

**SENATE . . . . . No. 497**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Benjamin B. Downing***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to nursing home facility class.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Benjamin B. Downing*

*Berkshire, Hampshire, and Franklin*

*William Smitty Pignatelli*

*4th Berkshire*

**SENATE . . . . . No. 497**

By Mr. Downing, a petition (accompanied by bill, Senate, No. 497) of Benjamin B. Downing and William Smitty Pignatelli for legislation relative to nursing home facility class. Health Care Financing.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act relative to nursing home facility class.

*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. Notwithstanding any general or special law to the contrary, but  
2 consistent with Sections 255 and 256 of Chapter 149 of the Acts of 2004, the executive office of  
3 health and human services shall, within 45 days of the effective date of this act, apply to the  
4 federal Centers for Medicare and Medicaid Services for a waiver from the provisions of 42  
5 U.S.C. Sec. 1396b(w)(3)(B) for the nursing facility user fee created by section 25 of chapter 118  
6 of the General Laws, to mitigate the impact of the user fee on nursing facilities that: (1) Are  
7 established as not-for-profit entities; (2) have 100 or fewer licensed beds; (3) were established  
8 and licensed in Massachusetts prior to the enactment of the Health Insurance for the Aged Act,  
9 Pub. L. 89-97, Title I, 79 Stat. 290, and the Medicaid Act, Pub. L. 89-97, Title I, Sec. 121(a), 79  
10 Stat. 343, on July 30, 1965; (4) are located in Berkshire County; and (5) are not participating in  
11 the Medicaid program.

12                   SECTION 2. The form of such a waiver application shall meet the  
13 requirements for automatic approval by the federal Centers for Medicare and Medicaid Services

14 pursuant to 42 U.S.C. Sec. 1396b(w)(3)(E), including (1) that the net impact of the nursing  
15 facility user fee with the waiver remains generally redistributive in nature, as provided in 42  
16 C.F.R. Sec. 433.68(e)(1)(ii), and (2) that the amount of the nursing facility user fee with the  
17 waiver remains not directly correlated to payments for items or services, and therefore meets the  
18 hold harmless requirements provided in 42 C.F.R. Sec. 433.68(f).

19                   SECTION 3. In the waiver application, patient days from nursing facilities not  
20 described in the first paragraph above that must be exempted from the nursing facility user fee in  
21 order for the waiver application to meet the requirements for automatic approval by the Centers  
22 for Medicare and Medicaid Services shall be taken from a not-for-profit nursing facility located  
23 in Berkshire County.