

An Act to improve quality and oversight of long-term care

Summary and Fact Sheet

“An Act to improve quality and oversight of long-term care” takes a comprehensive approach towards reforming the long-term care industry by supporting and expanding the workforce, enhancing oversight of facilities, prioritizing quality of care, and ensuring access.

This legislation responds to several of the recommendations made by the 2020 Nursing Facility Task Force [report](#), by:

- Providing the Department of Public Health (DPH) with additional tools to monitor and take punitive action against facilities including new abilities to limit, restrict, suspend or revoke a license for cause and appoint temporary managers;
- Strengthening DPH’s licensure suitability standards to include a more comprehensive review of the background and legal record of applicants and expanding the scope of review to include any entity with at least 5 percent ownership interest in a nursing facility; and
- Creating new initiatives to support and grow the workforce such workforce training grants to develop new Certified Nursing Assistants (CNAs), career ladder program grants, and leadership and supervisory training.

The bill seeks to further improve quality of care by facilitating the establishment of small house nursing homes, mandating new infection outbreak response plans and anti-social isolation policies, and providing for new training and education programs. This legislation also increases accountability for underperforming nursing facilities by raising the civil penalties sought by the Attorney General in instances of abuse or neglect and by increasing fines sought by DPH if a facility is operating without a valid license.

Importantly, this Act also expands facility financial reporting which will give DPH, policymakers and the public a better understanding of the complicated ownership arrangements of nursing homes and allow stakeholders to gain a real-time understanding of the state of the nursing home sector in the Commonwealth.

This legislation also recognizes the critical role nursing homes play in the continuum of care and seeks to loosen chokepoints that are currently preventing patients in acute care hospitals from being discharged to the appropriate post-acute care setting. This bill launches a two-year pilot program that requires insurance carriers to respond to a prior authorization request for admission to post-acute care facilities, including skilled nursing facilities, by the next business day or to waive prior authorization altogether if a patient can be admitted into a facility over the weekend. This Act also eases the administration of prior authorization policies by requiring the Division of Insurance to work with MassHealth on creating a standardized prior authorization form to help patients and providers efficiently make prior authorization requests.

Finally, “An Act to improve quality and oversight of long-term care” addresses other challenges of moving patients to appropriate post-acute care settings by addressing the guardianship process for patients that cannot make medical decisions for themselves, studying improvements to the MassHealth long-term care eligibility process, and assembling a comprehensive task force to make recommendations on how to address lingering hospital throughput challenges.

These proposals build on successes achieved through the state budget and ARPA allocation processes including \$165 million to help address frontline caregiver shortages in last session's Economic Development Bill (Chapter 268 of the Acts of 2023), \$115 million in increases to the MassHealth Nursing Home Supplement Rates Line Item (4000-0641) in the FY 2023 Budget, and \$25 million as a no interest, forgivable loan program for capital improvements in the COVID-19 Recovery Bill (Chapter 102 of the Acts of 2021).

Section-by-Section Summary:

Section 1: Long-Term Care Workforce and Capital Fund

- Establishes the Long-Term Care Workforce and Capital Fund to be administered by the Secretary of the Health and Human Services, in consultation with an advisory committee consisting of various members of the administration along with representatives from Mass Senior Care and SEIU 1199.
- Directs the HHS Secretary to establish workforce training programs including; new CNA training; career ladder training for CNAs, home health aides, homemakers to become LPNs; and supervisory and leadership training.
- Directs HHS Secretary to establish a no interest or forgivable capital loan program to off-set certain capital costs and to fund other capital improvements.
- 50 percent of civil penalties secured by the Attorney General against nursing home facilities for abuse or neglect will be deposited into the fund.

Section 2: Licensure and Suitability

- Updates definition of "owner" and expands scope of oversight into management functions by including management companies.
- Sets a two-year term for licenses and requires annual inspections and allows for one-year provisional licenses when public necessity requires.
- Requires a 90-day "notice of intent to acquire" to be processed in the event of a transfer.
- Determinations of responsibility and suitability for applicants, potential transferees, or management companies shall include their criminal and civil litigation history, financial capacity, and history providing quality long-term care both in and outside the Commonwealth. Grants DPH the authority to pursue alternative administrative actions besides license termination.

Section 3: Small House Nursing Homes

- Requires DPH to promulgate regulations for the development of small house nursing homes, which are facilities designed as a residential home that includes a central living space with a kitchen, dining and living area and outdoor space.
- Newly constructed small homes will be limited to no more than 14 individuals per unit with resident rooms accommodating only one person, with exceptions to accommodate a spouse, partner, family member, or friend.

Section 4: Violations and Remedies

- Sets out rules for notice of violations of regulations and requires correction by no more than 60 days. If an issue is not rectifiable within 60 days, a written plan for correction is required.

- Absent corrective action, the department may seek remedies and/or sanctions, including the appointment of a temporary manager approved by the state, allowing a third party to properly address chronic issues and improve the overall conditions in facilities and the quality-of-care residents receive.

Section 5: Penalties

- Increases penalties for abuse and neglect which can be sought by the Attorney General by 400 percent to \$25,000 if no bodily injury results; \$50,000 if bodily injury results; \$100,000 if sexual assault or serious bodily injury results; and \$250,000 if death results.
- Deposits 50% of any amount secured by the Attorney General into the Long-Term Care Workforce and Capital Fund established in section 1 of the bill.
- Extends the statute of limitations to 4 years from 2 for cases brought under this section.

Section 6: Outbreak Response Planning, Enhanced Training, and Financial Performance

- Requires long-term care facilities to develop individualized outbreak response plans to contain the spread of disease and ensure consistent communication with DPH, residents, families and staff.
- These plans must include written policies to meet staffing, training, and facility demands during an infectious disease outbreak and requires plans to be reviewed and resubmitted to DPH annually.
- Directs DPH to establish and implement training and education programs on topics such as infection prevention and control, resident care plans, and staff safety programs. Providing education on the most frequently cited deficiencies in addition to industry best practices will lead to improved compliance and quality.
- Directs DPH to promulgate regulations necessary to enable residents of a facility to engage in in-person, face-to-face, or verbal/auditory-based contact, communications, and religious and recreational activities.
- Directs the DPH in coordination with other agencies and departments, to examine cost trends and financial performance across the nursing industry that will help regulators and policymakers untangle the complicated ownership structure of nursing homes.

Section 7: Penalties

- Doubles the current fines for operating a long-term facility without a license to \$1,000 for a first offense and \$2,000 for a second offense or 2 years imprisonment.
- Increases the penalty for violating various rules and regulations from \$50 to \$500.

Section 8: Guardianship Fees

- Authorizes MassHealth applicants or members who cannot make medical decisions for themselves and have no health care agent to retain more of their own income, a maximum of \$1,500, in order to pay for the necessary fees associated with appointing a guardian.

Section 9: Rate-setting

- Requires MassHealth to set the base year to no more than 2 years prior to the current rate year for the Medicaid rate determination purposes. The first year this will be effective will be 2025, which will be based on 2023 data.

- Directs MassHealth to establish skilled nursing facility rate add-on programs for bariatric patient care and one-on-one staffing of at-risk residents particularly those with suicidal ideation or aggressive behavior toward other residents or staff.
- Grants MassHealth the authority to establish a rate add-on program to encourage the development of the small house nursing home model.

Section 10: Uniform Prior Authorization Forms

- Requires the Division of Insurance to develop and implement uniform prior authorization forms for admissions from acute care hospitals to post-acute care facilities.

Section 11: Prior Authorization Pilot (2 years)

- Requires that all payers, including MassHealth, to approve or deny a request for prior authorization for admissions from acute care hospitals to post-acute care facilities or home health agencies for post-acute care services, by the next business day or to waive prior authorization altogether when a patient can be admitted over the weekend.
- In the case of prior authorization for non-emergency transportation between health care facilities, once authorization has been granted, that authorization must remain valid for at least 7 days.

Section 12: Hospital Throughput Task Force

- Establishes a task force to study and propose recommendations to address acute care hospital throughput challenges and the impact of persistent delays in discharging patients from acute to post-acute care settings.
- The task force will examine hospital discharge planning and case management practices; administrative legal and regulatory barriers to discharge; efforts to increase public awareness of health care proxies; post-acute care capacity constraints; the effectiveness of interagency coordination; and other items.

Section 13: MassHealth Long-Term Care Eligibility

- Requires MassHealth to study the cost and feasibility of changes to its eligibility requirements for with the goal of reducing the time applicants spend at acute-care hospitals awaiting long-term care eligibility determinations.
- The study will consider improvements to the eligibility determination process; establishing a rebuttable presumption of eligibility; guaranteeing payment for long-term care services for up to 1 year; and expanding the undue hardship waiver criteria.

Section 14: HPC Study of Medicare ACOs

- Requires the Health Policy Commission (HPC) to conduct an analysis and issue a report on the impact of Medicare accountable care organizations on the financial viability of long-term care facilities and continued access to services for Medicare patients.

Section 15-21: Effective Dates

- The Division of Insurance must develop the uniform prior authorization form for admission from acute care hospitals to post-acute care facilities within 90 days of the effective date and providers must begin using the form within 30 days following its development.
- Additional effective dates relevant to suitability reviews, outbreak response plans, DPH/CHIA data analysis, prior authorization pilot, and Medicaid rate base-year.