

HOUSE No. 3927

The Commonwealth of Massachusetts

PRESENTED BY:

Kate Lipper-Garabedian

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

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

An Act relative to assisted living facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>6/6/2023</i>

HOUSE No. 3927

By Representative Lipper-Garabedian of Melrose, a petition (subject to Joint Rule 12) of Kate Lipper-Garabedian relative to assisted living facilities. Elder Affairs.

The Commonwealth of Massachusetts

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

An Act relative to assisted living facilities.

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. Section 3 of chapter 19D of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by striking the section in its entirety and inserting in place
3 thereof the following:-

4 Section 3. (a) No person shall advertise, operate or maintain an assisted living residence
5 without the certification required under this chapter; provided, however, that the provisions of
6 this chapter shall not apply to such entities for the original facilities and services for which said
7 entities were originally licensed or organized to provide. Assisted living residences may be
8 sponsored by the following entities:

9 (1) convalescent homes, licensed nursing homes, licensed rest homes, charitable homes
10 for the aged or intermediate care facilities for persons with an intellectual disability licensed
11 pursuant to section seventy-one of chapter one hundred and eleven:

12 (2) hospices licensed pursuant to the provisions of section fifty-seven D of chapter one
13 hundred and eleven;

14 (3) facilities providing continuing care to residents as defined by section seventy-six of
15 chapter ninety-three;

16 (4) congregate housing authorized by section thirty-nine of chapter one hundred and
17 twenty-one B or participants in the department's congregate housing program;

18 (5) group homes or supported living programs operating under contract with the
19 department of mental health, the rehabilitation commission or the department of developmental
20 services or

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

25 (b) The provisions of this chapter shall not apply to any residential
26 premises available for lease by elderly or disabled individuals which is financed or
27 subsidized in whole or in part by local, state or federal housing programs established primarily to
28 develop or operate housing or both rather than to provide housing and personal services in
29 combination, provided that such premises are not currently licensed under chapter one hundred
30 and eleven.

31 SECTION 2. Section 4 of chapter 19D of the General Laws, as appearing in the 2020
32 Official Edition, is hereby amended by striking the section in its entirety and inserting in place
33 thereof the following:-

34 Section 4. (a) The department shall issue for a term of two years, and shall renew for like
35 terms, a certification, subject to corrective action, modification, suspension or revocation by it
36 for cause, to any person whom it reasonably determines to meet the regulatory requirements
37 promulgated by the department in accordance with this chapter. Such certification shall not be
38 transferable or assignable and shall be issued only to the person and for the premises named in
39 the application. The department shall issue a certificate which shall be posted by the assisted
40 living residence in a conspicuous place on the approved premises.

41 (b) Upon applying for initial certification or certification renewal, an applicant shall pay
42 the department a fee based on the number of units at the assisted living residence. Said fee shall
43 be established by the secretary of administration and finance pursuant to the provisions of section
44 three B of chapter seven of the General Laws; provided, however, that a minimum fee shall be
45 established notwithstanding the number of units at the residence; and provided further, that said
46 fees shall be sufficient to support the entire cost of the department's administration of this
47 chapter. Monies collected from said fee may be appropriated for the purpose of supporting said
48 administration.

49 (c) Notwithstanding the previous paragraph, no fees, including minimum fees, for initial
50 certification or certification renewal shall be due from any provider for assisted living units
51 created under the HUD Assisted Living Conversion Program.

52 (d) If an application for renewal is filed at least thirty days before the stated expiration
53 date of the certification, such certification shall not expire on such date, and the assisted living
54 residence shall be deemed to be certified until such time as the department may notify the
55 sponsor that the application for renewal has been denied.

56 (e) Each applicant for initial certification shall file with the department an operating plan
57 which includes the following information:

58 (1) the number of units for which certification is sought and the number of residents per
59 unit;

60 (2) the location of resident units, common spaces and egresses by floor;

61 (3) the base fee to be charged for each such unit;

62 (4) the services to be offered, and arrangements for providing such services, including
63 linkages with hospital and nursing facilities if any;

64 (5) the number of staff to be employed in the operation of said residence and

65 (6) such other information as the department may reasonably require or the applicant may
66 choose to provide as affirmative evidence of ability to comply with the regulations and
67 provisions of this chapter.

68 (f) Applicants and sponsors shall file notice of any material change to the assisted living
69 residence's operating plans prior to the change's effective date and as may otherwise be required
70 by the department. A sponsor shall file annually on a date established by and on a form
71 prescribed by the department a statement and a professional opinion prepared by a certified
72 public account or comparable reviewer indicating whether the assisted living residence is in

73 sound fiscal condition and is maintaining sufficient cash flow and reserves to meet the
74 requirements of the service plans established for its residents.

75 (g) Each applicant for initial certification and each sponsor applying for renewal of
76 certification shall disclose the name and address of each officer, director and trustee and the
77 names and addresses of limited partners or shareholders with more than five percent interest in
78 the assisted living residence. The applicant or the sponsor shall furnish assurances that none of
79 such individuals has ever been found in violation of any local, state or federal statute, regulation,
80 ordinance or other law by reason of that individual's relationship to an assisted living residence,
81 and the applicant shall list, for each such individual, all multifamily housing or health care
82 facilities or providers in the commonwealth or in other states in which she or he has been or is an
83 officer, director, trustee, or general partner.

84 (h) With respect to an applicant or sponsor who has or has had within the previous five
85 years before the date of such application an interest in an entity licensed under chapter one
86 hundred and eleven of the General Laws, or a medical provider licensed under other applicable
87 state statutes, or a home health agency certified under Title XVIII of the Social Security Act, as
88 amended, the applicant shall furnish evidence from the department of public health that such
89 facility or agency has substantially met applicable criteria for licensure or certification and, if
90 applicable, has corrected all cited deficiencies without delicensure or decertification being
91 imposed. The department may in its discretion deny certification to any applicant hereunder who
92 has directly or indirectly had an ownership interest in an entity licensed under chapter one
93 hundred and eleven, or a medical provider licensed under other applicable state statutes, or a
94 home health agency certified under Title XVIII of the Social Security Act, as amended, that (i)
95 has been the subject of a patient care receivership action; (ii) has ceased to operate such an entity

96 as a result of (a) a settlement agreement arising from a decertification action, (b) a settlement
97 agreement in lieu of a patient care receivership or (c) a delicensure action or involuntary
98 termination of participation in either the medical assistance program or the medicare program;
99 (iii) has been the subject of a substantiated case of patient abuse or neglect involving material
100 failure to provide adequate protection or services for the resident in order to prevent such abuse
101 or neglect or (iv) has over the course of its operation been cited for repeated, serious and willful
102 violations of rules and regulations governing the operation of said health care facility that
103 indicate a disregard for resident safety and an inability to responsibly operate an assisted living
104 residence.

105 SECTION 3. Section 6 of chapter 19D of the General Laws, as appearing in the 2020
106 Official Edition, is hereby amended by striking the section in its entirety and inserting in place
107 thereof the following:-

108 Section 6. (a) If the department determines a sponsor or applicant has failed or refused to
109 comply with requirements established under this chapter or the regulations promulgated
110 thereunder, the department may

- 111 (1) deny an application for recertification;
- 112 (2) modify, suspend or revoke a certification or
- 113 (3) issue a fine of not more than \$500 for each day of such failure or refusal to
114 comply.

115 (b) Notice of denial, revocation, suspension or modification and the sponsor's or
116 applicant's right to an adjudicatory proceeding shall be governed by the provisions of chapter
117 thirty A.

118 SECTION 4. Section 8 of chapter 19D of the General Laws, as appearing in the 2020
119 Official Edition, is hereby amended by inserting in subsection (b) after the words “assisted living
120 residence.” the following:-

121 ; provided that, making such a referral shall be a violation of chapter 93A.

122 SECTION 5. Section 15 of chapter 19D of the General Laws, as appearing in the 2020
123 Official Edition, is hereby amended by inserting after subsection (c) the following:-

124 (d) No assisted living residence shall discharge, discipline, discriminate or otherwise
125 retaliate against an employee of such residence who, in good faith, files a complaint with or
126 provides information to the department. No assisted living residence shall discriminate or
127 retaliate against a resident, party or entity who, in good faith, files a complaint with or provides
128 information to the department. Any assisted living residence in violation of this section shall be
129 liable to the person so retaliated against by a civil action for up to treble damages, costs and
130 attorney’s fees.