

HOUSE No. 4780

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 16, 2022.

The committee on Elder Affairs to whom were referred the petition (accompanied by bill, Senate, No. 400) of Julian Cyr, Mathew J. Muratore, Angelo J. Puppolo, Jr., Anne M. Gobi and other members of the General Court for legislation relative to promote the betterment of resident health and safety in long term care facilities, the petition (accompanied by bill, Senate, No. 403) of Paul R. Feeney, Jack Patrick Lewis, Carol A. Doherty, Angelo J. Puppolo, Jr., and other members of the General Court for legislation to improve nursing home job standards and care quality, the petition (accompanied by bill, Senate, No. 406) of Patricia D. Jehlen for legislation relative to regulations for small house nursing homes, the petition (accompanied by bill, Senate, No. 413) of Patricia D. Jehlen, Jack Patrick Lewis, Carol A. Doherty, Angelo J. Puppolo, Jr., and other members of the General Court for legislation to improve employer standards for Massachusetts nursing homes, the petition (accompanied by bill, Senate, No. 414) of Patricia D. Jehlen for legislation to ensure quality of care in nursing homes, the petition (accompanied by bill, Senate, No. 416) of Jason M. Lewis, Attorney General Maura Healey, Thomas M. Stanley and James B. Eldridge for legislation to strengthen the Attorney General's tools to protect nursing home residents and other patients from abuse and neglect, the petition (accompanied by bill, Senate, No. 422) of Mark C. Montigny, Christopher Hendricks and John H. Rogers for legislation relative to reserving beds in nursing homes during certain leaves of absence, the petition (accompanied by bill, Senate, No. 423) of Mark C. Montigny for legislation to establish safe staffing levels at skilled nursing facilities, the petition (accompanied by bill, Senate, No. 424) of Mark C. Montigny, Christopher Hendricks and Michael O. Moore for legislation to prevent patient abuse and death in nursing homes, the petition (accompanied by bill, Senate, No. 425) of Michael O. Moore, Lindsay N. Sabadosa, Mathew J. Muratore, Angelo J. Puppolo, Jr., and other members of the General Court for legislation to promote innovation in eldercare services, the petition (accompanied by bill, Senate, No. 429)

of Bruce E. Tarr, Mathew J. Muratore, Angelo J. Puppolo, Jr., Michael J. Soter and other members of the General Court for legislation relative to nursing facility workforce, the petition (accompanied by bill, House, No. 724) of Ruth B. Balser and others for legislation to improve nursing home job standards and care quality, the petition (accompanied by bill, House, No. 725) of Ruth B. Balser and others relative to the authority of the Attorney General to protect nursing home residents and other patients from abuse and neglect, the petition (accompanied by bill, House, No. 727) of Ruth B. Balser and others relative to care in nursing homes, the petition (accompanied by bill, House, No. 733) of Claire D. Cronin, Sean Garballey and others for the passage of a resolve to improve employer standards for nursing homes, the petition (accompanied by bill, House, No. 736) of Denise C. Garlick and others that the Division of Health Care Facility Licensure and Certification be authorized to establish and implement a prescribed process and program for providing training and education to certain licensed providers, the petition (accompanied by bill, House, No. 738) of Thomas A. Golden, Jr., and others relative to promoting innovation in eldercare services, the petition (accompanied by bill, House, No. 754) of David Allen Robertson, Tami L. Gouveia and others relative to oversight of long-term care by the Department of Public Health, and the petition (accompanied by bill, House, No. 758) of Thomas P. Walsh relative to floor plans for certain nursing homes, reports recommending that the accompanying bill (House, No. 4780) ought to pass.

For the committee,

THOMAS M. STANLEY.

HOUSE No. 4780

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 “Infirmary 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

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

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

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

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

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

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

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

223 Notwithstanding any of the foregoing provisions of this section, the department shall not
224 issue a license to establish or maintain and operate a long-term care facility unless the applicant
225 for such license submits to the department a certificate that each building to be occupied by
226 patients of such convalescent or nursing home or skilled nursing facility meets the construction
227 standards of the state building code, and is of at least type 1-B fireproof construction; provided,
228 however, that this paragraph shall not apply in the instance of a transfer of facility operations of a
229 convalescent or nursing home or skilled nursing facility whose license had not been revoked as

230 of the time of such transfer; and provided, further, that a public medical institution as defined
231 under section 2 of chapter 118E, which meets the construction standards as defined herein, shall
232 not be denied a license as a nursing home under this section because it was not of new
233 construction and designed for the purpose of operating a convalescent or nursing home or skilled
234 nursing facility at the time of application for a license to operate a nursing home. An
235 intermediate care facility for persons with an intellectual disability shall be required to meet the
236 construction standards established for such facilities by Title XIX of the Social Security Act
237 (P.L. 89-97) and any regulations promulgated pursuant thereto, and by regulations promulgated
238 by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

389 (i) annual training for long term care facilities on the licensure and certification process.

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

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

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

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

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

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

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

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

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

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

423 Section 73.

424 Whoever advertises, announces, establishes or maintains, or is concerned in establishing
425 or maintaining a long-term care facility, or is engaged in any such business, without a license
426 granted under section 71, or whoever being licensed under said section 71 violates any provision
427 of sections 71 to 73, inclusive, shall for a first offense be punished by a fine of not more than
428 \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or by imprisonment for
429 not more than two years.

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

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

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

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

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

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

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

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

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

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

504 Not later than June 1, 2023, the health policy commission shall submit to the clerks of the
505 house of representatives and the senate, the house and senate committees on ways and means, the

506 joint committee on healthcare financing and the joint committee on elder affairs the report,
507 including any recommendations derived from the study.

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