking out, in lines 131 and 132, the word “person” and inserting in place thereof  
367 the following words:-

368 "building, or portion thereof,".

369 SECTION 53. Said section 13A of said chapter 22, as so appearing, is hereby further  
370 amended by inserting after the words “for a building”, in line 150, the following words:-

371 "or facility".

372 SECTION 54. Said section 13A of said chapter 22, as so appearing, is hereby further  
373 amended by inserting after the word “building”, in line 166, the following word:-

374 ", facility".

375 SECTION 55. Said section 13A of said chapter 32, as so appearing, is hereby further  
376 amended by striking out, in lines 177, 179 and 187 the words “physically handicapped persons”  
377 and inserting in place thereof, in each instance, the following words:-

378 "persons with a disability".

379 SECTION 56. Said section 13A of said chapter 22, as so appearing, is hereby further  
380 amended by inserting after the definition of “Alteration”, the following definition:

381 “Areas that are not generally in public use,” areas not intended for use by the public, as  
382 designated in the 1991 and 2010 Americans with Disabilities Act (ADA) Standards for  
383 Accessible Design, and employee work areas.

384 SECTION 57. Said section 13A of said chapter 22, as so appearing, is hereby further  
385 amended by inserting after the definition of “Construction” the following definitions:-

386 “Employee work area”:-

387 "Employee work area," all or any portion of a space used only by employees and used  
388 only for work. Corridors, toilet rooms, kitchenettes and break rooms are considered “employee  
389 work areas” and shall be made accessible in new construction, or where renovation work being  
390 performed is otherwise subject to the jurisdiction of the Board. Corridors, toilet rooms,  
391 kitchenettes and break rooms are not otherwise considered “employee work areas;” provided  
392 however, that where corridors, toilet rooms, kitchenettes and break rooms constitute the path of  
393 travel to or are essential to the use of employees for work, they shall be, when possible,  
394 adaptable.

395 “Facility”, all or any portion of a building, structure, site improvement, complex,  
396 equipment, road, walk, passageway, parking lot or other real or personal property, including the  
397 site where the building, property, structure or equipment is located."

398 SECTION 58. Said section 13A of said chapter 22, as so appearing, is hereby further  
399 amended by striking out the definition of “Public building” and inserting in place thereof the  
400 following definition:-

401 “Public building”, buildings constructed by the commonwealth or any political  
402 subdivision thereof with public funds and open to public use, including, but not limited to, those  
403 constructed by public housing authorities, the Massachusetts Port Authority, the Massachusetts  
404 Parking Authority, the Massachusetts Department of Transportation, the Massachusetts Bay  
405 Transportation Authority, or building authorities of any public educational institution, or their  
406 successors; and privately financed buildings that are open to and used by the public, including  
407 but not limited to places of public accommodation listed in section 92A of chapter 272 of the  
408 General Laws, and 42 U.S.C. section 12181(7).

409 SECTION 59. Said section 13A of said chapter 22, as so appearing, is hereby further  
410 amended by striking out, in line 200, the words “Physically handicapped person” and inserting in  
411 place thereof the following words:-

412 "Person with a disability".

413 SECTION 60. Said section 13A of said chapter 22, as so appearing, is hereby further  
414 amended by striking out, in line 204, the words “Physically handicapped persons” and inserting  
415 in place thereof the following words:-

416 "A person with a disability."

417 SECTION 61. Chapter 118E of the General Laws is hereby amended by striking out  
418 section 31 and inserting in place thereof the following section:-

419 Section 31. (a) This subsection shall apply to estates of individuals dying prior to April 1,  
420 1995. There shall be no adjustment or recovery of medical assistance correctly paid except as  
421 follows:

422 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
423 regardless of age, who was an inpatient in a nursing facility or other medical institution when the  
424 individual received such assistance. Recovery of the assistance shall be limited to assistance  
425 provided on or after March 22, 1991.

426 (2) Recovery from Persons Age 65 and Over: From the estate of an individual who was  
427 65 years of age or older when the individual received such assistance. Any recovery may be  
428 made only after the death of the surviving spouse, if any, and only at a time when the individual  
429 has no surviving child who is under age 21 or is blind or permanently and totally disabled. The  
430 division shall waive recovery where it would result in undue hardship, as defined by the division  
431 in its regulations.

432 (b) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in  
433 which a petition for admission to probate of a decedent's will or for administration of a  
434 decedent's estate is filed prior to [the effective date of the amendment]. There shall be no  
435 adjustments or recovery of medical assistance correctly paid except as follows:

436 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
437 regardless of age, who was an inpatient in a nursing facility or other medical institution when the  
438 individual received such assistance. Recovery of the assistance shall be limited to assistance  
439 provided on or after March 22, 1991.

440 (2) Recovery from Persons Age 65 and Over: From the estate of an individual who was  
441 65 years of age or older when the individual received the assistance.

442 (3) Recovery from Persons Age 55 and Over for Post–October 1, 1993 Medicaid: From  
443 the estate of an individual who was 55 years of age or older when the individual received such  
444 assistance, where the assistance was for services provided on or after October 1, 1993.

445 Any recovery under this subsection may be made only after the death of the surviving  
446 spouse, if any, and only at a time when the individual has no surviving child who is under age 21  
447 or is blind or permanently and totally disabled. The division shall waive recovery if recovery  
448 would work an undue hardship, as defined by the division in its regulations.

449 (c) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in  
450 which a petition for admission to probate of a decedent's will or for administration of a  
451 decedent's estate is filed on or after [effective date of amendment]. There shall be no adjustments  
452 or recovery of medical assistance correctly paid except as follows:

453 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
454 regardless of age, who was an inpatient in a nursing facility or other medical institution within  
455 the meaning of 42 USC 1396p(a)(1)(B)(i) when he or she received such assistance. Recovery of  
456 such assistance shall be limited to assistance provided on or after March 22, 1991.

457 (2) Recovery from Persons Age 55 and Over for Post–October 1, 1993 Medicaid: From  
458 the estate of an individual who was 55 years of age or older when the individual received such  
459 assistance, where such assistance was for services provided on or after October 1, 1993, but only  
460 for medical assistance consisting of nursing facility services, home and community-based



461 services, and related hospital and prescription drug services for which estate recovery is  
462 mandated by 42 USC 1396p(b)(1)(B)(i) or other federal law.

463 Any recovery under this subsection may be made only after the death of the surviving  
464 spouse, if any, and only at a time when the individual has no surviving child who is under age 21  
465 or is blind or disabled. The division shall not recover for capitated payments made to managed  
466 care entities that exceed the actual cost of medical services received by the decedent.

467 The division shall waive recovery:

468 (i) if such recovery is not cost effective, including when the total gross assets of the  
469 estate, less any claims that have priority over MassHealth, or mortgages or liens on real property,  
470 in a probate estate are \$25,000 or less; or

471 (ii) if such recovery would create an undue hardship. The division shall promulgate  
472 regulations defining undue hardship that shall include, but not be limited to, cases in which:

473 (A) a sale of real property would be required to satisfy a claim against the probate estate;  
474 and the property is occupied as the home of a surviving spouse, child under age 21, child of any  
475 age who is blind or disabled, surviving sibling with a legal interest in the property or a child to  
476 whom the decedent could have transferred the home during his or her lifetime with no transfer of  
477 asset penalty pursuant to 42 USC 1396p(c)(2)(A) or (B); or

478 (B) a sale of real property would be required to satisfy a claim against the probate estate,  
479 and the property is occupied as the home of an individual who has lived in it for at least 1 year  
480 prior to the death of the decedent provided that if at the time of death the decedent was a nursing  
481 facility resident, the individual must have lived in the home for at least 1 year prior to the

482 decedent's nursing facility admission, has inherited or received a legal or equitable interest in the  
483 property, is not being forced to sell by other devisees or heirs at law and whose income is 400  
484 per cent of the federal poverty level or less at the time of the decedent's death; or

485 (C) a sale of real property would be required to satisfy a claim against the probate estate,  
486 at the time the notice of claim is filed the property is occupied as the home of an individual who  
487 has lived in it for at least 2 consecutive years prior to the decedent becoming institutionalized or  
488 before the decedent's death, and during that time the individual provided a level of care that kept  
489 the decedent from needing to be admitted to a nursing home, and the individual has inherited or  
490 received a legal or equitable interest in the property, and is not being forced to sell by other  
491 devisees or heirs at law; or

492 (D) the gross income of a devisee or heir was 400 per cent of the federal poverty level or  
493 less during the 2 years prior to the date of presentment of the division's claim, in which case, the  
494 division shall waive recovery in an amount equal to the value of the devisee's or heir's interest in  
495 the estate up to a maximum of \$50,000 per qualifying individual; provided, if there are multiple  
496 individuals who qualify for this waiver, the maximum amount waived is \$100,000 per estate; or

497 (E) the sale of a homestead of modest value, as defined by the division consistent with  
498 federal guidelines, would be required to satisfy the claim; or

499 (F) other compelling circumstances in which recovery would create a financial hardship  
500 for one or more devisees or heirs at law whose income is 400 percent of the federal poverty level  
501 or less.

502 (d) For purposes of this section, "estate" shall mean all real and personal property and  
503 other assets includible in the decedent's probate estate under the General Laws, provided that it

504 shall not include certain property of American Indians that the Secretary has exempted from  
505 Medicaid estate recovery pursuant to 42 USC 1396p(b)(3)(B) or Government reparation  
506 payments to special populations that are exempt from Medicaid estate recovery pursuant to  
507 federal law.

508 (e) There shall be no adjustments or recovery of medical assistance correctly paid from  
509 the estate of an individual who was receiving such assistance pursuant to the CommonHealth  
510 program for disabled adults.

511 (f) For purposes of this section, medical assistance shall not include medical assistance  
512 for medicare cost-sharing or for benefits described in 42 USC 1396a(a)(10)(E) that are exempt  
513 from Medicaid estate recovery.

514 (g) The division is also authorized during an individual's lifetime to recover all assistance  
515 correctly provided on or after April 1, 1995, if property against which the division has a lien or  
516 encumbrance under section 34 is sold. No lien or encumbrance shall be valid against any bona  
517 fide purchaser for value or take priority against any subsequent mortgagee for value unless and  
518 until it is recorded in the registry of deeds where the property lies.

519 Repayment shall not be required under this subsection while any of the following  
520 relatives lawfully resides in the property: (1) a sibling who had been residing in the property for  
521 at least 1 year immediately prior to the individual being admitted to a nursing facility or other  
522 medical institution; or (2) a child who (i) had been residing in the property for at least two years  
523 immediately prior to the parent being admitted to a nursing facility or other medical institution;  
524 (ii) establishes to the satisfaction of the division that the child provided care which permitted the  
525 parent to reside at home during that 2-year period rather than in an institution; and (iii) has

526 lawfully resided in the property on a continuous basis while the parent has been in the medical  
527 institution.

528           If repayment is not yet required because a relative specified above is still lawfully  
529 residing in the property and the individual wishes to sell the property, the purchaser shall take  
530 possession subject to the lien or the division shall release the lien if the individual agrees to (1)  
531 either set aside sufficient assets to satisfy the lien or give bond to the division with sufficient  
532 sureties and (2) repay the division as soon as the specified relative is no longer lawfully residing  
533 in the property. Notwithstanding the foregoing or any general or special law to the contrary, the  
534 division and the parties to the sale may by agreement enter into an alternative resolution of the  
535 division's lien. This subsection shall not limit the division's ability to recover from the  
536 individual's estate under subsection (a), (b), or (c) or as otherwise provided under any general or  
537 special law. The division shall provide a release of any lien where repayment shall not be  
538 required within 60 days of receiving notice of the change in circumstances resulting in  
539 repayments no longer being required.

540           SECTION 62. Said chapter 118E is further amended by striking out section 32 and  
541 inserting in place thereof the following section:-

542           Section 32. (a) Notwithstanding any provision of law to the contrary, a petition for  
543 admission to probate of a decedent's will or for administration of a decedent's estate shall include  
544 a sworn statement that copies of said petition and death certificate have been sent to the division  
545 by certified mail in accordance with sections 3-306(f) and 3-403(f) of chapter 190B. Within 30  
546 days of a request by the division, a personal representative shall complete and send to the  
547 division by certified mail a form prescribed by the division and provide such further information

548 as the division may require. In the event a petitioner fails to send copies of the petition and death  
549 certificate to the division and the decedent received medical assistance for which the division is  
550 authorized to recover under section 31, any person receiving a distribution of assets from the  
551 decedent's estate shall be liable to the division to the extent of such distribution.

552 (b) The division may present claims against a decedent's estate as follows: (1) within 4  
553 months after approval of the official bond of the personal representative, file a written statement  
554 of the amount claimed with the registry of probate where the petition was filed and deliver or  
555 mail a copy thereof to the personal representative. The claim shall be deemed presented upon the  
556 filing of the claim in the registry of probate; or (2) within 1 year after date of death of the  
557 decedent, commence an action under the provisions of section 9 of chapter 197.

558 (c) When presenting its claim by written statement under subsection (b), the division shall  
559 also notify the personal representative of

560 (1) the circumstances and conditions which must exist for the division to be required to  
561 defer recovery under section 31;

562 (2) the circumstances and conditions which must exist for the division to waive recovery  
563 under its regulations for undue hardship;

564 (3) how to obtain a detailed accounting of the claim;

565 (4) limitations on estate recovery related to the decedent having a long term care policy;

566 (5) the limitation described in subsections (d), (e) and (f) of section 31; and

567 (6) the personal representative's obligation to mail a copy of the division's written  
568 statement to all individuals who may be entitled to deferral or waiver of estate recovery pursuant

569 to section 31 and of the personal representative's obligation to give the division notice of  
570 circumstances and conditions for deferral or waiver that he or she has reason to believe exist.  
571 The division shall also supply a form that may be used to notify the division of circumstances  
572 and conditions that require deferral or waiver of recovery.

573 (d) If the division presents a claim against the decedent's estate pursuant to subsection (b)  
574 the personal representative shall forthwith send a copy of the written statement by certified mail  
575 of the amount claimed to individuals who may be entitled to deferral or waiver of estate recovery  
576 pursuant to section 31 and the personal representative shall give the division notice of  
577 circumstances and conditions for deferral or waiver that he or she has reason to believe exist.  
578 The personal representative shall have 60 days from the date of presentment or 30 days from the  
579 date the agency responds to a request for a detailed accounting, whichever is later, to mail notice  
580 to the division by certified mail of one or more of the following findings: (1) the claim is  
581 disallowed in whole or in part, or (2) circumstances and conditions where the division is required  
582 to defer recovery under section 31 exist, or (3) circumstances and conditions where the division  
583 will waive recovery for undue hardship under its regulations exist. A notice under clause (2) or  
584 (3) shall state the specific circumstances and conditions which exist. The division shall notify the  
585 personal representative what supporting documentation it requires to determine if the  
586 circumstances in clause (2) or (3) exist and shall cooperate with the personal representative in  
587 supplying information in the possession of the agency. The division shall send a written notice to  
588 the personal representative stating whether or not it is satisfied that circumstances and conditions  
589 under clause (2) or (3) exist. If the division denies that said circumstances exist, its notice shall  
590 explain with specificity the reason for the denial and the opportunity for either an administrative  
591 hearing before the MassHealth Board of Hearings or a hearing in an action commenced by the

592 division pursuant to subsection (f) if no administrative hearing is requested. Any party aggrieved  
593 by a decision of the MassHealth board of hearings may seek a de novo review in any action  
594 commenced by the division pursuant to subsection (f). Failure to mail a notice under clauses (1),  
595 (2), or (3) within the time allowed from presentment shall be deemed an allowance of the claim  
596 for purposes of subsection (g).

597 (e) If the division at any time within the period for presenting claims under subsection (b)  
598 amends the amount due, the personal representative shall have an additional 60 days to mail  
599 notice to the division under clause 1 of subsection (d).

600 (f) If the division receives a disallowance under clause (1) of subsection (d), the division  
601 may commence an action to enforce its claim in a court of competent jurisdiction within 60 days  
602 after receipt of said notice of disallowance. If the division receives a notice under clause (2) or  
603 (3) of said subsection (d), with which it disagrees, the division may commence an action in a  
604 court of competent jurisdiction within 60 days after receipt of said notice or within 30 days of a  
605 final decision of the MassHealth board of hearings with which it disagrees, whichever is later. If  
606 the division commences an action to enforce its claim, any and all costs and fees incurred by the  
607 Personal Representative in defense of such claim shall be recognized as costs and expenses  
608 incurred in the administration of the estate and such expenses shall be given priority pursuant to  
609 clause (1) of subsection (a) of section 3-805 of chapter 190B. If the division fails to commence  
610 an action after receiving a notice under clause (2) of said subsection (d), the division shall defer  
611 recovery while the circumstances or conditions specified in said notice continue to exist. If the  
612 division fails to commence an action after receiving a notice under clause (3) of subsection (d),  
613 the division shall waive recovery for undue hardship.

614 (g) Unless otherwise provided in any judgment entered, claims allowed pursuant to this  
615 section shall bear interest at the rate provided under section 6I of chapter 231 commencing 4  
616 months plus 60 days after approval of the official bond of the personal representative.  
617 Notwithstanding the foregoing, if the division fails to commence an action after receipt of a  
618 notice under clause (2) of subsection (d), interest at the rate provided under section 6I of chapter  
619 231 shall not commence until the circumstances or conditions specified in the notice received by  
620 the division under said clause (2) cease to exist. The personal representative shall notify the  
621 division within 30 calendar days of any change in the circumstances or conditions asserted in  
622 said clause (2) notice, and upon request by the division, shall provide updated documentation  
623 verifying that the circumstances or conditions continue to exist. If the division's claim has been  
624 allowed as provided herein and no circumstances and conditions requiring that the division defer  
625 recovery under section 31 exist, it may petition the probate court for an order directing the  
626 personal representative to pay the claim to the extent that funds are available or for such further  
627 relief as may be required.

628 (h) Notice of a petition by a personal representative for a license to sell real estate shall  
629 be given to the division in any estate where: (1) the division has filed a written statement of  
630 claim with the registry of probate as provided in subsection (b); or (2) the division has filed with  
631 the registry of probate a notice, as prescribed under subsection (a) of section 9 of chapter 197,  
632 that an action has been commenced.

633 (i) In all cases where:—

634 (1) the division determines it may have a claim against a decedent's estate;



635 (2) a petition for administration of the decedent's estate or for admission to probate of the  
636 decedent's will has not been filed; and

637 (3) more than 1 year has passed from the decedent's date of death, the division is hereby  
638 authorized to designate a public administrator to be appointed and to serve pursuant to chapter  
639 194 subject to the time limitations under chapter 190B. Said designation by the division shall  
640 include a statement of the amount claimed. This provision shall apply to all estates in which no  
641 petition for administration of the decedent's estate or for admission to probate of the decedent's  
642 will has been filed as of the effective date of this section, regardless of the decedent's date of  
643 death. Said public administrator shall have the same rights and duties as the personal  
644 representative and the same 60-day opportunity to send notice to the division

645 (1) that the claim is disallowed in whole or in part; or

646 (2) circumstances and conditions where the division is required to defer recovery under  
647 section 31 exist; or

648 (3) circumstances and conditions where the division will waive recovery for undue  
649 hardship under its regulations exist.

650 (j) If the personal representative wishes to sell or transfer any real property against which  
651 the division has filed a lien or claim not yet enforceable because circumstances or conditions  
652 specified in section 31 continue to exist, the division shall release the lien or claim if the personal  
653 representative agrees to (1) either set aside sufficient assets to satisfy the lien or claim, or to give  
654 bond to the division with sufficient surety or sureties and (2) repay the division as soon as the  
655 circumstances or conditions which resulted in the lien or claim not yet being enforceable no  
656 longer exist. Notwithstanding the foregoing provision or any general or special law to the

657 contrary, the division and the parties to the sale may by agreement enter into an alternative  
658 resolution of the division's lien or claim.

659 SECTION 63. Said chapter 118E is further amended by inserting after section 34 the  
660 following section:-

661 Section 34A. (a) The division shall give notice of the conditions in which it may seek  
662 estate recovery, including, but not limited to, an explanation of what constitutes an estate, what  
663 services and expenses are subject to recovery, what Medicaid spending or property is exempt  
664 from estate recovery, the relationship between a life-time lien and estate recovery and provisions  
665 for deferral or waiver of estate recovery. The notice shall be in clear and non-technical language  
666 with citation to the applicable law. The notice should also explain how an individual may obtain  
667 an accounting of the current amount of MassHealth spending potentially subject to recovery. The  
668 notice must be supplied to individuals potentially subject to estate recovery at the time of  
669 application, at least annually thereafter so long as said individuals are eligible for MassHealth,  
670 and at the time any lien is released.

671 (b) The division shall give an additional notice to any individual who is required to enroll  
672 or given the option to enroll in any Medicaid managed care organization, accountable care  
673 organization, senior care options plan, integrated care organization, prepaid health plan or any  
674 other delivery system in which Medicaid spending takes the form of a fixed monthly premium or  
675 other capitated amount who may be subject to estate recovery. Said additional notice shall be  
676 prior to enrollment in managed care, and shall explain how the amount of MassHealth spending  
677 subject to estate recovery is determined when MassHealth spending is a fixed monthly payment

678 or capitated amount, and how the member may obtain the amount of said fixed payment or  
679 capitated amount subject to estate recovery.

680 SECTION 64. The executive office shall file a state plan amendment or waiver  
681 application, as may be required, to implement the provisions of this Act.

682 SECTION 65. Section 4 of chapter 19A of the general laws is hereby amended by adding  
683 in subsection (d) after the word “persons”, the following:-

684 “Including, but not limited to, providing information about the Program of All-Inclusive  
685 Care for the Elderly (PACE), pursuant to 42 CFR Part 460.60, Senior Care Options (SCO) and  
686 fee for service (CHOICES).”.

687 SECTION 66. Section 4B of chapter 19A of the general laws is hereby amended by  
688 adding in the fourth paragraph after the words “referral services to elders” in subsection (1) the  
689 following:-

690 “provided, that said information and referral services shall include, but not be limited to,  
691 information about the Program of all-inclusive care for the elderly (PACE) pursuant to 42 CFR  
692 Part 460.60; Senior Care Options (SCO) and fee for service (CHOICES).

693 SECTION 67. Section 9 of chapter 118E of the general laws is hereby amended by  
694 striking paragraph four and adding in place there of the following:-

695 “A person seeking admission to a long-term care facility paid for by MassHealth shall  
696 receive pre-admission counseling for long-term care services, which shall include an assessment  
697 of community-based service options including but not limited to the Program of all-inclusive  
698 care for the elderly (PACE) pursuant to CFR Part 460.60 Senior Care Options (SCO) and fee for

699 service (CHOICES). A person seeking care in a long-term care facility on a private pay basis  
700 shall be offered pre-admission counseling. For the purposes of this section, pre-admission  
701 counseling shall be conducted by the executive office of health and human services or the  
702 executive office of elder affairs or their subcontractors. The executive office of elder affairs  
703 shall, in consultation with the office of acute and ambulatory care in the executive office of  
704 health and human services, study the advisability and feasibility of using certain Medicaid  
705 providers to provide pre-admission counseling. The division shall report to the general court on  
706 an annual basis the number of individuals who received pre-admission counseling under this  
707 section and the number of diversions to the community generated by the pre-admission  
708 counseling program.”

709 SECTION 68. Section 3 of chapter 40A of the General Laws, as appearing in the 2014  
710 Official Edition, is hereby amended by inserting after the last paragraph the following 3  
711 paragraphs:-

712 No zoning ordinance or by-law shall prohibit or require a special permit for the use of  
713 land or structures for an accessory dwelling unit, or the rental thereof, in a single-family  
714 residential zoning district on a lot with 5,000 square feet or more or on a lot of sufficient area to  
715 meet the requirements of title 5 of the state environmental code established by section 13 of  
716 chapter 21A, if applicable; provided, however, that the single-family dwelling or the accessory  
717 dwelling unit is occupied by at least 1 person with disabilities or 1 person who is elderly.

718 As used in this section, “accessory dwelling unit” shall mean a self-contained housing  
719 unit, inclusive of sleeping, cooking and sanitary facilities, incorporated within the same structure  
720 as a single-family dwelling or in a detached accessory structure and that: (i) maintains a separate

721 entrance, either directly from the outside or through an entry hall or corridor shared with the  
722 single dwelling; (ii) shall not be sold separately from the single family dwelling; (iii) is not  
723 smaller in floor area than 450 square feet; (iv) may include up to two bedrooms; and (v) is not  
724 larger in floor area than ½ the floor area of the single family dwelling or 900 square feet,  
725 whichever is smaller; “person with disabilities” shall mean a person who has been determined to  
726 be disabled (i) in accordance with criteria established by local by-law or ordinance, if any, or (ii)  
727 by the Social Security Administration or MassHealth, notwithstanding any local by-law or  
728 ordinance; and “elderly” shall mean a person sixty-five years of age or older.

729           The zoning ordinance or by-law may require that the single-family dwelling or the  
730 accessory dwelling unit be owner-occupied and may limit the total number of accessory dwelling  
731 units in the municipality to a percentage not lower than 5 percent of the total non-seasonal  
732 housing units in the municipality. The use of land or structures for an accessory dwelling unit  
733 may be subject to reasonable regulations concerning dimensional setbacks and the bulk and  
734 height of structures. Not more than 1 additional parking space shall be required for an accessory  
735 dwelling unit but, if parking is required for the single family dwelling, that parking shall either  
736 be retained or replaced. An accessory dwelling unit allowed under this section is considered  
737 owner-occupied upon transfer of title of the single-family dwelling in whole or in part to a trust  
738 in which at least 1 beneficiary is a person with disabilities or a person who is elderly; provided,  
739 however, that either the single-family dwelling or the accessory dwelling unit remains occupied  
740 by that beneficiary. Nothing in this paragraph shall authorize an accessory dwelling unit to  
741 violate the building, fire, health or sanitary codes, historic or wetlands laws, or ordinances or by-  
742 laws.

743 SECTION 69. The General Laws are hereby amended by inserting after Chapter 19D, the  
744 following new chapter: –

745 Chapter 19D1/2

746 Section 1: Purpose

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

750 (b) Personal care homes are designed to provide safe, humane, comfortable and  
751 supportive residential settings for adults who require assistance or supervision with activities of  
752 daily living or instrumental activities of daily living, and qualify for the State Home Care  
753 Program. Residents who live in personal care homes that meet the requirements in this chapter  
754 will receive the encouragement and assistance they need to develop and maintain maximum  
755 independence and self-determination.

756 Section 2: Definitions

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

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

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

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

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

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

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

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

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

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

786 Section 3: Regulations

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

790 Section 4: Licensing of personal care homes

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

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

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

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



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

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

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

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

814 The secretary may, when public necessity and convenience require, or to prevent undue  
815 hardship to a sponsor or potential sponsor, under such rules and regulations as it may adopt,  
816 grant a temporary provisional or probationary license under this section; provided, however, that  
817 no such license shall be for a term exceeding one year.

#### 818 Section 4A: Exemptions

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

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

824 (2) convalescent homes, nursing homes, rest homes, charitable homes for the aged or  
825 intermediate care facilities for persons with an intellectual disability licensed pursuant to section  
826 71 of chapter 111;

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

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

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

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

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

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

#### 839 Section 4B: Transfer of Ownership

840 In the case of the transfer of ownership of a personal care home, a prospective transferee,  
841 in the capacity of a prospective sponsor, shall submit a notice of intent to acquire such a home to  
842 the secretary at least ninety days prior to the transfer of ownership. The notice of intent shall be  
843 on a form supplied by the secretary and shall be deemed complete upon submission of all  
844 information that the department requires on the notice of intent form and is reasonably necessary

845 to carry out the purposes of this section. Within ninety days of the submission of a completed  
846 notice of intent form, the secretary shall determine whether such prospective sponsor is  
847 responsible and suitable for licensure. Requests by the secretary for information other than the  
848 information required on the notice of intent form shall not extend the ninety day period.  
849 Notwithstanding the foregoing, the secretary with the consent of said prospective licensee may  
850 extend the ninety day determination period for one additional period not to exceed thirty days.

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

855 Upon determination by the secretary that the prospective sponsor is responsible and  
856 suitable for licensure, or upon the failure of the department to notify said prospective sponsor in  
857 writing of its decision within the required period, and upon a transfer of ownership, the  
858 prospective sponsor may file an application for a license that shall have the effect of a license  
859 until the secretary takes final action on the application.

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

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

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

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

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

876 Section 4D: Licensing Fee

877 The fee for the issue or renewal of each license shall be determined annually by the  
878 commissioner of administration under the provision of section 3B of chapter 7. The fee shall be  
879 sufficient to support the direct and indirect costs incurred by the department of elder affairs  
880 related to the duties established by section 4, including, but not limited to, costs incurred when  
881 the secretary delegates inspection to an ASAP.

882 Section 4E: Access

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

886 Section 5: Delivery of long-term services and supports

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

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

896 When a personal care home resident is enrolled in the state home care program, a sponsor  
897 must accept as full payment for cost of care services the amount of the combined service  
898 revenues resulting from the state home care program, and any other formal and informal  
899 resources being coordinated through the service plan as maintained by the ASAP. All residents  
900 of personal care homes shall have a person-centered care plan maintained and authorized by an  
901 ASAP.

#### 902 Section 6: Resident Contract

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

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

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

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

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

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

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

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

#### 924 Section 6A: Discharge

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

927 If a personal care home resident does not meet the terms for occupancy as stated in the  
928 resident contract, the personal care home shall not commence involuntary discharge until the

929 administrator has discussed the reasons for the involuntary discharge with the designated  
930 representative of the personal care home resident and the ASAP care manager responsible for the  
931 service plan. Documentation of the discussions shall be placed in the resident's record.

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

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

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

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

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

938 (5) The personal care home can no longer meet the resident's needs with available  
939 support services. Triggering this occurrence requires a signed affirmation by the ASAP  
940 responsible for maintaining the service plan. Furthermore, triggering this occurrence requires the  
941 clinical review of an ASAP from a contiguous service area with a signed statement confirming  
942 that the reviewing ASAP does not object to the involuntary discharge for the reason of no longer  
943 being able to meet the resident's needs with available support services.

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

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

948 Section 7: Supports for Room and Board

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

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

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

959           Section 8: ASAP Performing as Sponsor

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

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

968           SECTION 70. Chapter 121B is hereby amended by adding the following section:-



969 Section 61. (a) For purposes of this section, unless the context clearly requires otherwise,  
970 the following words shall have the following meanings:

971 “Bullying”, the repeated use by one or more residents of employees of, or visitors to, a  
972 covered residential community of a written, verbal or electronic expression physical act or  
973 gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional  
974 harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of  
975 harm to himself or of damage to his property; (iii) creates a hostile environment for the victim;  
976 (iv) infringes on the rights of the victim at a covered residential community; or (v) materially and  
977 substantially disrupts the orderly operation of a covered residential community. For the purposes  
978 of this section, bullying shall include but not be limited to cyber-bullying, group or social  
979 bullying, and mobbing.

980 “Covered residential community”, a public or privately-owned, multifamily residential  
981 housing development subsidized in whole or in part by the U.S. Department of Housing and  
982 Urban Development or the Commonwealth of Massachusetts and intended for occupancy  
983 primarily or solely persons aged 55 or older and/or persons with disabilities.

984 “Cyber-bullying”, bullying through the use of technology or any electronic  
985 communication, which shall include, but shall not be limited to, any transfer of signs, signals,  
986 writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a  
987 wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited  
988 to, electronic mail, internet communications, instant messages, instant messages or facsimile  
989 communications. Cyber-bullying shall also include (i) the creation of a web page or blog in  
990 which the creator assumes the identity of another person or (ii) the knowing impersonation of

991 another person as the author or posted content or messages, if the creation of impersonation  
992 creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of  
993 bullying. Cyber-bullying shall also include the distribution by electronic means of a  
994 communication to more than one person or the posting of material on an electronic medium that  
995 may be accessed by one or more persons, if the distribution or posting creates any of the  
996 conditions enumerated in clauses (i) to (v), inclusive or the definition of bullying.

997 “Group or social bullying” is the attempt by several persons acting together to engage in  
998 bullying conduct toward one or more victims by intentional, repeated, aggressive speech or  
999 action capable of causing harm.

1000 “Hostile environment”, a situation in which bullying causes the residential environment  
1001 to be permeated with intimidation, ridicule, or insult that is sufficiently severe or pervasive to  
1002 interfere with a resident’s peaceful enjoyment of her tenancy or rights as a tenant.

1003 “Mobbing”, is bullying that owner/management employees condone or take part in, with  
1004 the purpose of demeaning the victim and excluding them from the social life, quiet enjoyment of  
1005 occupancy, or occupancy status in a covered residential community.

1006 “Owner/managers”, the owner of a covered residential community and/or the property  
1007 manager or management agent responsible for managing a covered residential community.

1008 “Plan”, a bullying prevention and intervention plan established pursuant to subsection  
1009 (d).

1010           “Perpetrator”, a person who engages in bullying or retaliation, or an owner/management  
1011 company whose employees engage in, support or condone bullying, group or social bullying or  
1012 mobbing.

1013           “Residential property and grounds”, property on which a covered residential community  
1014 is located or property that is owned, leased, or used by an owner/manager or group of residents  
1015 for an activity, function, program, instruction or training related to the operation of the  
1016 residential community.

1017           “Victim”, a person against whom bullying, group or social bullying, mobbing, or  
1018 retaliation has been perpetrated.

1019           (b) Bullying shall be prohibited: (i) on residential property and ground, at an  
1020 owner/manager or resident sponsored activity, function or program whether on or off residential  
1021 grounds or through the use of technology or an electronic device owned, leased, or used by an  
1022 owner/manager; and (ii) at an owner/manager sponsored location, activity, or function or  
1023 program that is not located within the covered residential community, or through the use of  
1024 technology or an electronic device that is not owned, leased, or used by an owner/manager, if the  
1025 bullying creates a hostile environment in a covered residential community for the victim,  
1026 infringes on the rights of the victim at a covered residential community or materially and  
1027 substantially disrupts the orderly operation of a covered residential community. Nothing  
1028 contained herein shall require an owner/manager to staff any non-residence related activities,  
1029 functions, or programs.

1030           Retaliation against a person who reports bullying, provides information during an  
1031 investigation or bullying, or witnesses or has reliable information about bullying shall be  
1032 prohibited.

1033           (c) The public safety division of the Commonwealth’s attorney general’s office, after  
1034 consultation with the department of public health, the department of mental health, the executive  
1035 office of elder affairs, the office on disability, the department of housing and community  
1036 development, Mass Housing, the Massachusetts district attorneys association, representatives or  
1037 areawide tenant organizations representing residents of covered residential communities,  
1038 representatives or areawide associations or resident service coordinators and owner/managers,  
1039 and experts on bullying, group or social bullying, and mobbing shall, within one year of  
1040 enactment of this legislation: (i) publish a model plan and training curricula for owner/managers  
1041 to consider when creating their plans and curricula; and (ii) create and compile list of bullying  
1042 prevention and intervention resources, evidence-based curricula, best practices and academic-  
1043 based research that shall be made available to covered residential communities. The resources  
1044 may include, but shall not be limited to, print, audio, video or digital media; subscription based  
1045 online services; and on-site or technology-enabled professional development and training  
1046 sessions. The Division shall biennially update the model plan and the list of the resources,  
1047 curricula, best practices and research and shall post them on its website. The division shall  
1048 conduct a biennial confidential survey of residents and management staff to assess the  
1049 prevalence and extent of bullying and the effectiveness of remedial efforts, and publish the  
1050 findings while protecting the confidentiality of respondents.

1051 (d) Each owner/manager of a covered residential community shall provide appropriate  
1052 training on bullying prevention to all employees and residents of a covered residential  
1053 community. The curriculum shall be evidence-based.

1054 (e) (1) Each covered residential community shall develop, adhere to and update a plan to  
1055 address bullying prevention and intervention in consultation with residents, any legitimate  
1056 residents' association as defined by 24 CFR Part 245, resident support organizations,  
1057 owner/manager service employees, on-site management staff, professional support personnel,  
1058 community representatives, local law enforcement agencies, and division staff. The consultation  
1059 shall include, but not be limited to, notice and a public comment period. The plan shall be  
1060 adopted and implemented within six months of preparation of a model plan by the division and  
1061 updated at least biennially.

1062 (2) Each plan shall include, but not be limited to: (i) descriptions of and statements  
1063 prohibiting bullying, group or social bullying, mobbing, cyber-bullying and retaliation; (ii) clear  
1064 procedures for residents, owner/manager employees, visitors, relatives, partners, guardians and  
1065 others to report bullying or retaliation; (iii) a provision that reports of bullying or retaliation may  
1066 be made anonymously; provided, however, that no disciplinary action shall be taken against a  
1067 resident or owner/manager employee solely on the basis of an anonymous report; (iv) clear  
1068 procedures for promptly responding to and investigating reports of bullying or retaliation; (v) the  
1069 range of remedial actions that may be taken against a perpetrator for bullying or retaliation,  
1070 including but not limited to employment sanctions or lease enforcement; provided,  
1071 however, that the remedial actions shall balance the need for accountability with the need to  
1072 teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and  
1073 assessing that victim's needs for protection; (vii) strategies for protecting from bullying or

1074 retaliation a person who reports bullying, provides information during an investigation of  
1075 bullying or witnesses or has reliable information about an act of bullying; (viii) procedures  
1076 consistent with state and federal law for promptly notifying the relatives, partners, or guardians  
1077 of a victim and a perpetrator, if appropriate and authorized by the victim; provided, further, that  
1078 the relatives, partners and guardians of a victim shall also be notified of the action taken to  
1079 prevent any further acts of bullying or retaliation, if appropriate and authorized by the victim;  
1080 and provided, further, that the procedures shall provide for immediate notification pursuant to  
1081 regulations promulgated under this subsection by the division or person who holds a comparable  
1082 role to the local law enforcement agency when civil and/or criminal charges may be pursued  
1083 against the perpetrator; (ix) a provision that a person who knowingly makes a false accusation of  
1084 bullying or retaliation shall be subject to remedial action or sanction; and (x) a strategy for  
1085 providing, counseling or referring to appropriate services for perpetrators and victims and for  
1086 appropriate family members of said residents. The plan shall also reference existing regulatory  
1087 and lease protections applicable to the covered residential community, including but not limited  
1088 to grievance procedures and protections for public housing tenants; lease and 24 CFR Part 245,  
1089 protections for HUD multifamily tenants; and comparable protections for MassHousing tenants  
1090 in elderly/handicapped housing. Each plan shall also include procedures for victims to appeal  
1091 confidentially to the division in cases where the alleged perpetrator is the owner/manager or  
1092 employee of the covered residential community and the resident is concerned about retaliation.

1093 (3) Nothing in this section shall prevent an owner/manager from remediating any  
1094 discrimination or harassment based on a person's membership in a legally protected category  
1095 under local, state or federal law.

1096 (4) The plan for a covered residential community shall include a provision for ongoing  
1097 professional development and training to build the skills of all employees, including, but not  
1098 limited to, on-site managers, social service or resident service coordinators, maintenance and  
1099 office clerical staff, to prevent, identify and respond to bullying. The content of such professional  
1100 development shall include, but not be limited to: (i) appropriate strategies to prevent bullying  
1101 incidents; (ii) appropriate strategies for immediate, effective interventions to stop bullying  
1102 incidents; (iii) information regarding the complex interaction and power differential that can take  
1103 place between and among one or more perpetrators, victims and witnesses to the bullying; (iv)  
1104 research findings on bullying, including information about specific categories of residents who  
1105 have been shown to be particularly at risk for bullying in the environment or covered residential  
1106 communities, and the role of mental illness, dementia, behavioral disorders, domestic violence  
1107 and substance abuse as they may affect both victims and perpetrators; (v) information on the  
1108 incidence and nature of cyber-bullying; and (vi) internet safety issues as they relate to cyber-  
1109 bullying. The division shall identify and offer information on alternative methods for fulfilling  
1110 the professional development requirements of this section, at least one of which shall be  
1111 available at no cost to owners/managers of covered residential communities.

1112 (5) The plan may include provisions for informing relatives, partners, and guardians  
1113 about the bullying prevention curriculum of the covered residential community and shall include,  
1114 but not be limited to: (i) how relatives, partners and guardians can reinforce the curriculum and  
1115 support the owner/manager or division plan; (ii) the dynamics of bullying; and (iii) online safety  
1116 and cyber-bullying.

1117 (6) The division shall promulgate rules and regulations on the requirements related to an  
1118 owner/agent's duties under clause (viii) of the second paragraph of subsection (e).

1119 (f)(1) Each owner/manager shall provide to residents and/or their designees, in  
1120 appropriate languages or means of communication, annual written notice of the relevant resident-  
1121 related sections of the plan.

1122 (2) Each owner/manager shall provide to all employees of a covered residential  
1123 community annual written notice of the plan. The employees at each covered residential  
1124 community shall be trained biennially on the plan. The relevant section of the plan relating to the  
1125 duties of employees shall be included in an owner/agent employee handbook or policies.

1126 (3) The plan shall be posted on the website of each owner/manager or a covered  
1127 residential community, or otherwise made available to residents, staff and interested members of  
1128 the public.

1129 (g) Each owner/manager shall be responsible for the implementation and oversight of the  
1130 plan at her covered residential community.

1131 (h) Any employee of a covered residential community, including on-site management  
1132 staff, social service or resident service coordinator, maintenance or clerical staff, shall  
1133 immediately report any instance of bullying or retaliation the staff member has witnessed or  
1134 become aware of to the owner/manager official identified in the plan as responsible for receiving  
1135 such reports. Upon receipt of such a report, the owner/manager or a designee shall promptly  
1136 conduct an investigation. If the owner/manager or a designee determines that bullying or  
1137 retaliation has occurred, the owner/manager or designee shall (i) take appropriate remedial  
1138 action, in consultation with the victim; and (ii) assist the victim in notifying the local law  
1139 enforcement agency if the owner/manager or designee believes that civil, criminal or both civil  
1140 and criminal charges may be pursued against a perpetrator.



1141 (i) If an incident of bullying or retaliation occurs on the grounds of a covered residential  
1142 community and involves a former resident or employee who is no longer involved in a covered  
1143 residential community, the owner/manager informed of the bullying or retaliation shall contact  
1144 law enforcement consistent with the provisions of clause (viii) of the second paragraph of  
1145 subsection (e).

1146 (j) Nothing in this section shall supersede or replace existing rights or remedies under any  
1147 other general or special law.

1148 SECTION 71 (a) Notwithstanding any special or general law to the contrary, there shall  
1149 be a special commission established to study and report on alternatives to the arrest and  
1150 incarceration for individuals with developmental and intellectual disabilities. The report shall  
1151 include, but not be limited to, findings and recommendations on: (i) existing options for diverting  
1152 individuals with disabilities from incarceration; (ii) recommendations for improving the process  
1153 by which individuals with disabilities are placed; (iii) techniques to identify individuals at risk  
1154 due to developmental or intellectual disabilities or pervasive mental health conditions; (iv)  
1155 techniques, services, and other resources to prevent exacerbation of issues.

1156 (b) The commission shall consist of the following 21 members: the secretary of health  
1157 and human services or a designee, who shall serve as co-chair; the secretary of public safety and  
1158 security or a designee, who shall serve as co-chair; the commissioner of the department of  
1159 developmental services or a designee; the commissioner of the department of mental health or a  
1160 designee; the chairs of the joint committee on the judiciary; the chairs of the joint committee on  
1161 children, families and persons with disabilities; one member of the senate to be appointed by the  
1162 president of the senate; one member of the senate to be appointed by the minority leader; one

1163 member of the house of representatives to be appointed by the speaker of the house of  
1164 representatives; one member of the house of representatives to be appointed by the house  
1165 minority leader of the house of representatives; the president of the Massachusetts Sheriffs'  
1166 Association or a designee; the president of the Massachusetts District Attorneys' Association or  
1167 a designee; the president of the Massachusetts Chiefs of Police or a designee; the chief counsel  
1168 of the committee for public counsel services or a designee; a representative from the Arc of  
1169 Massachusetts; a representative from the Disability Law Center; a representative from the  
1170 Disability Policy Consortium; a representative from the Center for Public Representation; a  
1171 representative from Dignity Alliance Massachusetts; a representative from an organization  
1172 involved with persons who are autistic, to be appointed by the governor; and a clinician with  
1173 experience working with intellectually and developmentally disabled individuals in the criminal  
1174 justice system, to be appointed by the governor.

1175 (c) The commission shall file a report of its findings and recommendations, together with  
1176 drafts of legislation necessary to carry those recommendations into effect, with the clerks of the  
1177 house of representatives and the senate not later than July 31, 2024.