

## SECTION BY SECTION SUMMARY

### House Bill 648 and Senate Bill 349, Acts to Improve Quality and Oversight of Long-Term Care

- SECTION 1: Workforce Investments I - would fund (1) a comprehensive evidence-based supervisory and leadership training program for the express purpose of improving workplace culture which will assist in retaining staff and reducing turnover and (2) re-establish the previously successful Extended Care Career Ladder Initiative (ECCLI) for certified nurses' aides, home health aides, homemakers and other entry-level workers in long-term care, originally established in 2000 as part of an earlier nursing home reform legislative package.
- SECTION 2: CNA Tuition Reimbursement Program - would require DPH to provide tuition reimbursement program for individuals who paid for certified nursing assistant training and have begun employment as a certified nursing assistant in a licensed nursing facility within 12 months of completing the training program, including passing the competency testing.
- SECTION 3: Revises Suitability – would amend the current suitability review sections of the DPH enabling act for the purpose of increased transparency related to nursing home licensure changes.
  - ✓ The Department's determination of suitability would be based on (i) the civil litigation history of the applicant or potential transferee, including litigation related to the operation of a long-term care facility, such as quality of care, safety of residents or staff, employment and labor issues, fraud, unfair or deceptive business practices and landlord/tenant issues; and the criminal history of the applicant or the potential transferee, including their respective owners, which may include pending or settled litigation or other court proceedings in the commonwealth and in other states including federal jurisdiction. (ii) the financial capacity of the applicant or potential transferee, including their respective owners, to establish or maintain and operate a long-term care facility, which may include any recorded liens and unpaid fees or taxes in the commonwealth and in other states; (iii) the history of the applicant or potential transferee, including their respective owners, in providing long-term care in the commonwealth, measured by compliance with applicable statutes and regulations governing the operation of long-term care facilities; and (iv) the history of the applicant or potential transferee, including their respective owners, in providing long-term care in states other than the commonwealth, if any, measured by in said states. A potential transferee would be required to provide notice to the current staff of the facility and to provide notice of the potential transferee's plans regarding retaining the facility workforce and recognizing any current collective bargaining agreements to the labor organizations that represents the facility's workforce at the time the potential transferee submits a "notice of intent to acquire".
  - ✓ In addition, a licensee would be required to notify the department in writing prior to engaging a company to manage the long-term care facility (i.e., management company's name). The licensee would be required to memorialize any such engagement in a written agreement with the management company, which must include a requirement that the management company and its personnel comply with all applicable federal, state and local laws, regulations and rules.
  - ✓ The section would also allow DPH, for cause, to limit, restrict, suspend or revoke a license. Grounds for cause on which the department may take such action shall include: (i) substantial or sustained failure to provide adequate care to residents; (ii) substantial or sustained failure to maintain compliance with applicable statutes, rules and regulations; (iii)

or the lack of financial capacity to maintain and operate a long-term care facility. Limits or restrictions include requiring a facility to limit new admissions. Suspension of a license includes suspending the license during a pending license revocation action, or suspending the license to permit the licensee a period of time, not shorter than 60 days, to wind down operations, and discharge and transfer, if applicable, all residents.

- SECTION 4: Small House Nursing Homes – would require DPH to establish regulations for the operation of small house nursing homes, with a requirement that EOHHS establish a rate add-on to fund it.
- SECTION 5: Temporary Manager - would amend section 72E of Chapter 111 DPH enabling law to require any nursing facility that fails to maintain substantial or sustained compliance with applicable statutes, rules or regulations, aside from any other remedies or sanctions DPH may impose, to hire at the nursing facility's expense, a temporary manager to assist in bringing the nursing facility back into substantial compliance or sustaining such compliance. The temporary manager must be approved by DPH and remain in place for no less than 3 months.
- SECTION 6: AGO Civil Penalties – would amend DPH Section 72K of Chapter 111 to increase AG authority to file a civil action/recoveries. The attorney general may file a civil action against a person who commits abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property or against a person who wantonly or recklessly permits or causes another to commit abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property. The section would increase the civil penalty for resident abuse, mistreatment, neglect or misappropriation from \$5,000 to \$25,000 with no bodily injury; from \$10,000 to \$50,000 with bodily injury; from \$20,000 to \$100,000 if sexual assault or serious bodily injury results; and \$250,000 if death results. The attorney general may file a civil action within four years after an offense is committed.
- SECTION 7: (1) Outbreak Response Plan, (2) DPH Training and Regulatory Review (MSCA Bill) and (3) Promoting Resident Visitations
  - ✓ (1) Outbreak Response Plan would require long term care facilities to develop a customized outbreak response plan. The plan would include in the event of an outbreak of a contagious disease - policies and protocols for isolating and cohorting infected and at-risk residents, notification of residents, families and visitors, availability of lab testing, screening visitors, staff not to come to work sick, implementing evidence based outbreak response measures, routine monitoring of residents and staff to identify signs of communicable disease, and reporting to public health in accordance with applicable laws and regulations. Policies must also include how the facility will meet staffing, training and facility demands during an infectious disease outbreak. The facility must contract or hire on a full-time or part-time basis an individual certified by the Certification Board of Infection Control and Epidemiology; or a physician who has completed an infectious disease fellowship.
  - ✓ (2) DPH Training and Regulatory Review - would require DPH, through its division of health care facility licensure and certification to establish and implement a prescribed process and program for providing training and education to long term care providers licensed by the department. The training and education programs would reflect most frequently cited deficiencies and may include: infection prevention and control; development, implementation, adherence and review of comprehensive resident care plans; falls prevention; procedures to ensure timely notification of changes in a resident's condition

to the resident's primary care physician; the prevention of abuse and neglect; development and implementation of a program to minimize the danger of workplace violence to employees; and review of the survey and inspection process. In addition, the Department would be required to consult with industry provider associations before requiring any new regulatory guidance, regulation, interpretation, program letter or memorandum or any other materials used in surveyor training to survey licensed providers. The process, training, and education shall include annual training for long term care facilities on the licensure and certification process. This training shall include (i) the department's interpretation of the general laws, rules, regulations, procedures and policies concerning the licensure and certification process for such long-term care facilities; (ii) biannual training of long-term care providers on the most frequently cited deficiencies, identified deficiency trends, both state and federal, and best practices to ensure resident quality of care; and (iii) training of long-term care providers and the department survey inspectors jointly on the department's new expectations. Trainings shall be interactive, with the sharing of information and recommendations between long term care facilities and the department on issues and topics.

- ✓ (3) Promoting Resident Visitations would require DPH to promulgate regulations necessary to encourage and enable residents of a long-term care facility to engage in in-person, face-to-face, verbal or auditory-based contact, communications and religious and recreational activities with others except when such in-person contact, communication or activities are prohibited, restricted or limited, as otherwise permitted by federal or state statute, rule or regulation.
  
- SECTION 8: State Licensure Fines - would increase the penalty for nursing facilities found violating state-only licensure regulations from \$50 per violation to not to exceed \$22,320, unless DPH determines a higher amount is permitted pursuant to 42 CFR 488.438. If a nursing facility fails or refuses to comply to correct or remedy the violation, each day after the agreed upon correct date shall constitute a separate offense.
  
- SECTION 9: Medical Leave of Absence (MLOA) and Non-Medical Leaves of Absence (NMLOA) – would codify in state law that MassHealth reimburse nursing facilities for MLOA for 20 days and NMLOA for 10 days.
  
- SECTION 10: Workforce Investments 2
  - ✓ Living Wage - MassHealth would be required to enact regulations regarding standard payments from MassHealth to nursing facilities that establish a living wage for direct care staff of licensed nursing homes, including, but not limited to, certified nurse aides and housekeeping, laundry, dietary, plant operations and clerical staff. These regulations must ensure that such standard payments shall reimburse nursing facilities for the costs of paying a living wage, associated payroll benefits and related employee costs.
  - ✓ MassHealth Living Wage Cost Adjustment Factor (CAF) - subject to appropriation, MassHealth would be required to adjust the living wage using an inflation adjustment consistent with the annual unadjusted Medicare Skilled Nursing Facility Market Basket Rate Update, as established by the Centers for Medicare & Medicaid Services in the Medicare SNF rate.

- SECTION 11: CHIA Cost Trend Analysis – would require the Center for Health Information and Analysis (CHIA), in consultation with MassHealth, the department of elder affairs, the department of public health and the health policy commission to annually conduct an examination of cost trends and financial performance among nursing facilities. The information shall be analyzed on an institution-specific and industry-wide basis. The examination shall also aggregate information collected on multiple skilled nursing facilities that are owned and operated by a single individual, trust, estate, partnership, association, company or corporation with an ownership interest of 5 per cent or more in the facilities' operating license, management company, or associated real estate. The examination and report shall include, but not be limited to the collection and analysis of the following: (i) gross and net patient service revenues; (ii) other sources of operating and non-operating revenue; (iii) trends in relative price, payer mix, case mix, utilization and length of stay dating back to 2010; (iv) affiliations with other health care providers, including, but not limited to, preferred clinical relationships and partnerships; (v) categories of costs, including, but not limited to, general and administrative costs, nursing and other labor costs and salaries, building costs, capital costs and other operating costs; (vi) total spending on direct patient care as a percent of total operating expenses; (vii) operating and total margin; (viii) occupancy rates; and (ix) other relevant measures of financial performance and service delivery. These measures should distinguish long-term residents from short-stay residents where possible.
- SECTION 12: Minimum HPPD Study - The Health Policy Commission would be required to conduct an analysis and issue a report on nursing personnel in long term care facilities. The study shall consider the hours of care per resident per day required to prevent a substandard quality of care as defined by federal regulations (42 CFR 488.301) and ensure sufficient staffing levels necessary to meet resident nursing care needs based on acuity, resident assessments, care plans, census and other relevant factors. This study must also consider the effect of such staffing requirements on the long-term care industry including cost impact on long-term care facilities, satisfaction of the workforce and quality of care for residents.
- SECTION 13/Outbreak Response Plan - created by SECTION 7 of this proposed law would be due 180 days after enactment of this section.