

By Mr. Flaherty of Boston, petition of Michael F. Flaherty that provision be made for protecting residents of nursing homes. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

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 111 of the General Laws, as appearing in
2 chapter 878 of the Acts of 1977, is hereby amended by inserting
3 after the sixth paragraph the following new paragraph: —

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

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

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

17 (3) the transfer is required because of non-payment for the pa-
18 tient's stay, except as prohibited by the federal Social Security Act;

19 (4) the transfer is required because the facility is withdrawing
20 from the medical assistance program under the requirements of
21 this section; or

22 (5) the transfer can be shown by clear and convincing evidence
23 to have been requested by the patient. Except in the case of a
24 medical temergency, at least one month before the date of a pro-

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