

to those patients residing in his facility at the time the provider announces his intention to withdraw who are eligible for medical assistance or who become eligible for medical assistance during the term of the contract. Such rules and regulations shall also provide that any such provider who has withdrawn from said program may not participate in said program for a period of time, not exceeding five years, specified in said regulations.

Such rules and regulations shall also provide that any long term care provider whose facility is unable to meet the standards for participation in said program shall continue to provide care to the medical assistance recipients residing in his facility until the provider has arranged for the complete relocation of all the medical assistance recipients residing in his facility in accordance with such rules and regulations and with the regulations of the department of public health.

Any provider who violates the provisions of this section by failing to provide care to a medical assistance recipient residing in his facility shall be subject to a fine of one thousand dollars for each violation.

SECTION 2. The provisions of this act shall take effect only with respect to contracts between the department of public welfare and long term care providers executed on or after the effective date of this act.

Approved December 30, 1977.

Chap. 879. AN ACT MAKING CHANGES IN THE LAW RELATIVE TO RECOUNTS OF ELECTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to make certain clarifications in the election laws to expedite the procedures for the bi-ennial state election, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 54 of the General Laws is hereby amended by striking out section 135, as most recently amended by chapter 62 of the acts of 1974, and inserting in place thereof the following section:-

Section 135. A petition for a recount may be filed with the city or town clerk on or before five o'clock post meridian on the sixth day following a primary or preliminary election, or on or before five o'clock post meridian on the tenth day following an election,

in a ward of a city or in a town, if ten or more voters of such ward or town, except a town having more than twenty-five hundred voters and voting by precincts and except Boston, and in such a town voting by precincts ten or more voters of each precinct in which a recount is petitioned for and in Boston fifty or more voters of a ward, shall sign in person as registered, or substantially as registered, and shall state the address where he is currently living with the street and number, if any, and his address on January the first preceding. In the case of any petition for a recount hereunder, the registrars need not certify a greater number of names than is required hereby for the holding of the recount, increased by one fifth thereof.

Such petition shall be on a form furnished by the state secretary, shall be accompanied by a written request for a recount signed by the candidate on whose behalf the recount is being conducted, shall be sworn to by one of the subscribers before a notary public, and shall contain a statement that they have reason to believe and do believe that the records, or copies of records, made by the election officers of such ward or town, or of such precinct in a town having more than twenty-five hundred voters and voting by precincts, are erroneous, specifying wherein they deem such records or copies thereof to be in error, or that challenged votes were cast by persons not entitled to vote therein, and that they believe a recount of the ballots cast in such ward, precinct or town will affect the nomination or election of one or more candidates voted for at such primary, preliminary election or election, specifying the office or will affect the decision of a question voted upon at such election, specifying the question. The city or town clerk shall forthwith transmit to the registrars of voters such petition and statement, and the envelopes or containers containing all records of the election, including the sealed envelopes containing the ballots cast, the original tally sheets, the envelopes containing the spoiled and unused ballots, the voting lists used at the election, the certificates issued to voters omitted from the voting list, the precinct clerk's election record, the absentee ballot envelopes and applications for such absentee ballots as were cast at the election, the lists of voters who were sent absentee ballots with the notation as to whether such ballots were cast or rejected or whether such voter voted in person, and the sealed envelopes containing the ballots rejected as defective. In the case of a recount of the votes for an office any candidate for such office shall, upon his request, be permitted to obtain and examine the record books and the clerk of the precinct's book, so called, where used, and may require that a count be made of the

number of persons checked as having voted on the voting lists used at each precinct, and that an examination be made of the figures on each ballot box register.

The registrars shall first examine the petition and statement and attach thereto a certificate of the number of names of subscribers which are names of registered voters in such ward, precinct or town and shall then, without unnecessary delay, but not before the last hour for filing petitions for recounts as aforesaid, open the envelopes or containers, except envelopes containing absentee ballots rejected as defective, recount the ballots cast and determine the questions raised, and shall examine all ballots cast by or for challenged voters and reject any such ballot cast by or for a person found not to have been entitled to vote. They shall examine the sealed inner ballot envelopes rejected as defective as to the reasons for rejection and shall determine whether each such ballot should have been rejected or accepted. The registrars' determinations shall be subject to protest as said envelopes are examined at the recount. Said envelopes shall remain sealed irrespective of the decision of the registrars unless ordered opened by a court. The registrars shall endorse on the back of every cast ballot subsequently rejected and on the back of every inner ballot envelope of absentee ballots originally rejected as defective the reason for such rejection or subsequent acceptance and said statement shall be signed by a majority of said registrars. A member of the board of registrars shall endorse over his signature on the back of each protested ballot the block number of which it is a part and the office for which the vote is protested, together with the name of the candidate for whom the vote is counted.

The registrars at the recount shall determine how protested votes are to be counted and the registrars shall assign tally clerks to count the votes.

In cases of recounts at elections where voting machines have been used the city or town clerk shall transmit to the registrars the records of the election officers, the envelopes or containers containing the total sheets showing the votes recorded by the voting machines, cast by challenged voters and cast by absent voting ballots, respectively, and containing the ballots cast by challenged voters and the absent voting ballots cast, and all other material specified in section one hundred and thirty-five A.

State-wide recounts in cases of offices to be filled or questions to be voted upon at the state election by all the voters of the commonwealth may be requested as provided in the foregoing provisions of this section so far as applicable, except that any petition

therefor shall be on a form approved and furnished by the state secretary, shall be signed in the aggregate by at least one thousand voters, and shall be submitted on or before five o'clock post meridian of the tenth day following such election to the registrars of voters of the city or town in which the signers appear to be voters, who shall forthwith certify thereon the number of signatures which are names of registered voters in said city or town, and except that said petitions for recount shall be filed with the state secretary on or before five o'clock post meridian of the fifteenth day following such election. The state secretary shall hold such petitions for recount until after the official tabulation of votes by the governor and council and if it then appears that the difference in the number of votes cast for the two leading candidates for the office, or in the number of affirmative and negative votes on a question, for which recount is desired is more than one half of one per cent of the total number of votes cast for such office or on such question, the petitions for recount shall be void. If such difference in the votes so cast appears to be one half of one per cent or less of the total votes cast for such office or on such question, he shall forthwith order the clerk of each city and town of the commonwealth to transmit forthwith, and said clerk shall so transmit, the envelopes or containers containing the ballots, sealed except in the case of those containing ballots which have already been recounted in respect to said office or question under authority of this section, to the registrars of the city or town who shall, without unnecessary delay, open the envelopes or containers, recount the ballots cast for said office or on such question and determine the questions raised. The registrars shall examine the sealed inner ballot envelopes originally rejected as defective, determine whether each such ballot should have been rejected or accepted, endorse the reasons for such findings, but in no case shall the registrars open the envelopes. The registrars determinations shall be subject to protest as said envelopes are examined at the recount. If a state-wide recount is petitioned for, all ballots cast at a state election shall be held, except as otherwise provided herein, by the city and town clerks until the expiration of sixty days after said election.

The board of registrars of voters in any city or town shall set the date of any recount for an office or question which appeared on a state primary or state election ballot, except for state-wide offices to be filled or on such questions to be voted on at the state election by all the voters of the commonwealth, for a date not more than six days after receipt of the recount petition for a primary, and not more than ten days after receipt of such peti-

tion for an election. The registrars shall forthwith, upon setting the date of any such recount, notify the state secretary in writing of the office to be recounted, the time and place of the recount and the number of observers to which each candidate is entitled. The registrars shall, within twenty-four hours after receipt of the recount petition, give not less than three days written notice to each candidate for the office for which a recount was petitioned under authority of this section, or to such person as shall be designated by the petitioners for a recount of ballots cast upon questions submitted to the voters, of the time and place of making the recount, and each such candidate or person representing petitioners as aforesaid shall be allowed to be present and to witness such recount at each table where a recount of the ballots affecting such candidate is being held, accompanied by one or more counsel, if he so desires. Each such candidate or person may also be represented by agents, appointed by him or his counsel in writing, sufficient in number to provide one such agent for each officer counting or checking such ballots; provided, that no such candidate or person may have more than one such agent, other than his counsel, witnessing the work of any one officer at any one time. Each such candidate, person, counsel and agent shall have the right to watch and inspect the ballots, tally sheets and all other papers used in the recount, and to watch every individual act performed in connection therewith. In the case of a recount of ballots cast for offices which are filled by all the voters of the commonwealth, such notice may be given to the duly organized state political committees. In the case of a recount of the ballots cast upon a question submitted to all the voters as aforesaid, one representative from any committee organized to favor or to oppose the question so submitted shall be permitted to be present and witness the recount.

All recounts shall be upon the questions designated in the statements or petitions filed, and no other count shall be made, or allowed to be made, or other information taken, or allowed to be taken, from the ballots on such recount, except that in the case of a recount of the ballots cast for an office, the votes cast for all of the candidates for such office, including blanks cast, shall be recounted and all spoiled and unused ballots shall also be counted and determination shall be made without opening the envelopes whether each sealed absentee ballot envelope rejected as defective should have been rejected or accepted, and the results recorded on the blank forms provided therefor, together with the absentee ballot envelopes and applications for such ab-

sent voting ballots. Nothing contained in this section shall be construed to prevent the immediate commencement of the work of actually recounting the ballots at the recount.

If, after a petition for a recount of the votes for an office in any ward, town, or precinct of a town has been filed, a candidate who requested the recount files a written request with the city or town clerk that the recount petitioned for be discontinued, the city or town clerk shall immediately suspend the recount and give written notice to each candidate for the office that, unless written notice of a candidate's objection is received within seventy-two hours after such notice is sent, the recount shall be discontinued. If no such notice of objection is received, the recount shall be discontinued.

If, after a petition for state-wide recount for an office has been filed, the leading candidate, together with every other candidate whose votes therefor are not exceeded in number by the votes of the leading candidate by more than one half of one per cent of the total number of votes cast for such office, shall file a written request with the state secretary that the recount petitioned for be discontinued, the state secretary shall immediately order such recount discontinued whereupon such proceedings shall terminate.

The registrars shall, when the recount is complete, enclose all the ballots in their proper envelopes or containers, seal each envelope or container with a seal provided therefor, and certify upon each envelope or container that it has been opened and again sealed in conformity to law; and shall likewise make and sign a statement of their determination of the questions raised. The registrars shall also enclose all protested ballots in a separate envelope, seal the envelope with a seal provided therefor and certify upon the envelope that it contains all ballots that have been protested. When ballots are summoned to court, only such ballots as have been duly recorded as protested at a recount shall be required to be produced except by express order of the court. The envelopes or containers, with such statement, shall be returned to the city or town clerk, who shall alter and amend, in accordance with such determination, such records as have been found to be erroneous; and the records so amended shall stand as the true records of the election. Copies of such amended records of votes cast at a state election shall be made and transmitted as required by law in the case of copies of original records; provided, that such copies of amended records shall in case of a state-wide recount be transmitted by the city or town clerk to the state secretary within four days of the completion of such recount. If, in case of a recount of votes for town officers, it shall appear that

a person was elected other than the person declared to have been elected, the registrars of voters shall forthwith make and sign a certificate of such fact, stating therein the number of votes cast, as determined by the recount, for each candidate for the office the election to which is disputed, and shall file the same with the town clerk. The town clerk shall record the certificate and shall, within twenty-four hours after such filing, cause a copy of such certificate, attested by him, to be delivered to or left at the residence of the person so declared to have been elected, and to the person who by such certificate appears to be elected.

Registrars of voters may employ such clerical assistance as they deem necessary to enable them to carry out this section and in the investigation of challenged votes may summon witnesses and administer oaths.

SECTION 2. Section 135A of said chapter 54, as most recently amended by section 21 of chapter 600 of the acts of 1975, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- For recounts of any election in an election district where voting machines are used all records of the election shall be transmitted to the registrars of voters for the recount, including the voting lists used at the election, the certificates issued to voters omitted from the voting list, the original tally sheets, the precinct clerk's election record, the sealed envelopes containing challenged ballots and absentee ballots cast, the absentee ballot envelopes and applications for such absentee ballots as were cast at the election, the lists of voters who were sent absentee ballots with the notation as to whether such ballots were cast or rejected or whether such voter voted in person and the sealed envelopes containing ballots rejected as defective.

The recount shall consist of the checking with the records and voting lists of the total sheets containing the results of the votes counted, including those cast by voting machines, by ballots of challenged voters and by absent voting ballots, the rejection or counting of ballots cast by challenged voters and the counting of absent voting ballots cast, and the examination of sealed absentee ballot envelopes rejected as defective as to reasons for rejection and a determination as to whether each such envelope should have been rejected or accepted. The registrars' determinations shall be subject to protest as said envelopes are examined at the recount. Said envelopes shall remain sealed irrespective of the decision of the registrars at the recount unless ordered opened by a court. The recount shall also include the determination of the questions raised by the petition for recount, the retabulation of

the results, and the certification of the corrected results to the city or town clerk.

SECTION 3. The third paragraph of section 37 of chapter 53 of the General Laws, as most recently amended by section 2 of chapter 310 of the acts of 1976, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- Said officers shall, at any time after the primary, upon receiving a written request therefor signed by any person, furnish a copy of said list to such person upon the payment of a reasonable fee or shall allow such person to examine and copy such list without charge under such supervision as the clerk may reasonably require.

SECTION 4. Said chapter 53 is hereby amended by striking out section 40A, as amended by section 6 of chapter 546 of the acts of 1977, and inserting in place thereof the following section:-

Section 40A. Petitions for recounts of the ballots cast at a primary of a political party may be signed only by registered voters enrolled in such political party on or before the last day to register to vote for the primary.

SECTION 5. The fourth paragraph of section 48 of said chapter 53, as appearing in section 7 of said chapter 546, is hereby amended by striking out the third and fourth sentences and inserting in place thereof the following two sentences:- Said registrars of voters shall issue such certificate to any person seeking the nomination of a political party, who is a newly registered voter of that city or town enrolled in that political party and who has not been an enrolled member of another political party during the year preceding the last day for filing nomination papers with the state secretary. No such certificate shall be issued to any person who is a candidate for nomination for any such office, if such person has been an enrolled member of another political party during the year prior to the last day for filing nomination papers with the state secretary as provided by this section.

SECTION 6. Section 108 of chapter 54 of the General Laws, as most recently amended by section 3 of chapter 310 of the acts of 1976, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- At any time after the election, upon written request of any person, the city or town clerk shall, within a reasonable time, open the envelope in which the voting lists have been enclosed, as provided in section one hundred and seven, and make a copy of the lists as checked.

SECTION 7. This act shall take effect on January first, nineteen hundred and seventy-eight.

Approved December 30, 1977.

Chap. 880. AN ACT INCREASING THE AUTHORITY OF CITIES AND TOWNS TO INDEMNIFY POLICEMEN AND FIREMEN AGAINST WHOM DAMAGES ARE RECOVERED AS A RESULT OF THEIR OPERATION OF MOTOR VEHICLES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for the indemnification of police officers and fire fighters for certain acts done prior to such indemnification, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 100 of chapter 41 of the General Laws is hereby amended by inserting after the second paragraph the following paragraph:-

Notwithstanding the provisions of section one hundred A or section one hundred D or any contrary provisions of any other general or special law, a city or town shall indemnify a police officer or fire fighter, to the extent and in the manner herein provided and subject to the same limitations, for expenses or damages incurred by him in the defence or settlement of a claim against him for acts done by him while operating a motor vehicle as such police officer or fire fighter.

SECTION 2. The provisions of section one hundred of chapter forty-one of the General Laws, as amended by section one of this act, shall apply to indemnification petitions pending prior to the effective date of this act or filed thereafter, regardless of the time when expenses or damages under said section one hundred, as so amended, were incurred by a fire fighter or police officer.

Approved December 30, 1977.