

SENATE No. 379

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to improve quality and oversight of long-term care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/20/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/26/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/30/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/2/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/8/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/14/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>2/14/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/15/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/16/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>2/23/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/23/2023</i>
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	<i>2/23/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/23/2023</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>2/28/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>3/13/2023</i>

<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>3/13/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>5/1/2023</i>
<i>Rita A. Mendes</i>	<i>11th Plymouth</i>	<i>5/19/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/22/2023</i>

SENATE No. 379

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 379) of Patricia D. Jehlen, Thomas M. Stanley, Joanne M. Comerford, Jack Patrick Lewis and other members of the General Court for legislation to improve quality and oversight of long-term care. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4780 OF 2021-2022.]

The Commonwealth of Massachusetts

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

An Act to improve quality and oversight of long-term care.

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 23 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 9U the following 2 sections:-

3 Section 9V. The executive office of labor and workforce development, through the
4 Commonwealth Corporation, shall establish a grant program for nursing facility supervisory and
5 leadership training. The program shall include, but not be limited to, covering the cost of nursing
6 facility worker participation in evidence-based supervisory training for the express purpose of
7 improving staff satisfaction, retaining staff and reducing turnover.

8 Section 9W. The Commonwealth Corporation shall, subject to appropriation, establish an
9 extended care career ladder grant program, consistent with section 410 of chapter 159 of the acts

10 of 2000. The Commonwealth Corporation shall make grants available for certified nurses' aides,
11 home health aides, homemakers and other entry-level workers in long-term care. The grants may
12 include English language training, training in other languages and adult basic education
13 programs to improve quality of care and improve direct care worker access to and participation
14 in career ladder training. The length of such grants shall not exceed a period of 3 years. The
15 Commonwealth Corporation shall submit quarterly reports to the house and senate committees
16 on ways and means on said grant program including, but not limited to, the number of grants
17 awarded, the amount of each grant, a description of the career ladder programs, changes in care-
18 giving and workplace practices that have occurred and their impact on quality of care and worker
19 retention and the certificates, degrees or professional status attained by each participating
20 employee. The administrative and program-management costs for the implementation of said
21 grant program shall not exceed 4 per cent of the amount of the grant program. Each grant may
22 include funding for technical assistance and evaluation.

23 SECTION 2. Chapter 111 of the General Laws, as so appearing, is hereby amended by
24 inserting after section 4O the following section:-

25 Section 4P. The department shall, subject to appropriation, establish a tuition
26 reimbursement program for certified nursing assistant training. The department shall reimburse
27 for the costs of certified nursing assistant training or competency, provided that: (i) the costs
28 have been incurred for an approved certified nursing assistant training program; (ii) the costs
29 have been actually paid by the certified nursing assistant from their own personal funds; and (iii)
30 individuals have begun employment as a certified nursing assistant in a licensed nursing facility
31 within 12 months of completing the training program, including passing the competency testing.

32 SECTION 3. Chapter 111 of the General Laws is hereby further amended by striking out
33 section 71 and inserting in place thereof the following section:-

34 Section 71. (a) For purposes of this section and sections 71A½ to 73, inclusive, the
35 following terms shall have the following meanings unless the context or subject matter clearly
36 requires otherwise:

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

39 “Charitable home for the aged”, any institution, however named, conducted for charitable
40 purposes and maintained for the purpose of providing a retirement home for elderly persons and
41 which may provide nursing care within the home for its residents.

42 “Convalescent or nursing home or skilled nursing facility”, any institution, however
43 named, whether conducted for charity or profit, which is advertised, announced or maintained for
44 the express or implied purpose of caring for four or more persons admitted thereto for the
45 purpose of nursing or convalescent care.

46 “Infirmity maintained in a town”, an infirmary, which until now the department of
47 transitional assistance has been directed to visit by section 7 of chapter 121.

48 “Intermediate care facility for persons with an intellectual disability”, any institution,
49 however named, whether conducted for charity or profit, which: (i) is advertised, announced or
50 maintained for the purpose of providing rehabilitative services and active treatment to persons
51 with an intellectual disability or persons with related conditions, as defined in regulations
52 promulgated pursuant to Title XIX of the federal Social Security Act (P.L. 89–97); (ii) is not

53 both owned and operated by a state agency; and (iii) makes application to the department for a
54 license for the purpose of participating in the federal program established by said Title XIX.

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

57 “Licensee”, a person to whom a license to establish or maintain and operate a long-term
58 care facility has been issued by the department.

59 “Long-term care facility”, a charitable home for the aged, convalescent or nursing home,
60 skilled nursing facility, infirmary maintained in a town, intermediate care facility for persons
61 with an intellectual disability or rest home.

62 “Owner”, any person with an ownership interest of 5 per cent or more, or with a
63 controlling interest in an applicant, potential transferee or the real property on which a long-term
64 care facility is located; provided, that the real property owner is related to the applicant or
65 potential transferee as defined in Section 413.17(b) of Title 42 of the Code of Federal
66 Regulations.

67 “Person”, an individual, trust, estate, partnership, association, company or corporation.

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

70 “Rest home”, any institution, however named, which is advertised, announced or
71 maintained for the express or implied purpose of providing care incident to old age to four or
72 more persons who are ambulatory and who need supervision.

73 “Transfer of facility operations”, a transfer of the operations of a currently operating
74 long-term care facility from the current licensee of the long-term care facility to a potential
75 transferee, pending licensure, pursuant to a written “transfer of operations” agreement.

76 (b) To each applicant it deems suitable and responsible to establish or maintain and
77 operate a long-term care facility and which meets all other requirements for long-term care
78 facility licensure, the department shall issue for a term of 2 years, and shall renew for like terms,
79 a license, subject to the restrictions set forth in this section or revocation by it for cause;
80 provided, however, that each long-term care facility shall be inspected at least once a year.

81 The department shall not issue license to establish or maintain an intermediate care
82 facility for persons with an intellectual disability unless the department determines that there is a
83 need for such facility at the designated location; provided, however, that in the case of a facility
84 previously licensed as an intermediate care facility for persons with an intellectual disability in
85 which there is a change in ownership, no such determination shall be required; and provided
86 further, that in the case of a facility previously licensed as an intermediate care facility for
87 persons with an intellectual disability in which there is a change in location, such determination
88 shall be limited to consideration of the suitability of the new location.

89 In the case of the transfer of facility operations of a long-term care facility, a potential
90 transferee shall submit a “notice of intent to acquire” to the department at least 90 days prior to
91 the proposed transfer date. The notice of intent to acquire shall be on a form supplied by the
92 department and shall be deemed complete upon submission of all information which the
93 department requires on the notice of intent form and is reasonably necessary to carry out the
94 purposes of this section. In the case of the transfer of facility operations, a potential transferee

95 shall provide notice to the current staff of the facility, and shall provide notice of the potential
96 transferee's plans regarding retaining the facility workforce and recognizing any current
97 collective bargaining agreements to the labor organizations that represents the facility's
98 workforce at the time the potential transferee submits a "notice of intent to acquire".

99 No license shall be issued to an applicant or potential transferee unless the department
100 makes a determination that the applicant or potential transferee is responsible and suitable for
101 licensure.

102 For purposes of this section, the department's determination of responsibility and
103 suitability shall be limited to the following factors:

104 (i) the civil litigation history of the applicant or potential transferee, including litigation
105 related to the operation of a long-term care facility, such as quality of care, safety of residents or
106 staff, employment and labor issues, fraud, unfair or deceptive business practices and
107 landlord/tenant issues; and the criminal history of the applicant or the potential transferee,
108 including their respective owners, which may include pending or settled litigation or other court
109 proceedings in the commonwealth and in other states including federal jurisdiction. Any
110 information related to criminal or civil litigation obtained by the department pursuant to this
111 section shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7
112 of chapter 4 and chapter 66;

113 (ii) the financial capacity of the applicant or potential transferee, including their
114 respective owners, to establish or maintain and operate a long-term care facility, which may
115 include any recorded liens and unpaid fees or taxes in the commonwealth and in other states;

116 (iii) the history of the applicant or potential transferee, including their respective owners,
117 in providing long-term care in the commonwealth, measured by compliance with applicable
118 statutes and regulations governing the operation of long-term care facilities; and

119 (iv) the history of the applicant or potential transferee, including their respective owners,
120 in providing long-term care in states other than the commonwealth, if any, measured by
121 compliance with the applicable statutes and regulations governing the operation of long-term
122 care facilities in said states.

123 With respect to potential transferees, upon determination by the department that a
124 potential transferee is responsible and suitable for licensure, the potential transferee may file an
125 application for a license. In the case of a potential transfer of facility operations, the filing of an
126 application for a license shall have the effect of a license until the department takes final action
127 on such application.

128 If the department determines that an applicant or potential transferee is not suitable and
129 responsible, the department's determination shall take effect on the date of the department's
130 notice. In such cases and upon the filing of a written request, the department shall afford the
131 applicant or potential transferee an adjudicatory hearing pursuant to chapter 30A.

132 During the pendency of such appeal, the applicant or potential transferee shall not operate
133 the facility as a licensee, or, without prior approval of the department, manage such facility.

134 Each applicant, potential transferee and licensee shall keep all information provided to
135 the department current. After the applicant, potential transferee or licensee becomes aware of any
136 change to information related to information it provided or is required to provide to the
137 department, such person shall submit to the department written notice of the changes as soon as

138 practicable and without unreasonable delay. Changes include, but are not limited to, changes in
139 financial status, such as filing for bankruptcy, any default under a lending agreement or under a
140 lease, the appointment of a receiver or the recording of any lien. Failure to provide timely notice
141 of such change may be subject to the remedies or sanctions available to the department under
142 sections 71 to 73, inclusive.

143 An applicant, potential transferee or licensee and their respective owners shall be in
144 compliance with all applicable federal, state and local laws, rules and regulations.

145 Prior to engaging a company to manage the long-term care facility, hereinafter a
146 “management company”, a licensee shall notify the department in writing of the proposed
147 management company’s name, contact information and any other information on the
148 management company and its personnel that may be reasonably requested by the department.
149 The licensee shall memorialize any such engagement in a written agreement with the
150 management company. Such written agreement shall include a requirement that the management
151 company and its personnel comply with all applicable federal, state and local laws, regulations
152 and rules. Promptly after the effective date of any such agreement, the licensee shall provide to
153 the department a copy of the valid, fully executed agreement. Any payment terms included in the
154 agreement shall be confidential and exempt from disclosure under clause Twenty-sixth of section
155 7 of chapter 4 and chapter 66.

156 The department shall not issue a license unless the authorities in charge of the long-term
157 care facility first submit to the department, with respect to each building occupied by residents:
158 (i) a certificate of inspection of the egresses, the means of preventing the spread of fire and
159 apparatus for extinguishing fire, issued by an inspector of the office of public safety and

160 inspections of the division of professional licensure; provided, however, that with respect to
161 convalescent or nursing homes only, the division of health care quality of the department of
162 public health shall have sole authority to inspect for and issue such certificate; and (ii) a
163 certificate of inspection issued by the head of the local fire department certifying compliance
164 with the local ordinances.

165 Any applicant who is aggrieved, on the basis of a written disapproval of a certificate of
166 inspection by the head of the local fire department or by the office of public safety and
167 inspections of the division of professional licensure, may, within 30 days from such disapproval,
168 appeal in writing to the division of professional licensure. With respect to certificates of
169 inspection that the division of health care quality of the department of public health has the sole
170 authority to issue, an applicant may, within 30 days from disapproval of a certificate of
171 inspection, appeal in writing to the department of public health only. Failure to either approve or
172 disapprove within 30 days after a written request by an applicant shall be deemed a disapproval.

173 If the division of professional licensure or, where applicable, the department of public
174 health approves the issuance of a certificate of inspection, it shall forthwith be issued by the
175 agency that failed to approve. If said department disapproves, the applicant may appeal
176 therefrom to the superior court. Failure of said department to either approve or disapprove the
177 issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a
178 disapproval. The department shall not issue a license until issuance of an approved certificate of
179 inspection, as required in this section.

180 Nothing in this section or in sections 72 or 73 shall be construed to revoke, supersede or
181 otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning,
182 registration or maintenance of a long-term care facility.

183 (c) For cause, the department may limit, restrict, suspend or revoke a license. Grounds for
184 cause on which the department may take such action shall include: (i) substantial or sustained
185 failure to provide adequate care to residents; (ii) substantial or sustained failure to maintain
186 compliance with applicable statutes, rules and regulations; (iii) or the lack of financial capacity
187 to maintain and operate a long-term care facility. Limits or restrictions include requiring a
188 facility to limit new admissions. Suspension of a license includes suspending the license during a
189 pending license revocation action, or suspending the license to permit the licensee a period of
190 time, not shorter than 60 days, to wind down operations, and discharge and transfer, if
191 applicable, all residents.

192 The department may, when public necessity and convenience require, or to prevent undue
193 hardship to an applicant or licensee, under such rules and regulations as it may adopt, grant a
194 temporary provisional or probationary license under this section; provided, however, that no such
195 license shall be for a term exceeding 1 year.

196 With respect to an order to limit, restrict or suspend a license, within 7 days of receipt of
197 the written order, the licensee may file a written request with the department for administrative
198 reconsideration of the order or any portion thereof.

199 Upon a written request by a licensee who is aggrieved by the revocation of a license or
200 the adoption of a probationary license, or by an applicant who is aggrieved by the refusal of the
201 department to renew a license, the commissioner and the council shall hold a public hearing,

202 after due notice, and thereafter they may modify, affirm or reverse the action of the department;
203 provided, however, that the department may not refuse to renew and may not revoke the license
204 of a long-term care facility until after a hearing before a hearings officer, and any such applicant
205 so aggrieved shall have all the rights provided in chapter 30A with respect to adjudicatory
206 proceedings.

207 In no case shall the revocation of such a license take effect in less than 30 days after
208 written notification by the department to the licensee.

209 The fee for a license to establish or maintain or operate a long-term care facility shall be
210 determined annually by the commissioner of administration pursuant to the provision of section
211 3B of chapter 7, and the license shall not be transferable or assignable and shall be issued only
212 for the premises named in the application.

213 Nursing institutions licensed by the department of mental health, or the department of
214 developmental services for persons with intellectual disabilities shall not be licensed or inspected
215 by the department of public health. The inspections herein provided shall be in addition to any
216 other inspections required by law.

217 (d) In the case of the new construction of, or major addition, alteration or repair to, any
218 facility subject to this section, preliminary architectural plans and specifications and final
219 architectural plans and specifications shall be submitted to a qualified person designated by the
220 commissioner. Written approval of the final architectural plans and specifications shall be
221 obtained from said person prior to said new construction, or major addition, alteration or repair.

222 Notwithstanding any of the foregoing provisions of this section, the department shall not
223 issue a license to establish or maintain and operate a long-term care facility unless the applicant

224 for such license submits to the department a certificate that each building to be occupied by
225 patients of such convalescent or nursing home or skilled nursing facility meets the construction
226 standards of the state building code, and is of at least type 1–B fireproof construction; provided,
227 however, that this paragraph shall not apply in the instance of a transfer of facility operations of a
228 convalescent or nursing home or skilled nursing facility whose license had not been revoked as
229 of the time of such transfer; and provided, further, that a public medical institution as defined
230 under section 2 of chapter 118E, which meets the construction standards as defined herein, shall
231 not be denied a license as a nursing home under this section because it was not of new
232 construction and designed for the purpose of operating a convalescent or nursing home or skilled
233 nursing facility at the time of application for a license to operate a nursing home. An
234 intermediate care facility for persons with an intellectual disability shall be required to meet the
235 construction standards established for such facilities by Title XIX of the Social Security Act
236 (P.L. 89–97) and any regulations promulgated pursuant thereto, and by regulations promulgated
237 by the department.

238 (e) Every applicant for a license and every potential transferee shall provide on or with its
239 application or notice of intent to acquire a sworn statement of the names and addresses of any
240 owner as defined in this section. In this section, the phrase “person with an ownership or control
241 interest” shall have the definition set forth in 42 USC § 1320a–3 of the Social Security Act and
242 in regulations promulgated hereunder by the department.

243 The department shall notify the secretary of elder affairs forthwith of the pendency of any
244 proceeding of any public hearing or of any action to be taken under this section relating to any
245 convalescent or nursing home, rest home, infirmary maintained in a town or charitable home for
246 the aged. The department shall notify the commissioner of mental health forthwith of the

247 pendency of any proceeding, public hearing or of any action to be taken under this section
248 relating to any intermediate care facility for persons with an intellectual disability.

249 SECTION 4. Section 72 of said chapter 111 of the General Laws, as so appearing, is
250 hereby amended by adding the following four paragraphs:-

251 The department shall establish regulations for the operation of small house nursing
252 homes, herein defined as 1 or more units of a nursing home designed and modeled as a private
253 home including residential kitchen and living area. Newly constructed small house nursing
254 homes shall house no more than 14 individuals per unit, in resident rooms that accommodate not
255 more than 2 residents per room, which are shared only at the request of a resident to
256 accommodate a spouse, partner, family member or friend. All resident rooms shall contain a full
257 private and accessible bathroom.

258 Regulations for small house nursing homes shall, to the extent practicable, prohibit the
259 use of institutional features, including but not limited to nursing stations, medication carts, room
260 numbers and wall-mounted licenses or certificates that could appropriately be accessed through
261 other means.

262 Regulations for construction and physical plant standards should be based on the smaller
263 size and limited number of residents served in small house nursing homes in comparison with
264 traditional nursing facility units. In addition to development of construction and physical plant
265 standards that support small house nursing homes, regulations shall support a staffing model
266 small house nursing homes that allow for a universal worker approach to resident care that is
267 organized to support and empower all staff to respond to the needs and desires of residents
268 including cooking and meal preparation, and provides for consistent staff in each small house.

269 The executive office of health and human services shall develop an add-on to rates of
270 payment for nursing facilities that develop small house nursing homes and meet criteria
271 established by the executive office.

272 SECTION 5. Said chapter 111 is hereby further amended by striking out section 72E and
273 inserting in place thereof the following section:-

274 Section 72E. The department shall, after every inspection by its agent made under
275 authority of section 72, give the licensee of the inspected long-term care facility notice in writing
276 of every violation of the applicable statutes, rules and regulations of the department found upon
277 said inspection. With respect to the date by which the licensee shall remedy or correct each
278 violation, hereinafter the “correct by date”, the department in such notice shall specify a
279 reasonable time, not more than 60 days after receipt thereof, by which time the licensee shall
280 remedy or correct each violation cited therein or, in the case of any violation which in the
281 opinion of the department is not reasonably capable of correction within 60 days, the department
282 shall require only that the licensee submit a written plan for the timely correction of the violation
283 in a reasonable manner. The department may modify any nonconforming plan upon notice in
284 writing to the licensee.

285 Absent good faith efforts to remedy or correct, failure to remedy or correct a cited
286 violation by the agreed upon correct by date shall be cause to pursue or impose the remedies or
287 sanctions available to it under sections 71 to 73, inclusive, unless the licensee shall demonstrate
288 to the satisfaction of the department or the court, as the case may be, that such failure was not
289 due to any neglect of its duty and occurred despite an attempt in good faith to make correction by
290 the agreed upon correct by date. The department may pursue or impose any remedy or sanction

291 or combination of remedies or sanctions available to it under said sections 71 to 73, inclusive. An
292 aggrieved licensee may pursue the remedies available to it under said sections 71 to 73,
293 inclusive.

294 In addition, if the licensee fails to maintain substantial or sustained compliance with
295 applicable statutes, rules and regulations, in addition to imposing any of the other remedies or
296 sanctions available to it, the department may require the licensee to engage, at the licensee's own
297 expense, a temporary manager to assist the licensee with bringing the facility into substantial
298 compliance and with sustaining such compliance. Such manager shall be subject to the
299 department's approval, provided that such approval not be unreasonably withheld. Any such
300 engagement of a temporary manager shall be for a period of not less than 3 months and shall be
301 pursuant to a written agreement between the licensee and the management company. A copy of
302 such agreement shall be provided by the licensee to the department promptly after execution.
303 Any payment terms included in the agreement shall be confidential and exempt from disclosure
304 under clause twenty-sixth of section 7 of chapter 4 and chapter 66.

305 Nothing in this section shall be construed to prohibit the department from enforcing a
306 statute, rule or regulation, administratively or in court, without first affording formal opportunity
307 to make correction under this section, where, in the opinion of the department, the violation of
308 such statute, rule or regulation jeopardizes the health or safety of residents or the public or
309 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such
310 statute, rule or regulation is the second such violation occurring during a period of 12 full
311 months.

312 SECTION 6. Section 72K of said chapter 111 of the General Laws, as so appearing, is
313 hereby amended by striking out subsection (b) and inserting in place thereof the following 2
314 subsections:-

315 (b) The attorney general may file a civil action against a person who commits abuse,
316 mistreatment or neglect of a patient or resident or who misappropriates patient or resident
317 property or against a person who wantonly or recklessly permits or causes another to commit
318 abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident
319 property. The civil penalty for such abuse, mistreatment, neglect or misappropriation shall not
320 exceed: \$25,000 if no bodily injury results; \$50,000 if bodily injury results; \$100,000 if sexual
321 assault or serious bodily injury results; and \$250,000 if death results. Section 60B of chapter 231
322 shall not apply to an action brought by the attorney general pursuant to this section. Nothing in
323 this section shall preclude the filing of any action brought by the attorney general or a private
324 party pursuant to chapter 93A or any action by the department pursuant to this chapter.

325 (c) Notwithstanding section 5 of chapter 260, the attorney general may file a civil action
326 only within four years next after an offense is committed.

327 SECTION 7. Said chapter 111 of the General Laws is hereby further amended by
328 inserting after section 72BB the following 3 sections:-

329 Section 72CC. (a) For purposes of this section, the following terms shall, unless the
330 context clearly requires otherwise, have the following meanings:

331 “Cohorting”, the practice of grouping patients who are or are not colonized or infected
332 with the same organism in order to confine their care to one area and prevent contact with other
333 patients.

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

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

337 “Outbreak”, any unusual occurrence of disease or any disease above background or
338 endemic levels.

339 “Long-term care facility”, a charitable home for the aged, convalescent or nursing home
340 or skilled nursing facility, an infirmary maintained in a town, an intermediate care facility for
341 persons with an intellectual disability or a rest home.

342 (b) Notwithstanding any general or special law to the contrary, the department shall
343 require long-term care facilities to develop an outbreak response plan which shall be customized
344 to the facility. Each facility’s plan shall include, but not be limited to:

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

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

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

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

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

357 (c) (1) In addition to the requirements set forth in subsection (b), the department shall
358 require long-term care facilities to include in their outbreak response plan, written policies to
359 meet staffing, training and facility demands during an infectious disease outbreak and to
360 successfully implement the outbreak response plan, including either employing on a full-time or
361 part-time basis, or contracting with on a consultative basis, the following individuals:

362 (a) an individual certified by the Certification Board of Infection Control &
363 Epidemiology, Inc.; or

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

365 (2) The department shall verify that the outbreak response plans submitted by long-term
366 care facilities are in compliance with the requirements of subsection (b) and with the
367 requirements of paragraph (1) of this subsection.

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

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

374 (e) The department shall promulgate regulations necessary to implement this section.

375 Section 72DD. The department, through its division of health care facility licensure and
376 certification, shall establish and implement a prescribed process and program for providing
377 training and education to long term care providers licensed by the department under section 72.
378 The training and education programs may include: infection prevention and control;
379 development, implementation, adherence and review of comprehensive resident care plans; falls
380 prevention; procedures to ensure timely notification of changes in a resident's condition to the
381 resident's primary care physician; the prevention of abuse and neglect; development and
382 implementation of a program to minimize the danger of workplace violence to employees; and
383 review of the survey and inspection process. The department shall consult with the industry trade
384 associations, before requiring any new regulatory guidance, regulation, interpretation, program
385 letter or memorandum or any other materials used in surveyor training to survey licensed
386 providers.

387 The process, training, and education shall include, but not be limited to, the following:

388 (i) annual training for long term care facilities on the licensure and certification process.
389 This training shall include, but not be limited to, the department's interpretation of the general
390 laws, rules, regulations, procedures and policies concerning the licensure and certification
391 process for such long-term care facilities;

392 (ii) biannual training of long-term care providers on the most frequently cited
393 deficiencies, identified deficiency trends, both state and federal, and best practices to ensure
394 resident quality of care; and

395 (iii) training of long-term care providers and the department survey inspectors jointly on
396 the department's new expectations. Trainings shall be interactive, with the sharing of information
397 and recommendations between long term care facilities and the department on issues and topics.

398 Section 72EE. (a) For the purposes of this section, the following terms shall, unless the
399 context clearly requires otherwise, have the following meanings:

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

403 “Resident”, a person who resides in a long-term care facility.

404 “Long-term care facility”, a charitable home for the aged, convalescent or nursing home
405 or skilled nursing facility, an infirmary maintained in a town, an intermediate care facility for
406 persons with an intellectual disability or a rest home.

407 (b) The department shall promulgate regulations necessary to encourage and enable
408 residents of a long-term care facility to engage in in-person, face-to-face, verbal or auditory-
409 based contact, communications and religious and recreational activities with others except when
410 such in-person contact, communication or activities are prohibited, restricted or limited, as
411 otherwise permitted by federal or state statute, rule or regulation. Said regulations shall include
412 specific protocols and procedures to provide for residents of the facility who have disabilities
413 that impede their ability to communicate, including, but not limited to, residents who are blind,
414 deaf, have Alzheimer’s disease or other related dementias and residents who have developmental
415 disabilities.

416 (c) The department may distribute civil monetary penalty funds, as approved by the
417 federal Centers for Medicare and Medicaid Services, and any other available federal and state
418 funds, upon request, to facilities for communicative technologies and accessories needed for the
419 purposes of this section.

420 SECTION 8. Said chapter 111 is hereby further amended by striking out section 73 and
421 inserting in place thereof the following section:-

422 Section 73. Whoever advertises, announces, establishes or maintains, or is concerned in
423 establishing or maintaining a long-term care facility, or is engaged in any such business, without
424 a license granted under section 71, or whoever being licensed under said section 71 violates any
425 provision of sections 71 to 73, inclusive, shall for a first offense be punished by a fine of not
426 more than \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or by
427 imprisonment for not more than two years.

428 Whoever violates any rule or regulation established under sections 71, 72 and 72C shall
429 be punished by a fine, not to exceed \$22,320, as the department may establish unless the
430 department determines a higher amount is permitted pursuant to 42 CFR 488.438. If any person
431 violates any such rule or regulation by allowing a condition to exist which may be corrected or
432 remedied, the department shall order such person, in writing, to correct or remedy such
433 condition, and if such person fails or refuses to comply with such order by the agreed upon
434 correct by date, as defined in section 72E, each day after the agreed upon correct by date during
435 which such failure or refusal to comply continues shall constitute a separate offense. A failure to
436 pay the fine imposed by this section shall be a violation of this section.

437 SECTION 9. Section 14A of chapter 118E of the General Laws, as appearing in the 2020
438 Official Edition, is hereby amended by adding the following paragraph:-

439 On a per resident basis, MassHealth shall reimburse nursing home facilities for up to and
440 including 20 medical leave-of-absence days and shall reimburse the facilities for up to and
441 including 10 nonmedical leave-of-absence days per year for MassHealth recipients; provided,
442 that medical leave-of-absence days shall include an observation stay in a hospital in excess of 24
443 hours. No nursing home shall reassign a patient's bed during a leave of absence that is eligible
444 for reimbursement.

445 SECTION 10. Said chapter 118E of the General Laws is further amended by adding the
446 following section:-

447 Section 80. For the purpose of ensuring a living wage for nursing facility direct care staff,
448 MassHealth shall enact regulations regarding standard payments from MassHealth to nursing
449 facilities that establish a living wage for direct care staff of licensed nursing homes, including,
450 but not limited to, certified nurse aides and housekeeping, laundry, dietary, plant operations and
451 clerical staff. Such regulations shall ensure that such standard payments shall reimburse nursing
452 facilities for the costs of paying a living wage, associated payroll benefits and related employee
453 costs. MassHealth shall, subject to appropriation, adjust such payments with an inflation
454 adjustment consistent with the annual unadjusted Skilled Nursing Facility Market Basket Update,
455 as established by the Centers for Medicare & Medicaid Services in 42 C.F.R. § 413.337.
456 MassHealth shall adopt all additional regulations and procedures necessary to carry out this
457 section, provided, that such regulations shall include permissible use standards mandating that
458 facilities shall expend these supplemental payments exclusively on direct care staff expenses,

459 which shall be further defined in such regulations but that shall not include spending on
460 temporary nursing staff, management staff or nursing facility administrators. Such additional
461 regulations and procedures shall include: (i) mandated facility interim reporting to the executive
462 office of health and human services on the ways in which the facility expects to spend; and (ii)
463 mandated facility final reporting on the expenditure of payments received under this section,
464 including audits and provisions that reconcile such expenditure reporting with the Direct Care
465 Cost Quotient regulations. MassHealth shall submit to the house and senate committees on ways
466 and means a report containing an analysis of funds expended under this program.

467 SECTION 11. (a) Notwithstanding any special or general law to the contrary, the center
468 for health information and analysis, in consultation with MassHealth, the department of elder
469 affairs, the department of public health and the health policy commission shall annually conduct
470 an examination of cost trends and financial performance among nursing facilities, as defined by
471 957 CMR 7.02. The information shall be analyzed on an institution-specific and industry-wide
472 basis. The examination shall also aggregate information collected on multiple skilled nursing
473 facilities that are owned and operated by a single individual, trust, estate, partnership,
474 association, company or corporation with an ownership interest of 5 per cent or more in the
475 facilities' operating license, management company, or associated real estate. The examination
476 and report shall include, but not be limited to the collection and analysis of the following: (i)
477 gross and net patient service revenues; (ii) other sources of operating and non-operating revenue;
478 (iii) trends in relative price, payer mix, case mix, utilization and length of stay dating back to
479 2010; (iv) affiliations with other health care providers, including, but not limited to, preferred
480 clinical relationships and partnerships; (v) categories of costs, including, but not limited to,
481 general and administrative costs, nursing and other labor costs and salaries, building costs,

482 capital costs and other operating costs; (vi) total spending on direct patient care as a percent of
483 total operating expenses; (vii) operating and total margin; (viii) occupancy rates; and (ix) other
484 relevant measures of financial performance and service delivery. These measures should
485 distinguish long-term residents from short-stay residents where possible. The report and any
486 policy recommendations shall be filed with the clerks of the house of representatives and the
487 senate, the house of representatives and senate committees on ways and means and the joint
488 committee on elder affairs no later than 6 months after the passage of this act.

489 (b) To determine affiliations between nursing facilities and other health care providers as
490 required, the center for health information and analysis shall utilize ownership information
491 submitted to the department of public health as part of the long-term care facility licensure
492 determination process set forth in section 71 of chapter 111 of the General Laws. The department
493 of public health shall provide such records as necessary for the provision of this section.

494 SECTION 12. Notwithstanding any general or special law to the contrary, the health
495 policy commission shall conduct an analysis and issue a report on nursing personnel in long-term
496 care facilities. The study shall consider the hours of care per resident per day required to prevent
497 a substandard quality of care as defined by 42 CFR 488.301 and ensure sufficient staffing levels
498 necessary to meet resident nursing care needs based on acuity, resident assessments, care plans,
499 census and other relevant factors. This study shall also consider the effect of such staffing
500 requirements on the long-term care industry including cost impact on long-term care facilities,
501 satisfaction of the workforce and quality of care for residents.

502 The health policy commission shall submit to the clerks of the house of representatives
503 and the senate, the house and senate committees on ways and means, the joint committee on

504 healthcare financing and the joint committee on elder affairs the report, including any
505 recommendations derived from the study within 180 days of the effective date of this act.

506 SECTION 13. Pursuant to section 72CC of section 111 of the General Laws, each long-
507 term care facility shall submit its outbreak response plan to the department within 180 days of
508 the effective date of this act.