

**SENATE . . . . . No. 391**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Mark C. Montigny***

*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 providing transparency and accountability of nursing home ownership.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2023</i>
<i>Paul A. Schmid III</i>	<i>8th Bristol</i>	<i>3/2/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/2/2023</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>3/2/2023</i>

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By Mr. Montigny, a petition (accompanied by bill, Senate, No. 391) of Mark C. Montigny, Jack Patrick Lewis, Paul A. Schmid, III, Patricia D. Jehlen and others for legislation to provide transparency and accountability of nursing home ownership. Elder Affairs.

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**The Commonwealth of Massachusetts**

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

An Act providing transparency and accountability of nursing home ownership.

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

1           SECTION 1. Chapter 111 of the General Laws, as appearing in the 2020 Official Edition,  
2 is hereby amended by striking out section 71 and inserting in place thereof the following  
3 section:-

4           Section 71. For purposes of this section and sections 71A ½ to 73, the following terms  
5 shall have the following meanings unless the context or subject matter clearly requires otherwise:

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

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

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

15 “Infirmity maintained in a town”, an infirmity which hitherto the department of public  
16 welfare has been directed to visit by section 7 of chapter 121.

17 “Intermediate care facility for persons with an intellectual disability”, any institution,  
18 however named, whether conducted for charity or profit, which is advertised, announced or  
19 maintained for the purpose of providing rehabilitative services and active treatment to persons  
20 with an intellectual disability or persons with related conditions, as defined in regulations  
21 promulgated pursuant to Title XIX of the federal Social Security Act (P.L. 89–97); which is not  
22 both owned and operated by a state agency; and which makes application to the department for a  
23 license for the purpose of participating in the federal program established by said Title XIX.

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

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

28 “Long-term care facility”, a charitable home for the aged, a convalescent or nursing  
29 home, an infirmity maintained in a town, an intermediate care facility for persons with an  
30 intellectual disability or a rest home.

31           “Owner”, any person owning 5 per cent or more of, with an ownership interest of 5 per  
32 cent or more of, or with a controlling interest in an applicant, potential transferee or the real  
33 property on which a long-term care facility is located.

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

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

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

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

43           To each applicant it deems suitable and responsible to establish or maintain and operate a  
44 long-term care facility and which meets all other requirements for long-term care facility  
45 licensure, the department shall issue for a term of two years, and shall renew for like terms, a  
46 license, subject to the restrictions set forth in this section or revocation by it for cause; provided,  
47 however, that each convalescent or nursing home and each intermediate care facility for persons  
48 with an intellectual disability shall be inspected at least once a year.

49           No license shall be issued to establish or maintain an intermediate care facility for  
50 persons with an intellectual disability, unless there is a determination by the department that  
51 there is a need for such facility at the designated location; provided, however, that in the case of

52 a facility previously licensed as an intermediate care facility for persons with an intellectual  
53 disability in which there is a change in ownership, no such determination shall be required and in  
54 the case of a facility previously licensed as an intermediate care facility for persons with an  
55 intellectual disability in which there is a change in location, such determination shall be limited  
56 to consideration of the suitability of the new location.

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

63 No license shall be issued to an applicant and no potential transferee may submit an  
64 application for a license unless the department makes a determination that the applicant or  
65 potential transferee is responsible and suitable for licensure.

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

68 (i) the criminal or civil history of the applicant or the potential transferee, including their  
69 respective owners, which shall include certification by the department of criminal justice  
70 information services and which may include a review of any pending or settled litigation or other  
71 court proceedings in the commonwealth and in other states;

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

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

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

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

87 If the department determines that an applicant or potential transferee is not suitable and  
88 responsible, the department's determination shall take effect on the date of the department's  
89 notice. In such cases, the applicant or potential transferee shall upon the filing of a written  
90 request with the department be afforded an adjudicatory hearing pursuant to chapter 30A. During  
91 the pendency of such appeal, the applicant or potential transferee shall not operate the facility as  
92 a licensee, or, without prior approval of the department, manage such facility.

93           Each applicant, potential transferee and licensee shall keep all information provided to  
94 the department current. Promptly after the applicant, potential transferee or licensee becomes  
95 aware of any change to information related to information it provided or is required to provide to  
96 the department, such person shall submit to the department written notice of the changes.  
97 Changes include, but are not limited to, changes in financial status, such as filing for bankruptcy,  
98 any default under a lending agreement or lease, the appointment of a receiver or the recording of  
99 any lien.

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

102           Prior to engaging a company to manage the long-term care facility a licensee shall notify  
103 the department in writing of the name of and provide contact information for the proposed  
104 management company and any other information on the management company and its personnel  
105 that may be reasonably requested by the department. Any such engagement must be pursuant to a  
106 written agreement between the licensee and the management company. Such written agreement  
107 shall include a requirement that the management company and its personnel shall comply with  
108 all applicable federal, state and local laws, regulations and rules. Promptly after the effective date  
109 of any such agreement, the licensee shall provide to the department a copy of the valid, fully  
110 executed agreement.

111           With respect to a license issued as a result of a transfer of operations, the department  
112 shall not reduce the number of beds that were on the license held by the former licensee, unless  
113 the public safety requires it.

114 No license shall be issued hereunder unless there shall be first submitted to the  
115 department by the authorities in charge of the long-term care facility with respect to each  
116 building occupied by residents (1) a certificate of inspection of the egresses, the means of  
117 preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the  
118 office of public safety and inspections of the division of professional licensure; provided,  
119 however, that with respect to convalescent or nursing homes only, the division of health care  
120 quality of the department of public health shall have sole authority to inspect for and issue such  
121 certificate, and (2) a certificate of inspection issued by the head of the local fire department  
122 certifying compliance with the local ordinances.

123 Any applicant who is aggrieved, on the basis of a written disapproval of a certificate of  
124 inspection by the head of the local fire department or by the office of public safety and  
125 inspections of the division of professional licensure, may, within 30 days from such disapproval,  
126 appeal in writing to the division of professional licensure. With respect to certificates of  
127 inspection that the division of health care quality of the department of public health has the sole  
128 authority to issue, an applicant may, within 30 days from disapproval of a certificate of  
129 inspection, appeal in writing to the department of public health only. Failure to either approve or  
130 disapprove within 30 days, after a written request by an applicant, shall be deemed a disapproval.

131 If the division of professional licensure or, where applicable, the department of public  
132 health approves the issuance of a certificate of inspection, it shall forthwith be issued by the  
133 agency that failed to approve. If said department disapproves, the applicant may appeal  
134 therefrom to the superior court. Failure of said department to either approve or disapprove the  
135 issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a

136 disapproval. No license shall be issued by the department until issuance of an approved  
137 certificate of inspection, as required in this section.

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

141           For cause, the department may limit, restrict, suspend or revoke the license. Grounds for  
142 cause on which the department may take such action shall include failure or inability to provide  
143 adequate care to residents, failure to maintain substantial compliance with applicable statutes,  
144 rules and regulations or lack of financial capacity to maintain and operate a long-term care  
145 facility. Limits or restrictions include requiring a facility to limit new admissions. Suspension of  
146 a license includes suspending the license during a pending license revocation action or  
147 suspending the license to permit the licensee a period of time, not shorter than 60 days, to wind  
148 down operations, and discharge and transfer, if applicable, all residents.

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

153           With respect to an order to limit, restrict or suspend a license, within 7 days of receipt of  
154 the written order, the licensee may file a written request with the department for administrative  
155 reconsideration of the order or any portion thereof. Failure of the department to grant, deny or  
156 otherwise act upon any such written request within seven days of its receipt of such a request  
157 shall be deemed a denial of the request.

158           Upon a written request by a licensee who is aggrieved by the revocation of a license or by  
159 an applicant who is aggrieved by the refusal of the department to renew a license, the  
160 commissioner and the council shall hold a public hearing, after due notice, and thereafter they  
161 may modify, affirm or reverse the action of the department; provided, however, that the  
162 department may not refuse to renew and may not revoke the license of a long-term care facility  
163 until after a hearing before a hearings officer, and any such applicant so aggrieved shall have all  
164 the rights provided in chapter 30A with respect to adjudicatory proceedings.

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

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

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

175           In the case of new construction, or major addition, alteration, or repair with respect to any  
176 facility subject to this section, preliminary architectural plans and specifications and final  
177 architectural plans and specifications shall be submitted to a qualified person designated by the  
178 commissioner. Written approval of the final architectural plans and specifications shall be  
179 obtained from said person prior to said new construction, or major addition, alteration, or repair.

180           Notwithstanding any of the foregoing provisions of this section, no license to establish or  
181 maintain and operate a long-term care facility shall be issued by the department unless the  
182 applicant for such license submits to the department a certificate that each building to be  
183 occupied by patients of such convalescent or nursing home or skilled nursing facility meets the  
184 construction standards of the state building code, and is of at least type 1-B fireproof  
185 construction; provided, however, that this paragraph shall not apply in the instance of a transfer  
186 of facility operations of a convalescent or nursing home or skilled nursing facility whose license  
187 had not been revoked as of the time of such transfer; and provided, further, that a public medical  
188 institution as defined under section 2 of chapter 118E, which meets the construction standards as  
189 defined herein, shall not be denied a license as a nursing home under this section because it was  
190 not of new construction and designed for the purpose of operating a convalescent or nursing  
191 home or skilled nursing facility at the time of application for a license to operate a nursing home.  
192 An intermediate care facility for persons with an intellectual disability shall be required to meet  
193 the construction standards established for such facilities by Title XIX of the Social Security Act  
194 (P.L. 89-97) and any regulations promulgated pursuant thereto, and by regulations promulgated  
195 by the department.

196           Every applicant for a license and every potential transferee shall provide on or with its  
197 application or notice of intent to acquire a sworn statement of the names and addresses of any  
198 person who owns or has an ownership or control interest in the applicant or potential transferee  
199 or in the real property on which the long-term care facility is located. As used herein, the phrase  
200 "person with an ownership or control interest" shall have the definition set forth in 42 USC Sec.  
201 1320a-3 of the Social Security Act and in regulations promulgated hereunder by the department.

202           The department shall notify the secretary of elder affairs forthwith of the pendency of any  
203 proceeding of any public hearing or of any action to be taken under this section relating to any  
204 convalescent or nursing home, rest home, infirmary maintained in a town, or charitable home for  
205 the aged. The department shall notify the commissioner of mental health forthwith of the  
206 pendency of any proceeding, public hearing or of any action to be taken under this section  
207 relating to any intermediate care facility for persons with an intellectual disability.

208           SECTION 2. Said chapter 111, as so appearing, is hereby further amended by striking out  
209 section 72E and inserting in place thereof the following section:-

210           Section 72E. The department shall, after every inspection by its agent made under  
211 authority of section 72 of this chapter, give the licensee of the inspected long-term care facility  
212 notice in writing of every violation of the applicable statutes, rules and regulations of the  
213 department found upon said inspection. With respect to the date by which the licensee shall  
214 remedy or correct each violation, hereinafter the “correct by date”, the department in such notice  
215 shall specify a reasonable time, not more than 60 days after receipt thereof, by which time the  
216 licensee shall remedy or correct each violation cited therein or, in the case of any violation which  
217 in the opinion of the department is not reasonably capable of correction within 60 days, the  
218 department shall require only that the licensee submit a written plan for the timely correction of  
219 the violation in a reasonable manner. The department may modify any nonconforming plan upon  
220 notice in writing to the licensee.

221           Absent good faith efforts to remedy or correct, failure to remedy or correct a cited  
222 violation by the agreed upon correct by date shall be cause to pursue or impose the remedies or  
223 sanctions available to it under sections 71 through 73 of this chapter unless the licensee shall

224 demonstrate to the satisfaction of the department or the court, as the case may be, that such  
225 failure was not due to any neglect of its duty and occurred despite an attempt in good faith to  
226 make correction by the agreed upon correct by date. The department may pursue or impose any  
227 remedy or sanction or combination of remedies or sanctions available to it under said sections 71  
228 through 73. An aggrieved licensee may pursue the remedies available to it under such sections.

229           In addition, if the licensee fails to maintain substantial compliance with applicable  
230 statutes, rules and regulations, in addition to imposing any of the other remedies or sanctions  
231 available to it, the department may require the licensee to engage, at the licensee's own expense,  
232 a temporary manager to assist the licensee with bringing the facility into substantial compliance  
233 and with sustaining such compliance. Such manager is subject to the department's approval, such  
234 approval not to be unreasonably withheld. Any such engagement of a temporary manager would  
235 be for a period of not less than 6 months and shall be pursuant to a written agreement between  
236 the licensee and the management company. A copy of such agreement shall be provided by the  
237 licensee to the department promptly after execution.

238           Nothing in this section shall be construed to prohibit the department from enforcing a  
239 statute, rule or regulation, administratively or in court, without first affording formal opportunity  
240 to make correction under this section, where, in the opinion of the department, the violation of  
241 such statute, rule or regulation jeopardizes the health or safety of residents or the public or  
242 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such  
243 statute, rule or regulation is the second such violation occurring during a period of 12 full  
244 months.”; and

245 SECTION 3. Said chapter 111, as so appearing, is hereby further amended by striking out  
246 section 73 and inserting in place thereof the following section:-

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

253 Notwithstanding the above paragraph, whoever violates any rule or regulation made  
254 pursuant to sections 71, 71C, 72, or 72C shall be punished by such fine not to exceed \$23,989,  
255 unless the department determines a higher amount is permitted pursuant to 42 CFR 488.438. If  
256 any person violates any such rule or regulation by allowing a condition to exist which may be  
257 corrected or remedied, the department shall order him, in writing, to correct or remedy such  
258 condition, and if such person fails or refuses to comply with such order by the agreed upon  
259 correct by date as defined in section 72E, each day after the agreed upon correct by date during  
260 which such failure or refusal to comply continues shall constitute a separate offense. Fines  
261 collected pursuant to this paragraph shall be deposited into the Long-Term Care Facility Quality  
262 Improvement Fund established pursuant to section 2UUUU of chapter 29 and shall not revert to  
263 the General Fund. A failure to pay the fine imposed by this section shall be a violation of this  
264 section.