

HOUSE No. 754

The Commonwealth of Massachusetts

PRESENTED BY:

David Allen Robertson and Tami L. Gouveia

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 the Department of Public Health with adequate oversight of long-term care facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/15/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/22/2021</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>3/11/2021</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>3/11/2021</i>

HOUSE No. 754

By Representatives Robertson of Tewksbury and Gouveia of Acton, a 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. Elder Affairs.

The Commonwealth of Massachusetts

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

An Act providing the Department of Public Health with adequate oversight of long-term care 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 XX. Chapter 111 of the General Laws, as so appearing, is hereby amended by
2 striking out section 71 and inserting in place thereof the following section:-

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

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

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

10 “Convalescent or nursing home or skilled nursing facility”, any institution, however
11 named, whether conducted for charity or profit, which is advertised, announced or maintained for

12 the express or implied purpose of caring for four or more persons admitted thereto for the
13 purpose of nursing or convalescent care.

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

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

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

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

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

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

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

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

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

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

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

48 No license shall be issued to establish or maintain an intermediate care facility for
49 persons with an intellectual disability, unless there is a determination by the department that
50 there is a need for such facility at the designated location; provided, however, that in the case of
51 a facility previously licensed as an intermediate care facility for persons with an intellectual
52 disability in which there is a change in ownership, no such determination shall be required and in
53 the case of a facility previously licensed as an intermediate care facility for persons with an

54 intellectual disability in which there is a change in location, such determination shall be limited
55 to consideration of the suitability of the new location.

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

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

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

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

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

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

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

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

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

92 Each applicant, potential transferee and licensee shall keep all information provided to
93 the department current. Promptly after the applicant, potential transferee or licensee becomes
94 aware of any change to information related to information it provided or is required to provide to
95 the department, such person shall submit to the department written notice of the changes.

96 Changes include, but are not limited to, changes in financial status, such as filing for bankruptcy,
97 any default under a lending agreement or lease, the appointment of a receiver or the recording of
98 any lien.

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

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

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

113 No license shall be issued hereunder unless there shall be first submitted to the
114 department by the authorities in charge of the long-term care facility with respect to each
115 building occupied by residents (1) a certificate of inspection of the egresses, the means of
116 preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the
117 office of public safety and inspections of the division of professional licensure; provided,

118 however, that with respect to convalescent or nursing homes only, the division of health care
119 quality of the department of public health shall have sole authority to inspect for and issue such
120 certificate, and (2) a certificate of inspection issued by the head of the local fire department
121 certifying compliance with the local ordinances.

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

130 If the division of professional licensure or, where applicable, the department of public
131 health approves the issuance of a certificate of inspection, it shall forthwith be issued by the
132 agency that failed to approve. If said department disapproves, the applicant may appeal
133 therefrom to the superior court. Failure of said department to either approve or disapprove the
134 issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a
135 disapproval. No license shall be issued by the department until issuance of an approved
136 certificate of inspection, as required in this section.

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

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

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

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

157 Upon a written request by a licensee who is aggrieved by the revocation of a license or by
158 an applicant who is aggrieved by the refusal of the department to renew a license, the
159 commissioner and the council shall hold a public hearing, after due notice, and thereafter they
160 may modify, affirm or reverse the action of the department; provided, however, that the
161 department may not refuse to renew and may not revoke the license of a long-term care facility

162 until after a hearing before a hearings officer, and any such applicant so aggrieved shall have all
163 the rights provided in chapter 30A with respect to adjudicatory proceedings.

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

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

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

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

179 Notwithstanding any of the foregoing provisions of this section, no license to establish or
180 maintain and operate a long-term care facility shall be issued by the department unless the
181 applicant for such license submits to the department a certificate that each building to be
182 occupied by patients of such convalescent or nursing home or skilled nursing facility meets the
183 construction standards of the state building code, and is of at least type 1-B fireproof

184 construction; provided, however, that this paragraph shall not apply in the instance of a transfer
185 of facility operations of a convalescent or nursing home or skilled nursing facility whose license
186 had not been revoked as of the time of such transfer; and provided, further, that a public medical
187 institution as defined under section 2 of chapter 118E, which meets the construction standards as
188 defined herein, shall not be denied a license as a nursing home under this section because it was
189 not of new construction and designed for the purpose of operating a convalescent or nursing
190 home or skilled nursing facility at the time of application for a license to operate a nursing home.
191 An intermediate care facility for persons with an intellectual disability shall be required to meet
192 the construction standards established for such facilities by Title XIX of the Social Security Act
193 (P.L. 89-97) and any regulations promulgated pursuant thereto, and by regulations promulgated
194 by the department.

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

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

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

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

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

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

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

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

246 Section 73. Whoever advertises, announces, establishes or maintains, or is concerned in
247 establishing or maintaining a long-term care facility, or is engaged in any such business, without
248 a license granted under section 71 of this chapter, or whoever being licensed under said section
249 violates any provision of sections 71 to 73, inclusive, shall for a first offense be punished by a

250 fine of not more than \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or
251 by imprisonment for not more than two years.

252 Whoever violates any rule or regulation made under sections 71, 72 and 72C of this
253 chapter shall be punished by such fine, not to exceed \$500, as the department may establish. If
254 any person violates any such rule or regulation by allowing a condition to exist which may be
255 corrected or remedied, the department shall order him, in writing, to correct or remedy such
256 condition, and if such person fails or refuses to comply with such order by the agreed upon
257 correct by date as defined in section 72E, each day after the agreed upon correct by date during
258 which such failure or refusal to comply continues shall constitute a separate offense. A failure to
259 pay the fine imposed by this section shall be a violation of this section.