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By Mr. Burke, a petition (accompanied by bill, Senate, No. 515) of Edward L. Burke and John G. King for legislation to provide protections for nursing home residents. Health Care.

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The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT PROVIDING PROTECTIONS FOR NURSING HOME RESIDENTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Section 4 of chapter 118E of the General Laws, as appearing  
2 in chapter 878 of the Acts of 1977, is hereby amended by  
3 inserting after the sixth paragraph the following new para-  
4 graph: —

5 A long term care provider shall not discharge or transfer  
6 to another facility any patient for the reason that the patient  
7 has or will become a medical assistance recipient. Further-  
8 more, no patient receiving medical assistance shall be trans-  
9 ferred from his room in a long-term care facility at the re-  
10 quest of such provider except where an adequate alternative  
11 placement is available to the patient and the transfer is made  
12 for one of the following reasons: —

13 (1) the transfer is required by medical necessity and is in  
14 the best interest of the patient;

15 (2) the transfer is necessary to protect the health, safety,  
16 or well-being of the patient or other patients and the reasons  
17 for the transfer are documented in the patient's personal or  
18 medical records;

19 (3) the transfer is required because of non-payment for  
20 the patient's stay, except as prohibited by the federal Social  
21 Security Act;

22 (4) the transfer is required because the facility is with-  
23 drawing from the medical assistance program under the re-  
24 quirements of this section; or

25 (5) the transfer can be shown by clear and convincing

26 evidence to have been requested by the patient.

27 Except in the case of a medical emergency, at least one  
28 month before the date of a proposed involuntary transfer,  
29 the provider shall mail or deliver to the patient, his physician  
30 and his next of kin, guardian or sponsor and the department,  
31 the department of elder affairs and the department of public  
32 health, a written notification of the provider's intent stating  
33 specific reasons for the transfer and (b) a copy of a proposed  
34 transfer trauma mitigation care plan developed by the pro-  
35 vider to minimize the risks, trauma and discomfort of the  
36 relocation. Such plan shall, at a minimum, assess the pa-  
37 tient's medical, psychological and social needs; involve the  
38 patient, his physician and his next of kin, guardian or spon-  
39 sor to the fullest extent possible in the transfer process and  
40 the choice of an alternate placement; and provide for coun-  
41 seling and a visit to the site of the alternate placement prior  
42 to transfer, for systematic reassurance by the patient's fam-  
43 ily and the staff of all involved facilities, for assistance in  
44 moving, and for a following evaluation of the patient's needs  
45 within one month of the transfer. The transfer shall be  
46 stayed pending a final decision, at the hearing or upon judi-  
47 cial review, in an administrative hearing if such is requested  
48 by the patient, his next of kin, guardian or sponsor. Such  
49 hearing shall be conducted at the facility by the department  
50 within ten working days but no less than five working days  
51 after receipt of notice of the proposed transfer, upon reason-  
52 able notice to all interested persons described in this section,  
53 and in accordance with the fair hearing procedures adopted  
54 by the department under this chapter. At the hearing the  
55 provider shall have the burden of proving by clear and con-  
56 vincing evidence that the proposed transfer complies with  
57 each of the requirements imposed by this section. Within ten  
58 working days of the close of the hearing the department shall  
59 issue and mail or deliver to the provider, to the patient, his  
60 physician and his next of kin, guardian or sponsor, if any,  
61 a written decision containing a clear statement of reasons  
62 therefor specific to the facts of the case and approving, with  
63 or without conditions, or disapproving the proposed discharge  
64 or transfer. Where a patient is transferred involuntarily un-

65 der this section, it shall be the responsibility of the depart-  
66 ment to provide removal and relocation assistance pursuant  
67 to the transfer plan.

