

SENATE No. 2900

Senate, June 25, 2024 -- Text of the Senate amendment to the House Bill relative to long-term care and assisted living (House, No. 4193) (being the text of Senate, No. 2889, printed as amended)

The Commonwealth of Massachusetts

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

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 3 definitions:-

4 “Authorized medical professional”, an advanced practice registered nurse with
5 prescriptive authority, a physician assistant or a physician; provided, however, that an authorized
6 medical professional shall have been granted authority by a resident to issue care orders for the
7 resident.

8 “Basic health services”, certain services provided at an assisted living residence by
9 employees of the residence that are qualified to administer such services or a qualified third party
10 in accordance with a care order issued by an authorized medical professional; provided,
11 however, that such services shall include all of the following: (i) injections; (ii) the application or
12 replacement of simple non-sterile dressings; (iii) the management of oxygen on a regular and
13 continuing basis; (iv) specimen collection and the completion of a home diagnostic test,
14 including, but not limited to, warfarin, prothrombin or international normalized ratio testing and
15 glucose testing; and provided further, that such home diagnostic test or monitoring is approved

16 by the United States Food and Drug Administration for home use; and (v) application of
17 ointments or drops.

18 “Care Order”, a written order for basic health services issued by an authorized medical
19 professional.

20 SECTION 2. Said section 1 of said chapter 19D, as so appearing, is hereby further
21 amended by striking out the definition of “Elderly housing”.

22 SECTION 3. Said section 1 of said chapter 19D, as so appearing, is hereby further
23 amended by striking out the definition of “Skilled nursing care” and inserting in place thereof the
24 following definition:-

25 "Skilled nursing care", skilled services described in 130 CMR 456.409 or any successor
26 regulation.

27 SECTION 4. Section 2 of said chapter 19D, as so appearing, is hereby amended by
28 striking out clauses (v) and (vi) and inserting in place thereof the following 2 clauses:-

29 (v) provide services to residents in accordance with service plans developed through a
30 process by which employees of the residence discuss the service plan and the needs of the
31 resident with the resident and their representative or designee and ensure the consequences of a
32 decision, including any inherent risk, are understood by all parties; provided, however, that such
33 parties shall review the service plan periodically and consider changes in the resident's status and
34 the ability of the residence to respond accordingly and as set forth in section 12; provided
35 further, that if a resident is receiving basic health services, the staff of the residence shall consult
36 the resident’s authorized medical professional when developing the resident’s service plan;

37 (vi) coordinate and provide personal services, basic health services, where applicable, and
38 other services required under service plans as set forth in section 12;

39 SECTION 5. Said chapter 19D is hereby further amended by striking out sections 3 to 6,
40 inclusive, as so appearing, and inserting in place thereof the following 4 sections:-

41 Section 3. (a) No person shall advertise, operate or maintain an assisted living residence
42 without the certification required under this chapter; provided, however, that the provisions of
43 this chapter shall not apply to entities for the original facilities and services for which said
44 entities were originally licensed or organized to provide. Assisted living residences may be
45 sponsored by: (i) convalescent homes, licensed nursing homes, licensed rest homes, charitable
46 homes for the aged or intermediate care facilities for persons with an intellectual disability
47 licensed pursuant to section 71 of chapter 111; (ii) hospices licensed pursuant to the provisions
48 of section 57D of said chapter 111; (iii) facilities providing continuing care to residents, as
49 defined by section 76 of chapter 93; (iv) congregate housing authorized by section 39 of chapter
50 121B; (v) 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 (vi) housing operated for only those duly ordained priests or for the of the religious
53 orders of the Roman Catholic church in their own locations, buildings, residences or
54 headquarters to provide care, shelter, treatment and medical assistance for any of the said duly
55 ordained priests or members of the said religious order.

56 (b) The provisions of this chapter shall not apply to any residential premises available for
57 lease by elderly or disabled individuals that is financed or subsidized in whole or in part by local,
58 state or federal housing programs established primarily to develop or operate housing rather than

59 to provide housing and personal services in combination; provided, however, that such premises
60 are not currently licensed under chapter 111.

61 Section 4. (a) The department shall issue a certification for a term of 2 years, and shall
62 renew for like terms, to any applicant whom the department determines meets the regulatory
63 requirements promulgated by the department in accordance with this chapter; provided, however,
64 that a certification shall be subject to corrective action, modification, suspension or revocation
65 for cause, as determined by the department. Such certification shall: (i) not be transferable or
66 assignable; (ii) be issued only to the person and for the premises named in the application; (iii)
67 indicate whether the residence has been approved to provide basic health services; and (iv)
68 indicate the certification's expiration date. The department shall issue a certificate, which shall
69 be posted by the residence and on the residence's website in a conspicuous place on the approved
70 premises.

71 (b) Upon applying for initial certification or renewal, an applicant shall pay the
72 department a fee based on the number of units at the assisted living residence, established by the
73 secretary of administration and finance pursuant to the provisions of section 3B of chapter 7;
74 provided, however, that a minimum fee shall be established notwithstanding the number of units
75 at the residence. No fees for initial certification or renewal shall be due from any provider for
76 assisted living units created under the United States Department of Housing and Urban
77 Development Assisted Living Conversion Program.

78 (c) If an application for renewal of a certification is filed not less than 30 days before the
79 expiration date, such certification shall not expire until the department notifies the sponsor that
80 the application for renewal has been denied.

81 (d) Applicants for initial certification shall file with the department an operating plan that
82 includes: (i) the number of units; (ii) the number of residents allowed per unit; (iii) the location
83 of resident units, common spaces and egresses by floor; (iv) the base fee to be charged for each
84 such unit; (v) the services to be offered, including basic health services, if applicable, and
85 arrangements for providing such services, including linkages with hospital and nursing facilities,
86 if any; (vi) the number of staff to be employed; and (vii) other information the department deems
87 necessary.

88 (e) Residences may seek certification by the department to provide basic health services;
89 provided, however, that residences offering basic health services shall not restrict resident choice
90 in the delivery of said services by third party providers. The residence shall submit a revised
91 operating plan to the department in the event of a change in the scope of basic health services
92 offered to residents. A residence seeking to provide basic health services shall include in its
93 operating plan: (i) a proposed administrative and operational structure to ensure the safe and
94 effective use of basic health services and meet the needs of its residents; and (ii) a compliance
95 plan to meet the requirements established under this chapter and promulgated regulations, which
96 shall include, but not be limited to: (A) staff qualifications and training; and (B) effective
97 policies and procedures to ensure the availability of adequate supplies necessary for basic health
98 services and the safe administration and secure storage of medications.

99 (f) Applicants and sponsors shall file material changes to the assisted living residence's
100 operating plan prior to the change's effective date and as may otherwise be required by the
101 department. A sponsor shall file annually on a date established by and on a form prescribed by
102 the department, a statement and a professional opinion prepared by a certified public account or
103 comparable reviewer indicating whether the assisted living residence is in sound fiscal condition

104 and is maintaining sufficient cash flow and reserves to meet the requirements of the service plans
105 established for its residents.

106 (g) Applicants for initial certification or renewal shall disclose the name and address of
107 each officer, director, trustee and limited partner or shareholder with not less than 5 per cent
108 interest in the assisted living residence and shall provide to the department documentation of the
109 history of each such individual or entity, including, but not limited to: (i) all multifamily housing,
110 assisted living residences or health care facilities in which the individual or entity has been an
111 officer, director, trustee or partner and, if applicable, evidence from the relevant regulatory
112 authority that said applicant has met criteria for licensure or certification; (ii) documentation of
113 any enforcement action against the applicant and, if applicable, evidence that the applicant has
114 corrected all cited deficiencies without revocation of licensure or certification; and (iii) any other
115 evidence, as determined by the department.

116 (h) The department may deny certification to an applicant who had an ownership interest
117 in an entity licensed under chapter 111, a licensed medical provider or a home health agency
118 certified under Title XVIII of the Social Security Act, as amended, that: (i) has been subject to a
119 patient care receivership action; (ii) has ceased to operate such an entity as a result of: (A)
120 suspension or revocation of license or certification; (B) receivership; or (C) a settlement
121 agreement arising from suspension or revocation of a license or certification; (iii) a settlement
122 agreement in lieu of or as a result of subclause (B); (iv) has been the subject of a substantiated
123 case of patient abuse or neglect involving material failure to provide adequate protection or
124 services for the resident in order to prevent such abuse or neglect; or (v) has over the course of
125 its operation been cited for repeated, serious and willful violations of rules and regulations

126 governing the operation of said health care facility that indicate a disregard for resident safety
127 and an inability to responsibly operate an assisted living residence.

128 Section 5. (a) The department or its authorized designee, shall biennially review all
129 assisted living residences; provided, however, that an authorized designee shall not include
130 sponsors of assisted living residences.

131 (b) Prior to the issuance of the sponsor's initial certification, the department shall conduct
132 a review to determine whether an assisted living residence is compliant with this chapter;
133 provided, however, that the department may conduct such review of an assisted living residence
134 at any time the department has probable cause to believe that such assisted living residence is in
135 violation of a provision of this chapter or any regulation promulgated thereunder. Such review
136 shall include: (i) an inspection of every part of the common areas of the assisted living residence
137 and the living quarters of a resident with the resident's prior consent; (ii) an examination of the
138 operating plan; (iii) an examination of a resident's service plan and written progress reports with
139 the resident's consent; and (iv) resident satisfaction surveys. An inspector shall have authority to
140 confidentially and privately interview the sponsor, manager, staff and residents.

141 (c) Reviews of assisted living residences certified to provide basic health services shall
142 include an inspection of records associated with the provision of basic health services, a review
143 of residence employee qualifications and the residence's operating plan.

144 (d) Upon the completion of an annual or biennial review, the department shall prepare a
145 written report summarizing all pertinent information obtained during the review and shall not
146 disclose confidential or privileged information obtained in connection with such review. The
147 department shall promulgate rules and regulations necessary to ensure the sponsor receives such

148 report and, if applicable, has the opportunity to respond to and resolve any findings of
149 noncompliance prior to departmental enforcement action. Completed reports, responses and
150 notices of final action shall be made available to the public at the department during business
151 hours together with the responses of the applicants or the sponsors and said reports, responses
152 and notices of final action shall be posted on the website of the department.

153 Section 6. (a) If the department determines a sponsor or applicant has failed or refused to
154 comply with requirements established under this chapter or the regulations promulgated
155 thereunder, the department may: (i) deny an application for recertification; (ii) modify, suspend
156 or revoke a certification; or (iii) issue a fine of not more than \$500 for each day of such failure or
157 refusal to comply.

158 (b) Notice of enforcement action and a sponsor's right to an adjudicatory proceeding
159 shall be governed by the provisions of chapter 30A.

160 SECTION 6. Section 8 of said chapter 19D, as so appearing, is hereby amended by
161 striking out, in lines 14 and 15, the words "Any person who violates this subsection shall be
162 subject to" and inserting in place thereof the following words:- A violation of this subsection
163 shall constitute a violation of chapter 93A and shall be punishable by.

164 SECTION 7. Section 10 of said chapter 19D, as so appearing, is hereby amended by
165 striking out subsections (b) to (d), inclusive, and inserting in place thereof the following 7
166 subsections:-

167 (b) The sponsor of the assisted living residence may provide or arrange for the provision
168 of additional services, including: (i) barber and beauty services, sundries for personal
169 consumption and other amenities; (ii) local transportation for medical and recreational purposes;

170 (iii) assistance with and supervision of instrumental activities of daily living; (iv) assistance to
171 residents with accessing telehealth services;(v) basic health services for residents whose service
172 plan includes basic health services, in accordance with the requirements set forth within this
173 chapter, by personnel who meet standards for professional qualifications and training set forth in
174 regulations promulgated pursuant to this chapter; and (vi) ancillary services for health-related
175 care including, but not limited to, restorative therapies, podiatry, hospice care, home health or
176 other such services; provided, however, that such services shall be delivered by an individual
177 licensed to provide such care.

178 (c) No employee of an assisted living residence shall control or manage the funds or
179 property of an assisted living resident; provided, however, that if a resident is unable to manage
180 their funds or property, the assisted living residence shall arrange money management and other
181 financial arrangements with an independent party.

182 (d) A residence certified to provide basic health services may advertise, market and
183 otherwise promote offered services under this chapter and inform residents of the option to
184 directly procure such services from qualified third parties.

185 (e) The residence shall disclose to each resident through the assisted living residence's
186 residency agreement the fees associated with basic health services and shall review such fees
187 with the resident upon the implementation of and any revision to a service plan that includes
188 provision of basic health services. The residence shall notify residents of any changes in fees in
189 advance and in a timely manner. Residents who receive basic health services shall receive an
190 additional service plan review on a quarterly basis and shall have the opportunity to discontinue
191 receiving basic health services from the residence upon written notice to the residence and shall

192 not be charged a cancellation fee or a fee for services not provided due to discontinuation of the
193 services.

194 (f) The department, in consultation with the department of public health, shall promulgate
195 regulations governing the application, criteria for approval or disapproval of such application,
196 and ongoing oversight of residences that elect to offer basic health services authorized in this
197 section. The department may impose an annual fee on assisted living residences that offer basic
198 health services.

199 (g) To ensure patient safety and clinical competence in the application of subsections (d)
200 to (f), inclusive, the department and the department of public health shall establish operating plan
201 requirements for residences that opt to provide basic health services, including staff access to a
202 licensed practical nurse or registered nurse for consultation at all times; provided, however, that
203 the nurse shall not be required to be on the premises. The department shall make available
204 electronic copies of the required components of operating plans on the department's website and
205 shall conduct annual compliance reviews on the documentation created and maintained by
206 assisted living residences for an assisted living resident who received basic health services within
207 the previous 12-month period.

208 (h) No residence shall offer or provide basic health services without first being certified
209 by the department. If the department determines that a residence is offering basic health services
210 without certification, the department shall issue a fine of not more than \$1,000 per day.

211 SECTION 8. Section 11 of said chapter 19D, as so appearing, is hereby amended by
212 striking out, in lines 1 to 5, inclusive, the words "No assisted living residence shall admit any
213 resident who requires twenty-four hour skilled nursing supervision. No assisted living residence

214 shall provide, or admit or retain any resident in need of skilled nursing care unless all of the
215 following are the case” and inserting in place thereof the following words:- No assisted living
216 residence shall admit a resident who requires 24-hour skilled nursing supervision unless such
217 resident elects to receive basic health services from residences that are certified to provide such
218 services or from qualified third parties. No assisted living residence shall provide skilled nursing
219 care or admit or retain a resident in need of skilled nursing care unless such resident elects to
220 receive basic health services and the following criteria are met.

221 SECTION 9. Section 15 of said chapter 19D, as so appearing, is hereby amended by
222 striking out subsection (c) and inserting in place thereof the following subsection:-

223 (c) No assisted living residence shall discharge, discipline, discriminate against or
224 otherwise retaliate against an employee or resident who, in good faith, files a complaint with or
225 provides information to the department relative to what the employee reasonably believes is a
226 violation of law, rule or regulation or poses a risk to public health or safety or resident or staff
227 well-being. An assisted living residence in violation of this section shall be liable to the person
228 retaliated against by a civil action for up to treble damages, costs and attorney’s fees in the event
229 such violation shall be determined to be egregious or willful.

230 SECTION 10. Said chapter 19D is hereby further amended by adding the following
231 section:-

232 Section 19. The department shall promulgate regulations necessary to implement the
233 requirements of this chapter. Such regulations shall include the establishment of standards
234 concerning the education, training and experience of the managers and residence employees,
235 including service coordinators.

236 SECTION 11. Chapter 111 of the General Laws is hereby amended by striking out
237 section 71, as appearing in the 2022 Official Edition, and inserting in place thereof the following
238 section:-

239 Section 71. (a) For purposes of this section and sections 71A½ to 73, inclusive, the
240 following words shall have the following meanings unless the context clearly requires otherwise:

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

243 “Charitable home for the aged”, an institution conducted for charitable purposes and
244 maintained for the purpose of providing a retirement home for elderly persons and which may
245 provide nursing care within the home for its residents.

246 “Cohorting”, the practice of grouping patients who: (i) are colonized or infected with the
247 same organism in order to confine their care to 1 area and prevent contact with other patients; or
248 (ii) are not colonized or infected with the same organism in order to confine their care to 1 area
249 and prevent contact with other patients.

250 “Convalescent or nursing home”, an institution including a skilled nursing facility, which
251 is advertised, announced or maintained for the express or implied purpose of caring for 4 or more
252 persons admitted thereto for the purpose of nursing or convalescent care.

253 “Correct by date”, the date by which a licensee shall remedy or correct a violation
254 discovered after an inspection by the department pursuant to section 72E.

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

256 “Intermediate care facility for persons with an intellectual disability”, an institution that:
257 (i) is conducted for charity or not for profit; (ii) is advertised, announced or maintained for the
258 purpose of providing rehabilitative services and active treatment to persons with an intellectual
259 disability or persons with related conditions, as defined in regulations promulgated pursuant to
260 Title XIX of the Social Security Act, Public Law 89-97; (iii) is not both owned and operated by a
261 state agency; and (iv) makes application to the department for a license for the purpose of
262 participating in the federal program established by said Title XIX.

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

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

267 “Licensee”, a person permitted to establish or maintain and operate a long-term care
268 facility through a license.

269 “Long-term care facility”, a charitable home for the aged, convalescent or nursing home,
270 skilled nursing facility, intermediate care facility for persons with an intellectual disability or rest
271 home.

272 “Long-term care services”, services including: (i) long-term resident, nursing,
273 convalescent or rehabilitative care; (ii) supervision and care incident to old age for ambulatory
274 persons; or (iii) retirement home care for elderly persons.

275 “Management company”, an organization engaged by a licensee to manage the operations
276 at a long-term care facility.

277 “Outbreak”, an unusual occurrence of disease or any disease above endemic levels.

278 “Owner”, a person or management company with an ownership interest of not less than 5
279 per cent, or with a controlling interest in an applicant, licensee, potential transferee or the real
280 property on which a long-term care facility is located.

281 “Person”, an individual, trust, partnership, association, corporation or other form of
282 business association.

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

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

288 “Resident”, an individual who resides in a long-term care facility.

289 “Rest home”, an institution, which is advertised, announced or maintained for the express
290 or implied purpose of providing care incident to old age for 4 or more persons who are
291 ambulatory and who do not require a specific level of nursing care or other medically related
292 services on a routine basis.

293 “Skilled nursing facility”, an institution, which is certified by the federal Centers for
294 Medicare and Medicaid Services for the purpose of providing continuous skilled nursing care
295 and rehabilitative services for not less than 4 persons.

296 “Small house nursing home”, 1 or more units of a convalescent or nursing home designed
297 and modeled as a residential home including a central living space, kitchen, dining area, living
298 area and outdoor space.

299 “Transfer of facility operations”, a transfer of the operations of a long-term care facility
300 from a licensee to a potential transferee.

301 (b)(1) The department shall issue for a term of 2 years, and shall renew for like terms, a
302 license, subject to the restrictions in this section, to each applicant the department deems
303 responsible and suitable to establish or maintain and operate a long-term care facility and which
304 meets all other requirements for long-term care facility licensure pursuant to this chapter. A
305 license issued pursuant to this section shall not be transferable or assignable and shall be issued
306 only for the premises named in the application.

307 (2) Each long-term care facility shall be subject to at least 1 periodic, resident-centered
308 inspection every 9 to 15 months for the purpose of gathering information about the quality of
309 services furnished in the long-term care facility to determine compliance with applicable state
310 and federal requirements.

311 (3) The department may, when public necessity and convenience require or to prevent
312 undue hardship to an applicant or licensee, pursuant to such rules and regulations as it may
313 adopt, grant a temporary provisional or probationary license pursuant to this section; provided,
314 however, that no such license shall be for a term exceeding 1 year.

315 (4) The fee for a license to establish or maintain and operate a long-term care facility
316 shall be determined annually by the secretary of administration and finance pursuant to section
317 3B of chapter 7.

318 (c) The department shall not issue a license to establish or maintain an intermediate care
319 facility for persons with an intellectual disability unless the department determines that there is a
320 need for such a facility at the designated location; provided, however, that in the case of a facility
321 previously licensed as an intermediate care facility for persons with an intellectual disability in
322 which there is a change in ownership or transfer of operations, no such determination shall be
323 required; and provided further, that in the case of a facility previously licensed as an intermediate
324 care facility for persons with an intellectual disability in which there is a change in location, such
325 determination shall be limited to consideration of the suitability of the new location.

326 (d)(1) In the case of the transfer of facility operations of a long-term care facility, a
327 potential transferee shall submit a notice of intent to acquire to the department not less than 90
328 days prior to the proposed transfer date. The notice of intent to acquire shall be on a form
329 supplied by the department and shall be deemed complete upon submission of all information the
330 department requires on said form. The potential transferee shall not be deemed responsible and
331 suitable upon the expiration of the 90-day period or upon the expiration of said period as
332 extended if the department fails to notify said potential transferee in writing of its decision within
333 the 90-day period or within the expiration of the extension period, whichever is applicable;
334 provided, however, that the potential transferee may resubmit its application for transfer.

335 (2) A potential transferee shall, concurrently with the submission of an intent to acquire,
336 provide notice to the staff of the facility and to any labor organization that represents the
337 facility's staff at the time the notice of intent to acquire is submitted of the potential transferee's
338 plans to retain or not retain the facility staff and to recognize and bargain with any labor
339 organizations currently representing the facility staff.

340 (3) Upon determination by the department that a potential transferee is responsible and
341 suitable for licensure pursuant to subsection (g), the potential transferee may file an application
342 for a license. In the case of a potential transfer of facility operations, the filing of an application
343 for a license shall have the effect of a temporary provisional or probationary license until the
344 department takes final action on such application.

345 (4) Upon an approved transfer of facility operations, the department shall not reduce the
346 number of beds from the number that was originally approved in granting a license, unless a
347 reduction in the number of beds is in the interest of public health, welfare or safety.

348 (e) Every applicant for a license shall provide on or with its application, and every
349 potential transferee shall provide on or with its notice of intent to acquire, a sworn statement of
350 the names and addresses of any owner of the applicant or the potential transferee.

351 (f) No license shall be issued to an applicant or potential transferee prior to a
352 determination by the department that the applicant or potential transferee is responsible and
353 suitable pursuant to subsection (g).

354 (g) For the purposes of this section, the department's determination of responsibility and
355 suitability shall include, but not be limited to: (i) the criminal history of the applicant or the
356 potential transferee, including its respective owners and management companies, and, to the
357 extent possible, the civil litigation history of the applicant or potential transferee, including its
358 respective owners and contracted management companies, including litigation related to the
359 operation of a long-term care facility, such as quality of care, safety of residents or staff,
360 employment and labor issues, fraud, unfair or deceptive business practices and landlord-tenant
361 issues; provided, however, that such criminal and civil litigation history may include pending or

362 other court proceedings in the commonwealth and in any other state or federal jurisdiction;
363 provided further, that information protected from public disclosure by federal or state law and
364 obtained by the department pursuant to this section shall be confidential and exempt from
365 disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66; (ii) the financial
366 capacity of the applicant or potential transferee, including its respective owners and management
367 companies, to establish or maintain and operate a long-term care facility; provided, however, that
368 financial capacity may include, but not be limited to, recorded liens or unpaid fees or taxes in the
369 commonwealth or in other states; (iii) the history of the applicant or potential transferee,
370 including its respective owners and management companies, in providing quality long-term care
371 in the commonwealth as measured by compliance with applicable quality measures, statutes and
372 regulations governing the operation of long-term care facilities; provided, however, that
373 applicable quality measures may include the Centers for Medicare and Medicaid Services
374 Quality Rating System; and (iv) the history of the applicant or potential transferee, including its
375 respective owners, management companies and, if applicable, the involvement of private equity
376 firms, in providing quality long-term care in states other than the commonwealth, if any, as
377 measured by compliance with the applicable quality measures, statutes and regulations governing
378 the operation of long-term care facilities in said states; provided, however, that applicable quality
379 measures may include the Centers for Medicare and Medicaid Services Quality Rating System

380 (h)(1) If the department determines that an applicant or potential transferee is not
381 responsible and suitable, the department's determination shall take effect on the date of the
382 department's notice to the applicant or potential transferee. In such cases and upon the filing of a
383 written request, the department shall afford the applicant or potential transferee an adjudicatory
384 hearing pursuant to chapter 30A.

385 (2) During the pendency of an adjudicatory hearing, the applicant or potential transferee
386 shall not operate the facility as a licensee nor, without prior approval of the department, manage
387 such facility.

388 (i) Each applicant, potential transferee and licensee shall maintain current records of all
389 information provided to the department. After the applicant, potential transferee or licensee
390 becomes aware of any change related to information it has provided or is required to provide to
391 the department, such applicant, potential transferee or licensee shall submit to the department
392 written notice of the change as soon as practicable and without unreasonable delay; provided,
393 however, that any change in financial status shall be provided to the department and shall
394 include, but not be limited to, filing for bankruptcy, any default under a lending agreement or
395 under a lease, the appointment of a receiver or the recording of any lien. Failure to provide
396 timely notice of such a change shall be subject to the remedies or sanctions available to the
397 department pursuant to this chapter.

398 (j) An applicant, potential transferee or licensee and its respective owners and
399 management companies shall comply with applicable federal, state and local laws, rules and
400 regulations.

401 (k) The department shall not reduce the number of beds it originally approved in granting
402 a license for a convalescent or nursing home or rest home upon the transfer of facility operations
403 of said convalescent or nursing home or rest home from 1 licensee to another unless a reduction
404 in the number of beds is in the interest of public health, welfare or safety.

405 (l)(1) The department shall not issue a license unless the applicant first submits to the
406 department, with respect to each building occupied by residents: (i) a certificate of inspection of

407 the egresses, the means of preventing the spread of fire and apparatus for extinguishing fire,
408 issued by an inspector of the office of public safety and inspections within the division of
409 occupational licensure; and (ii) a certificate of inspection issued by the head of the local fire
410 department certifying compliance with local ordinances; provided, however, that for
411 convalescent or nursing homes, the bureau of health care safety and quality within the
412 department shall have sole authority to inspect and issue a certificate required pursuant to clause
413 (i) of this paragraph.

414 (2) An applicant who is aggrieved, based on a written disapproval of a certificate of
415 inspection by the head of the local fire department or by the office of public safety and
416 inspections of the division of occupational licensure, may, within 30 days of such disapproval,
417 submit a written appeal to the division of occupational licensure. Failure to either approve or
418 disapprove within 30 days after a written request by an applicant shall be deemed a disapproval.
419 For certificates of inspection issued to convalescent or nursing homes by the bureau of health
420 care safety and quality within the department, an applicant may, within 30 days of disapproval of
421 a certificate of inspection, submit a written appeal to the department; provided, however, that
422 failure of the department to either approve or disapprove of a written appeal within 30 days of
423 the submission of such written appeal shall constitute a disapproval.

424 (3) If the division of occupational licensure or, where applicable, the department,
425 approves the issuance of a certificate of inspection after an appeal, the certificate shall be issued
426 by the issuing agency. If the division of occupational licensure or, where applicable, the
427 department, does not approve the issuance of a certificate of inspection, the applicant may appeal
428 to the superior court pursuant to chapter 30A. Failure of the division or the department to either
429 approve or disapprove the issuance of a certificate of inspection within 30 days of the receipt of

430 an appeal shall be deemed a disapproval. The department shall not issue a license until issuance
431 of an approved certificate of inspection, as required pursuant to paragraph (1).

432 (4) Nothing in this section or in sections 72 or 73 shall be construed to supersede or
433 otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning,
434 registration or maintenance of a long-term care facility.

435 (m)(1) For cause, the department may limit, restrict, suspend or revoke a license;
436 provided, however, that the department may temporarily suspend a license without a hearing if:
437 (i) the suspension is due to an emergency; and (ii) the department responds to the suspension in a
438 reasonable timeframe.

439 (2) Grounds for cause on which the department may take action pursuant to paragraph (1)
440 shall include: (i) substantial or sustained failure or inability to provide adequate care to residents;
441 (ii) substantial or sustained failure to maintain compliance with applicable statutes, rules and
442 regulations; or (iii) the lack of financial capacity to maintain and operate a long-term care
443 facility.

444 (3) Suspension of a license may include suspending the license during a pending license
445 revocation action or suspending the license to permit the licensee a period of time, not less than
446 60 days, to terminate operations and discharge and transfer all residents, if applicable.

447 (4) With respect to an order by the department to limit, restrict or suspend a license,
448 within 7 days of receipt of the written order, the licensee may file a written request with the
449 department for an adjudicatory proceeding pursuant to chapter 30A.

450 (5) Upon a written request by a licensee who is aggrieved by the revocation or limitation
451 of a license or by an applicant who is aggrieved by the refusal of the department to renew a
452 license, the licensee or applicant so aggrieved shall have all the rights provided in chapter 30A
453 with respect to adjudicatory proceedings. In no case shall the revocation of such a license take
454 effect in less than 30 days after written notification by the department to the licensee.

455 (6) The department may require a facility to limit new admissions.

456 (n) In the case of the new construction of, major addition to or alteration or repair to any
457 long-term care facility, preliminary and final architectural plans and specifications shall be
458 submitted to a qualified person designated by the commissioner. Written approval of the final
459 architectural plans and specifications shall be obtained from said person prior to the new
460 construction, major addition, alteration or repair.

461 (o) Notwithstanding any other provision of this section, the department shall not issue a
462 license to establish or maintain and operate a long-term care facility to an applicant who applies
463 to the department for said license to establish or maintain and operate a convalescent or nursing
464 home unless the applicant for such license submits to the department a certificate that each
465 building to be occupied by residents of such convalescent or nursing home meets the
466 construction standards of the state building code and is of at least type 1-B fireproof
467 construction; provided, however, that this subsection shall not apply in the instance of a transfer
468 of facility operations of a convalescent or nursing home whose license has not been revoked as
469 of the time of such transfer; and provided further, that a public medical institution as defined in
470 section 8 of chapter 118E, which meets the construction standards as defined herein, shall not be
471 denied a license as a long-term care facility pursuant to this section because it was not of new

472 construction and designed for the purpose of operating a long-term care facility at the time of
473 application for a license to operate a long-term care facility. An intermediate care facility for
474 persons with an intellectual disability shall be required to meet the construction standards
475 established for such facilities by Title XIX of the Social Security Act, Public Law 89-97, and any
476 regulations promulgated pursuant thereto and by regulations promulgated by the department.

477 (p) The department shall notify the secretary of elder affairs of any proceeding, public
478 hearing or action to be taken pursuant to this section relating to any convalescent or nursing
479 home, rest home or charitable home for the aged. The department shall notify the commissioner
480 of developmental services of the pendency of any proceeding, public hearing or action to be
481 taken pursuant to this section relating to any intermediate care facility for persons with an
482 intellectual disability.

483 (q) The department shall notify the clerks of the senate and house of representatives, the
484 joint committee on elder affairs and the senate and house committees on ways and means within
485 3 business days of being notified of a long-term care facility's decision to close pursuant to
486 department regulations.

487 SECTION 12. Said chapter 111 is hereby further amended by striking out section 72, as
488 so appearing, and inserting in place thereof the following section:-

489 Section 72. (a)(1) The department shall classify long-term care facilities and shall, after a
490 public hearing, promulgate rules and regulations for the conduct of such facilities. Rules and
491 regulations for long-term care facilities shall include, but not be limited to, minimum
492 requirements for medical and nursing care, the keeping of proper medical and nursing records,
493 uniform requirements for the handling of patient funds, minimum requirements relative to the

494 prevention and reparation of lost or damaged patient possessions, including personal clothing,
495 and minimum requirements relative to facility sanitation, minimum standards for clinical
496 expertise, staff licensing, certification and training, use of psychotropic medications and non-
497 pharmacological interventions and other requirements of care and treatment; provided, however,
498 that regulations for intermediate care facilities for persons with an intellectual disability shall
499 include minimum requirements for social services, psychological services and other services
500 appropriate for the care of persons with an intellectual disability and shall limit the size of such
501 facilities to not more than 15 beds; provided further, that in promulgating rules or regulations for
502 long-term care facilities, the department shall consider the ability of long-term care facilities to
503 provide services under rates set pursuant to section 13C of chapter 118E; and provided further,
504 that no such rule or regulation shall apply to a long-term care facility licensed at the time of
505 promulgation of such rule or regulation, or a long-term care facility being constructed at the time
506 of such promulgation under plans approved by the department, unless such rule or regulation has
507 a direct and material relation to patient diet, cleanliness, nursing care or health, or to habilitative
508 services and active treatment for persons with an intellectual disability or persons with related
509 conditions.

510 (2) The department may authorize specialized care units serving persons requiring
511 treatment for infectious diseases, isolation, strokes, degenerative neurological conditions,
512 traumatic brain injuries, in-house dialysis treatments, behavioral health treatments, substance use
513 disorder treatments, bariatric patient care and conditions requiring 24-hour or 1-on-1 patient
514 supervision. The department may promulgate rules and regulations to regulate the conduct of any
515 such specialized care units.

516 (b)(1) The department or its agents and the board of health or its agents of the city or
517 town wherein any portion of such long-term care facility is located may visit and inspect such
518 institution at any time; provided, however, that a board of health or its agents conducting an
519 inspection of a long-term care facility located within its city or town shall notify the department
520 of the results of any inspection conducted pursuant to this paragraph.

521 (2) Any person inspecting pursuant to paragraph (1) shall record in writing every
522 violation of the applicable rules and regulations of the department that they discover during the
523 course of their inspection. Every record of inspection shall be treated as a public record except to
524 such extent the record or a portion of the record is expressly exempt from such treatment
525 pursuant to clause Twenty-sixth of section 7 of chapter 4. A record of inspection containing
526 violations shall be made public by the department when a written plan of correction is submitted.
527 If a written plan of correction is not submitted within the allowable time, said violations shall be
528 made public at the expiration of the allowable time. Inspections hereunder shall be unannounced
529 and made at such intervals as the department shall specify in its rules and regulations; provided,
530 that, each long-term care facility shall be subject to at least 1 periodic, resident-centered
531 inspection every 9 to 15 months, pursuant to subsection (b) of section 71. A visit made to a
532 facility for the purpose of providing consultation shall not be considered an inspection.

533 (c) The superior court shall have jurisdiction pursuant to chapter 30A to enforce the rules
534 and regulations promulgated pursuant to this section.

535 (d)(1) The department shall promulgate regulations to govern the conduct of such homes
536 and to regulate construction and physical plant standards for small house nursing homes;

537 provided, however, that such regulations shall consider environmental standards and
538 sustainability.

539 (2) Newly constructed small house nursing homes shall house not more than 14
540 individuals per unit, in resident rooms that accommodate not more than 1 resident per room;
541 provided, however, that if a resident requests to share a room with another resident to
542 accommodate a spouse, partner, family member or friend, such resident room shall have
543 sufficient space and equipment, as established by the department, for 2 residents; provided
544 further, that determinations to grant such requests shall be determined based on space and
545 availability of rooms at the applicable home. All resident rooms shall contain a full private and
546 accessible bathroom.

547 (3) The department may promulgate additional regulations for small house nursing homes
548 to establish a staffing model that: (i) allows for a universal worker approach to resident care that
549 is organized to support and empower all staff to respond to the needs and desires of residents,
550 including, but not limited to, cooking and meal preparation, without exceeding the lawful scope
551 of practice of said employee; and (ii) provides for consistent staff in each small house nursing
552 home.

553 (4) All regulations promulgated pursuant to this subsection shall ensure the convalescent
554 or nursing home meets the requirements to participate in the Medicare and Medicaid programs.

555 SECTION 13 Said chapter 111 is hereby further amended by striking out section 72E, as
556 appearing in the 2022 Official Edition, and inserting in place thereof the following section:-

557 Section 72E. (a) The department shall, after every inspection by its agent under section
558 72, provide the licensee of the inspected long-term care facility notice in writing of every

559 violation of the applicable statutes, rules and regulations found during said inspection. With
560 respect to the date by which the licensee shall remedy or correct each violation, the department
561 in such notice shall specify a reasonable time, not more than 60 days after receipt, by which time
562 the licensee shall remedy or correct each violation cited or, in the case of any violation which in
563 the opinion of the department is not reasonably capable of correction within 60 days, the
564 department shall require only that the licensee submit a written plan for the timely correction of
565 the violation in a reasonable manner. The department may modify any nonconforming plan upon
566 notice, in writing, to the licensee.

567 (b) Failure to remedy or correct a cited violation by the correct by date shall be cause to
568 pursue or impose the remedies or sanctions available to the department pursuant to this chapter,
569 unless the licensee demonstrates to the satisfaction of the department or a court, where
570 applicable, that such failure was not due to any neglect of its duty and occurred despite an
571 attempt in good faith to make correction by the correct by date. An aggrieved licensee may
572 pursue the remedies available to it pursuant to chapter 30A.

573 (c) If the department determines the licensee failed to maintain substantial or sustained
574 compliance with applicable state and federal laws, rules and regulations, in addition to imposing
575 any of the other remedies or sanctions available to it, the department may require the licensee to
576 engage, at the licensee's own expense, a temporary manager to assist the licensee with bringing
577 the facility into substantial compliance and with sustaining such compliance. Such temporary
578 manager shall be subject to the department's approval. Any such engagement of a temporary
579 manager shall be for a period of not less than 3 months and shall be pursuant to a written
580 agreement between the licensee and the management company providing the temporary
581 manager. A copy of said agreement shall be provided by the licensee to the department promptly

582 after execution. Any payment terms included in the agreement shall be confidential and exempt
583 from disclosure pursuant to clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

584 (d) Nothing in this section shall be construed to prohibit the department from enforcing a
585 statute, rule or regulation, administratively or in court, without first affording formal opportunity
586 to make correction pursuant to this section, where, in the opinion of the department, the violation
587 of such statute, rule or regulation jeopardizes the health or safety of residents or the public or
588 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such
589 statute, rule or regulation is the second such violation occurring during a period of 12 full
590 months.

591 SECTION 14. Section 72K of said chapter 111, as so appearing, is hereby amended by
592 striking out subsection (b) and inserting in place thereof the following 2 subsections:-

593 (b) The attorney general may file a civil action against a person who: (i) commits abuse,
594 mistreatment or neglect of a patient or resident; (ii) misappropriates patient or resident property;
595 or (iii) wantonly or recklessly permits or causes another to commit abuse, mistreatment or
596 neglect of a patient or resident or misappropriate patient or resident property. The civil penalty
597 for such abuse, mistreatment, neglect or misappropriation shall not exceed \$25,000 if no bodily
598 injury results; \$50,000 if bodily injury results; \$100,000 if sexual assault or serious bodily injury
599 results; and \$250,000 if death results. Section 60B of chapter 231 shall not apply to an action
600 brought by the attorney general pursuant to this section. Nothing in this section shall preclude the
601 filing of any action brought by the attorney general or a private party pursuant to chapter 93A or
602 any action by the department pursuant to this chapter.

603 (c) Notwithstanding section 5 of chapter 260, the attorney general may file a civil action
604 within 4 years next after an offense is committed.

605 SECTION 15. Said chapter 111 is hereby further amended by inserting after section
606 72BB the following 4 sections:-

607 Section 72CC. (a) The department shall require long-term care facilities to develop an
608 outbreak response plan which shall be customized to each long-term care facility and shall
609 review such plan to ensure compliance with the requirements under this section. Each long-term
610 care facility's plan shall include, but not be limited to: (i) a protocol for isolating and cohorting
611 infected and at-risk patients in the event of an outbreak of a contagious disease until the cessation
612 of the outbreak; (ii) clear policies for the notification of residents, residents' families, visitors and
613 staff in the event of an outbreak of a contagious disease at a long-term care facility; (iii)
614 information on the availability of laboratory testing, protocols for screening visitors and staff for
615 the presence of a communicable disease, protocols to prohibit infected staff from appearing for
616 work at the long-term care facility and processes for implementing evidence-based outbreak
617 response measures; (iv) policies to conduct routine monitoring of residents and staff to quickly
618 identify signs of a communicable disease that could develop into an outbreak; (v) policies for
619 reporting outbreaks to public health officials, including the municipality in which the facility is
620 located, in accordance with applicable laws and regulations; and (vi) policies to meet staffing,
621 training and long-term care facility demands during an infectious disease outbreak and to
622 successfully implement the outbreak response plan.

623 (b) A long-term care facility shall review the outbreak response plan it submitted to the
624 department pursuant to subsection (a) on an annual basis and if it makes any material changes to

625 such plan, the facility shall submit to the department an updated outbreak response plan within
626 30 days of making such change. The department shall, upon receiving an updated outbreak
627 response plan, verify that the plan is in compliance with the requirements of subsection (a).

628 (c) The department shall promulgate regulations necessary to implement this section.

629 Section 72DD. (a) The division of health care facility licensure and certification within
630 the department of public health shall establish and implement a process and program for
631 providing training and education to staff of long-term care facilities licensed by the department
632 pursuant to section 71. The training and education program may include, but not be limited to: (i)
633 infection prevention and control; (ii) development, implementation, adherence to and review of
634 comprehensive resident care plans; (iii) falls prevention; (iv) procedures to ensure timely
635 notification of changes in a resident's condition to the resident's primary care physician; (v)
636 prevention of abuse and neglect; (vi) development and implementation of a program to ensure
637 staff safety; and (vii) review of the inspection process under section 72.

638 (b) The training and education program shall be interactive and shall include, but not be
639 limited to: (i) an annual training for long-term care facility supervisory and leadership staff on
640 the licensure and certification process, including, but not limited to, the department's
641 interpretation of relevant general laws and relevant changes or additions to applicable rules,
642 regulations, procedures and policies concerning the licensure and certification process for long-
643 term care facilities; and (ii) a biannual training of staff of long-term care facilities on the most
644 frequently cited deficiencies, identified deficiency trends, both state and federal, and best
645 practices to ensure resident quality of care.

646 Section 72EE. (a) The department shall promulgate regulations to encourage and enable
647 residents of a long-term care facility to engage in in-person, face-to-face, verbal or auditory-
648 based contact, communications and religious and recreational activities with others to the extent
649 that in-person contact, communication or activities are not prohibited, restricted or limited by
650 federal or state law, rule or regulation. Said regulations shall include specific protocols and
651 procedures to provide for residents of the facility who have disabilities that impede their ability
652 to communicate, including, but not limited to, residents who are blind, deaf, have Alzheimer's
653 disease or other dementias and developmental disabilities.

654 (b) The department may distribute federal civil monetary penalty funds, subject to
655 approval by the federal Centers for Medicare and Medicaid Services, and any other available
656 federal and state funds, upon request, to facilities for communicative technologies and
657 accessories pursuant to this section.

658 Section 72FF. (a) As used in this section the following words shall have the following
659 meanings unless the context requires otherwise:

660 "Gender expression", the manner in which a person represents or expresses gender to
661 others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.

662 "Gender identity" or "Gender", a person's gender identity, appearance or behavior,
663 whether or not that gender identity, appearance or behavior is different from that traditionally
664 associated with the person's physiology or birth sex; provided, however, that gender identity
665 may be demonstrated through medical history, care or treatment of the gender identity, consistent
666 and uniform assertion of the gender identity or any other evidence that the gender identity is

667 sincerely held as part of a person's core identity; and provided further, that gender identity shall
668 not be asserted for any improper purpose.

669 "Gender-nonconforming", gender expression does not conform to stereotypical
670 expectations of such gender.

671 "Gender transition", a process in which a person begins to live according to that person's
672 gender identity, rather than the sex the person was assigned at birth, which may include changing
673 one's clothing, appearance, name or identification documents or undergoing medical treatments.

674 "HIV", human immunodeficiency virus.

675 "Intersex", a person whose sexual or reproductive anatomy or chromosomal pattern is not
676 consistent with typical definitions of male or female.

677 "LGBTQI", lesbian, gay, bisexual, transgender, questioning, queer and intersex.

678 "Long-term care facility", a charitable home for the aged, convalescent or nursing home,
679 skilled nursing facility, intermediate care facility for persons with an intellectual disability or rest
680 home.

681 "Long-term care facility staff", all individuals employed by, or contracted directly with, a
682 long-term care facility.

683 "Non-binary" describes a person whose gender identity falls outside of the traditional
684 gender binary structure of man and woman.

685 "Resident", a resident or patient of a long-term care facility.

686 "Queer", a person whose gender expression, gender identity or sexual orientation does
687 not conform to dominant expectations or standards.

688 "Questioning", a person who is exploring or unsure about their own sexual orientation or
689 gender identity or expression.

690 "Sexual orientation", a person's romantic or sexual attraction to other people.

691 "Transgender", a person whose gender identity or gender expression differs from the birth
692 sex of that person.

693 (b) Except as provided in subsection (c), long-term care facilities and long-term care
694 facility staff shall not take any of the following actions based in whole or in part on a person's
695 actual or perceived sexual orientation, gender identity, gender expression, intersex status or HIV
696 status: (i) denying admission to a long-term care facility, transferring or refusing to transfer a
697 resident within a facility or to another facility or discharging or evicting a resident from a
698 facility; (ii) denying a request by residents to share a room; (iii) where rooms are assigned by
699 gender, assigning, reassigning or refusing to assign a room to a transgender resident other than in
700 accordance with the transgender resident's gender identity, unless at the transgender resident's
701 request, and assigning, reassigning or refusing to assign a room to a non-binary resident other
702 than in accordance with the non-binary resident's preference; (iv) prohibiting a resident from
703 using or harassing a resident for using or seeking to use, a restroom available to other persons of
704 the same gender identity, regardless of whether the resident is making a gender transition, has
705 taken or is taking hormones, has undergone gender affirmation surgery or presents as gender-
706 nonconforming; provided, however, that for the purposes of this clause, harassment shall include,
707 but not be limited to, requiring a resident to show identity documents to gain entrance to a

708 restroom; (v) repeatedly and intentionally failing to use a resident's chosen name or pronouns
709 after being informed of the chosen name or pronouns, in a manner that constitutes discrimination
710 or harassment in violation of any applicable federal, state or local law; (vi) denying a resident the
711 right to wear or be dressed in clothing, accessories or cosmetics or to engage in grooming
712 practices that are permitted to any other resident; (vii) restricting a resident's right to associate
713 with other residents or with visitors, including the right to consensual sexual relations where
714 sexual relations would not be restricted if the participants were heterosexual or married; (viii)
715 denying or restricting medical or nonmedical care that is appropriate to a resident's organs and
716 bodily needs or providing such care that unduly demeans the resident or causes avoidable
717 discomfort or harm; or (ix) refusing or willfully failing to provide any service, care or reasonable
718 accommodation to a resident or an applicant for services or care.

719 (c) The requirements of this section shall not apply to the extent that compliance with the
720 requirement is incompatible with any professionally reasonable clinical judgment or inconsistent
721 with 42 CFR § 483.15(c)(1), 42 CFR § 483.24 and 105 CMR 150.003.

722 (d) Each facility shall distribute a document containing the following notice alongside the
723 informational document required by section 72AA:

724 "[Name of facility] does not discriminate and does not permit discrimination by any
725 person, including persons employed by the facility, residents, family members and other visitors
726 to the facility including, but not limited to, abuse or harassment, on the basis of actual or
727 perceived sexual orientation, gender identity, gender expression, intersex status or HIV status or
728 based on association with another individual on account of that individual's actual or perceived
729 sexual orientation, gender identity, gender expression, intersex status or HIV status. You may

730 file a complaint with the office of the long-term care ombudsman, [provide current contact
731 information] if you believe you have experienced this kind of discrimination."

732 (e) Each long-term care facility shall ensure that resident records, including records
733 generated at the time of admission, include the resident's gender and the name and pronouns by
734 which the resident would like to be identified, as indicated by the resident.

735 (f) Unless expressly authorized by the resident or the resident's authorized representative,
736 long-term facility staff not involved in providing direct care to a resident shall not be present
737 during physical examination of, or the provision of personal care to, that resident if the resident
738 is partially or fully unclothed.

739 (g) Transgender residents shall be provided access to such transition-related assessments,
740 therapy and treatments as have been recommended by the resident's health care provider,
741 including, but not limited to, transgender-related medical care, including hormone therapy and
742 supportive counseling, subject to availability and third-party medical coverage.

743 (h) LGBTQI-related programming, such as an LGBTQI Pride Month event or a
744 Transgender Day of Remembrance event, shall be allowed and treated equally to other cultural
745 celebrations or commemorations.

746 (i) The department shall promulgate regulations relative to discipline and penalties for
747 long-term care facilities that violate the requirements of this section or that employ a staff
748 member who violates the requirements of this section, which shall include, but not be limited to,
749 civil penalties and other administrative action. Nothing in this section shall be construed to limit
750 the ability of any party to bring a civil, criminal or administrative action for conduct constituting
751 a violation of any other provision of law.

752 (j) (1) A long-term care facility shall ensure that the long-term care facility staff receive
753 training, on at least a biennial basis, concerning: (i) the care of LGBTQI older adults and older
754 adults living with HIV; and (ii) the prevention of discrimination based on sexual orientation,
755 gender identity or expression, intersex status and HIV status.

756 (2) The training required by this section shall include, but not be limited to: (i) the
757 definition of the terms commonly associated with sexual orientation, gender identity and
758 expression, intersex status and HIV status; (ii) best practices for communicating with or about
759 LGBTQI older adults and older adults living with HIV and others who are LGBTQI or living
760 with HIV, including the use of any name and pronouns by which residents may express the
761 desire to be identified; (iii) a description of the health and social challenges historically
762 experienced by LGBTQI older adults and older adults living with HIV and others who are
763 LGBTQI or living with HIV, including discrimination when seeking or receiving care at long-
764 term care facilities, and the demonstrated physical and mental health effects within the LGBTQI
765 community associated with such discrimination; (iv) strategies to create a safe and affirming
766 environment for LGBTQI seniors and residents living with HIV, including suggested changes to
767 facility policies and procedures, forms, signage, communication between residents and their
768 families, activities and staff training and in-services; and (v) an overview of the provisions of this
769 section.

770 (3) The department shall select an entity that has demonstrated expertise in creating safe
771 and affirming environments and identifying the legal, social and medical challenges faced by
772 LGBTQI older adults and older adults living with HIV and others who are LGBTQI or living
773 with HIV, who reside in long-term care facilities, to provide the training required by this section.

774 (4) Long-term care facility staff shall complete all training required by this section within
775 1 year of their date of hire unless the new hire provides the long-term care facility with
776 documentation demonstrating that they have completed equivalent training within the past 2
777 years.

778 (5) Each long-term care facility shall retain records documenting the completion of the
779 training required pursuant to this section by each administrator and staff member at the long-term
780 care facility. Compliance records shall be made available, upon request, to the department, the
781 executive office of health and human services and the office of the statewide long-term care
782 ombudsman.

783 (6) Each long-term care facility shall assume the cost of providing the training required
784 pursuant to this section.

785 (k) The commissioner and the secretary of health and human services shall adopt rules
786 and regulations as may be necessary to implement this section.

787 SECTION 16. Said chapter 111 is hereby further amended by striking out section 73, as
788 so appearing, and inserting in place thereof the following section:-

789 Section 73. (a) Whoever advertises, announces, establishes or maintains, or is otherwise
790 engaged in any business with or is concerned in establishing or maintaining a long-term care
791 facility without a license granted pursuant to section 71 or violates any provision of sections 71
792 to 73, inclusive, shall for a first offense be punished by a fine of not more than \$1,000, and for a
793 subsequent offense by a fine of not more than \$2,000 or by imprisonment for not more than 2
794 years.

795 (b) Whoever violates any rule or regulation promulgated pursuant to sections 71, 72, 72C
796 and 72FF shall be punished by a fine not to exceed \$500, unless the department determines a
797 higher amount is appropriate in accordance with 42 CFR 488.438. If any person violates any
798 such rule or regulation by allowing a condition to exist which may be corrected or remedied, the
799 department shall order such person, in writing, to correct or remedy such condition. If such
800 person fails or refuses to comply with such order by the correct by date, each day after the
801 correct by date during which such failure or refusal to comply continues shall constitute a
802 separate offense. A failure to pay the fine imposed by this section shall be a violation of this
803 subsection.

804 SECTION 17. Section 28 of chapter 118E of the General Laws, as so appearing, is
805 hereby amended by adding the following paragraph:-

806 The division shall consider a transfer of assets by an individual age 65 or older or a
807 transfer made for the sole benefit of an individual age 65 or older into a trust pursuant to 42
808 U.S.C. 1396p(d)(4)(C), established for the sole benefit of said individual, to be a disposal of
809 resources for fair market value, to the extent that such resources shall be available, under any
810 circumstances, to be used by the trustee to provide goods and services to the individual, or to
811 reimburse such costs, at fair market value.

812 SECTION 18. Section 31 of said chapter 118E, as so appearing, is hereby amended by
813 inserting after subsection (b) the following subsection:-

814 (b½) This subsection shall apply to estates of individuals dying on or after August 1,
815 2024. There shall be no adjustments or recovery of medical assistance correctly paid except for
816 recovery from the estate of an individual who was:

817 (i) regardless of age, a resident in a nursing facility or other medical institution within the
818 meaning of 42 U.S.C. 1396p(a)(1)(B)(i) when the individual received such assistance; provided,
819 however, that recovery of such assistance shall be limited to assistance provided on or after
820 March 22, 1991; or

821 (ii) 55 years of age or older when the individual received such assistance, where such
822 assistance was for services provided on or after October 1, 1993, but only for medical assistance
823 consisting of nursing facility services, home and community-based services and related hospital
824 and prescription drug services for which estate recovery is mandated under 42 U.S.C.
825 1396p(b)(1)(B)(i) or other federal law.

826 Any recovery may be made only after the death of the surviving spouse, if any, and only
827 at a time when the individual has no surviving child who is: (i) under the age of 21; or (ii) an
828 individual who is blind or an individual with a disability.

829 SECTION 19. Said section 31 of said chapter 118E, as so appearing, is hereby further
830 amended by adding the following subsection:-

831 (e) Notwithstanding subsection (b^{1/2}), there shall be no adjustment or recovery of medical
832 assistance correctly paid from the estate of an individual who was receiving such assistance
833 under the CommonHealth program for adults with disabilities or for payment of personal care
834 attendant services; provided, however, that the executive office shall seek federal authority, if
835 required, to implement this subsection.

836 SECTION 20. Said chapter 118E is hereby further amended by adding the following 2
837 sections:-

838 Section 83. To establish Medicaid rates for skilled nursing facilities licensed pursuant to
839 section 71 of chapter 111, the division of medical assistance shall use as base year costs for rate
840 determination purposes the reported costs of the calendar year not more than 2 years prior to the
841 current rate year.

842 Section 84. (a) The division of medical assistance shall establish a skilled nursing facility
843 rate add-on program for bariatric patient care and a rate add-on program for 1-on-1 staffing of at-
844 risk residents requiring 24-hour monitoring and supervision for their safety and the safety of
845 other residents and staff. The division of medical assistance shall identify at-risk resident
846 populations to include in the rate add-on program for 1-on-1 staffing which may include, but not
847 be limited to, residents that: (i) have demonstrated suicidal ideation; (ii) have demonstrated
848 aggressive behavior toward other residents or staff; (iii) have demonstrated exit-seeking
849 behavior; or (vi) are registered sex offenders. The rate add-ons for said program shall be
850 sufficient to defray the cost of employing the required staff to conduct the 24-hour monitoring
851 and supervision of the at-risk residents.

852 (b) When determining eligibility for add-on or enhanced rates for specialized care units,
853 as authorized by paragraph (2) of section 72 of chapter 111, the division shall consider whether
854 the facility has complied with standards, as determined and certified by the department of public
855 health, which may include, but not be limited to, clinical expertise, staff licensing, staff training,
856 staff certification, unit accreditation, staff ratios, use of psychotropic medications and non-
857 pharmacological interventions, therapeutic and psychosocial programming to develop and
858 maintain daily living skills and encourage socialization, use of behavior plans and other
859 requirements of care and treatment as determined by the department.

860 (c) The division of medical assistance may develop an add-on rate of payment for skilled
861 nursing facilities that develop small house nursing homes and meet criteria established by the
862 executive office.

863 SECTION 21. Subsection (c) of section 25 of chapter 176O of the General Laws, as
864 appearing in the 2022 Official Edition, is hereby amended by inserting after the second sentence
865 the following sentence:- The division shall develop and implement a uniform prior authorization
866 form for the admission of patients from an acute care hospital to a post-acute care facility or
867 transitioned to a home health agency certified by the federal Centers for Medicare and Medicaid
868 Services for covered post-acute care services.

869 SECTION 22. Section 23 of chapter 20 of the acts of 2021 is hereby repealed.

870 SECTION 23. (a) For the purposes of this section, the following words shall have the
871 following meanings unless the context clearly requires otherwise:

872 “Enrollee”, shall have the same meaning as in section 8A of chapter 118E of the General
873 Laws; provided, however, that “enrollee” shall include “insured” as defined in section 1 of
874 chapter 176O of the General Laws.

875 “Payer”, the group insurance commission under chapter 32A of the General Laws, the
876 division of medical assistance under chapter 118E of the General Laws, insurance companies
877 organized under chapter 175 of the General Laws, non-profit hospital service corporations
878 organized under chapter 176A of the General Laws, medical service corporations organized
879 under chapter 176B of the General Laws, health maintenance organizations organized under
880 chapter 176G of the General Laws and preferred provider organizations organized under chapter

881 176I of the General Laws, or a utilization review organization acting under contract with the
882 aforementioned entities.

883 “Post-acute care facility or agency”, (i) a facility licensed under chapter 111 to provide
884 inpatient post-acute care services, including, but not limited to, skilled nursing facilities, long-
885 term care hospitals, intermediate care facilities or rehabilitation facilities; or (ii) a home health
886 agency certified by the federal Centers for Medicare and Medicaid Services.

887 (b) Notwithstanding any general or special law to the contrary, all payers shall approve or
888 deny a request for prior authorization for admission to a post-acute care facility or transition to a
889 post-acute care agency for any inpatient of an acute care hospital requiring covered post-acute
890 care services by the next business day following receipt by the payer of all necessary information
891 to establish medical necessity of the requested service; provided, however, that no admission
892 may occur until the pre-admission screening and resident review pursuant to 42 CFR 483 is
893 complete. If the calendar day immediately following the date of submission of the completed
894 request is not a payer’s business day, and the payer cannot otherwise make a determination by
895 the next calendar day, and the receiving post-acute care facility or agency is both open to new
896 admissions and has indicated that said facility or agency will accept the enrollee, then prior
897 authorization shall be waived; provided, however, that the payer shall provide coverage and may
898 begin its concurrent review of the admission on the next business day; provided further, that the
899 payer shall not retrospectively deny coverage for services to an enrollee admitted to a post-acute
900 care facility or transitioned to a post-acute care agency after a waiver of prior authorization
901 pursuant to this section unless the claim was a result of fraud, waste or abuse. An adverse
902 determination of a prior authorization request pursuant to this section may be appealed by an
903 enrollee or the enrollee’s provider and such appeal, in the case of an enrollee of a commercial

904 payer, shall be subject to the expedited grievance process pursuant to clause (iv) of subsection
905 (b) of section 13 of chapter 176O of the General Laws. An enrollee of an insurance program of
906 the division of medical assistance or the enrollee's provider may request an expedited appeal of
907 an adverse determination of a prior authorization request. Nothing in this section shall be
908 construed to require a payer to reimburse for services that are not a covered benefit.

909 (c) In the case of non-emergency transportation between an acute care hospital and a
910 post-acute care facility, payers shall approve or deny a request for prior authorization according
911 to the same process provided pursuant to subsection (b); provided, however, that once
912 authorization has been granted, said authorization shall be valid for not less than 7 calendar days
913 following approval.

914 (d) The division of insurance and the division of medical assistance shall issue sub-
915 regulatory guidance to effectuate the purposes of this subsection.

916 SECTION 24. For the purposes of this section, "payer" shall mean the group insurance
917 commission under chapter 32A of the General Laws, the division of medical assistance under
918 chapter 118E of the General Laws, insurance companies organized under chapter 175 of the
919 General Laws, non-profit hospital service corporations organized under chapter 176A of the
920 General Laws, medical service corporations organized under chapter 176B of the General Laws,
921 health maintenance organizations organized under chapter 176G of the General Laws and
922 preferred provider organizations organized under chapter 176I of the General Laws, or a
923 utilization review organization acting under contract with the aforementioned entities.

924 Notwithstanding any general or special law to the contrary, not later than 90 days after
925 the effective date of this act, the division of insurance shall develop the uniform prior

926 authorization form for admission to a post-acute care facility or transition to a home health
927 agency for any inpatient of an acute care hospital requiring covered post-acute care services
928 pursuant to section 25 of chapter 176O of the General Laws. Said uniform prior authorization
929 form shall state that no admission to a nursing facility may occur until the preadmission
930 screening and resident review required under 42 CFR 483 is complete. The division of insurance
931 shall develop said uniform prior authorization form in consultation with the division of medical
932 assistance. The division of medical assistance, or any entity acting for the division of medical
933 assistance under contract, shall accept the uniform prior authorization form as sufficient to
934 request prior authorization for the requested service. All acute care hospitals shall use the
935 uniform prior authorization form to request prior authorization for coverage of post-acute care
936 services at a post-acute care facility or home health agency, and all payers or entities acting for a
937 payer under contract shall accept such form as sufficient to request prior authorization for the
938 requested service not later than 30 days after the form has been developed by the division of
939 insurance.

940 SECTION 25. (a) For the purposes of this section, the terms “licensee” and “management
941 company” shall have the meanings as defined in section 71 of chapter 111 of the General Laws.

942 (b) Pursuant to section 71 of chapter 111 of the General Laws, a licensee who has entered
943 into a contract with a management company prior to the effective date of this act shall provide
944 the department of public health with the necessary documentation and materials for a
945 determination by the department of the responsibility and suitability of the management
946 company, as described in subsection (g) of said section 71 of said chapter 111, prior to any
947 issuance of a renewed license; provided, however, that the department shall give a licensee
948 reasonable time to provide the department with the necessary documents and materials if the

949 licensee's renewal date is within 90 days of the effective date of this act. A licensee's failure to
950 comply with this section shall subject the licensee to the penalties established in section 73 of
951 said chapter 111.

952 SECTION 26. (a) There shall be a special commission to study oversight of continuing
953 care retirement communities to protect the consumer and financial rights of residents.

954 (b) The commission shall consist of: the chairs of the joint committee on elder affairs,
955 who shall serve as co-chairs; the attorney general or a designee; the secretary of elder affairs or a
956 designee; the commissioner of public health or a designee; 3 persons to be appointed by the
957 governor, 1 of whom shall be a certified public accountant or an actuary and 2 of whom shall be
958 residents at a continuing care retirement community; a representative of the Massachusetts
959 chapter of National Academy of Elder Law Attorneys; a representative of LeadingAge
960 Massachusetts, Inc.; a representative of Massachusetts Assisted Living Association, Inc.; a
961 representative of AARP Massachusetts; a representative of the Alzheimer's Association; a
962 representative of Massachusetts Advocates for Nursing Home Reform, Inc.; a representative of
963 the Massachusetts Life Care Residents' Association, Inc.; a representative of Massachusetts
964 Senior Care Association, Inc.; and a representative of Local 1199 SEIU. The commission shall
965 meet not less than 6 times and shall hold not less than 1 public hearing.

966 (c) The commission shall study and report on: (i) continuing care retirement
967 communities, their care contracts and their impact on consumers; (ii) the financial viability of
968 such communities; (iii) the payment and return of entrance fees at such communities; (iv)
969 statutory and regulatory oversight of such communities, including any activities by state agencies
970 to enforce regulatory requirements; (v) advertising practices communicated to potential residents

971 and families about such communities; and (vi) regulatory procedures for the closure or change of
972 ownership of such communities.

973 (d) The commission shall submit a report with recommendations, including legislation or
974 regulations necessary to carry out such recommendations, to the clerks of the house of
975 representatives and the senate, the joint committee on elder affairs and the senate and house
976 committees on ways and means not later than August 1, 2025.

977 SECTION 27. (a) The department of public health shall study and report on the need and
978 feasibility of qualified professional guardians to give informed medical consent for indigent
979 persons and whether such guardians would reduce hospital discharge issues and increase access
980 to long-term care and preventive care; provided, however, that the report shall include, but not be
981 limited to: (i) the need for qualified professional guardians to assist indigent persons with
982 accessing appropriate medical care, including preventive care; (ii) data on the current number of
983 Rogers guardians and similar guardians and the financial impact of reimbursing such guardians;
984 (iii) the fiscal impact of establishing MassHealth fee-for-service guardians; and (iv) other
985 recommendations deemed necessary by the department.

986 (b) Not later than July 31, 2025, the department shall submit its report, including any
987 proposed legislation necessary to carry out its recommendations, to the clerks of the senate and
988 house of representatives, the senate and house committees on ways and means and the joint
989 committee on elder affairs.

990 SECTION 28. (a) There shall be a taskforce to review the viability and sustainability of
991 long-term care facilities in the commonwealth.

992 (b) The taskforce shall consist of: the secretary of health and human services, who shall
993 serve as chair; the secretary of elder affairs or a designee; commissioner of public health or a
994 designee; 4 persons to be appointed by the governor, 1 of whom shall represent long-term care
995 facilities, 1 of whom shall operate an assisted living residence, 1 of whom shall represent
996 residents of long-term care facilities in the commonwealth and 1 of whom shall be health care
997 economist; a representative of LeadingAge Massachusetts, Inc., a representative of 1199SEIU; a
998 representative of Massachusetts Association of Residential Care Homes, Inc.; a representative of
999 the Massachusetts Senior Action Council, Inc; and a representative of Massachusetts Senior Care
1000 Association.

1001 In making appointments, the governor shall, to the maximum extent feasible, ensure that
1002 the task force represents a broad distribution of diverse perspectives and geographic regions.

1003 (c) In making recommendations, the task force shall consider issues including, but not
1004 limited to: (i) the demand for long-term care facilities over the next 5 and 10 years and the ability
1005 to meet that demand in a cost-effective manner; (ii) the geographic accessibility of such
1006 facilities; (iii) staffing challenges and workforce initiatives to support such facilities including
1007 but not limited to childcare; (iv) the utilization of pharmacists and other health care providers in
1008 long-term care; (v) any policy reforms to strengthen long-term care in the commonwealth
1009 including but not limited to, maintaining quality of care; (vi) the adequacy of payor rates; (vii)
1010 costs and impacts of financing for facility construction and maintenance, including but not
1011 limited to, private equity and real estate investment trusts; and (viii) costs associated with
1012 transportation options to and from facilities for individuals.

1013 (d) The task force shall submit its report, recommendations and any proposed legislation
1014 necessary to carry out its recommendations to the clerks of the senate and house of
1015 representatives, the joint committee on health care financing, the joint committee on elder affairs
1016 and the senate and house committees on ways and means not later than July 31, 2025.

1017 SECTION 29. (a) Notwithstanding any general or special law to the contrary, there shall
1018 be an assisted living residences commission to study and recommend policies to ensure assisted
1019 living residences adequately meet the health and safety needs of residents. The areas examined
1020 by the commission shall include, but not be limited to: (i) the current statutory and regulatory
1021 oversight of assisted living residences; (ii) assisted living best practices in other states; (iii) the
1022 impacts of licensing or certifying such residences; (iv) advertising practices of assisted living
1023 residences to potential residents and their families; (v) regulatory procedures for opening, closing
1024 or changing ownership of a residence, including determination of need processes and clustering
1025 of facilities; (vi) trends in incident reports made to the executive office of elder affairs and the
1026 long term care ombudsman's office and resolutions of such incidents; (vii) methods to provide
1027 transparency of information for potential consumers and family members researching and
1028 comparing residences; (viii) safety standards; (ix) existing consumer protections for residents in
1029 statutes and regulations; and (x) basic health services in residences.

1030 (b) The commission shall consist of: the secretary of elder affairs, who shall serve as
1031 chair; the commissioner of public health or a designee; the assistant secretary of MassHealth or a
1032 designee; the long term care ombudsman or a designee; the chairs of the joint committee on elder
1033 affairs; 1 member to be appointed by the senate president; 1 member to be appointed by the
1034 speaker of the house; 1 member to be appointed by the minority leader of the senate; 1 member
1035 to be appointed by the minority leader of the house of representatives; 3 members to be

1036 appointed by the governor, 2 of whom shall be residents or family members of residents at an
1037 assisted living residence; a representative of the Massachusetts chapter of the National Academy
1038 of Elder Law Attorneys; a representative of LeadingAge Massachusetts, Inc.; a representative of
1039 the Massachusetts Assisted Living Association, Inc.; a representative of AARP Massachusetts; a
1040 representative of the New England chapter of the Gerontological Advanced Practice Nurses
1041 Association; a representative of the Massachusetts chapter of the Alzheimer's Association; a
1042 representative of MassPACE, Inc.; and a representative of Greater Boston Legal Services, Inc..
1043 The commission shall meet not less than 5 times and shall hold at least 1 public hearing.

1044 (c) The commission shall file its report and recommendations, including any proposed
1045 legislation necessary to carry out its recommendations, to the clerks of the senate and house of
1046 representatives, the joint committee on elder affairs and the house and senate committees on
1047 ways and means not later than August 1, 2025.

1048 SECTION 30. Notwithstanding any general or special law to the contrary, the executive
1049 office shall report to the house and senate committees on ways and means, not later than 90 days
1050 after the effective date of this act, on the availability of a waiver and, if applicable, the estimated
1051 net state cost of a waiver that would allow individuals qualifying for Medicaid and at risk of
1052 entering a nursing home to reside in a certified assisted living residence. The executive office of
1053 health and human services may request a waiver from the federal Centers for Medicare and
1054 Medicaid Services to allow individuals qualifying for Medicaid and at risk of entering a nursing
1055 home to reside in a certified assisted living residence.

1056 SECTION 31. Pursuant to section 72CC of chapter 111 of the General Laws, each long-
1057 term care facility shall submit its outbreak response plan to the department of public health not
1058 later than 180 days after the effective date of this act.

1059 SECTION 32. (a) Each long-term care facility shall designate 2 employees, including 1
1060 employee representing management at the facility and 1 employee representing direct care staff
1061 at the facility, to receive in-person training required by section 72FF of chapter 111 of the
1062 General Laws within 6 months of the effective date of this act. The designated employees shall
1063 serve as points of contact for the long-term care facility regarding compliance with the
1064 provisions of this act and shall develop a general training plan for the facility. In the event a
1065 designated employee ceases to be employed by the facility, the facility shall designate another
1066 employee who is representative of the employee group represented by the former designee, who
1067 shall complete the in-person training required pursuant to this section, to serve as a point of
1068 contact for the facility regarding compliance with the provisions of this act and have joint
1069 responsibility for the facility's training plan.

1070 (b) All long-term care facility staff employed by a long-term care facility on the effective
1071 date of this act, other than an employee designated pursuant to subsection (a), shall complete the
1072 training required by 72FF of chapter 111 of the General Laws within 1 year of the effective date
1073 of this act.

1074 SECTION 33. Sections 15 and 32 shall take effect 180 days after the effective date of this
1075 act.

1076 SECTION 34. Section 83 of chapter 118E of the General Laws, inserted by section 20,
1077 shall take effect on October 1, 2025.

1078 SECTION 35. Section 23 is hereby repealed.

1079 SECTION 36. Section 35 shall take effect 2 years after the effective date of this act.