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FOR IMMEDIATE RELEASE
August 30, 2024

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House and Senate finalize long-term care reform bill to protect patients and expand workforce training

BOSTON – The House and Senate have finalized legislation to reform the state’s long-term care industry which State Representative Hannah Kane (R-Shrewsbury) says will protect vulnerable patients by providing for stronger licensing and oversight requirements, periodic site inspections, and expanded workforce training.

House Bill 5033, *An Act to improve quality and oversight of long-term care*, was enacted in both legislative branches on August 29 and is now on Governor Maura Healey’s desk for her review and signature. The bill represents a compromise agreement reached by a six-member conference committee, which worked to resolve the differences between earlier versions of the bill approved unanimously by the House on November 15 and by the Senate on July 25.

Representative Kane was a member of the six-person conference committee that resolved differences between the House and Senate bills. Representative Kane said the final bill retains many of the House priorities that were included in the original version of the bill that passed last fall. It also incorporates several of the reforms recommended in the 2020 report filed by the Nursing Facility Task Force, which was charged with “evaluating ways to ensure the financial stability of skilled nursing facilities; considering the role of skilled nursing facilities within the continuum of elder care services; and addressing current workforce challenges.”

House Bill 5033 takes steps to strengthen the licensing oversight and review process by requiring applicants to disclose their civil litigation history and to demonstrate their financial capacity to establish or maintain and operate a long-term care facility. According to Representative Kane, employees at these facilities will be provided with explicit protections from retaliation if they file a complaint or provide information to the Department of Public Health (DPH) on specific violations or potential risks to public health.

Representative Kane said House Bill 5033 also expands the Attorney General’s powers to crack down on long-term care facilities that are found liable for abusing, mistreating, or neglecting their patients by increasing financial penalties five-fold and expanding the statute of limitations governing the filing of civil charges from two years to four years. Under the bill, fines will be increased from \$5,000 to \$25,000 in cases where no bodily injury results; from \$10,000 to \$50,000 when bodily injury results; from \$20,000 to \$100,000 in cases involving sexual assault or serious bodily injury; and from \$50,000 to \$250,000 if the patient dies.

Representative Kane noted that 50 percent of the civil fines collected by the Attorney General for incidents of abuse or neglect will be deposited into a new Long-Term Care Workforce and Capital Fund to support the recruitment and retention of a long-term care workforce, including Certified Nursing Assistants (CNAs), training for direct care workers to become Licensed Practical Nurses (LPNs), and long-term care supervisory and leadership training. Funds will also be made available as zero-interest or forgivable loans to support capital improvements at long-term care facilities, including the development of specialized care units.

House Bill 5033 also requires that safeguards be put in place to prevent and contain infectious disease outbreaks among patients at nursing homes and other long-term care facilities. Representative Kane noted that all long-term care facilities in Massachusetts will now be required to develop a customized outbreak response plan setting clear policies for testing protocols; isolating infected and at-risk patients; notifying residents, their families, visitors and staff about any contagious disease outbreaks; implementing outbreak response measures; and notifying public health officials of any outbreaks that occur.

In addition, House Bill 5033 enhances DPH's ability to monitor long-term care facilities and to act quickly when violations occur. All long-term care facilities will now be subject to at least one resident-centered inspection per year to determine the quality of services provided at the facility and its compliance with state and federal requirements. According to Representative Kane, DPH will have the power to modify, suspend or revoke a license for cause and to appoint temporary managers to help bring facilities into compliance with acceptable standards due to: the substantial or sustained failure of a facility to provide adequate care to residents; the substantial or sustained failure or inability of a facility to maintain compliance with laws; and a lack of financial capacity to maintain and operate a long-term care facility.

House Bill 5033 also contains certain provisions that were included in the Senate version of the bill, such as an LGBTQI Bill of Rights for long-term care facilities specifically prohibiting discrimination against individuals based on their gender identity or HIV status. Additional Senate language included in the compromise bill calls for the Executive Office of Elder Affairs to annually review all assisted living residences certified to provide basic health services, which include injections, the application or replacement of simple non-sterile dressings, oxygen management, and the application of ointments or drops.

Representative Kane said House Bill 5033 also:

- establishes a task force to review the viability and sustainability of long-term care facilities in the Commonwealth;
- creates a task force to evaluate the governance and regulatory structure of rest homes in the Commonwealth;
- 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;
- requires DPH to study and report on the need and feasibility of allowing qualified professional guardians to give informed medical consent for indigent persons and whether such guardians would reduce hospital discharge issues and increase access to long-term care and preventive care;
- directs MassHealth to study the cost and feasibility of changes to its eligibility requirements with the goal of reducing the time applicants spend at acute-care hospitals awaiting long-term care eligibility determinations; and
- 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

Governor Healey has until September 8 to sign House Bill 5033 into law.

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