

Mr. Kennedy of Brockton, petition of Thomas P. Kennedy for legislation to ensure equal access to long term care facilities. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT TO ENSURE EQUAL ACCESS TO LONG TERM CARE FACILITIES.

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 1.

2 1. The Department of Public Health through the Determina-
3 tion of Need program is hereby directed to identify as "Nursing
4 Beds Needed Areas" those areas of the Commonwealth where
5 there is a need for additional nursing home beds based upon:

- 6 (1) High Medicaid eligible populations; and
7 (2) Current insufficient numbers of nursing home beds.

8 2. Chapter 6A of the General Laws is hereby amended by
9 inserting after Section 32B the following:

10 Long term care facilities approved by the Determination of
11 Need program to be constructed in areas designated by the
12 Department of Public Health in Nursing Beds Needed Areas shall
13 be eligible for special incentives in the formulation of their rates
14 of reimbursement. These special incentives shall include, but not
15 be limited to:

- 16 (1) waiver of caps and ceilings on nursing and variable costs
17 associated with the operation of the nursing homes; and,
18 (2) an increase in payment to the nursing homes available
19 pursuant to the existing nursing home incentive program
20 administered jointly by the Department of Public Health and the
21 Rate Setting Commission.

1 SECTION 2.

2 1. Chapter 111, Section 25C of the General Laws is hereby
3 amended by inserting at the end of the second sentence of the fifth

4 paragraph the following: provided, that any application relating
5 to a long term care facility, which application is not considered
6 by the Department to be an emergency or unique application, may
7 be filed the first business day of January, May or September.

8 2. Chapter 111, Section 25C is hereby further amended by
9 striking the last sentence of the seventh paragraph and by inserting
10 at the end of the first sentence of the seventh paragraph the
11 following: and further provided, if an application has not been
12 acted upon by the Department within such time limits the
13 application shall be deemed to have been approved by the
14 Department.

15 The Department of Public Health is hereby directed to modify
16 the administration of the Determination of Need program as
17 follows:

18 (1) Until such time as new nursing bed need guidelines are
19 established by the Department, the aggregate nursing home bed
20 need as currently defined by the Department shall be increased
21 by a minimum of ten percent (10%) statewide.

22 (2) Review of site and architectural plans by the Department
23 of long term care facility projects that have already received a
24 Determination of Need shall be completed within one-hundred
25 twenty (120) days.

26 (3) The designation of applications as comparable shall be
27 limited to applications filed on the same filing date.

28 3. Chapter 111, Section 25C is hereby further amended by
29 deleting the second clause of the second sentence of the fifth
30 paragraph and substituting the following: For emergency and
31 unique applications as determined by the Department, the filing
32 day shall be the business day on which such application is received,
33 provided that, notwithstanding the foregoing, the filing day for
34 applications for the upgrading of levels of care in long term care
35 facilities licensed by the Department shall be the business day on
36 which such application is received;

37 4. Chapter 111, Section 25B of the General Laws is hereby
38 amended by striking subsection (ii) of the definition of
39 "Substantial change in services" and substituting the following:

40 (ii) Any increase in bed capacity of more than four (4) beds;
41 provided, that any bi-annual increase in the bed capacity of a long
42 term care facility of twenty (20) beds or less shall not be subject

43 to the provisions of sections twenty-five C to twenty-five G
44 inclusive and, provided further, that any decrease in the level of
45 service offered by a long term care facility which does not involve
46 a capital expenditure shall not be subject to the provisions of
47 sections twenty-five C to twenty-five G.

48 5. Chapter 111, Section 25B is hereby amended by striking the
49 last four words of the definition of "Expenditure minimum" and
50 substituting the following: one million dollars.

1 SECTION 3.

2 Chapter 6A of the General Laws is hereby amended by inserting
3 after Section 32 the following:

4 Section 32A. Fixed cost reimbursement for nursing and rest
5 home providers shall include a rental allowance for the net value
6 of capital related assets. For purposes of this section, the following
7 definitions shall apply:

8 "Capital related assets" shall refer to land, building and fixed
9 equipment.

10 "Net value of capital related assets" is defined as the difference
11 between the current value of capital related assets and long term
12 liabilities.

13 The value of capital related assets shall be determined by an
14 appraisal. This appraisal shall be based on replacement costs for
15 buildings and equipment and on a market value approach for
16 land. Appraisals shall be conducted once every four years. In years
17 in which an appraisal is not conducted, the current value of capital
18 related assets shall be determined by use of a standard
19 construction index applied to the most recently conducted
20 appraisal.

21 The net capital value rental allowance shall be obtained by
22 multiplying the net value of capital related assets by a fixed rental
23 rate of 10%. Occupancy levels used as an adjustment to patient
24 days for the purposes of determining the per diem reimbursement
25 for net capital value rental for facilities shall be set at two
26 percentage points below the statewide average occupancy level
27 percentage. Occupancy levels for new facilities shall be determined
28 on the basis of actual occupancy rates for the first eighteen months
29 of operation.

30 For the purpose of encouraging new construction in areas in

31 need of additional nursing home beds, as identified by the
32 Department of Public Health through the Certificate of Need
33 program, the rental rate applied to the net value of capital related
34 assets may be raised.

35 Section 32B. The Rate Setting Commission shall offer financial
36 incentives to eligible providers to encourage the upgrading and
37 maintenance of quality of care in long term care facilities, to
38 provide for growth and reimbursement to facilities and to enhance
39 the financial stability of facilities in order to ensure continuity of
40 care. Eligibility for the incentive program shall be determined
41 through a combination of factors to include quality of care as
42 measured by compliance scores received on Department of Public
43 Health annual inspection surveys, public occupancy level and cost
44 efficiencies. Incentive payments shall be made available on the
45 interim rate and again on the final rate. Final rate incentive
46 payments shall only be available if the provider has invested all
47 of the dollars received from interim rate incentive payments into
48 patient care.

49 Specific eligibility requirements are as follows:

50 *Outstanding Compliance Incentive:*

51 Outstanding Compliance Incentives shall be paid for providers
52 who qualify for the Acceptable Compliance Incentive and qualify
53 for the outstanding regulatory compliance group established by
54 the Department of Public Health pursuant to its regulations.

55 *Acceptable Compliance Incentive:*

56 Providers who meet the following criteria shall be eligible for
57 the Acceptable Compliance Incentive:

58 • Maintenance of a level of occupancy of 96% of licensed bed
59 capacity or greater.

60 • Maintenance of a level of public occupancy of at least 77%
61 or greater.

62 • Qualify for the acceptable regulatory compliance group
63 established by the Department of Public Health.

64 • Provider's combined level-specific nursing and variable costs
65 in relation to the mean combined nursing and variable costs
66 incurred falls into one of four efficiency groupings which measure
67 the deviation from the mean with the most efficient grouping
68 determined to be those whose costs are equal to or less than one-
69 half of one standard deviation below the mean level-specific costs

70 with the least efficient but still acceptable grouping determined
71 to be those facilities with costs greater than one-half of one
72 standard deviation above the mean but less than one standard
73 deviation above the mean.

74 Per diem adjustments for Outstanding Compliance Incentives
75 and Acceptable Compliance Incentives shall be based on the 1986
76 schedule of payments defined through regulation 114.2 CMR 2.00:
77 Rates of Payment for Long Term Care Facilities, indexed forward
78 each year on the basis of a standard index for inflation.

1 SECTION 4.

2 Chapter 111 is hereby amended by inserting after Section 72V
3 the following:

4 Section 72W. Each long term care facility licensed pursuant to
5 Section 72 of this chapter and participating in the medical
6 assistance program pursuant to Section 18 of Chapter 118E and
7 who maintains a residential occupancy level below 60% publicly-
8 aided residents shall:

9 1. Maintain a dated list of written and completed applications
10 to the long term care facility which shall be available at all times
11 to authorized personnel from the Department of Public Health.
12 The inspection of such applications shall be reviewed periodically
13 by the Department of Public Health and shall be included in the
14 annual survey of long term care facilities for certification in the
15 medical assistance program.

16 2. Admit patients in the sequence as they appear on the dated
17 list as maintained by that facility with the following exceptions:

18 (a) A placement to enable spouses, or other relatives of
19 significant degree of kinship to be admitted within a facility;

20 (b) A placement to allow the admitted patient to avail him/
21 herself of a religious or ethnic environment.

22 (c) A placement which admitted the first applicant on the
23 waiting list who was compatible with a vacated bed based on the
24 following factors;

25 (1) the sex of the prospective roommate(s);

26 (2) the specific conditions of the prospective roommate(s);

27 (3) safety consideration, such as stairs, elevators, etc.;

28 (d) A placement with specialized medical needs and/or social
29 needs;

30 (e) A placement to a specialized care unit in a facility
31 including but not limited to Medicare certified beds; head trauma
32 units; designated Alzheimer's units; specialized mental health
33 units; facilities having agreements with Continuing Care
34 Retirement Communities; and facilities having agreements with
35 Health Maintenance Organizations.

36 (f) A placement who is appropriately placed in another
37 facility in another community.

38 Any application on the dated list must be updated every 30 days.

39 For purposes of this Section, publicly-aided residents shall be
40 defined as residents whose care is paid for by or under Medicaid,
41 Medicare, Massachusetts Commission for the Blind, Veterans
42 Services or the Veterans Administration.

