

SENATE No. 780

The Commonwealth of Massachusetts

PRESENTED BY:

Liz Miranda

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

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

An Act to address the overuse of temporary nursing service agencies at Massachusetts skilled nursing facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/8/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/8/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/8/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>2/21/2023</i>

SENATE No. 780

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 780) of Liz Miranda, Joanne M. Comerford, Jack Patrick Lewis, James K. Hawkins and other members of the General Court for legislation to address the overuse of temporary nursing service agencies at Massachusetts skilled nursing facilities. Health Care Financing.

The Commonwealth of Massachusetts

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

An Act to address the overuse of temporary nursing service agencies at Massachusetts skilled nursing facilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Notwithstanding any special or general law to the contrary, the
2 department of public health is directed to amend the state regulations governing the reporting by
3 and rates paid by health-care providers to temporary nursing agencies registered with the
4 department (101 CMR 345).

5 (b) Such amendment shall include reductions in the maximum prices set forth in 101
6 CMR 345.03(2) that an agency may charge for registered nurse, licensed practical nurse, or
7 certified nurse aide services provided to a skilled nursing facility. In setting such reduced
8 maximum rates, the department shall establish hourly rate caps through a process that establishes
9 and considers a weighted average wage for regular skilled nursing facility employees, plus a
10 factor to incorporate payroll taxes, for each applicable employee classification, shift, and region.

11 The department shall establish such weighted average service rates annually utilizing

12 information provided by facilities. In no case shall the established maximum prices of temporary
13 nursing agencies be permitted to exceed one hundred and fifty percent of the established average
14 wages for regular employees at each applicable classification.

15 (c) Such amendment shall require reporting any individual or business entity with an
16 ownership interest of 5 percent or more of a temporary nursing agency is also the holder of an
17 operating license issued to establish or maintain a Massachusetts skilled nursing facility. Further,
18 a temporary nursing agency so owned by any such individual or entity shall be prohibited from
19 procuring or providing temporary employment at a skilled nursing facility so owned by the same
20 individual or entity.

21 (d) The process for establishing the amendments as outlined in the subsections above
22 shall also include an examination and analysis of the Temporary Nursing Service Cost Report
23 and Reporting Requirements established in 101 CMR 345.05. As it so determines in such
24 analysis, the department may amend the Reporting Requirements regulatory provision to
25 strengthen the transparency of, increase the mandated disclosures required in or to otherwise
26 strengthen the state accountability standards now included in the mandated Temporary Nursing
27 Service Cost Report. Such analysis shall include and such amendments to the regulatory
28 reporting requirements may include improved standards for temporary nursing agency reporting
29 on compensation, benefits and worker supports for temporary nursing agency workers; licensing,
30 training, and continuing education requirements for assigned workers; reporting on the
31 operations, cost trends and financial performance of temporary nursing agencies; processes
32 utilized to assure prompt arrival of assigned workers; procedures for reporting on, the
33 investigation of and the resolution of complaints about the performance of temporary nursing
34 agency workers; and procedures for the notice of and for resolving actual or suspected abuse,

35 theft, tampering or other diversion of controlled substances by temporary nursing agency staff
36 workers. Such amendments may also include the establishment of or increases to corresponding
37 registration and reporting fees.

38 (e) The process for determining maximum rates as outlined in subsection (b) above shall
39 also include an examination and analysis of Travel Nurse Factor established in 101 CMR 345(e).
40 The department may amend the Travel Nurse Factor provision to reduce the established
41 percentage amount above which an agency's price for travel nurses' services provided to a
42 nursing facility may exceed the base rate limits established in 101 CMR 345.03.

43 (f) Prior to and during the process of making the regulatory amendments outlined in the
44 subsections above, the department shall consult with the Massachusetts Senior Care Association,
45 Inc. and 1199 SEIU United Healthcare Workers East.

46 (g) The department of public health shall complete the processes above and file for
47 Emergency Adoption of such amended regulations no later than 180 days after passage of this
48 Act.

49 SECTION 2. (a) Notwithstanding any special or general law to the contrary, the
50 executive office of health and human services is directed to amend the state standard payment
51 regulations establishing Quality Adjustment Payments (101 CMR 206.06).

52 (b) Such amendment shall require each nursing facility to report to EOHHS on the
53 amount and percentage of the facility's federally reported nursing care hours per patient day that
54 was provided by temporary nursing agency staff.

55 (c) Such amendment shall include establish a new Quality Adjustment Payment
56 subsection and a Nursing Care Staffing Levels Achievement rate adjustment that implements
57 such new rate adjustment and that is based upon a facility's compliance with the Massachusetts
58 hours per resident day standard. For purposes of determining such a rate adjustment, a facility's
59 reported nursing care hours per resident day standard shall be adjusted downward to reduce the
60 facility's credit for reported hours of care provided by temporary nursing agency staff by a
61 percentage to be determined by EOHHS but that shall adjust credited hours downward by least
62 twenty-five percent.

63 (d) Prior to and in making the regulatory amendments as outlined in the subsections
64 above, the executive office of health and human services shall consult with the Massachusetts
65 Senior Care Association, Inc. and 1199 SEIU United Healthcare Workers East.

66 (e) The executive office of health and human services shall complete the process above
67 and file for Emergency Adoption of such amended regulations no later than 180 days after
68 passage of this Act.

69 SECTION 3. (a) Notwithstanding any special or general law to the contrary, the
70 department of public health is directed to amend the Massachusetts long term care facility
71 operating regulations provisions relative to Staff Qualifications and Training (105 CMR
72 150.024) and Educational Programs (105 CMR 150.7(I)).

73 (b) Such amendments shall require that any temporary nursing agency staff that works in
74 a skilled nursing facility is compliant with all applicable requirements and qualifications, as
75 determined by the department, that are required of nursing care staff regularly employed in their
76 position. Such amendments shall require temporary nursing agency staff working for more than

77 one hundred hours in a facility participate in any job orientation and other continuing in-service
78 educational programs appropriate to the care provided in the facility by regularly employed
79 nursing personnel.

80 (c) Prior to and in making the regulatory amendments as outlined in the subsections
81 above, the executive office of health and human services shall consult with the Massachusetts
82 Senior Care Association, Inc. and 1199 SEIU United Healthcare Workers East.

83 (d) The department of public health shall complete the process above and file for
84 Emergency Adoption of such amended regulations no later than 180 days after