

H4193: An Act to improve quality and oversight of long-term care

Presentation by the Joint Committee on Elder Affairs

Bill History

- ▶ H648 (S379) was filed in the 193rd session as an omnibus bill that combined the best proposals for reform of long-term care heard by the Joint Committee on Elder Affairs in the previous session.
- ▶ A public hearing was held on April 10, 2023.
- ▶ H648/S379 was redrafted and reported favorably by the Joint Committee On Elder Affairs on June 14, 2023.
- ▶ The new draft (H3929) was developed in close consultation with many stakeholders including the nursing home industry, organized labor, resident rights advocacy groups, and others.
- ▶ H3929 was recommended “ought to pass” by the Joint Committee on Health Care Financing and referred to House Ways and Means on October 30, 2023.
- ▶ The Massachusetts House of Representatives unanimously passed the HWM re-draft (H4178) on November 15th, 2023.
- ▶ The bill (now H4193) is now before the Senate Committee on Ways and Means

Key Themes

- ▶ Supporting the Workforce
 - ▶ Sections 1, 6 (72DD), 9
- ▶ Suitability, Oversight, and Accountability
 - ▶ Sections 2, 3, 4, 5, 6 (72FF), 7
- ▶ Quality of Care
 - ▶ Sections 1, 3, 7 (new 72CC, 72EE)
- ▶ Access
 - ▶ Sections 8, 9, 10, 11, 12, 13, 14, 15

Bills Attached

- ▶ H648/S379, *An Act to improve quality and oversight of long-term care* (Rep. Stanley, Rep. Lipper-Garabedian/ Sen. Jehlen)
- ▶ H616/S384, *An Act strengthening the Attorney General's tools to protect nursing home residents and other patients from abuse and neglect* (Rep. Balsler/ Sen. Lewis),
- ▶ H627/S364, *An Act promoting the betterment of resident health and safety in long term care facilities* (Rep. Garlick/ Sen. Cyr),
- ▶ S378, *An Act relative to small house nursing homes* (Sen. Jehlen)
- ▶ *Others Added by Health Care Financing Include: H1216/S738 (Quality Jobs), H1218/S739 (Stabilization) , H1166/S780 (Temp. Nursing), and S791 (Infection Control)

Bill Summary

- ▶ H4198 takes a comprehensive approach towards reforming the long-term care industry, taking crucial steps to enhance the quality of care to residents, ensure accountability of nursing home operators, and improve staff recruitment and retention.
- ▶ This bill responds to remaining needs highlighted in the 2020 Nursing Facility Task Force report and builds upon these recommendations by advancing several key policies.

Nursing Home Task Force Policy Goals:

- ▶ Right size the Nursing Home Industry in response to current and future demand
- ▶ Establish a Reasonable and Sustainable Rate Structure for Nursing and Rest Homes
- ▶ Promote High Quality Care in Nursing and Rest Homes
- ▶ Ensure a Sustainable Workforce Serving the Care Needs of Individuals Across the Entire Long-Term Care Continuum

Sections 1

The Long-Term Care Workforce and Capital Fund

Section 1

- ▶ 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 1199 SEIU.
- ▶ 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.

Sections 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 5A

Certified Medication Aides

- ▶ Directs the Department of Public Health to create a program for the training of “certified medication aides” to administer non-narcotic, prescription or non-prescription drugs consisting of not less than 60 hours of training.
- ▶ Certified aides will be supervised by a LPN, RN, or Physician who will evaluate them every 6 months

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.
 - ▶ Additional notification to municipal leaders added by Amendment 23 to H4178
- ▶ 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 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.

Sections 7 and 8

Penalties and Guardianship Fees

Section 7

- ▶ Replaces Section 73 of Chapter 111
- ▶ Describes the penalties for operating a long-term facility without a license, including fines beginning at \$1000 and a possible penalty of 2 years imprisonment.
- ▶ Describes penalty for violating a rule or regulation issued pursuant to Chapter 111 section 71,72, and 72C increasing the maximum penalty from \$50 to \$500.

Section 8

- ▶ 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

Section 9

- ▶ 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.

Sections 10 and 11

Uniform Prior Authorization Forms, Prior Authorization Pilot

Section 10

- ▶ 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

- ▶ 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
 - ▶ Clauses xii, xiii, xiv added by Amendment 22 to H4178

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 13A

Rest Home Task Force

- ▶ Added via Amendment #16 to H4178
- ▶ Establishes a task force to study and propose recommendations to address the governance and regulatory structure of rest homes in the Commonwealth.
- ▶ The task force will examine the licensing, regulatory, and reporting structure for rest homes; inventory rest homes; review recent rest home closures; review current rate structures; and other items.

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.

Sections 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.

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