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Massachusetts Legislature Acts to Transform Long-Term Care Sector

Rep. Kane conferees on bill that increases oversight, allows for basic health services to be offered at assisted living residences, and boosts workforce for care of older adults in Massachusetts

BOSTON – On August 29th, the Massachusetts Legislature passed sweeping reforms to the long-term care and assisted living sectors, taking a powerful step towards delivering high quality and safe care for older residents across the Commonwealth.

An Act to improve quality and oversight of long-term care strengthens the Commonwealth’s oversight of nursing homes, provides critical anti-discrimination protections for LGBTQ+ nursing home residents, and permanently allows assisted living residences to offer basic health services.

“I’m proud of this comprehensive legislation, which reflects Massachusetts’ values when it comes to protecting our vulnerable residents, upholding their civil rights, and putting our knowledge and expertise as a health care leader to use to keep our loved ones and neighbors safe,” said **Senate President Karen E. Spilka (D-Ashland)**. “Those who make the decision to put their loved ones in a nursing home or long-term care facility deserve to know that those loved ones will be protected. Once law, this bill will give the Commonwealth the resources and tools to ensure their safety, weed out bad actors in the field, and enforce oversight and accountability. I would like to thank Senator Jehlen for her leadership on this issue, Chair Rodrigues for his hard work, our partners in the House and all the conferees for seeing this bill through this session. It will make a positive difference in so many lives.”

“The nursing home sector has long faced workforce and financial challenges that were only exacerbated by the pandemic. Addressing persistent challenges within this important sector will not only improve the quality of care that residents receive, it will increase capacity and help acute care hospitals more efficiently discharge patients to the appropriate post-acute care settings,” said **House Speaker Ronald J. Mariano (D-Quincy)**. “Building off of key investments in the industry in recent budgets, this comprehensive legislation takes the necessary steps to ensure that the Commonwealth’s nursing homes, and the patients that they care for, are supported. I want to thank Chairman Stanley and my colleagues in the House, along with our partners in the Senate, for working diligently to send this critical legislation to the Governor’s desk for her signature.”

“Long-term care reform was a long-standing priority for the Legislature this session, and I’m pleased the conference committee was able to come to a consensus agreement,” said **Senator Michael J. Rodrigues (D-Westport), Chair of the Senate Committee on Ways and Means**. “This comprehensive package passed by the House and Senate today addresses many of the inequities that are prevalent in the long-term care sector. With this legislation, we will now have a much stronger licensure process and stricter oversight on non-performing

entities. We also make permanent basic health services at assisted living facilities. This reform bill will bring much needed stability into long term care and assisted living facilities across the Commonwealth.”

“This legislation couldn’t have come at a more critical time when more oversight and accountability are needed in long-term care,” said **Representative Thomas M. Stanley (D-Waltham), House Chairman of the Joint Committee on Elder Affairs**. “I’m grateful to Speaker Mariano for prioritizing long-term care at the beginning of session and to my fellow conferees for their tireless work over the last few weeks to produce such a comprehensive bill, one that marks the first major legislative reform to our long-term care and assisted living industries in over a quarter of a century. This legislation enhances both access to and quality of care in long-term care settings, tightens suitability standards for operators, strengthens supports for the long-term care workforce, and permanently allows assisted living residences to offer basic health services to their residents.”

“This landmark legislation is the culmination of years of advocacy and collaboration among so many people committed to improving life for our family, friends, and neighbors residing or working in long-term care, assisted living, and the community,” said **Senator Patricia D. Jehlen (D-Somerville), Senate Chair of the Joint Committee on Elder Affairs**. “There is always more work to do but we have agreed on policy that will surely have a positive impact on quality of care, transparency and oversight, and planning for the future. I am grateful for the work of the Senate President, the Chair of Senate Ways and Means, my House co-chair of Elder Affairs, and their staffs.”

“I want to thank Speaker Mariano, Chair Stanley, and my fellow conferees,” said **Assistant Majority Leader Alice Peisch (D-Wellesley)**. “This legislation ensures the protection and care of our most vulnerable residents. The bill strengthens the long-term care industry by increasing standards and access to care and makes permanent basic health services at assisted living facilities.”

“I am very optimistic for the opportunities and reforms that this legislation will introduce to some of the most vulnerable members of our community. Not only is it our duty to ensure that our aging residents have access to the care that they deserve, but also their safety as they enter the years of their lives where they need extra assistance. Ensuring that long-term care facilities will not have to make certain sacrifices due to financial uncertainty will be crucial for the long-term health goals of our Commonwealth,” said **Senator Patrick M. O’Connor (R-Weymouth), a Senate conferee**. “The education and accountability measures that this bill offers are tremendous, and the improvements upon specialized care have proven to be of the utmost importance to us in the Legislature. I’d like to thank my fellow conferees for their dedication to this as we take the next step towards serving and regulating elder care.”

“This bill is an important step toward ensuring older adults receive the care they need to be safe and healthy,” said **Representative Hannah Kane (R-Shrewsbury)**. “Strengthening oversight of long-term care facilities, requiring infectious disease outbreak plans, improving licensing requirements, and other reforms included in the conference committee report will protect vulnerable patients and provide the Commonwealth with the tools needed to enforce the standards for long-term care facilities. I thank the Speaker and my fellow conferees for their dedication to long-term care reform.”

The bill includes provisions related to basic health services administered in assisted living facilities and oversight of long-term care facilities, including the following:

Inclusion for LGBTQ+ Residents. The legislation requires each long-term care facility to provide staff training on the rights and care of LGBTQ+ older adults and older adults living with HIV. It also forbids any long-term care facility and long-term care facility staff from discriminating based in whole or in part on a person’s sexual orientation, gender identity, gender expression, intersex status or HIV status, whether through the denial of admission, medical or non-medical care, access to restrooms, or through room assignments.

Building the Long-Term Care Workforce. The Long-Term Care Workforce and Capital Fund established in the bill supports several new initiatives to recruit and retain a dedicated long-term care workforce, including grants to develop new Certified Nursing Assistants (CNAs), career ladder grants for direct care workers to train to become Licensed Practical Nurses (LPNs), along with leadership and supervisory training for nursing home leaders. The fund also establishes a no interest or forgivable capital loan program to off-set certain capital costs, including the development of specialized care units, and to fund other capital improvements. Civil penalties secured by the Attorney General against nursing home facilities for abuse or neglect will be deposited into the fund to support these initiatives.

Estate Recovery. The legislation limits MassHealth estate recovery to only federally mandated recovery and removes estate recovery for residents receiving assistance under CommonHealth.

Medication Aides. It requires the Department of Public Health, in consultation with the Board of Registration in Nursing, to create a program for the certification, training, and oversight of certified medication aides who shall be authorized to administer medications to residents of long-term care facilities.

Expanding Access to Basic Health Services. The bill makes it easier for residents of assisted living residences (ALRs) to offer basic health services such as helping a resident administer drops, manage their oxygen, or take a home diagnostic test. The legislation requires ALRs create service plans that demonstrate the residence has the necessary procedures in place, such as staff training and policies, to ensure safe and effective delivery of basic health services.

Enhancing State Oversight and Compliance to Ensure Quality Care. The legislation enhances oversight and compliance of ALRs by lowering the threshold for ownership interest disclosure from 25 per cent to five per cent. Under the new law, applicants are required to demonstrate that any prior multifamily housing, ALR, or health care facilities in which they had an interest met all the licensure or certification criteria. If any of these facilities were subject to enforcement action, the applicant must provide evidence that they corrected these deficiencies without revocation of licensure or certification.

This bill also gives the Executive Office of Elder Affairs (EOEA) new powers to penalize non-compliance by allowing them to fine ALRs up to \$500 per day. This is in addition to existing EOEA powers to modify, suspend, or revoke a certification, or deny a recertification. Finally, it adds whistleblower protections for staff and residents who report anything happening at an ALR that they reasonably believe is a threat to the health or safety of staff or residents.

Further, it authorizes the Attorney General to file a civil action against a person who: commits abuse, mistreatment or neglect of a patient or resident; misappropriates patient or resident property; recklessly permits or causes another to commit abuse, mistreatment or neglect of a patient or resident or misappropriate patient or resident property.

Long Term Care Facilities. The bill requires the Department of Public Health (DPH) to inspect each long-term care facility annually to assess quality of services and compliance. It also requires DPH to review the civil litigation history, in addition to the criminal history, of the long-term care facility applicants, including any litigation related to quality of care, patient safety, labor issues, or deceptive business practices.

The bill requires DPH to review the financial capacity of an applicant and its history in providing long term care in Massachusetts and other states. It requires applicants to notify DPH if it is undergoing financial distress, such as filing for bankruptcy, defaulting on a lending agreement, or undergoing receivership.

It allows DPH to limit, restrict, or revoke a long-term care facility license for cause, such as substantial or sustained failure to provide adequate care, substantial or sustained failure to comply with laws or regulations, or lack of financial capacity to operate a facility. It also gives DPH the power to appoint a temporary manager if a

long-term care facility owner fails to maintain substantial or sustained compliance with laws and regulations. This manager would be brought on for at least three months, at the facility owner's expense, to bring the facility into compliance.

Small House Nursing Homes. Small House nursing homes have emerged over the last two decades as an alternative to traditional long-term care facilities with a growing body of evidence demonstrating superior clinical outcomes in addition to higher resident and staff satisfaction levels. The bill would streamline the process for small house nursing homes to be licensed in the Commonwealth.

Outbreak Response Planning, Enhanced Training, and Financial Performance. The bill 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.

The bill also 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. DPH would also be required 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.

This legislation also directs 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.

Uniform Prior Authorization Forms. The bill requires the Division of Insurance (DOI) to develop and implement uniform prior authorization forms for admissions from acute care hospitals to post-acute care facilities.

Two-Year Prior Authorization Pilot. This legislation 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 seven days.

Hospital Throughput Task Force. The bill 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.

MassHealth Long-Term Care Eligibility. The bill 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 one year; and expanding the undue hardship waiver criteria.

HPC Study of Medicare ACOs. This legislation 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.

The compromise legislation now having passed the Legislature, the bill now goes to the Governor's desk for her signature.

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