

SENATE No. 2527

The Commonwealth of Massachusetts

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

SENATE, December 21, 2023.

The committee on Elder Affairs, to whom was referred the petitions (accompanied by bill, Senate, No. 372) of Patricia D. Jehlen for legislation to direct the administration to amend the frail elder home and community-based waiver to permit eligible older adults to choose to reside in certified assisted living residences; (accompanied by bill, Senate, No. 374) of Patricia D. Jehlen, Thomas M. Stanley, Jason M. Lewis, Susannah M. Whipps and others for legislation to authorize common sense health services in assisted living; and (accompanied by bill, House, No. 3927) of Kate Lipper-Garabedian relative to assisted living facilities, report the accompanying bill (Senate, No. 2527).

For the committee,
Patricia D. Jehlen

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

An Act relative to assisted living and basic health services.

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 1 of chapter 19D of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting after the definition of “Assisted living
3 residence” or “Residence,” the following definitions:-

4 “Authorized medical professional”, an advanced practice registered nurse with
5 prescriptive authority, a physician assistant or a physician, who has been granted authority by the
6 resident to issue care orders for the resident.

7 “Basic health services”, certain services provided at an appropriately certified residence
8 by staff qualified to provide such care or a qualified third party in accordance with a care order
9 issued by an authorized medical professional. Such services shall include: (1) injections; (2) the
10 application or replacement of simple non-sterile dressings; (3) the management of oxygen on a
11 regular and continuing basis; (4) assistance with sample collection and the completion of any
12 home diagnostic test, such as warfarin, INR testing and glucose testing, provided such home

13 diagnostic test or monitoring is approved by the FDA for home use; or (5) application of
14 ointments or drops.

15 "Care Order", a written order for basic health services issued by an authorized medical
16 professional.

17 SECTION 2. Said section 1 of said chapter 19D is hereby further amended by striking out
18 the definition of "Elderly Housing".

19 SECTION 3. Said section 1 of said chapter 19D is hereby further amended by striking the
20 definition of "skilled nursing care" and inserting in place thereof the following definition:-

21 "Skilled nursing care", the skilled services described in 130 CMR 456.409 or any
22 successor regulation.

23 SECTION 4. Section 2 of said chapter 19D of the General Laws, as appearing in the 2022
24 Official Edition, is hereby amended by striking out clauses (v) and (vi) and inserting in place
25 thereof the following 2 clauses:-

26 (v) provide services to residents in accordance with service plans developed through a
27 process by which staff of the residence discuss the service plan and the needs of the resident with
28 the resident and their representative or designee, and the resident's authorized medical
29 professional if that resident is receiving basic health services, in such a way that the
30 consequences of a decision, including any inherent risk, are understood by all parties and
31 reviewed periodically in conjunction with the service plan, taking into account changes in the
32 resident's status and the ability of the residence to respond accordingly, and as set forth in section
33 12;

34 (vi) coordinate and provide personal services, basic health services, and other services
35 required under service plans as set forth in section 12;

36 SECTION 5. Said chapter 19D, as so appearing, is hereby further amended by striking
37 out section 3 and inserting in place thereof the following section:-

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

43 (1) convalescent homes, licensed nursing homes, licensed rest homes, charitable homes
44 for the aged or intermediate care facilities for persons with an intellectual disability licensed
45 pursuant to section 71 of chapter 111;

46 (2) hospices licensed pursuant to the provisions of section 57D of chapter 111;

47 (3) facilities providing continuing care to residents as defined by section 76 of chapter;

48 (4) congregate housing authorized by section 39 of chapter 121B or participants in the
49 department's congregate housing program;

50 (5) group homes or supported living programs operating under contract with the
51 department of mental health, the rehabilitation commission or the department of developmental
52 services; or

53 (6) housing operated for only those duly ordained priests, or for the of the religious orders
54 of the Roman Catholic church in their own locations, buildings, residences or headquarters to

55 provide care, shelter, treatment and medical assistance for any of the said duly ordained priests
56 or members of the said religious order.

57 (b) The provisions of this chapter shall not apply to any residential premises available for
58 lease by elderly or disabled individuals, which is financed or subsidized in whole or in part by
59 local, state or federal housing programs established primarily to develop or operate housing or
60 both rather than to provide housing and personal services in combination; provided, that such
61 premises are not currently licensed under chapter 111.

62 SECTION 6. Said chapter 19D of the General Laws is hereby further amended by
63 striking out section 4 and inserting in place thereof the following section:-

64 Section 4. (a) The department shall issue for a term of 2 years, and shall renew for like
65 terms, a certification, subject to corrective action, modification, suspension, or revocation by it
66 for cause, to any person whom it reasonably determines to meet the regulatory requirements
67 promulgated by the department in accordance with this chapter. Such certification shall not be
68 transferable or assignable and shall be issued only to the person and for the premises named in
69 the application. Such certification shall indicate whether the residence has been approved to
70 provide basic health services. The department shall issue a certificate, which shall be posted by
71 the residence in a conspicuous place on the approved premises.

72 (b) Upon applying for initial certification or certification renewal, an applicant shall pay
73 the department a fee based on the number of units at the assisted living residence. Said fee for
74 initial application and renewal shall be established by the secretary of administration and finance
75 pursuant to the provisions of section 3B of chapter 7; provided, however, that a minimum fee
76 shall be established notwithstanding the number of units at the residence; and provided further,

77 that said fees are sufficient to support the entire cost of the department's administration of this
78 chapter. Monies collected from said fee may be appropriated for the purpose of supporting said
79 administration.

80 (c) Notwithstanding subsection (b), no fees, including minimum fees, for initial
81 certification or certification renewal shall be due from any provider for assisted living units
82 created under the HUD Assisted Living Conversion Program.

83 (d) If an application for renewal is filed at least 30 days before the stated expiration date
84 of the certification, such certification shall not expire on such date but the assisted living
85 residence shall be deemed to be certified until such time as the department may notify the
86 sponsor that the application for renewal has been denied.

87 (e) Each applicant for initial certification shall file with the department an operating plan
88 that includes the following information:

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

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

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

93 (4) the services to be offered, including basic health services if the assisted living
94 residence intends to seek certification to offer such services, and arrangements for providing
95 such services, including linkages with hospital and nursing facilities if any;

96 (5) the number of staff to be employed in the operation of said residence;

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

100 (f) Residences may opt to seek certification by the department to provide basic health
101 services; provided, that they offer all such services defined by this chapter; and provided further,
102 that residences offering basic health services shall in no way restrict resident choice in the
103 delivery of said services by third party providers. A residence may not provide basic health
104 services without including in its operating plan for department approval a detailed description of:

105 (1) its proposed administrative and operational structure to ensure the safe and effective
106 provision of basic health services and meet the needs of its residents, including but not limited to
107 steps taken to provide adequate support and training to licensed practical nurses and registered
108 nurses who shall provide such care;

109 (2) how it intends to comply with the requirements established under this chapter and the
110 regulations promulgated thereunder, which shall, at a minimum, include: (i) qualifications and
111 training for staff; and (ii) effective policies and procedures to ensure the availability of adequate
112 supplies necessary for the safe provision of basic health services and the safe administration and
113 secure storage of medications.

114 The residence shall submit a revised operating plan to the department in the event of a
115 change in the scope of basic health services offered to residents.

116 (g) Applicants and sponsors shall file all material change to the assisted living residence's
117 operating plans prior to the change's effective date and as may otherwise be required by the
118 department. A sponsor shall file annually, on a date established by and on a form prescribed by

119 the department, a statement and a professional opinion prepared by a certified public account or
120 comparable reviewer indicating whether the assisted living residence is in sound fiscal condition
121 and is maintaining sufficient cash flow and reserves to meet the requirements of the service plans
122 established for its residents.

123 (h) Each applicant for initial certification and each sponsor applying for renewal of
124 certification shall disclose the name and address of each officer, director and trustee, and the
125 names and addresses of limited partners or shareholders with more than 5 per cent interest in the
126 assisted living residence. The applicant or the sponsor shall furnish assurances that none of such
127 individuals has ever been found in violation of any local, state or federal statute, regulation,
128 ordinance or other law by reason of that individual's relationship to an assisted living residence;
129 and the applicant shall list, for each such individual, all multifamily housing or health care
130 facilities or providers in the commonwealth or in other states in which she or he has been or is an
131 officer, director, trustee, or general partner.

132 (i) With respect to an applicant or sponsor who has or has had within the previous 5 years
133 before the date of such application an interest in an entity licensed under chapter 111, or a
134 medical provider licensed under other applicable state statutes, or a home health agency certified
135 under Title XVIII of the Social Security Act, as amended, the applicant shall furnish evidence
136 from the department of public health that such facility or agency has substantially met applicable
137 criteria for licensure or certification and, if applicable, has corrected all cited deficiencies
138 without delicensure or decertification being imposed. The department may in its discretion deny
139 certification to any applicant hereunder who has directly or indirectly had an ownership interest
140 in an entity licensed under chapter 111, or a medical provider licensed under other applicable

141 state statutes, or a home health agency certified under Title XVIII of the Social Security Act, as
142 amended, that

143 (i) has been the subject of a patient care receivership action;

144 (ii) has ceased to operate such an entity as a result of: (1) a settlement agreement arising
145 from a decertification action; (2) a settlement agreement in lieu of a patient care receivership; or
146 (3) a delicensure action or involuntary termination of participation in either the medical
147 assistance program or the medicare program;

148 (iii) has been the subject of a substantiated case of patient abuse or neglect involving
149 material failure to provide adequate protection or services for the resident in order to prevent
150 such abuse or neglect; or

151 (iv) has over the course of its operation been cited for repeated, serious and willful
152 violations of rules and regulations governing the operation of said health care facility that
153 indicate a disregard for resident safety and an inability to responsibly operate an assisted living
154 residence.

155 SECTION 7. Said chapter 19D is hereby further amended by striking out section 5 and
156 inserting in place thereof the following section:-

157 Section 5. (a) The department or its authorized designee, shall make or cause to be made
158 at least a biennial review of all assisted living residences. Said authorized designees shall not be
159 sponsors of assisted living residences, and may include, but shall not be limited to, a non-profit
160 agency, 1 or more home care corporations as defined in clause (c) of section 4 of chapter 19A, a
161 combination of such home care corporations as determined by the department or a separate state

162 agency. A review shall also be conducted prior to the issuance of the sponsor's initial
163 certification, and may be conducted at any time the department has probable cause to believe that
164 an assisted living residence is in violation of a regulation or provision of this chapter. The
165 purpose of such reviews shall be to determine whether the assisted living residence is in
166 compliance with the provisions of this chapter and the department's regulations. A review shall
167 include an inspection of every part of the common areas of the assisted living residence and the
168 living quarters of any resident, but only with the resident's prior consent, and an examination of
169 the operating plan and any resident's service plan and written progress reports, but only with the
170 resident's consent. Said review shall also include resident satisfaction surveys. An inspector shall
171 have authority to interview the sponsor, manager, staff and residents. Interviews with residents
172 shall be confidential and conducted privately.

173 (b) The department or its authorized designee shall make or cause to be made at least an
174 annual review of all assisted living residences certified to provide basic health services. Such
175 reviews shall be conducted to determine whether the residence is in compliance with the
176 provisions of this chapter and the department's regulations concerning the provision of basic
177 health services. Such a review shall include an inspection of records associated with the
178 provision of basic health services, a review of staff qualifications and the residence's operating
179 plan. An inspector shall have authority to interview the sponsor, manager, staff and residents.
180 Interviews with residents shall be confidential and conducted privately.

181 (c) Whenever an annual or biennial review is conducted, the department shall prepare a
182 written report summarizing all pertinent information obtained during the review and shall not
183 disclose confidential, or privileged information obtained in connection with such review. If the
184 department finds that the applicant or the sponsor is in compliance with this chapter and

185 applicable regulations, a copy of the report shall be mailed to the applicant or the sponsor within
186 10 days after the review of the assisted living residence. If the department finds that the applicant
187 or the sponsor is not in compliance with this chapter or regulations, a copy of the report shall be
188 delivered to the sponsor together with a notice describing such noncompliance with particularity
189 within 10 days after completion of the review of the assisted living residence. The applicant or
190 the sponsor shall have the right to submit a written response to such notice within 10 days after
191 receipt thereof. The department shall establish an administrative procedure by regulation for
192 resolving disputes regarding findings prior to final departmental action. All completed reports,
193 responses and notices of final action may be made available to the public at the department
194 during business hours together with the responses of the applicants or the sponsors thereto.

195 SECTION 8. Said chapter 19D is hereby further amended by striking out section 6 and
196 inserting in place thereof the following section:-

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

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

204 (b) Notice of denial, revocation, suspension or modification and the sponsor's or
205 applicant's right to an adjudicatory proceeding shall be governed by the provisions of chapter
206 30A.

207 SECTION 9. Section 8 of chapter 19D of the General Laws, as appearing in the 2022
208 Official Edition, is hereby amended by inserting after the word "residence", in line 14, the
209 following words:- ; provided that, making such a referral shall be a violation of chapter 93A.

210 SECTION 10. Section 10 of said chapter 19D, as so appearing, is hereby amended by
211 striking out subsections (b) through (d), inclusive and inserting in place thereof the following 8
212 subsections:-

213 (b) The sponsor of the assisted living residence may provide or arrange for the provision
214 of additional services, including the following:

215 (1) Barber/beauty services, sundries for personal consumption and other amenities.

216 (2) Local transportation for medical and recreational purposes.

217 (3) Assistance with and supervision of instrumental activities of daily living.

218 (4) Assistance to residents with accessing telehealth services.

219 (5) For all residents whose service plans so specify, basic health services by personnel
220 meeting standards for professional qualifications and training set forth in the regulations.

221 (c) The sponsor may arrange for, but may not use assisted living residence staff for,
222 unless such staff is licensed, the provision of basic health services or ancillary services for

223 health-related care, such as physician, pharmacist, restorative therapies, podiatry, hospice or
224 home health.

225 (d) No personnel of an assisted living residence shall control or manage the funds or
226 property of an assisted living resident. If the resident is unable to manage their funds or property,
227 money management and other financial arrangements should be made with an independent party.

228 (e) A residence certified to provide basic health services may provide, or arrange for the
229 provision of, basic health services for assisted living residents, and shall administer such care and
230 services in accordance with the requirements set forth within this chapter and regulations
231 promulgated thereunder. A residence certified to provide basic health services may advertise,
232 market and otherwise promote such services and inform all residents of the option to have such
233 services provided by qualified third parties procured directly by the resident.

234 (f) The residence shall disclose to each resident the fees associated with provision of
235 basic health services within the assisted living residence's residency agreement and shall review
236 such fees with the resident upon implementation and any revision to a service plan that includes
237 provision of basic health services. The residence shall notify residents of any changes in fees in
238 advance and in a timely manner. Residents who receive basic health services shall receive an
239 additional service plan review on a quarterly basis. Residents shall have the opportunity to
240 discontinue receiving basic health services from the residence upon written notice to the
241 residence and shall not be charged a cancellation fee or a fee for services not provided due to
242 discontinuation of the services.

243 (g) The department, in consultation with the department of public health, shall
244 promulgate regulations governing the application, criteria for approval or disapproval of such

245 application, and ongoing oversight of residences that elect to offer basic health services
246 authorized in this section. The department may impose an annual fee on participating assisted
247 living residences to pay for oversight of basic health services.

248 (h) To ensure patient safety and clinical competence in the application of subsections (e)
249 to (g), inclusive, the department and the department of public health shall establish operating
250 plan requirements for residences that opt to provide basic health services including a requirement
251 that when a residence is offering basic health services to 1 or more residents, staff shall have
252 access to a licensed practical nurse or registered nurse for consultation at all times and the nurse
253 shall not be required to be on the premises. The department shall make available electronic
254 copies of the required components of operating plans on the department's website. The
255 department shall conduct annual compliance reviews on the documentation created and
256 maintained by assisted living residences for any assisted living resident who received basic
257 health services within the previous 12-month period.

258 (i) No residence shall offer or provide basic health services without first being certified
259 by the department. Any residence found to be in violation of this subsection shall be subject to a
260 civil penalty of not more than \$1,000 per day assessable by the superior court.

261 SECTION 11. Section 11 of said chapter 19D, as so appearing, is hereby amended by
262 striking out, in lines 1 through 5, inclusive, the words: "No assisted living residence shall admit
263 any resident who requires twenty-four hour skilled nursing supervision. No assisted living
264 residence shall provide, or admit or retain any resident in need of skilled nursing care unless all
265 of the following are the case" and inserting in its place the following words:- No assisted living
266 residence shall admit any resident who requires 24-hour skilled nursing with the exception of

267 residents who elect to receive basic health services, either from residences that are certified to
268 provide such services, or from qualified third parties. No assisted living residence shall provide,
269 or admit or retain any resident in need of skilled nursing care, with the exception of residents
270 who elect to receive basic health services, unless all of the following are the case.

271 SECTION 12. Section 15 of said chapter 19D, as so appearing, is hereby amended by
272 striking out subsection (c) and inserting in place thereof the following subsection:-

273 (c) No assisted living residence shall discharge, discipline, discriminate or otherwise
274 retaliate against an employee of such residence who, in good faith, files a complaint with or
275 provides information to the department. No assisted living residence shall discriminate or
276 retaliate against a resident, party or entity who, in good faith, files a complaint with or provides
277 information to the department. Any assisted living residence in violation of this section shall be
278 liable to the person so retaliated against by a civil action for up to treble damages, costs and
279 attorney's fees.

280 SECTION 13. Said chapter 19D of the General Laws, as appearing in the 2020 Official
281 Edition, is hereby further amended by adding the following section:-

282 Section 19. The department shall promulgate regulations necessary to implement the
283 requirements of this chapter. Such regulations shall include the establishment of standards
284 concerning the education, training and experience of the manager and residence staff, including
285 the service coordinator.

286 SECTION 14. Notwithstanding any general or special law to the contrary, the executive
287 office shall report to the house and senate committees on ways and means, not later than 90 days
288 after the effective date of this act, on the availability of a waiver and, if applicable, the estimated

289 net state cost of a waiver that would allow individuals qualifying for Medicaid and at risk of
290 entering a nursing home to reside in a certified assisted living residence. The executive office of
291 health and human services may request a waiver from the federal Centers for Medicare and
292 Medicaid Services to allow individuals qualifying for Medicaid and at risk of entering a nursing
293 home to reside in a certified assisted living residence.