

Accompanying the third recommendation of the Executive Office of Elder Affairs (House, No. 98). Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

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

AN ACT TO INSURE THE ELDERLY EQUAL ACCESS TO LONG TERM CARE FACILITIES PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM.

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. Chapter 111 of the General Laws is hereby
2 amended by inserting after section 72W the following: —

3 Section 72X. Each long-term facility licensed pursuant to
4 Section 72 of this chapter and participating in the Medical
5 Assistance program pursuant to Chapter 118E, section 18 and/or
6 Chapter 6 section 131E shall:

7 (a) employ an application/inquiry form, on a standard form
8 as established by the department for each admission inquiry;

9 (b) provide a receipt to each applicant for admission to its
10 facility who requests placement on a waiting list stating the date
11 and time of such request, and the level of care sought by the
12 applicant;

13 (c) accept all applications at level of care provided by facility;

14 (d) shall not request the source of payment at the time of
15 application or any time prior to the individual's being accepted
16 at the facility;

17 (e) maintain a dated list of such applications and placements
18 which shall be available at all times to an applicant, his bona fide
19 representative, authorized personnel from the Department of
20 Public Health, Public Welfare, Commission for the Blind and the
21 Executive Office of Elder Affairs, and such other state agencies
22 or other bodies established by state statute whose statutory duties
23 necessitate access to such lists. The inspection of such lists of
24 applicants and placements shall be reviewed periodically by the

25 Department of Public Health and shall be included in the annual
26 survey of long-term care facilities for certification in the medical
27 assistance program; and

28 (f) admit patients in the sequence as they appear on the waiting
29 list as maintained by that facility.

30 Section 72Y. The admission by a long term care facility,
31 subject to section 72X of this chapter, of a privately paying
32 applicant before the admission of an applicant who is eligible for
33 or receiving Medical Assistance under Chapter 118E, Section 18
34 or Chapter 6 Section 131E of the General Laws, and whose name
35 appears earlier on the waiting list than the said private pay
36 applicant shall create a rebuttable presumption of discrimination
37 made unlawful herein. The provisions of subsection (f) of section
38 72X may be waived, upon the request of a facility, when the
39 department determines that an emergency placement is necessary
40 to protect the life, health, safety, or welfare of an applicant.

41 The department in conjunction with EOE A and after public
42 hearing shall promulgate rules and regulations defining
43 extraordinary circumstances, if any, under which the provisions
44 of subsection (f) of section 72X may be waived.

45 Section 72Z. Violation of sections 72X or 72Y shall be
46 punished by a fine of not less than two thousand dollars per
47 occurrence. More than one violation of sections 72X or 72Y by
48 a long-term care facility during a calendar year shall constitute
49 grounds for the revocation of the certification of participation of
50 such facility in the medical assistance program.

1 SECTION 2. The definition of the term "resident" in Section
2 27, Chapter 19A of the General Laws, as inserted by Chapter 544
3 of the Acts of 1983, is hereby further amended by inserting after
4 the words "long term care facility" the words: —

5 and any applicant for admission to a long-term care facility.