

HOUSE No. 4354

231 SECTION 18. Chapter 111 of the General Laws, as appearing in the 2018 Official
232 Edition, is hereby amended by striking out section 71 and inserting in place thereof the following
233 section:-

234 Section 71. For purposes of this section and sections 71A½ to 73, inclusive, the
235 following terms shall have the following meanings unless the context or subject matter clearly
236 requires otherwise:

237 “Applicant”, any person who applies to the department for a license to establish or
238 maintain and operate a long-term care facility.

239 “Charitable home for the aged”, any institution, however named, conducted for charitable
240 purposes and maintained for the purpose of providing a retirement home for elderly persons and
241 which may provide nursing care within the home for its residents.

242 “Convalescent or nursing home or skilled nursing facility”, any institution, however
243 named, whether conducted for charity or profit, which is advertised, announced or maintained for
244 the express or implied purpose of caring for four or more persons admitted thereto for the
245 purpose of nursing or convalescent care.

246 “Infirmity maintained in a town”, an infirmity which hitherto the department of public
247 welfare has been directed to visit by section 7 of chapter 121.

248 “Intermediate care facility for persons with an intellectual disability”, any institution,

249 however named, whether conducted for charity or profit, which is advertised, announced or
250 maintained for the purpose of providing rehabilitative services and active treatment to persons
251 with an intellectual disability or persons with related conditions, as defined in regulations
252 promulgated pursuant to Title XIX of the federal Social Security Act (P.L. 89–97); which is not
253 both owned and operated by a state agency; and which makes application to the department for a
254 license for the purpose of participating in the federal program established by said Title XIX.

255 “License”, an initial or renewal license to establish or maintain and operate a long-term
256 care facility issued by the department.

257 “Licensee”, a person to whom a license to establish or maintain and operate a long-term
258 care facility has been issued by the department.

259 “Long-term care facility”, a charitable home for the aged, a convalescent or nursing
260 home, an infirmary maintained in a town, an intermediate care facility for persons with an
261 intellectual disability or a rest home.

262 “Owner”, any person owning 5 per cent or more of, with an ownership interest of 5 per
263 cent or more of, or with a controlling interest in an applicant, potential transferee or the real
264 property on which a long-term care facility is located.

265 “Person”, an individual, a trust, estate, partnership, association, company or corporation.

266 “Potential transferee”, a person who submits to the department a “notice of intent to
267 acquire” the facility operations of a currently operating long-term care facility.

268 “Rest home”, any institution, however named, which is advertised, announced or
269 maintained for the express or implied purpose of providing care incident to old age to four or

270 more persons who are ambulatory and who need supervision.

271 “Transfer of facility operations”, a transfer of the operations of a currently operating
272 long-term care facility from the current licensee of the long-term care facility to a potential
273 transferee, pending licensure, pursuant to a written “transfer of operations” agreement.

274 To each applicant it deems suitable and responsible to establish or maintain and operate a
275 long-term care facility and which meets all other requirements for long-term care facility
276 licensure, the department shall issue for a term of two years, and shall renew for like terms, a
277 license, subject to the restrictions set forth in this section or revocation by it for cause; provided,
278 however, that each convalescent or nursing home and each intermediate care facility for persons
279 with an intellectual disability shall be inspected at least once a year.

280 No license shall be issued to establish or maintain an intermediate care facility for
281 persons with an intellectual disability, unless there is a determination by the department that
282 there is a need for such facility at the designated location; provided, however, that in the case of
283 a facility previously licensed as an intermediate care facility for persons with an intellectual
284 disability in which there is a change in ownership, no such determination shall be required and in
285 the case of a facility previously licensed as an intermediate care facility for persons with an
286 intellectual disability in which there is a change in location, such determination shall be limited
287 to consideration of the suitability of the new location.

288 In the case of the transfer of facility operations of a long-term care facility, a potential
289 transferee shall submit a “notice of intent to acquire” to the department at least 90 days prior to
290 the proposed transfer date. The notice of intent to acquire shall be on a form supplied by the
291 department and shall be deemed complete upon submission of all information which the

292 department requires on the notice of intent form and is reasonably necessary to carry out the
293 purposes of this section.

294 No license shall be issued to an applicant and no potential transferee may submit an
295 application for a license unless the department makes a determination that the applicant or
296 potential transferee is responsible and suitable for licensure.

297 For purposes of this section, the department's determination of responsibility and
298 suitability shall be limited to the following factors:

299 (i) the criminal or civil history of the applicant or the potential transferee, including their
300 respective owners, which shall include certification by the department of criminal justice
301 information services and which may include a review of any pending or settled litigation or other
302 court proceedings in the commonwealth and in other states;

303 (ii) the financial capacity of the applicant or potential transferee, including their
304 respective owners, to establish or maintain and operate a long-term care facility, which may
305 include any recorded liens and unpaid fees or taxes in the commonwealth and in other states;

306 (iii) the history of the applicant or potential transferee, including their respective owners,
307 in providing long-term care in the commonwealth, measured by compliance with applicable
308 statutes and regulations governing the operation of long-term care facilities; and

309 (iv) the history of the applicant or potential transferee, including their respective owners,
310 in providing long-term care in states other than the commonwealth, if any, measured by
311 compliance with the applicable statutes and regulations governing the operation of long term
312 care facilities in said states.

313 With respect to potential transferees, upon determination by the department that a
314 potential transferee is responsible and suitable for licensure, the potential transferee may file an
315 application for a license. In the case of a potential transfer of facility operations, the filing of an
316 application for a license shall have the effect of a license until the department takes final action
317 on such application.

318 If the department determines that an applicant or potential transferee is not suitable and
319 responsible, the department's determination shall take effect on the date of the department's
320 notice. In such cases, the applicant or potential transferee shall upon the filing of a written
321 request with the department be afforded an adjudicatory hearing pursuant to chapter 30A.
322 During the pendency of such appeal, the applicant or potential transferee shall not operate the
323 facility as a licensee, or, without prior approval of the department, manage such facility.

324 Each applicant, potential transferee and licensee shall keep all information provided to
325 the department current. Promptly after the applicant, potential transferee or licensee becomes
326 aware of any change to information related to information it provided or is required to provide to
327 the department, such person shall submit to the department written notice of the changes.
328 Changes include, but are not limited to, changes in financial status, such as filing for bankruptcy,
329 any default under a lending agreement or lease, the appointment of a receiver or the recording of
330 any lien.

331 An applicant, potential transferee or licensee and their respective owners shall be in
332 compliance with all applicable federal, state and local laws, rules and regulations.

333 Prior to engaging a company to manage the long-term care facility, hereinafter a
334 "management company", a licensee shall notify the department in writing of the name of and

335 provide contact information for the proposed management company and any other information
336 on the management company and its personnel that may be reasonably requested by the
337 department. Any such engagement must be pursuant to a written agreement between the licensee
338 and the management company. Such written agreement shall include a requirement that the
339 management company and its personnel shall comply with all applicable federal, state and local
340 laws, regulations and rules. Promptly after the effective date of any such agreement, the licensee
341 shall provide to the department a copy of the valid, fully executed agreement.

342 With respect to a license issued as a result of a transfer of operations, the department
343 shall not reduce the number of beds that were on the license held by the former licensee, unless
344 the public safety requires it.

345 No license shall be issued hereunder unless there shall be first submitted to the
346 department by the authorities in charge of the long-term care facility with respect to each
347 building occupied by residents (1) a certificate of inspection of the egresses, the means of
348 preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the
349 office of public safety and inspections of the division of professional licensure; provided,
350 however, that with respect to convalescent or nursing homes only, the division of health care
351 quality of the department of public health shall have sole authority to inspect for and issue such
352 certificate, and (2) a certificate of inspection issued by the head of the local fire department
353 certifying compliance with the local ordinances.

354 Any applicant who is aggrieved, on the basis of a written disapproval of a certificate of
355 inspection by the head of the local fire department or by the office of public safety and
356 inspections of the division of professional licensure, may, within 30 days from such disapproval,
357 appeal in writing to the division of professional licensure. With respect to certificates of

358 inspection that the division of health care quality of the department of public health has the sole
359 authority to issue, an applicant may, within 30 days from disapproval of a certificate of
360 inspection, appeal in writing to the department of public health only. Failure to either approve or
361 disapprove within 30 days, after a written request by an applicant, shall be deemed a disapproval.

362 If the division of professional licensure or, where applicable, the department of public
363 health approves the issuance of a certificate of inspection, it shall forthwith be issued by the
364 agency that failed to approve. If said department disapproves, the applicant may appeal
365 therefrom to the superior court. Failure of said department to either approve or disapprove the
366 issuance of a certificate of inspection within 30 days after receipt of an appeal shall be deemed a
367 disapproval. No license shall be issued by the department until issuance of an approved
368 certificate of inspection, as required in this section.

369 Nothing in this section or in sections 72 or 73 shall be construed to revoke, supersede or
370 otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning,
371 registration or maintenance of a long-term care facility.

372 For cause, the department may limit, restrict, suspend or revoke the license. Grounds for
373 cause on which the department may take such action shall include failure or inability to provide
374 adequate care to residents, failure to maintain substantial compliance with applicable statutes,
375 rules and regulations or lack of financial capacity to maintain and operate a long-term care
376 facility. Limits or restrictions include requiring a facility to limit new admissions. Suspension of
377 a license includes suspending the license during a pending license revocation action, or
378 suspending the license to permit the licensee a period of time, not shorter than 60 days, to wind
379 down operations, and discharge and transfer, if applicable, all residents.

380 The department may, when public necessity and convenience require, or to prevent undue
381 hardship to an applicant or licensee, under such rules and regulations as it may adopt, grant a
382 temporary provisional or probationary license under this section; provided, however, that no such
383 license shall be for a term exceeding 1 year.

384 With respect to an order to limit, restrict or suspend a license, within 7 days of receipt of
385 the written order, the licensee may file a written request with the department for administrative
386 reconsideration of the order or any portion thereof. Failure of the department to grant, deny or
387 otherwise act upon any such written request within 7 days of its receipt of such a request shall be
388 deemed a denial of the request.

389 Upon a written request by a licensee who is aggrieved by the revocation of a license or by
390 an applicant who is aggrieved by the refusal of the department to renew a license, the
391 commissioner and the council shall hold a public hearing, after due notice, and thereafter they
392 may modify, affirm or reverse the action of the department; provided, however, that the
393 department may not refuse to renew and may not revoke the license of a long-term care facility
394 until after a hearing before a hearings officer, and any such applicant so aggrieved shall have all
395 the rights provided in chapter 30A with respect to adjudicatory proceedings.

396 In no case shall the revocation of such a license take effect in less than 30 days after
397 written notification by the department to the licensee.

398 The fee for a license to establish or maintain or operate a long-term care facility shall be
399 determined annually by the commissioner of administration under the provision of section 3B of
400 chapter 7, and the license shall not be transferable or assignable and shall be issued only for the
401 premises named in the application.

402 Nursing institutions licensed by the department of mental health, or the department of
403 developmental services for persons with intellectual disabilities shall not be licensed or inspected
404 by the department of public health. The inspections herein provided shall be in addition to any
405 other inspections required by law.

406 In the case of new construction, or major addition, alteration, or repair with respect to any
407 facility subject to this section, preliminary architectural plans and specifications and final
408 architectural plans and specifications shall be submitted to a qualified person designated by the
409 commissioner. Written approval of the final architectural plans and specifications shall be
410 obtained from said person prior to said new construction, or major addition, alteration, or repair.

411 Notwithstanding any of the foregoing provisions of this section, no license to establish or
412 maintain and operate a long-term care facility shall be issued by the department unless the
413 applicant for such license submits to the department a certificate that each building to be
414 occupied by patients of such convalescent or nursing home or skilled nursing facility meets the
415 construction standards of the state building code, and is of at least type 1-B fireproof
416 construction; provided, however, that this paragraph shall not apply in the instance of a transfer
417 of facility operations of a convalescent or nursing home or skilled nursing facility whose license
418 had not been revoked as of the time of such transfer; and provided, further, that a public medical
419 institution as defined under section 2 of chapter 118E, which meets the construction standards as
420 defined herein, shall not be denied a license as a nursing home under this section because it was
421 not of new construction and designed for the purpose of operating a convalescent or nursing
422 home or skilled nursing facility at the time of application for a license to operate a nursing home.
423 An intermediate care facility for persons with an intellectual disability shall be required to meet
424 the construction standards established for such facilities by Title XIX of the Social Security Act

425 (P.L. 89--97) and any regulations promulgated pursuant thereto, and by regulations promulgated
426 by the department.

427 Every applicant for a license and every potential transferee shall provide on or with its
428 application or notice of intent to acquire a sworn statement of the names and addresses of any
429 person who owns or has an ownership or control interest in the applicant or potential transferee
430 or in the real property on which the long-term care facility is located. As used herein, the phrase
431 "person with an ownership or control interest" shall have the definition set forth in 42 USC Sec.
432 1320a-3 of the Social Security Act and in regulations promulgated hereunder by the department.

433 The department shall notify the secretary of elder affairs forthwith of the pendency of any
434 proceeding of any public hearing or of any action to be taken under this section relating to any
435 convalescent or nursing home, rest home, infirmary maintained in a town, or charitable home for
436 the aged. The department shall notify the commissioner of mental health forthwith of the
437 pendency of any proceeding, public hearing or of any action to be taken under this section
438 relating to any intermediate care facility for persons with an intellectual disability.

439 SECTION 19. Said chapter 111, as so appearing, is hereby further amended by striking
440 out section 72E and inserting in place thereof the following section:-

441 Section 72E. The department shall, after every inspection by its agent made under
442 authority of section 72 , give the licensee of the inspected long-term care facility notice in
443 writing of every violation of the applicable statutes, rules and regulations of the department
444 found upon said inspection. With respect to the date by which the licensee shall remedy or
445 correct each violation, hereinafter the "correct by date", the department in such notice shall
446 specify a reasonable time, not more than 60 days after receipt thereof, by which time the licensee

447 shall remedy or correct each violation cited therein or, in the case of any violation which in the
448 opinion of the department is not reasonably capable of correction within 60 days, the department
449 shall require only that the licensee submit a written plan for the timely correction of the violation
450 in a reasonable manner. The department may modify any nonconforming plan upon notice in
451 writing to the licensee.

452 Absent good faith efforts to remedy or correct, failure to remedy or correct a cited
453 violation by the agreed upon correct by date shall be cause to pursue or impose the remedies or
454 sanctions available to it under sections 71 to 73, inclusive, unless the licensee shall demonstrate
455 to the satisfaction of the department or the court, as the case may be, that such failure was not
456 due to any neglect of its duty and occurred despite an attempt in good faith to make correction by
457 the agreed upon correct by date. The department may pursue or impose any remedy or sanction
458 or combination of remedies or sanctions available to it under said sections 71 to 73, inclusive.
459 An aggrieved licensee may pursue the remedies available to it under said sections 71 to 73,
460 inclusive.

461 In addition, if the licensee fails to maintain substantial compliance with applicable
462 statutes, rules and regulations, in addition to imposing any of the other remedies or sanctions
463 available to it, the department may require the licensee to engage, at the licensee's own expense,
464 a temporary manager to assist the licensee with bringing the facility into substantial compliance
465 and with sustaining such compliance. Such manager is subject to the department's approval,
466 provided that such approval not to be unreasonably withheld. Any such engagement of a
467 temporary manager would be for a period of not less than 6 months and shall be pursuant to a
468 written agreement between the licensee and the management company. A copy of such
469 agreement shall be provided by the licensee to the department promptly after execution.

470 Nothing in this section shall be construed to prohibit the department from enforcing a
471 statute, rule or regulation, administratively or in court, without first affording formal opportunity
472 to make correction under this section, where, in the opinion of the department, the violation of
473 such statute, rule or regulation jeopardizes the health or safety of residents or the public or
474 seriously limits the capacity of a licensee to provide adequate care, or where the violation of such
475 statute, rule or regulation is the second such violation occurring during a period of 12 full
476 months.

477 SECTION 20. Said chapter 111, as so appearing, is hereby further amended by striking
478 out section 73 and inserting in place thereof the following section:-

479 Section 73. Whoever advertises, announces, establishes or maintains, or is concerned in
480 establishing or maintaining a long-term care facility, or is engaged in any such business, without
481 a license granted under section 71, or whoever being licensed under said section 71 violates any
482 provision of sections 71 to 73, inclusive, shall for a first offense be punished by a fine of not
483 more than \$1,000, and for a subsequent offense by a fine of not more than \$2,000 or by
484 imprisonment for not more than two years.

485 Whoever violates any rule or regulation made under sections 71, 72 and 72C shall be
486 punished by such fine, not to exceed \$500, as the department may establish. If any person
487 violates any such rule or regulation by allowing a condition to exist which may be corrected or
488 remedied, the department shall order him, in writing, to correct or remedy such condition, and if
489 such person fails or refuses to comply with such order by the agreed upon correct by date, as
490 defined in section 72E, each day after the agreed upon correct by date during which such failure
491 or refusal to comply continues shall constitute a separate offense. A failure to pay the fine
492 imposed by this section shall be a violation of this section.