SENATE DOCKET, NO. 1283 FILED ON: 1/14/2009

SENATE . . . . . No. 302

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act ensure that nursing home residents are not subject to undue hardship..

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

SECTION 1.

Chapter 118E of the General Laws is hereby amended by adding after Section 9E, the following Section 9F:

Section 9F. Nursing Home Residents' Entitlement to Hardship Relief

(1) The Division shall waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause a nursing home resident undue hardship under the following criteria:

(a) The denial of MassHealth would deprive the nursing home resident of medical care such that his or her health or life would be endangered or he or she would be deprived of food, shelter, clothing or other necessities such that he or she would be at risk of serious deprivation.

(b) All reasonable attempts to retrieve the transferred resources have been exhausted, and the recipient of the transfer is unwilling or unable to return the resources or to provide adequate compensation to the nursing home resident.

(c) The nursing home has notified the nursing home resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her care and services provided by the nursing home.

(d) There is no less costly non-institutional alternative reasonably available to ensure that the nursing home resident attains or maintains his or her highest practical physical, mental, and psychosocial well-being.

(2) In applying the criteria in the preceding subsection (1), the following rules shall apply:

(a) The health or life of a nursing home resident shall be deemed to be endangered under subsection (1)(a) if the resident is at risk of not receiving the nursing home services necessary for him or her to attain or maintain his or her highest practical level of physical, mental, and psychosocial well-being.

(b) All reasonable attempts to retrieve a transferred resource shall be deemed to be exhausted within the meaning of subsection (1)(b) if (i) the nursing home resident or a guardian or conservator for the nursing home resident certifies in writing that reasonable efforts to retrieve the transferred resource have been unsuccessful, or (ii) the nursing home resident, or his or her guardian or conservator, or family member certifies in writing that the sole trustee of a Medicaid qualifying trust is an individual whose whereabouts is unknown or who is incapable of competently fulfilling his or her fiduciary duties and the resident, guardian,

conservator or family member is making a good faith effort to contact the missing trustee or to secure the appointment of a competent successor trustee.

(c) To satisfy the criterion in subsection (1)(c), a nursing home shall not be required to issue a formal notice of discharge to a nursing home resident.

(d) A nursing home resident shall satisfy the criterion in subsection (1)(d) that a less costly non-institutional alternative is reasonably available to the resident by (a) establishing through a written certification of a licensed health care professional that the resident (i) requires one skilled service daily performed by or under the supervision of a registered nurse or licensed therapist, or (ii) the resident's medical or mental condition is such that the resident requires a combination of one skilled nursing service and services necessary for the resident to perform two activities of daily living; (b) obtaining the written certification of a physician that no community discharge plan safely ensures that the resident will attain or maintain his or her highest practical physical, mental, and psychosocial well-being; or (c) obtaining the written certification of a physician that no community provider is willing to provide services that ensure that the resident will attain or maintain his or her highest practical physical, mental, and psychosocial well-being.

(3) An application for hardship relief may be filed by a nursing home resident, his or her legal representative, a family member of the resident, or, with the consent of the resident or his or her personal representative, the nursing home in which the resident resides.

(4) The division shall act on a nursing home resident's request for hardship relief within fourteen days from receipt of the request. A nursing home resident shall be entitled to appeal the denial of a request for hardship relief to the division's board of hearings. While a

request for hardship relief is pending or is the subject of an appeal to the division's board of hearing, the division shall provide for payments for nursing facility services to the extent permitted by federal law in order to hold the bed for the resident at his or her facility.