

SENATE No. 2889

The Commonwealth of Massachusetts

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

SENATE, July 22, 2024.

The committee on Senate Ways and Means to whom was referred the House Bill to improve quality and oversight of long-term care (House, No. 4193) (also based on Senate, Nos. 2527 and 2604); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2889; and by striking out the title and inserting in place thereof the following title: “An Act relative to long-term care and assisted living”.

For the committee,
Michael J. Rodrigues

The Commonwealth of Massachusetts

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

1 SECTION 1. Section 1 of chapter 19D of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting after the definition of “Assisted living
3 residence” or “Residence,” the following 3 definitions:-

4 “Authorized medical professional”, an advanced practice registered nurse with
5 prescriptive authority, a physician assistant or a physician; provided, however, that an authorized
6 medical professional shall have been granted authority by a resident to issue care orders for the
7 resident.

8 “Basic health services”, certain services provided at an assisted living residence by
9 employees of the residence that are qualified to administer such services or a qualified third party
10 in accordance with a care order issued by an authorized medical professional; provided,
11 however, that such services shall include: (i) injections; (ii) the application or replacement of
12 simple non-sterile dressings; (iii) the management of oxygen on a regular and continuing basis;
13 (iv) specimen collection and the completion of a home diagnostic test, including, but not limited
14 to, warfarin, prothrombin or international normalized ratio testing and glucose testing; provided
15 however, that such home diagnostic test or monitoring is approved by the United States Food and
16 Drug Administration for home use; and (v) application of ointments or drops.

17 “Care Order”, a written order for basic health services issued by an authorized medical
18 professional.

19 SECTION 2. Said section 1 of said chapter 19D, as so appearing, is hereby further
20 amended by striking out the definition of “Elderly housing”.

21 SECTION 3. Said section 1 of said chapter 19D, as so appearing, is hereby further
22 amended by striking out the definition of “Skilled nursing care” and inserting in place thereof the
23 following definition:-

24 "Skilled nursing care", skilled services described in 130 CMR 456.409 or any successor
25 regulation.

26 SECTION 4. Section 2 of said chapter 19D, as so appearing, is hereby amended by
27 striking out clauses (v) and (vi) and inserting in place thereof the following 2 clauses:-

28 (v) provide services to residents in accordance with service plans developed through a
29 process by which employees of the residence discuss the service plan and the needs of the
30 resident with the resident and their representative or designee and ensure the consequences of a
31 decision, including any inherent risk, are understood by all parties; provided, however, that such
32 parties shall review the service plan periodically and consider changes in the resident's status and
33 the ability of the residence to respond accordingly and as set forth in section 12; provided
34 further, that if a resident is receiving basic health services, the staff of the residence shall consult
35 the resident’s authorized medical professional when developing the resident’s service plan;

36 (vi) coordinate and provide personal services, basic health services and other services
37 required under service plans as set forth in section 12;.

38 SECTION 5. Said chapter 19D is hereby further amended by striking out sections 3 to 6,
39 inclusive, as so appearing, and inserting in place thereof the following 4 sections:-

40 Section 3. (a) No person shall advertise, operate or maintain an assisted living residence
41 without the certification required under this chapter; provided, however, that the provisions of
42 this chapter shall not apply to entities for the original facilities and services for which said
43 entities were originally licensed or organized to provide. Assisted living residences may be
44 sponsored by: (i) convalescent homes, licensed nursing homes, licensed rest homes, charitable
45 homes for the aged or intermediate care facilities for persons with an intellectual disability
46 licensed pursuant to section 71 of chapter 111; (ii) hospices licensed pursuant to the provisions
47 of section 57D of said chapter 111; (iii) facilities providing continuing care to residents, as
48 defined by section 76 of chapter 93; (iv) congregate housing authorized by section 39 of chapter
49 121B or participants in the department's congregate housing program; (v) group homes or
50 supported living programs operating under contract with the department of mental health, the
51 rehabilitation commission or the department of developmental services; or (vi) housing operated
52 for only those duly ordained priests or for the of the religious orders of the Roman Catholic
53 church in their own locations, buildings, residences or headquarters to provide care, shelter,
54 treatment and medical assistance for any of the said duly ordained priests or members of the said
55 religious order.

56 (b) The provisions of this chapter shall not apply to any residential premises available for
57 lease by elderly or disabled individuals that is financed or subsidized in whole or in part by local,
58 state or federal housing programs established primarily to develop or operate housing rather than
59 to provide housing and personal services in combination; provided, however, that such premises
60 are not currently licensed under chapter 111.

61 Section 4. (a) The department shall issue a certification for a term of 2 years, and shall
62 renew for like terms, to any applicant whom the department determines meets the regulatory
63 requirements promulgated by the department in accordance with this chapter; provided, however,
64 that a certification shall be subject to corrective action, modification, suspension or revocation
65 for cause, as determined by the department. Such certification shall: (i) not be transferable or
66 assignable; (ii) be issued only to the person and for the premises named in the application; and
67 (iii) indicate whether the residence has been approved to provide basic health services. The
68 department shall issue a certificate, which shall be posted by the residence in a conspicuous place
69 on the approved premises.

70 (b) Upon applying for initial certification or renewal, an applicant shall pay the
71 department a fee based on the number of units at the assisted living residence, established by the
72 secretary of administration and finance pursuant to the provisions of section 3B of chapter 7;
73 provided, however, that a minimum fee shall be established notwithstanding the number of units
74 at the residence. No fees for initial certification or renewal shall be due from any provider for
75 assisted living units created under the United States Department of Housing and Urban
76 Development Assisted Living Conversion Program.

77 (c) If an application for renewal of a certification is filed not less than 30 days before the
78 expiration date, such certification shall not expire until the department notifies the sponsor that
79 the application for renewal has been denied.

80 (d) Applicants for initial certification shall file with the department an operating plan that
81 includes: (i) the number of units; (ii) the number of residents allowed per unit; (iii) the location
82 of resident units, common spaces and egresses by floor; (iv) the base fee to be charged for each

83 such unit; (v) the services to be offered, including basic health services, if applicable, and
84 arrangements for providing such services, including linkages with hospital and nursing facilities,
85 if any; (vi) the number of staff to be employed; and (vii) other information the department deems
86 necessary.

87 (e) Residences may seek certification by the department to provide basic health services;
88 provided, however, that residences offering basic health services shall not restrict resident choice
89 in the delivery of said services by third party providers. The residence shall submit a revised
90 operating plan to the department in the event of a change in the scope of basic health services
91 offered to residents. A residence seeking to provide basic health services shall include in its
92 operating plan: (i) a proposed administrative and operational structure to ensure the safe and
93 effective use of basic health services and meet the needs of its residents; and (ii) a compliance
94 plan to meet the requirements established under this chapter and promulgated regulations, which
95 shall include, but not be limited to: (A) staff qualifications and training; and (B) effective
96 policies and procedures to ensure the availability of adequate supplies necessary for basic health
97 services and the safe administration and secure storage of medications.

98 (f) Applicants and sponsors shall file material changes to the assisted living residence's
99 operating plan prior to the change's effective date and as may otherwise be required by the
100 department. A sponsor shall file annually on a date established by and on a form prescribed by
101 the department, a statement and a professional opinion prepared by a certified public account or
102 comparable reviewer indicating whether the assisted living residence is in sound fiscal condition
103 and is maintaining sufficient cash flow and reserves to meet the requirements of the service plans
104 established for its residents.

105 (g) Applicants for initial certification or renewal shall disclose the name and address of
106 each officer, director, trustee and limited partner or shareholder with not less than 5 per cent
107 interest in the assisted living residence and shall provide to the department documentation of the
108 history of each such individual or entity, including, but not limited to:

109 (i) all multifamily housing, assisted living residences or health care facilities in which the
110 individual or entity has been an officer, director, trustee or partner and, if applicable, evidence
111 from the relevant regulatory authority that said applicant has met criteria for licensure or
112 certification;

113 (ii) documentation of any enforcement action against the applicant and, if applicable,
114 evidence that the applicant has corrected all cited deficiencies without revocation of licensure or
115 certification; and

116 (iii) any other evidence, as determined by the department.

117 (h) The department may deny certification to an applicant who had an ownership interest
118 in an entity licensed under chapter 111, a licensed medical provider or a home health agency
119 certified under Title XVIII of the Social Security Act, as amended, that:

120 (i) has been subject to a patient care receivership action;

121 (ii) has ceased to operate such an entity as a result of: (A) suspension or revocation of
122 license or certification; (B) receivership; or (C) a settlement agreement arising from suspension
123 or revocation of a license or certification;

124 (iii) a settlement agreement in lieu of or as a result of subclause (B);

125 (iv) has been the subject of a substantiated case of patient abuse or neglect involving
126 material failure to provide adequate protection or services for the resident in order to prevent
127 such abuse or neglect; or

128 (v) has over the course of its operation been cited for repeated, serious and willful
129 violations of rules and regulations governing the operation of said health care facility that
130 indicate a disregard for resident safety and an inability to responsibly operate an assisted living
131 residence.

132 Section 5. (a) The department or its authorized designee, shall biennially review all
133 assisted living residences; provided, however, that an authorized designee shall not include
134 sponsors of assisted living residences.

135 (b) Prior to the issuance of the sponsor's initial certification, the department shall conduct
136 a review to determine whether an assisted living residence is compliant with this chapter;
137 provided, however, that the department may conduct such review of an assisted living residence
138 at any time the department has probable cause to believe that such assisted living residence is in
139 violation of a provision of this chapter or any regulation promulgated thereunder. Such review
140 shall include: (i) an inspection of every part of the common areas of the assisted living residence
141 and the living quarters of a resident with the resident's prior consent; (ii) an examination of the
142 operating plan; (iii) an examination of a resident's service plan and written progress reports with
143 the resident's consent; and (iv) resident satisfaction surveys. An inspector shall have authority to
144 confidentially and privately interview the sponsor, manager, staff and residents.

145 (c) Reviews of assisted living residences certified to provide basic health services shall
146 include an inspection of records associated with the provision of basic health services, a review
147 of residence employee qualifications and the residence’s operating plan.

148 (d) Upon the completion of an annual or biennial review, the department shall prepare a
149 written report summarizing all pertinent information obtained during the review and shall not
150 disclose confidential or privileged information obtained in connection with such review. The
151 department shall promulgate rules and regulations necessary to ensure the sponsor receives such
152 report and, if applicable, has the opportunity to respond to and resolve any findings of
153 noncompliance prior to departmental enforcement action. Completed reports, responses and
154 notices of final action may be made available to the public at the department during business
155 hours together with the responses of the applicants or the sponsors.

156 Section 6. (a) If the department determines a sponsor or applicant has failed or refused to
157 comply with requirements established under this chapter or the regulations promulgated
158 thereunder, the department may: (i) deny an application for recertification; (ii) modify, suspend
159 or revoke a certification; or (iii) issue a fine of not more than \$500 for each day of such failure or
160 refusal to comply.

161 (b) Notice of enforcement action and a sponsor’s right to an adjudicatory proceeding
162 shall be governed by the provisions of chapter 30A.

163 SECTION 6. Section 8 of said chapter 19D, as so appearing, is hereby amended by
164 striking out, in lines 14 and 15, the words “Any person who violates this subsection shall be
165 subject to” and inserting in place thereof the following words:- A violation of this subsection
166 shall constitute a violation of chapter 93A and shall be punishable by.

167 SECTION 7. Section 10 of said chapter 19D, as so appearing, is hereby amended by
168 striking out subsections (b) to (d), inclusive, and inserting in place thereof the following 7
169 subsections:-

170 (b) The sponsor of the assisted living residence may provide or arrange for the provision
171 of additional services, including:

172 (i) barber and beauty services, sundries for personal consumption and other amenities;

173 (ii) local transportation for medical and recreational purposes;

174 (iii) assistance with and supervision of instrumental activities of daily living;

175 (iv) assistance to residents with accessing telehealth services;

176 (v) basic health services for residents whose service plan includes basic health services,
177 in accordance with the requirements set forth within this chapter, by personnel who meet
178 standards for professional qualifications and training set forth in regulations promulgated
179 pursuant to this chapter; and

180 (vi) ancillary services for health-related care including, but not limited to, restorative
181 therapies, podiatry, hospice care, home health or other such services; provided, however, that
182 such services shall be delivered by an individual licensed to provide such care.

183 (c) No employee of an assisted living residence shall control or manage the funds or
184 property of an assisted living resident; provided, however, that if a resident is unable to manage
185 their funds or property, the assisted living residence shall arrange money management and other
186 financial arrangements with an independent party.

187 (d) A residence certified to provide basic health services may advertise, market and
188 otherwise promote offered services under this chapter and inform residents of the option to
189 directly procure such services from qualified third parties.

190 (e) The residence shall disclose to each resident through the assisted living residence's
191 residency agreement the fees associated with basic health services and shall review such fees
192 with the resident upon the implementation of and any revision to a service plan that includes
193 provision of basic health services. The residence shall notify residents of any changes in fees in
194 advance and in a timely manner. Residents who receive basic health services shall receive an
195 additional service plan review on a quarterly basis and shall have the opportunity to discontinue
196 receiving basic health services from the residence upon written notice to the residence and shall
197 not be charged a cancellation fee or a fee for services not provided due to discontinuation of the
198 services.

199 (f) The department, in consultation with the department of public health, shall promulgate
200 regulations governing the application, criteria for approval or disapproval of such application,
201 and ongoing oversight of residences that elect to offer basic health services authorized in this
202 section. The department may impose an annual fee on assisted living residences that offer basic
203 health services.

204 (g) To ensure patient safety and clinical competence in the application of subsections (d)
205 to (f), inclusive, the department and the department of public health shall establish operating plan
206 requirements for residences that opt to provide basic health services, including staff access to a
207 licensed practical nurse or registered nurse for consultation. The department shall make available
208 electronic copies of the required components of operating plans on the department's website and

209 shall conduct annual compliance reviews on the documentation created and maintained by
210 assisted living residences for an assisted living resident who received basic health services within
211 the previous 12-month period.

212 (h) No residence shall offer or provide basic health services without first being certified
213 by the department. Any residence found to be in violation of this subsection shall be subject to a
214 civil penalty of not more than \$1,000 per day assessable by the superior court.

215 SECTION 8. Section 11 of said chapter 19D, as so appearing, is hereby amended by
216 striking out, in lines 1 to 5, inclusive, the words “No assisted living residence shall admit any
217 resident who requires twenty-four hour skilled nursing supervision. No assisted living residence
218 shall provide, or admit or retain any resident in need of skilled nursing care unless all of the
219 following are the case” and inserting in place thereof the following words:- No assisted living
220 residence shall admit a resident who requires 24-hour skilled nursing supervision unless such
221 resident elects to receive basic health services from residences that are certified to provide such
222 services or from qualified third parties. No assisted living residence shall provide skilled nursing
223 care or admit or retain a resident in need of skilled nursing care unless such resident elects to
224 receive basic health services and the following criteria are met.

225 SECTION 9. Section 15 of said chapter 19D, as so appearing, is hereby amended by
226 striking out subsection (c) and inserting in place thereof the following subsection:-

227 (c) No assisted living residence shall discharge, discipline, discriminate against or
228 otherwise retaliate against an employee or resident who, in good faith, files a complaint with or
229 provides information to the department relative to what the employee reasonably believes is a
230 violation of law, rule or regulation or poses a risk to public health or safety or resident or staff

231 well-being. An assisted living residence in violation of this section shall be liable to the person
232 retaliated against by a civil action for up to treble damages, costs and attorney’s fees in the event
233 such violation shall be determined to be egregious or willful.

234 SECTION 10. Said chapter 19D is hereby further amended by adding the following
235 section:-

236 Section 19. The department shall promulgate regulations necessary to implement the
237 requirements of this chapter. Such regulations shall include the establishment of standards
238 concerning the education, training and experience of the managers and residence employees,
239 including service coordinators.

240 SECTION 11. Chapter 111 of the General Laws is hereby amended by striking out
241 section 71, as appearing in the 2022 Official Edition, and inserting in place thereof the following
242 section:-

243 Section 71. (a) For purposes of this section and sections 71A½ to 73, inclusive, the
244 following words shall have the following meanings unless the context clearly requires otherwise:

245 “Applicant”, a person who applies to the department for a license to establish or maintain
246 and operate a long-term care facility.

247 “Charitable home for the aged”, an institution conducted for charitable purposes and
248 maintained for the purpose of providing a retirement home for elderly persons and which may
249 provide nursing care within the home for its residents.

250 “Cohorting”, the practice of grouping patients who: (i) are colonized or infected with the
251 same organism in order to confine their care to 1 area and prevent contact with other patients; or

252 (ii) are not colonized or infected with the same organism in order to confine their care to 1 area
253 and prevent contact with other patients.

254 “Convalescent or nursing home”, an institution including a skilled nursing facility, which
255 is advertised, announced or maintained for the express or implied purpose of caring for 4 or more
256 persons admitted thereto for the purpose of nursing or convalescent care.

257 “Correct by date”, the date by which a licensee shall remedy or correct a violation
258 discovered after an inspection by the department pursuant to section 72E.

259 “Endemic level”, the usual level of a given disease in a geographic area.

260 “Intermediate care facility for persons with an intellectual disability”, an institution that:
261 (i) is conducted for charity or not for profit; (ii) is advertised, announced or maintained for the
262 purpose of providing rehabilitative services and active treatment to persons with an intellectual
263 disability or persons with related conditions, as defined in regulations promulgated pursuant to
264 Title XIX of the Social Security Act, Public Law 89-97; (iii) is not both owned and operated by a
265 state agency; and (iv) makes application to the department for a license for the purpose of
266 participating in the federal program established by said Title XIX.

267 “Isolating”, the process of separating persons colonized or infected with a communicable
268 disease from those who are not colonized or infected with a communicable disease.

269 “License”, an initial or renewal license issued by the department and permits the licensee
270 to establish or maintain and operate a long-term care facility.

271 “Licensee”, a person permitted to establish or maintain and operate a long-term care
272 facility through a license.

273 “Long-term care facility”, a charitable home for the aged, convalescent or nursing home,
274 skilled nursing facility, intermediate care facility for persons with an intellectual disability or rest
275 home.

276 “Long-term care services”, services including: (i) long-term resident, nursing,
277 convalescent or rehabilitative care; (ii) supervision and care incident to old age for ambulatory
278 persons; or (iii) retirement home care for elderly persons.

279 “Management company”, an organization engaged by a licensee to manage the operations
280 at a long-term care facility.

281 “Outbreak”, an unusual occurrence of disease or any disease above endemic levels.

282 “Owner”, a person or management company with an ownership interest of not less than 5
283 per cent, or with a controlling interest in an applicant, licensee, potential transferee or the real
284 property on which a long-term care facility is located.

285 “Person”, an individual, trust, partnership, association, corporation or other form of
286 business association.

287 “Potential transferee”, a person who submits to the department a notice of intent to
288 acquire the facility operations of a currently operating long-term care facility.

289 “Religious and recreational activities”, religious, social or recreational activity that is
290 consistent with the resident’s preferences and choosing, regardless of whether the activity is
291 coordinated, offered, provided or sponsored by facility staff or by an outside activity provider.

292 “Resident”, an individual who resides in a long-term care facility.

293 “Rest home”, an institution, which is advertised, announced or maintained for the express
294 or implied purpose of providing care incident to old age for 4 or more persons who are
295 ambulatory and who do not require a specific level of nursing care or other medically related
296 services on a routine basis.

297 “Skilled nursing facility”, an institution, which is certified by the federal Centers for
298 Medicare and Medicaid Services for the purpose of providing continuous skilled nursing care
299 and rehabilitative services for not less than 4 persons.

300 “Small house nursing home”, 1 or more units of a convalescent or nursing home designed
301 and modeled as a residential home including a central living space, kitchen, dining area, living
302 area and outdoor space.

303 “Transfer of facility operations”, a transfer of the operations of a long-term care facility
304 from a licensee to a potential transferee.

305 (b)(1) The department shall issue for a term of 2 years, and shall renew for like terms, a
306 license, subject to the restrictions in this section, to each applicant the department deems
307 responsible and suitable to establish or maintain and operate a long-term care facility and which
308 meets all other requirements for long-term care facility licensure pursuant to this chapter. A
309 license issued pursuant to this section shall not be transferable or assignable and shall be issued
310 only for the premises named in the application.

311 (2) Each long-term care facility shall be subject to at least 1 periodic, resident-centered
312 inspection every 9 to 15 months for the purpose of gathering information about the quality of
313 services furnished in the long-term care facility to determine compliance with applicable state
314 and federal requirements.

315 (3) The department may, when public necessity and convenience require or to prevent
316 undue hardship to an applicant or licensee, pursuant to such rules and regulations as it may
317 adopt, grant a temporary provisional or probationary license pursuant to this section; provided,
318 however, that no such license shall be for a term exceeding 1 year.

319 (4) The fee for a license to establish or maintain and operate a long-term care facility
320 shall be determined annually by the secretary of administration and finance pursuant to section
321 3B of chapter 7.

322 (c) The department shall not issue a license to establish or maintain an intermediate care
323 facility for persons with an intellectual disability unless the department determines that there is a
324 need for such a facility at the designated location; provided, however, that in the case of a facility
325 previously licensed as an intermediate care facility for persons with an intellectual disability in
326 which there is a change in ownership or transfer of operations, no such determination shall be
327 required; and provided further, that in the case of a facility previously licensed as an intermediate
328 care facility for persons with an intellectual disability in which there is a change in location, such
329 determination shall be limited to consideration of the suitability of the new location.

330 (d)(1) In the case of the transfer of facility operations of a long-term care facility, a
331 potential transferee shall submit a notice of intent to acquire to the department not less than 90
332 days prior to the proposed transfer date. The notice of intent to acquire shall be on a form
333 supplied by the department and shall be deemed complete upon submission of all information the
334 department requires on said form. The potential transferee shall not be deemed responsible and
335 suitable upon the expiration of the 90-day period or upon the expiration of said period as
336 extended if the department fails to notify said potential transferee in writing of its decision within

337 the 90-day period or within the expiration of the extension period, whichever is applicable;
338 provided, however, that the potential transferee may resubmit its application for transfer.

339 (2) A potential transferee shall, concurrently with the submission of an intent to acquire,
340 provide notice to the staff of the facility and to any labor organization that represents the
341 facility's staff at the time the notice of intent to acquire is submitted of the potential transferee's
342 plans to retain or not retain the facility staff and to recognize and bargain with any labor
343 organizations currently representing the facility staff.

344 (3) Upon determination by the department that a potential transferee is responsible and
345 suitable for licensure pursuant to subsection (g), the potential transferee may file an application
346 for a license. In the case of a potential transfer of facility operations, the filing of an application
347 for a license shall have the effect of a temporary provisional or probationary license until the
348 department takes final action on such application.

349 (4) Upon an approved transfer of facility operations, the department shall not reduce the
350 number of beds from the number that was originally approved in granting a license, unless a
351 reduction in the number of beds is in the interest of public health, welfare or safety.

352 (e) Every applicant for a license shall provide on or with its application, and every
353 potential transferee shall provide on or with its notice of intent to acquire, a sworn statement of
354 the names and addresses of any owner of the applicant or the potential transferee.

355 (f) No license shall be issued to an applicant or potential transferee prior to a
356 determination by the department that the applicant or potential transferee is responsible and
357 suitable pursuant to subsection (g).

358 (g) For the purposes of this section, the department's determination of responsibility and
359 suitability shall include, but not be limited to:

360 (i) the criminal history of the applicant or the potential transferee, including its respective
361 owners and management companies, and, to the extent possible, the civil litigation history of the
362 applicant or potential transferee, including its respective owners and contracted management
363 companies, including litigation related to the operation of a long-term care facility, such as
364 quality of care, safety of residents or staff, employment and labor issues, fraud, unfair or
365 deceptive business practices and landlord-tenant issues; provided, however, that such criminal
366 and civil litigation history may include pending or other court proceedings in the commonwealth
367 and in any other state or federal jurisdiction; provided further, that information protected from
368 public disclosure by federal or state law and obtained by the department pursuant to this section
369 shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of
370 chapter 4 and chapter 66;

371 (ii) the financial capacity of the applicant or potential transferee, including its respective
372 owners and management companies, to establish or maintain and operate a long-term care
373 facility; provided, however, that financial capacity may include, but not be limited to, recorded
374 liens or unpaid fees or taxes in the commonwealth or in other states;

375 (iii) the history of the applicant or potential transferee, including its respective owners
376 and management companies, in providing quality long-term care in the commonwealth as
377 measured by compliance with applicable quality measures, statutes and regulations governing the
378 operation of long-term care facilities; provided, however, that applicable quality measures may
379 include the Centers for Medicare and Medicaid Services Quality Rating System; and

380 (iv) the history of the applicant or potential transferee, including its respective owners
381 and management companies, in providing quality long-term care in states other than the
382 commonwealth, if any, as measured by compliance with the applicable quality measures, statutes
383 and regulations governing the operation of long-term care facilities in said states; provided,
384 however, that applicable quality measures may include the Centers for Medicare and Medicaid
385 Services Quality Rating System

386 (h)(1) If the department determines that an applicant or potential transferee is not
387 responsible and suitable, the department's determination shall take effect on the date of the
388 department's notice to the applicant or potential transferee. In such cases and upon the filing of a
389 written request, the department shall afford the applicant or potential transferee an adjudicatory
390 hearing pursuant to chapter 30A.

391 (2) During the pendency of an adjudicatory hearing, the applicant or potential transferee
392 shall not operate the facility as a licensee nor, without prior approval of the department, manage
393 such facility.

394 (i) Each applicant, potential transferee and licensee shall maintain current records of all
395 information provided to the department. After the applicant, potential transferee or licensee
396 becomes aware of any change related to information it has provided or is required to provide to
397 the department, such applicant, potential transferee or licensee shall submit to the department
398 written notice of the change as soon as practicable and without unreasonable delay; provided,
399 however, that any change in financial status shall be provided to the department and shall
400 include, but not be limited to, filing for bankruptcy, any default under a lending agreement or
401 under a lease, the appointment of a receiver or the recording of any lien. Failure to provide

402 timely notice of such a change shall be subject to the remedies or sanctions available to the
403 department pursuant to this chapter.

404 (j) An applicant, potential transferee or licensee and its respective owners and
405 management companies shall comply with applicable federal, state and local laws, rules and
406 regulations.

407 (k) The department shall not reduce the number of beds it originally approved in granting
408 a license for a convalescent or nursing home or rest home upon the transfer of facility operations
409 of said convalescent or nursing home or rest home from 1 licensee to another unless a reduction
410 in the number of beds is in the interest of public health, welfare or safety.

411 (l)(1) The department shall not issue a license unless the applicant first submits to the
412 department, with respect to each building occupied by residents: (i) a certificate of inspection of
413 the egresses, the means of preventing the spread of fire and apparatus for extinguishing fire,
414 issued by an inspector of the office of public safety and inspections within the division of
415 professional licensure; and (ii) a certificate of inspection issued by the head of the local fire
416 department certifying compliance with local ordinances; provided, however, that for
417 convalescent or nursing homes, the bureau of health care safety and quality within the
418 department shall have sole authority to inspect and issue a certificate required pursuant to clause
419 (i) of this paragraph.

420 (2) An applicant who is aggrieved, based on a written disapproval of a certificate of
421 inspection by the head of the local fire department or by the office of public safety and
422 inspections of the division of professional licensure, may, within 30 days of such disapproval,
423 submit a written appeal to the division of professional licensure. Failure to either approve or

424 disapprove within 30 days after a written request by an applicant shall be deemed a disapproval.
425 For certificates of inspection issued to convalescent or nursing homes by the bureau of health
426 care safety and quality within the department, an applicant may, within 30 days of disapproval of
427 a certificate of inspection, submit a written appeal to the department; provided, however, that
428 failure of the department to either approve or disapprove of a written appeal within 30 days of
429 the submission of such written appeal shall constitute a disapproval.

430 (3) If the division of professional licensure or, where applicable, the department,
431 approves the issuance of a certificate of inspection after an appeal, the certificate shall be issued
432 by the issuing agency. If the division of professional licensure or, where applicable, the
433 department, does not approve the issuance of a certificate of inspection, the applicant may appeal
434 to the superior court. Failure of the division or the department to either approve or disapprove the
435 issuance of a certificate of inspection within 30 days of the receipt of an appeal shall be deemed
436 a disapproval. The department shall not issue a license until issuance of an approved certificate
437 of inspection, as required pursuant to paragraph (1).

438 (4) Nothing in this section or in sections 72 or 73 shall be construed to supersede or
439 otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning,
440 registration or maintenance of a long-term care facility.

441 (m)(1) For cause, the department may limit, restrict, suspend or revoke a license;
442 provided, however, that the department may temporarily suspend a license without a hearing if:
443 (i) the suspension is due to an emergency; and (ii) the department responds to the suspension in a
444 reasonable timeframe.

445 (2) Grounds for cause on which the department may take action pursuant to paragraph (1)
446 shall include: (i) substantial or sustained failure or inability to provide adequate care to residents;
447 (ii) substantial or sustained failure to maintain compliance with applicable statutes, rules and
448 regulations; or (iii) the lack of financial capacity to maintain and operate a long-term care
449 facility.

450 (3) Suspension of a license may include suspending the license during a pending license
451 revocation action or suspending the license to permit the licensee a period of time, not less than
452 60 days, to terminate operations and discharge and transfer all residents, if applicable.

453 (4) With respect to an order by the department to limit, restrict or suspend a license,
454 within 7 days of receipt of the written order, the licensee may file a written request with the
455 department for an adjudicatory proceeding pursuant to chapter 30A.

456 (5) Upon a written request by a licensee who is aggrieved by the revocation or limitation
457 of a license or by an applicant who is aggrieved by the refusal of the department to renew a
458 license, the licensee or applicant so aggrieved shall have all the rights provided in chapter 30A
459 with respect to adjudicatory proceedings. In no case shall the revocation of such a license take
460 effect in less than 30 days after written notification by the department to the licensee.

461 (6) The department may require a facility to limit new admissions.

462 (n) In the case of the new construction of, major addition to or alteration or repair to any
463 long-term care facility, preliminary and final architectural plans and specifications shall be
464 submitted to a qualified person designated by the commissioner. Written approval of the final
465 architectural plans and specifications shall be obtained from said person prior to the new
466 construction, major addition, alteration or repair.

467 (o) Notwithstanding any other provision of this section, the department shall not issue a
468 license to establish or maintain and operate a long-term care facility to an applicant who applies
469 to the department for said license to establish or maintain and operate a convalescent or nursing
470 home unless the applicant for such license submits to the department a certificate that each
471 building to be occupied by residents of such convalescent or nursing home meets the
472 construction standards of the state building code and is of at least type 1-B fireproof
473 construction; provided, however, that this subsection shall not apply in the instance of a transfer
474 of facility operations of a convalescent or nursing home whose license has not been revoked as
475 of the time of such transfer; and provided further, that a public medical institution as defined in
476 section 8 of chapter 118E, which meets the construction standards as defined herein, shall not be
477 denied a license as a long-term care facility pursuant to this section because it was not of new
478 construction and designed for the purpose of operating a long-term care facility at the time of
479 application for a license to operate a long-term care facility. An intermediate care facility for
480 persons with an intellectual disability shall be required to meet the construction standards
481 established for such facilities by Title XIX of the Social Security Act, Public Law 89-97, and any
482 regulations promulgated pursuant thereto and by regulations promulgated by the department.

483 (p) The department shall notify the secretary of elder affairs of any proceeding, public
484 hearing or action to be taken pursuant to this section relating to any convalescent or nursing
485 home, rest home or charitable home for the aged. The department shall notify the commissioner
486 of developmental services of the pendency of any proceeding, public hearing or action to be
487 taken pursuant to this section relating to any intermediate care facility for persons with an
488 intellectual disability.

489 SECTION 12. Said chapter 111 is hereby further amended by striking out section 72, as
490 so appearing, and inserting in place thereof the following section:-

491 Section 72. (a)(1) The department shall classify long-term care facilities and shall, after a
492 public hearing, promulgate rules and regulations for the conduct of such facilities. Rules and
493 regulations for long-term care facilities shall include, but not be limited to, minimum
494 requirements for medical and nursing care, the keeping of proper medical and nursing records,
495 uniform requirements for the handling of patient funds, minimum requirements relative to the
496 prevention and reparation of lost or damaged patient possessions, including personal clothing,
497 and minimum requirements relative to facility sanitation, minimum standards for clinical
498 expertise, staff licensing, certification and training, use of psychotropic medications and non-
499 pharmacological interventions and other requirements of care and treatment; provided, however,
500 that regulations for intermediate care facilities for persons with an intellectual disability shall
501 include minimum requirements for social services, psychological services and other services
502 appropriate for the care of persons with an intellectual disability and shall limit the size of such
503 facilities to not more than 15 beds; provided further, that in promulgating rules or regulations for
504 long-term care facilities, the department shall consider the ability of long-term care facilities to
505 provide services under rates set pursuant to section 13C of chapter 118E; and provided further,
506 that no such rule or regulation shall apply to a long-term care facility licensed at the time of
507 promulgation of such rule or regulation, or a long-term care facility being constructed at the time
508 of such promulgation under plans approved by the department, unless such rule or regulation has
509 a direct and material relation to patient diet, cleanliness, nursing care or health, or to habilitative
510 services and active treatment for persons with an intellectual disability or persons with related
511 conditions.

512 (2) The department may authorize specialized care units serving persons requiring
513 treatment for infectious diseases, isolation, strokes, degenerative neurological conditions,
514 traumatic brain injuries, in-house dialysis treatments, behavioral health treatments, substance use
515 disorder treatments, bariatric patient care and conditions requiring 24-hour or 1-on-1 patient
516 supervision. The department may promulgate rules and regulations to regulate the conduct of any
517 such specialized care units.

518 (b)(1) The department or its agents and the board of health or its agents of the city or
519 town wherein any portion of such long-term care facility is located may visit and inspect such
520 institution at any time; provided, however, that a board of health or its agents conducting an
521 inspection of a long-term care facility located within its city or town shall notify the department
522 of the results of any inspection conducted pursuant to this paragraph.

523 (2) Any person inspecting pursuant to paragraph (1) shall record in writing every
524 violation of the applicable rules and regulations of the department that they discover during the
525 course of their inspection. Every record of inspection shall be treated as a public record except to
526 such extent the record or a portion of the record is expressly exempt from such treatment
527 pursuant to clause Twenty-sixth of section 7 of chapter 4. A record of inspection containing
528 violations shall be made public by the department when a written plan of correction is submitted.
529 If a written plan of correction is not submitted within the allowable time, said violations shall be
530 made public at the expiration of the allowable time. Inspections hereunder shall be unannounced
531 and made at such intervals as the department shall specify in its rules and regulations; provided,
532 that, each long-term care facility shall be subject to at least 1 periodic, resident-centered
533 inspection every 9 to 15 months, pursuant to subsection (b) of section 71. A visit made to a
534 facility for the purpose of providing consultation shall not be considered an inspection.

535 (c) The superior court shall have jurisdiction in equity to enforce the rules and regulations
536 promulgated pursuant to this section.

537 (d)(1) The department shall promulgate regulations to govern the conduct of such homes
538 and to regulate construction and physical plant standards for small house nursing homes;
539 provided, however, that such regulations shall consider environmental standards and
540 sustainability.

541 (2) Newly constructed small house nursing homes shall house not more than 14
542 individuals per unit, in resident rooms that accommodate not more than 1 resident per room;
543 provided, however, that if a resident requests to share a room with another resident to
544 accommodate a spouse, partner, family member or friend, such resident room shall have
545 sufficient space and equipment, as established by the department, for 2 residents; provided
546 further, that determinations to grant such requests shall be determined based on space and
547 availability of rooms at the applicable home. All resident rooms shall contain a full private and
548 accessible bathroom.

549 (2) The department may promulgate additional regulations for small house nursing homes
550 to establish a staffing model that: (i) allows for a universal worker approach to resident care that
551 is organized to support and empower all staff to respond to the needs and desires of residents,
552 including, but not limited to, cooking and meal preparation, without exceeding the lawful scope
553 of practice of said employee; and (ii) provides for consistent staff in each small house nursing
554 home.

555 (4) All regulations promulgated pursuant to this subsection shall ensure the convalescent
556 or nursing home meets the requirements to participate in the Medicare and Medicaid programs.

557 SECTION 13. Said chapter 111 is hereby further amended by inserting after section
558 72BB the following 4 sections:-

559 Section 72CC. (a) The department shall require long-term care facilities to develop an
560 outbreak response plan which shall be customized to each long-term care facility and shall
561 review such plan to ensure compliance with the requirements under this section. Each long-term
562 care facility's plan shall include, but not be limited to:

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

565 (ii) clear policies for the notification of residents, residents' families, visitors and staff in
566 the event of an outbreak of a contagious disease at a long-term care facility;

567 (iii) information on the availability of laboratory testing, protocols for screening visitors
568 and staff for the presence of a communicable disease, protocols to prohibit infected staff from
569 appearing for work at the long-term care facility and processes for implementing evidence-based
570 outbreak response measures;

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

573 (v) policies for reporting outbreaks to public health officials, including the municipality
574 in which the facility is located, in accordance with applicable laws and regulations; and

575 (vi) policies to meet staffing, training and long-term care facility demands during an
576 infectious disease outbreak and to successfully implement the outbreak response plan.

577 (b)(1) A long-term care facility shall review the outbreak response plan it submitted to
578 the department pursuant to subsection (a) on an annual basis and if it makes any material changes
579 to such plan, the facility shall submit to the department an updated outbreak response plan within
580 30 days of making such change. The department shall, upon receiving an updated outbreak
581 response plan, verify that the plan is in compliance with the requirements of subsection (a).

582 (d) The department shall promulgate regulations necessary to implement this section.

583 Section 72DD. (a) The division of health care facility licensure and certification within
584 the department of public health shall establish and implement a process and program for
585 providing training and education to staff of long-term care facilities licensed by the department
586 pursuant to section 71. The training and education program may include, but not be limited to: (i)
587 infection prevention and control; (ii) development, implementation, adherence to and review of
588 comprehensive resident care plans; (iii) falls prevention; (iv) procedures to ensure timely
589 notification of changes in a resident's condition to the resident's primary care physician; (v)
590 prevention of abuse and neglect; (vi) development and implementation of a program to ensure
591 staff safety; and (vii) review of the inspection process under section 72.

592 (b) The training and education program shall be interactive and shall include, but not be
593 limited to: (i) an annual training for long-term care facility supervisory and leadership staff on
594 the licensure and certification process, including, but not limited to, the department's
595 interpretation of relevant general laws and relevant changes or additions to applicable rules,
596 regulations, procedures and policies concerning the licensure and certification process for long-
597 term care facilities; and (ii) a biannual training of staff of long-term care facilities on the most

598 frequently cited deficiencies, identified deficiency trends, both state and federal, and best
599 practices to ensure resident quality of care.

600 Section 72EE. (a) The department shall promulgate regulations to encourage and enable
601 residents of a long-term care facility to engage in in-person, face-to-face, verbal or auditory-
602 based contact, communications and religious and recreational activities with others to the extent
603 that in-person contact, communication or activities are not prohibited, restricted or limited by
604 federal or state law, rule or regulation. Said regulations shall include specific protocols and
605 procedures to provide for residents of the facility who have disabilities that impede their ability
606 to communicate, including, but not limited to, residents who are blind, deaf, have Alzheimer's
607 disease or other dementias and developmental disabilities.

608 (b) The department may distribute federal civil monetary penalty funds, subject to
609 approval by the federal Centers for Medicare and Medicaid Services, and any other available
610 federal and state funds, upon request, to facilities for communicative technologies and
611 accessories pursuant to this section.

612 Section 72FF. (a) As used in this section the following words shall have the following
613 meanings unless the context requires otherwise:

614 "Gender expression", the manner in which a person represents or expresses gender to
615 others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.

616 "Gender identity" or "Gender", a person's gender identity, appearance or behavior,
617 whether or not that gender identity, appearance or behavior is different from that traditionally
618 associated with the person's physiology or birth sex; provided, however, that gender identity
619 may be demonstrated through medical history, care or treatment of the gender identity, consistent

620 and uniform assertion of the gender identity or any other evidence that the gender identity is
621 sincerely held as part of a person's core identity; and provided further, that gender identity shall
622 not be asserted for any improper purpose.

623 "Gender-nonconforming", gender expression does not conform to stereotypical
624 expectations of such gender.

625 "Gender transition", a process in which a person begins to live according to that person's
626 gender identity, rather than the sex the person was assigned at birth, which may include changing
627 one's clothing, appearance, name or identification documents or undergoing medical treatments.

628 "HIV", human immunodeficiency virus.

629 "Intersex", a person whose sexual or reproductive anatomy or chromosomal pattern is not
630 consistent with typical definitions of male or female.

631 "LGBTQI", lesbian, gay, bisexual, transgender, questioning, queer and intersex.

632 "Long-term care facility", a charitable home for the aged, convalescent or nursing home,
633 skilled nursing facility, intermediate care facility for persons with an intellectual disability or rest
634 home.

635 "Long-term care facility staff", all individuals employed by, or contracted directly with, a
636 long-term care facility.

637 "Non-binary" describes a person whose gender identity falls outside of the traditional
638 gender binary structure of man and woman.

639 "Resident", a resident or patient of a long-term care facility.

640 "Queer", a person whose gender expression, gender identity or sexual orientation does
641 not conform to dominant expectations or standards.

642 "Questioning", a person who is exploring or unsure about their own sexual orientation or
643 gender identity or expression.

644 "Sexual orientation", a person's romantic or sexual attraction to other people.

645 "Transgender", a person whose gender identity or gender expression differs from the birth
646 sex of that person.

647 (b) Except as provided in subsection (c), long-term care facilities and long-term care
648 facility staff shall not take any of the following actions based in whole or in part on a person's
649 actual or perceived sexual orientation, gender identity, gender expression, intersex status or HIV
650 status:

651 (i) denying admission to a long-term care facility, transferring or refusing to transfer a
652 resident within a facility or to another facility or discharging or evicting a resident from a
653 facility;

654 (ii) denying a request by residents to share a room;

655 (iii) where rooms are assigned by gender, assigning, reassigning or refusing to assign a
656 room to a transgender resident other than in accordance with the transgender resident's gender
657 identity, unless at the transgender resident's request, and assigning, reassigning or refusing to
658 assign a room to a non-binary resident other than in accordance with the non-binary resident's
659 preference;

660 (iv) prohibiting a resident from using or harassing a resident for using or seeking to use, a
661 restroom available to other persons of the same gender identity, regardless of whether the
662 resident is making a gender transition, has taken or is taking hormones, has undergone gender
663 affirmation surgery or presents as gender-nonconforming; provided, however, that for the
664 purposes of this clause, harassment shall include, but not be limited to, requiring a resident to
665 show identity documents to gain entrance to a restroom;

666 (v) repeatedly and intentionally failing to use a resident's chosen name or pronouns after
667 being informed of the chosen name or pronouns, in a manner that constitutes discrimination or
668 harassment;

669 (vi) denying a resident the right to wear or be dressed in clothing, accessories or
670 cosmetics or to engage in grooming practices that are permitted to any other resident;

671 (vii) restricting a resident's right to associate with other residents or with visitors,
672 including the right to consensual sexual relations where sexual relations would not be restricted
673 if the participants were heterosexual or married;

674 (viii) denying or restricting medical or nonmedical care that is appropriate to a resident's
675 organs and bodily needs or providing such care that unduly demeans the resident or causes
676 avoidable discomfort or harm; or

677 (ix) refusing or willfully failing to provide any service, care or reasonable
678 accommodation to a resident or an applicant for services or care.

679 (c) The requirements of this section shall not apply to the extent that compliance with the
680 requirement is incompatible with any professionally reasonable clinical judgment or inconsistent
681 with 42 CFR § 483.15(c)(1), 42 CFR § 483.24 and 105 CMR 150.003.

682 (d) Each facility shall distribute a document containing the following notice alongside the
683 informational document required by section 72AA:

684 "[Name of facility] does not discriminate and does not permit discrimination by any
685 person, including persons employed by the facility, residents, family members and other visitors
686 to the facility including, but not limited to, abuse or harassment, on the basis of actual or
687 perceived sexual orientation, gender identity, gender expression, intersex status or HIV status or
688 based on association with another individual on account of that individual's actual or perceived
689 sexual orientation, gender identity, gender expression, intersex status or HIV status. You may
690 file a complaint with the office of the long-term care ombudsman, [provide current contact
691 information] if you believe you have experienced this kind of discrimination."

692 (e) Each long-term care facility shall ensure that resident records, including records
693 generated at the time of admission, include the resident's gender and the name and pronouns by
694 which the resident would like to be identified, as indicated by the resident.

695 (f) Unless expressly authorized by the resident or the resident's authorized representative,
696 long-term facility staff not involved in providing direct care to a resident shall not be present
697 during physical examination of, or the provision of personal care to, that resident if the resident
698 is partially or fully unclothed.

699 (g) Transgender residents shall be provided access to such transition-related assessments,
700 therapy and treatments as have been recommended by the resident's health care provider,

701 including, but not limited to, transgender-related medical care, including hormone therapy and
702 supportive counseling, subject to availability and third-party medical coverage.

703 (h) LGBTQI-related programming, such as an LGBTQI Pride Month event or a
704 Transgender Day of Remembrance event, shall be allowed and treated equally to other cultural
705 celebrations or commemorations.

706 (i) The department shall promulgate regulations relative to discipline and penalties for
707 long-term care facilities that violate the requirements of this section or that employ a staff
708 member who violates the requirements of this section, which shall include, but not be limited to,
709 civil penalties and other administrative action. Nothing in this section shall be construed to limit
710 the ability of any party to bring a civil, criminal or administrative action for conduct constituting
711 a violation of any other provision of law.

712 (j) (1) A long-term care facility shall ensure that the long-term care facility staff receive
713 training, on at least a biennial basis, concerning:

714 (i) the care of LGBTQI older adults and older adults living with HIV; and

715 (ii) the prevention of discrimination based on sexual orientation, gender identity or
716 expression, intersex status and HIV status.

717 (2) The training required by this section shall include, but not be limited to:

718 (i) the definition of the terms commonly associated with sexual orientation, gender
719 identity and expression, intersex status and HIV status;

720 (ii) best practices for communicating with or about LGBTQI older adults and older adults
721 living with HIV and others who are LGBTQI or living with HIV, including the use of any name
722 and pronouns by which residents may express the desire to be identified;

723 (iii) a description of the health and social challenges historically experienced by LGBTQI
724 older adults and older adults living with HIV and others who are LGBTQI or living with HIV,
725 including discrimination when seeking or receiving care at long-term care facilities, and the
726 demonstrated physical and mental health effects within the LGBTQI community associated with
727 such discrimination;

728 (iv) strategies to create a safe and affirming environment for LGBTQI seniors and
729 residents living with HIV, including suggested changes to facility policies and procedures,
730 forms, signage, communication between residents and their families, activities and staff training
731 and in-services; and

732 (v) an overview of the provisions of this section.

733 (3) The department shall select an entity that has demonstrated expertise in creating safe
734 and affirming environments and identifying the legal, social and medical challenges faced by
735 LGBTQI older adults and older adults living with HIV and others who are LGBTQI or living
736 with HIV, who reside in long-term care facilities, to provide the training required by this section.

737 (4) Long-term care facility staff shall complete all training required by this section within
738 1 year of their date of hire unless the new hire provides the long-term care facility with
739 documentation demonstrating that they have completed equivalent training within the past 2
740 years.

741 (5) Each long-term care facility shall retain records documenting the completion of the
742 training required pursuant to this section by each administrator and staff member at the long-term
743 care facility. Compliance records shall be made available, upon request, to the department, the
744 executive office of health and human services and the office of the statewide long-term care
745 ombudsman.

746 (6) Each long-term care facility shall assume the cost of providing the training required
747 pursuant to this section.

748 (k) The commissioner and the secretary of health and human services shall adopt rules
749 and regulations as may be necessary to implement this section.

750 SECTION 14. Said chapter 111 is hereby further amended by striking out section 72E, as
751 appearing in the 2022 Official Edition, and inserting in place thereof the following section:-

752 Section 72E. (a) The department shall, after every inspection by its agent under section
753 72, provide the licensee of the inspected long-term care facility notice in writing of every
754 violation of the applicable statutes, rules and regulations found during said inspection. With
755 respect to the date by which the licensee shall remedy or correct each violation, the department
756 in such notice shall specify a reasonable time, not more than 60 days after receipt, by which time
757 the licensee shall remedy or correct each violation cited or, in the case of any violation which in
758 the opinion of the department is not reasonably capable of correction within 60 days, the
759 department shall require only that the licensee submit a written plan for the timely correction of
760 the violation in a reasonable manner. The department may modify any nonconforming plan upon
761 notice, in writing, to the licensee.

762 (b) Failure to remedy or correct a cited violation by the correct by date shall be cause to
763 pursue or impose the remedies or sanctions available to the department pursuant to this chapter,
764 unless the licensee demonstrates to the satisfaction of the department or a court, where
765 applicable, that such failure was not due to any neglect of its duty and occurred despite an
766 attempt in good faith to make correction by the correct by date. An aggrieved licensee may
767 pursue the remedies available to it pursuant to chapter 30A.

768 (c) If the department determines the licensee failed to maintain substantial or sustained
769 compliance with applicable state and federal laws, rules and regulations, in addition to imposing
770 any of the other remedies or sanctions available to it, the department may require the licensee to
771 engage, at the licensee's own expense, a temporary manager to assist the licensee with bringing
772 the facility into substantial compliance and with sustaining such compliance. Such temporary
773 manager shall be subject to the department's approval. Any such engagement of a temporary
774 manager shall be for a period of not less than 3 months and shall be pursuant to a written
775 agreement between the licensee and the management company providing the temporary
776 manager. A copy of said agreement shall be provided by the licensee to the department promptly
777 after execution. Any payment terms included in the agreement shall be confidential and exempt
778 from disclosure pursuant to clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

779 (d) Nothing in this section shall be construed to prohibit the department from enforcing a
780 statute, rule or regulation, administratively or in court, without first affording formal opportunity
781 to make correction pursuant to this section, where, in the opinion of the department, the violation
782 of such statute, rule or regulation jeopardizes the health or safety of residents or the public or
783 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such

784 statute, rule or regulation is the second such violation occurring during a period of 12 full
785 months.

786 SECTION 15. Section 72K of said chapter 111, as so appearing, is hereby amended by
787 striking out subsection (b) and inserting in place thereof the following 2 subsections:-

788 (b) The attorney general may file a civil action against a person who: (i) commits abuse,
789 mistreatment or neglect of a patient or resident; (ii) misappropriates patient or resident property;
790 or (iii) wantonly or recklessly permits or causes another to commit abuse, mistreatment or
791 neglect of a patient or resident or misappropriate patient or resident property. The civil penalty
792 for such abuse, mistreatment, neglect or misappropriation shall not exceed \$25,000 if no bodily
793 injury results; \$50,000 if bodily injury results; \$100,000 if sexual assault or serious bodily injury
794 results; and \$250,000 if death results. Section 60B of chapter 231 shall not apply to an action
795 brought by the attorney general pursuant to this section. Nothing in this section shall preclude the
796 filing of any action brought by the attorney general or a private party pursuant to chapter 93A or
797 any action by the department pursuant to this chapter.

798 (c) Notwithstanding section 5 of chapter 260, the attorney general may file a civil action
799 within 4 years next after an offense is committed.

800 SECTION 16. Said chapter 111 is hereby further amended by striking out section 73, as
801 so appearing, and inserting in place thereof the following section:-

802 Section 73. (a) Whoever advertises, announces, establishes or maintains, or is otherwise
803 engaged in any business with or is concerned in establishing or maintaining a long-term care
804 facility without a license granted pursuant to section 71 or violates any provision of sections 71
805 to 73, inclusive, shall for a first offense be punished by a fine of not more than \$1,000, and for a

806 subsequent offense by a fine of not more than \$2,000 or by imprisonment for not more than 2
807 years.

808 (b) Whoever violates any rule or regulation promulgated pursuant to sections 71, 72, 72C
809 and 72FF shall be punished by a fine not to exceed \$500. If any person violates any such rule or
810 regulation by allowing a condition to exist which may be corrected or remedied, the department
811 shall order such person, in writing, to correct or remedy such condition. If such person fails or
812 refuses to comply with such order by the correct by date, each day after the correct by date
813 during which such failure or refusal to comply continues shall constitute a separate offense. A
814 failure to pay the fine imposed by this section shall be a violation of this subsection.

815 SECTION 17. Section 28 of chapter 118E of the General Laws, as so appearing, is
816 hereby amended by adding the following paragraph:-

817 The division shall consider a transfer of assets by an individual age 65 or older or a
818 transfer made for the sole benefit of an individual age 65 or older into a trust pursuant to 42
819 U.S.C. 1396p(d)(4)(C), established for the sole benefit of said individual, to be a disposal of
820 resources for fair market value, to the extent that such resources shall be available, under any
821 circumstances, to be used by the trustee to provide goods and services to the individual, or to
822 reimburse such costs, at fair market value.

823 SECTION 18. Said chapter 118E is hereby further amended by adding the following 2
824 sections:-

825 Section 83. To establish Medicaid rates for skilled nursing facilities licensed pursuant to
826 section 71 of chapter 111, the division of medical assistance shall use as base year costs for rate

827 determination purposes the reported costs of the calendar year not more than 2 years prior to the
828 current rate year.

829 Section 84. (a) The division of medical assistance shall establish a skilled nursing facility
830 rate add-on program for bariatric patient care and a rate add-on program for 1-on-1 staffing of at-
831 risk residents requiring 24-hour monitoring and supervision for their safety and the safety of
832 other residents and staff. The division of medical assistance shall identify at-risk resident
833 populations to include in the rate add-on program for 1-on-1 staffing which may include, but not
834 be limited to, residents that: (i) have demonstrated suicidal ideation; (ii) have demonstrated
835 aggressive behavior toward other residents or staff; (iii) have demonstrated exit-seeking
836 behavior; or (vi) are registered sex offenders. The rate add-ons for said program shall be
837 sufficient to defray the cost of employing the required staff to conduct the 24-hour monitoring
838 and supervision of the at-risk residents.

839 (b) When determining eligibility for add-on or enhanced rates for specialized care units,
840 as authorized by paragraph (2) of section 72 of chapter 111, the division shall consider whether
841 the facility has complied with standards, as determined and certified by the department of public
842 health, which may include, but not be limited to, clinical expertise, staff licensing, staff training,
843 staff certification, unit accreditation, staff ratios, use of psychotropic medications and non-
844 pharmacological interventions, therapeutic and psychosocial programming to develop and
845 maintain daily living skills and encourage socialization, use of behavior plans and other
846 requirements of care and treatment as determined by the department.

847 (c) The division of medical assistance may develop an add-on rate of payment for skilled
848 nursing facilities that develop small house nursing homes and meet criteria established by the
849 executive office.

850 SECTION 19. Subsection (c) of section 25 of chapter 176O of the General Laws, as so
851 appearing, is hereby amended by inserting after the second sentence the following sentence:- The
852 division shall develop and implement a uniform prior authorization form for the admission of
853 patients from an acute care hospital to a post-acute care facility or transitioned to a home health
854 agency certified by the federal Centers for Medicare and Medicaid Services for covered post-
855 acute care services.

856 SECTION 20. (a) For the purposes of this section, the following words shall have the
857 following meanings unless the context clearly requires otherwise:

858 “Enrollee”, shall have the same meaning as in section 8A of chapter 118E of the General
859 Laws; provided, however, that “enrollee” shall include “insured” as defined in section 1 of
860 chapter 176O of the General Laws.

861 “Payer”, the group insurance commission under chapter 32A of the General Laws, the
862 division of medical assistance under chapter 118E of the General Laws, insurance companies
863 organized under chapter 175 of the General Laws, non-profit hospital service corporations
864 organized under chapter 176A of the General Laws, medical service corporations organized
865 under chapter 176B of the General Laws, health maintenance organizations organized under
866 chapter 176G of the General Laws and preferred provider organizations organized under chapter
867 176I of the General Laws, or a utilization review organization acting under contract with the
868 aforementioned entities.

869 “Post-acute care facility or agency”, (i) a facility licensed under chapter 111 to provide
870 inpatient post-acute care services, including, but not limited to, skilled nursing facilities, long-
871 term care hospitals, intermediate care facilities or rehabilitation facilities; or (ii) a home health
872 agency certified by the federal Centers for Medicare and Medicaid Services.

873 (b) Notwithstanding any general or special law to the contrary, all payers shall approve or
874 deny a request for prior authorization for admission to a post-acute care facility or transition to a
875 post-acute care agency for any inpatient of an acute care hospital requiring covered post-acute
876 care services by the next business day following receipt by the payer of all necessary information
877 to establish medical necessity of the requested service; provided, however, that no admission
878 may occur until the pre-admission screening and resident review pursuant to 42 CFR 483 is
879 complete. If the calendar day immediately following the date of submission of the completed
880 request is not a payer’s business day, and the payer cannot otherwise make a determination by
881 the next calendar day, and the receiving post-acute care facility or agency is both open to new
882 admissions and has indicated that said facility or agency will accept the enrollee, then prior
883 authorization shall be waived; provided, however, that the payer shall provide coverage and may
884 begin its concurrent review of the admission on the next business day; provided further, that the
885 payer shall not retrospectively deny coverage for services to an enrollee admitted to a post-acute
886 care facility or transitioned to a post-acute care agency after a waiver of prior authorization
887 pursuant to this section unless the claim was a result of fraud, waste or abuse. An adverse
888 determination of a prior authorization request pursuant to this section may be appealed by an
889 enrollee or the enrollee’s provider and such appeal, in the case of an enrollee of a commercial
890 payer, shall be subject to the expedited grievance process pursuant to clause (iv) of subsection
891 (b) of section 13 of chapter 176O of the General Laws. An enrollee of an insurance program of

892 the division of medical assistance or the enrollee’s provider may request an expedited appeal of
893 an adverse determination of a prior authorization request. Nothing in this section shall be
894 construed to require a payer to reimburse for services that are not a covered benefit.

895 (c) In the case of non-emergency transportation between an acute care hospital and a
896 post-acute care facility, payers shall approve or deny a request for prior authorization according
897 to the same process provided pursuant to subsection (b); provided, however, that once
898 authorization has been granted, said authorization shall be valid for not less than 7 calendar days
899 following approval.

900 (d) The division of insurance and the division of medical assistance shall issue sub-
901 regulatory guidance to effectuate the purposes of this subsection.

902 SECTION 21. For the purposes of this section, “payer” shall mean the group insurance
903 commission under chapter 32A of the General Laws, the division of medical assistance under
904 chapter 118E of the General Laws, insurance companies organized under chapter 175 of the
905 General Laws, non-profit hospital service corporations organized under chapter 176A of the
906 General Laws, medical service corporations organized under chapter 176B of the General Laws,
907 health maintenance organizations organized under chapter 176G of the General Laws and
908 preferred provider organizations organized under chapter 176I of the General Laws, or a
909 utilization review organization acting under contract with the aforementioned entities.

910 Notwithstanding any general or special law to the contrary, not later than 90 days after
911 the effective date of this act, the division of insurance shall develop the uniform prior
912 authorization form for admission to a post-acute care facility or transition to a home health
913 agency for any inpatient of an acute care hospital requiring covered post-acute care services

914 pursuant to section 25 of chapter 176O of the General Laws. Said uniform prior authorization
915 form shall state that no admission to a nursing facility may occur until the preadmission
916 screening and resident review required under 42 CFR 483 is complete. The division of insurance
917 shall develop said uniform prior authorization form in consultation with the division of medical
918 assistance. The division of medical assistance, or any entity acting for the division of medical
919 assistance under contract, shall accept the uniform prior authorization form as sufficient to
920 request prior authorization for the requested service. All acute care hospitals shall use the
921 uniform prior authorization form to request prior authorization for coverage of post-acute care
922 services at a post-acute care facility or home health agency, and all payers or entities acting for a
923 payer under contract shall accept such form as sufficient to request prior authorization for the
924 requested service not later than 30 days after the form has been developed by the division of
925 insurance.

926 SECTION 22. (a) For the purposes of this section, the terms “licensee” and “management
927 company” shall have the meanings as defined in section 71 of chapter 111 of the General Laws.

928 (b) Pursuant to section 71 of chapter 111 of the General Laws, a licensee who has entered
929 into a contract with a management company prior to the effective date of this act shall provide
930 the department of public health with the necessary documentation and materials for a
931 determination by the department of the responsibility and suitability of the management
932 company, as described in subsection (g) of said section 71 of said chapter 111, prior to any
933 issuance of a renewed license; provided, however, that the department shall give a licensee
934 reasonable time to provide the department with the necessary documents and materials if the
935 licensee’s renewal date is within 90 days of the effective date of this act. A licensee’s failure to

936 comply with this section shall subject the licensee to the penalties established in section 73 of
937 said chapter 111.

938 SECTION 23. Notwithstanding any general or special law to the contrary, the executive
939 office shall report to the house and senate committees on ways and means, not later than 90 days
940 after the effective date of this act, on the availability of a waiver and, if applicable, the estimated
941 net state cost of a waiver that would allow individuals qualifying for Medicaid and at risk of
942 entering a nursing home to reside in a certified assisted living residence. The executive office of
943 health and human services may request a waiver from the federal Centers for Medicare and
944 Medicaid Services to allow individuals qualifying for Medicaid and at risk of entering a nursing
945 home to reside in a certified assisted living residence.

946 SECTION 24. Pursuant to section 72CC of chapter 111 of the General Laws, each long-
947 term care facility shall submit its outbreak response plan to the department of public health not
948 later than 180 days after the effective date of this act.

949 SECTION 25. (a) Each long-term care facility shall designate 2 employees, including 1
950 employee representing management at the facility and 1 employee representing direct care staff
951 at the facility, to receive in-person training required by section 72FF of chapter 111 of the
952 General Laws within 6 months of the effective date of this act. The designated employees shall
953 serve as points of contact for the long-term care facility regarding compliance with the
954 provisions of this act and shall develop a general training plan for the facility. In the event a
955 designated employee ceases to be employed by the facility, the facility shall designate another
956 employee who is representative of the employee group represented by the former designee, who
957 shall complete the in-person training required pursuant to this section, to serve as a point of

958 contact for the facility regarding compliance with the provisions of this act and have joint
959 responsibility for the facility's training plan.

960 (b) All long-term care facility staff employed by a long-term care facility on the effective
961 date of this act, other than an employee designated pursuant to subsection (a), shall complete the
962 training required by 72FF of chapter 111 of the General Laws within 1 year of the effective date
963 of this act.

964 SECTION 26. Sections 13 and 25 shall take effect 180 days after the effective date of this
965 act.

966 SECTION 27. Section 83 of chapter 118E of the General Laws, inserted by section 18,
967 shall take effect on October 1, 2025.

968 SECTION 28. Section 20 is hereby repealed.

969 SECTION 29. Section 28 shall take effect 2 years after the effective date of this act.