ATTACHMENT C

November 10, 2022

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 115 of House Bill No. 5374, “An Act relating to economic growth and relief for the Commonwealth.”

Section 115 requires the Department of Public Health (DPH) to offer certified nurses’ aide (CNA) exams in languages other than English to nurses’ aides who receive their training or work in facilities with primarily non-English speaking populations. In addition to Spanish and Chinese, it is up to DPH to determine the other languages in which to offer the test.

CNAs are critical to our health care workforce. As we work to recover from the COVID-19 pandemic, the strain on our health care workforce remains a challenge. I support Section 115, as it expands access to testing for CNAs who might otherwise not have the opportunity to join the workforce due to limited English proficiency. However, Section 115 does not include an implementation deadline. This initiative would benefit from having a clearly defined timeline for DPH to develop the testing program, and to identify providers who are qualified to offer, proctor, and score the tests in each new language. In order to ensure the smooth and adequate implementation of this important initiative, I am returning this section with language requiring DPH to implement the section on or before October 1, 2023.

Additionally, as the pandemic has evolved, so too have the Commonwealth’s data needs and reporting requirements. Massachusetts continues to maintain one of the most robust and comprehensive public data reports on COVID-19 in the nation. Given the evolution of the pandemic, the availability of new leading indicators and monitoring mechanisms, and the burden the current requirement places on providers, the DPH recommends that we shift away from daily reporting and report COVID-19 data on not less than a weekly basis. I am including as a part of this package a previously filed section that accomplishes this change.

Finally, the pandemic has significantly impacted the mental health needs of the residents of the Commonwealth, which is why I was pleased to sign into law “An Act addressing barriers to care for mental health” in August. That law allows incarcerated individuals to petition the courts to be transferred to a mental health facility. The Department of Mental Health recommends that incarcerated individuals receive a clinical examination from a qualified mental health professional and a transfer to an inpatient hospital if the incarcerated individual has been on mental health watch for at least 48 hours and is in need of hospitalization by reason of mental illness. A clinical assessment is the only evidence on which a court considering a petition for transfer can reasonably rely in determining if the petitioner suffers from mental illness and whether a DMH psychiatric hospital will be able to provide the appropriate treatment. Courts uniformly rely on clinical assessments when ordering treatment in all similar contexts, and a clinical assessment for a transfer under this new provision should be required as well. I have previously proposed sections that would effectuate these changes and ask that they receive your further consideration as a part of this package.

For these reasons, I recommend that the bill be amended by striking out section 115 and inserting in place thereof the following section:-

SECTION 115. Chapter 111 of the General Laws is hereby amended by striking out section 72W and inserting in place thereof the following section:-

1. As used in this section the following words shall have the following meanings:-

“Long term care facility”, a convalescent home, nursing home, rest home or charitable home for the aged licensed under the provisions of section seventy-one.

“Nurses’ aide”, any employee of a long term care facility who provides nursing care under the supervision of a nurse for the purpose of providing safety, comfort, personal hygiene or protection of a patient in a long term care facility.

(b) The commissioner after consultation with the secretary of elder affairs and the board of registration shall establish standards for the training of nurses’ aides which shall include a minimum of sixty hours of training.

(c) Any person administering a long term care facility who hires a nurses’ aide shall provide such training for said nurses’ aide within ninety days of the commencement of employment.

(d) Any long term care facility which complies with the provisions of this section shall have the costs of such compliance recognized in its interim rate of payment.

(e) A nurses’ aide who receives their training and works in a facility whose resident population is predominantly non-English speaking, shall be offered the option to take the nurses’ aide certification exam in a language other than English, including, but not limited to, Spanish and Chinese; provided, however, that the department shall determine which languages the exam shall be offered in.

(f) The department shall make such rules and regulations as may be necessary to carry out the provisions of this section.

And further recommend that the bill be amended by inserting after section 130 the following 3 sections:-

SECTION 130A. Paragraph (2) of subsection (a½) of section 18 of chapter 123 of the General Laws, as inserted by section 48 of chapter 177 of the acts of 2022, is hereby amended by striking out the second sentence and inserting in place thereof the following 5 sentences:- The court shall provide notice of the petition to the person in charge of the place of detention, who shall cause the prisoner to be clinically examined by a physician or psychologist designated by the department of mental health as qualified to perform such examination. The physician or psychologist shall conduct the examination within 24 hours of receiving the examination request. The results of the clinical examination shall be reported to the district court that has jurisdiction. Such report shall include an opinion, with reasons therefore, as to whether the prisoner needs hospitalization by reason of mental illness. The court may order the prisoner’s requested transfer if the prisoner: (i) has been on mental health watch for at least 48 hours; and (ii) is in need of involuntary psychiatric hospitalization by reason of mental illness.

SECTION 130B. Said paragraph (2) of said subsection (a½) of said section 18, as so inserted, is hereby further amended by inserting, after the words “every 24 hours thereafter that the prisoner remains on mental health watch,” the following words:- unless a qualified mental health professional, as defined by section 1 of chapter 127, finds notice every 24 hours thereafter to be clinically contraindicated, whereupon a finding of clinical contraindication shall be entered into the prisoner’s medical record, .

SECTION 130C. Said subsection (a½) of said section 18, as so inserted, is hereby further amended by adding the following paragraph:-

(3) Any orders for hospitalization under this subsection shall proceed as provided in subsection (a).

And further recommend that the bill be amended by inserting after section 265 the following section:-

SECTION 265A. Notwithstanding the reporting requirements in section 1 of chapter 93 of the acts of 2020, each report required shall occur no less than once weekly.

And further recommend that the bill be amended by inserting after section 272 the following section :-

SECTION 272A. Section 115 shall take effect on October 1, 2023.

Respectfully submitted,

Charles D. Baker

Governor