

August 29, 2024

Memorandum

To: Mass Senior Care Members

From: Tara M. Gregorio, President

Re: Member Update: Legislature Enacts and Sends to Governor Healey the Omnibus Long-Term Care Reform Bill; REMINDER: Test Kits for COVID-19 Outbreaks; REMINDER: MassHealth Announces Important Change in LTC Eligibility Verification Timelines - Will Return to 30 Days Beginning September 2024

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Legislature Enacts and Sends to Governor Healey the Omnibus Long-Term Care Reform Bill

The legislature today enacted and sent to Governor Healey the Omnibus Long Term Care Reform bill, [H5033, An Act to improve quality and oversight of long-term care](#). To help ensure access to quality nursing facility care for individuals who can no longer live safely at home, this comprehensive, historic legislation will have a profound impact on the provision of care by modernizing our Medicaid rate system to better reflect current care costs, establishing a workforce and capital trust fund to help implement programs to expand our workforce, allowing for medication aides in nursing facilities, and reforming the DPH licensure and suitability process to improve transparency and accountability from the nursing facility sector.

The bill builds upon over \$2 billion in investments made in Massachusetts nursing facility care over the last three years and would:

- **Establish a Long-Term Care Workforce and Capital Fund administered by EOHHS in consultation with an Advisory Committee that includes MSCA.** The Fund would:
 - Administer zero interest capital improvement loans;
 - Establish workforce training programs for new CNAs, CNA to LPN pathway and supervisory training for clinicians.
- **Certified Medication Aides**

- Authorizes Massachusetts nursing facilities to create a Certified Medication Aide (CMA) role to upskill CNAs who, after training and competency testing, would be permitted to dispense oral, non-narcotic medications to residents under the supervision of a licensed nurse or MD.
- DPH, in consultation with BORN, will develop and oversee qualifications, certification, training and competency testing criteria. Training must be no less than 60 hours and CMAs must be evaluated at least every 6 months.

- **Department of Public Health**

- Directs DPH to work with the sector to establish and implement best practice training and education programs for nursing facilities based on most frequently cited deficiencies.
- Similar to CMS regulations, nursing facilities are required to develop an “outbreak response plan”.
- Requires facilities to adopt non-discriminatory practices for the care and treatment of LGBTQ+ and provide training and education to all staff.
- Requires DPH to make CMP funds available for technology to assist with communication.
- Requires DPH in consultation with the Center for Health Information and Analysis (CHIA) to conduct a comprehensive nursing facility cost trends analysis.

- **Medicaid Nursing Facility Rate Setting** – Base Year 2 years from rate year

- Effective October 1, 2025, requires MassHealth to better reflect current resident care costs by annually setting Medicaid nursing facility rates using a base year no more than 2 years from the rate year.
- Requires MassHealth to establish rate add-ons, in addition to the current behavioral health, SUD, Dialysis, Complex Care, for bariatric patient care and 1:1 staffing of at-risk residents requiring 24-hour monitoring and supervision.

- **Assisted Living Residences**

- Expands EOEA oversight of assisted living residences and codifies and makes permanent the provision of basic health services in assisted living residences.
- Requires EOEA to consult with DPH to establish operating requirements for ALRs providing basic health services and requires ALRs to report all incidents involving basic health services within 24 hours.

- **Small House Nursing Homes**

- Requires DPH to promulgate regulations for the development of small house nursing homes.
- Authorizes MassHealth to develop a small house nursing home rate add-on.

- **Guardianship**

- Requires DPH to conduct a study and report on the need and feasibility of 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 preventative care. The study must consider the utility of increasing the deduction allowed from a MassHealth applicant or member's income for guardianship fees.

- **Prior Authorization for Admissions to Post Acute Care**

- Requires the Division of Insurance to develop and implement uniform prior authorization forms for admissions from acute care hospitals to post-acute care facilities.
- Requires that all payers act on prior authorization by the next business day or to waive prior authorization altogether when a patient can be admitted over the weekend.

- **Hospital Throughput Task Force**

- Establishes a task force to study and propose recommendations to address acute care hospital throughput challenges, including:
 - examining 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.

- **MassHealth Long-Term Care Eligibility**

- Requires MassHealth to conduct a study to consider improvements to the eligibility determination process, including: 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.

- **Health Policy Commission 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 patient care outcomes and financial viability of long-term care facilities and continued access to services for Medicare patients.

- **Updates Licensure and Suitability Requirements**

- Updates transfer of ownership process and would include management companies.
- Allows for a one-year provisional license when public necessity requires.
- Authorizes DPH to limit, restrict, suspend or revoke a license for substantial or sustained failure to:
 - provide adequate care to residents;
 - maintain compliance with applicable statutes, rules and regulations; or for lacking financial capacity to maintain and operate a long term care facility.
- Prior to signing a contract with a management company, an applicant must notify and send required information to DPH and receive approval from DPH that the management company is suitable to manage a long-term care facility. A written agreement must exist between the licensee and management company.

- **Temporary Manager**

- Authorizes DPH to require a long-term care facility, at their own expense, to engage a temporary manager to assist the licensee in bringing the long-term care facility into substantial and with sustaining such compliance.

- **Attorney General Fines**

- Increases nursing home fines for abuse, mistreatment, neglect or misappropriation.
- Deposits half of AGO penalties into Long-Term Care Workforce and Capital Fund.

- **DPH Fines**

- Increases DPH state licensure fines from \$50 to \$500

- **Management Company**

- Prior to issuance of a renewed license by the Department, nursing facilities are required to provide documentation to enable the Department to determine the suitability of the management company.

The Massachusetts Senior Care Association extends its gratitude to the legislature for their dedication to nursing home residents and their caregivers. The bill is now before the Governor for her review and action.

REMINDER: Test Kits for COVID-19 Outbreaks

As the state continues to see an uptick in COVID-19 cases and outbreaks in nursing facilities, nursing facilities that are experiencing an outbreak may request POC

COVID-19 tests from the state. To request POC tests use the following link:

<https://bit.ly/3fy0kXy>.

In addition, free COVID-19 tests are still available through the Department of Health and Human Services (HHS) Abbott BinaxNOW Test Kit Program. Skilled nursing facilities and assisted living communities continue to receive or are eligible to receive free monthly shipments of Abbott BinaxNOW over-the-counter (OTC) COVID-19 test kits. Nursing facilities and ALR communities must have an active CLIA waiver to be eligible to participate in this program. Shipments can be started and stopped, and test quantities can be increased or decreased by emailing TDX@hhs.gov.

The email must include:

- Name of the facility
- Facility address
- CLIA waiver number
- Request (stop, start, increase, decrease)

Please note that it may take a week or two to update the shipping information. CDC guidance requires anyone with even mild symptoms of COVID-19 to be tested. More information and detailed guidance can be found on [CDC's Interim Infection Prevention and Control Recommendations for Healthcare Personnel](#). For questions related to the HHS BinaxNOW Distribution Program, please email TDX@hhs.gov

REMINDER: MassHealth Announces Important Change in LTC Eligibility Verification Timelines - Will Return to 30 Days Beginning September 2024

In response to Mass Senior Care's request to return to the prior 30-day verification process for LTC applications, MassHealth announced it will update its policy and revert to the prior **30-day** timeframe to be effective in late **September 2024**. This change will not impact existing timelines for non-LTC members. Mass Senior Care appreciates EOHHS' attention and action on this issue.