

**SENATE . . . . . No. 684**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Ryan C. Fattman*

*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 fiduciary responsibility.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>2/1/2019</i>

**SENATE . . . . . No. 684**

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By Mr. Fattman, a petition (accompanied by bill, Senate, No. 684) of Ryan C. Fattman and Michael J. Soter for legislation relative to fiduciary responsibility. Health Care Financing.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 620 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to fiduciary responsibility.

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

1 Chapter 118E of the General Laws, as appearing in the 2016 Official Edition, is hereby  
2 amended by adding the following section:-

3 Section 78. (a) As used in this section, the following words shall have the following  
4 meanings unless the context clearly requires otherwise:

5 "Asset transfer disqualification", a transfer of assets for less than fair market value by a  
6 Medicaid applicant or recipient as set forth in 42 U.S.C. 1396p(c)(1)(A) and 42 U.S.C.  
7 1396p(c)(1)(B).

8 "Costs of care", all costs of health care and lodging and all related costs, including  
9 transportation, medical and personal care and any other costs, charges and expenses incurred by  
10 the facility in rendering care to the resident.

11 "Department", the department of public health.

12 "Fiduciary", a person to whom power or property has been formally entrusted for the  
13 benefit of another such as an attorney-in-fact, legal guardian, trustee, or representative payee.

14 "Long-term care facility", a facility licensed by the department of public health pursuant  
15 to section 71 of chapter 111 of the General Laws.

16 "Patient liability amount", the amount of income that a resident is liable to contribute  
17 toward the cost of his or her nursing facility care.

18 "Period of asset transfer disqualification", the period of ineligibility for Medicaid required  
19 under 42 U.S.C. 1396p(c)(1)(E).

20 "Person", persons both natural and otherwise, including, without limitation, any  
21 corporation, partnership, limited liability company, trust or other entity.

22 "Resident", any person who inhabits or inhabited a long-term care facility for any period  
23 of time.

24 (b) Except as provided in subsection (c), when an asset transfer made on or after the  
25 effective date of this section results in a final determination of a Medicaid asset transfer  
26 disqualification, the person who received the assets from a resident which resulted in the  
27 Medicaid asset transfer disqualification shall be liable under this section to the long-term care  
28 facility for all costs of care up to the amount transferred to the person. The person shall be liable  
29 at the facility's Medicaid rate for services for the period of asset transfer disqualification.

30 (c) It shall be an affirmative defense in any action instituted under subsection (b), that the  
31 transfer of the asset which resulted in a final determination of a Medicaid asset transfer

32 disqualification was not a disqualifying transfer under 42 U.S.C. 1396p. The court's decision  
33 regarding such affirmative defense shall be made independently of the determination made by  
34 the department. If that affirmative defense is proven, the person shall not be liable under  
35 subsection (b).

36 (d) The facility shall send a written notice of its intent to file the action to any person  
37 whom it intends to name as a defendant in the action at least 45 days before filing an action  
38 pursuant to this section.

39 (e) Any fiduciary or person who has received authority over the income of a resident such  
40 as a person who has been given or otherwise obtained authority over a resident's bank account,  
41 has been named as or has rights as a joint account holder, or otherwise has obtained or received  
42 any control over a resident's bank account or any other income of a resident, shall be liable under  
43 this section to the long-term care facility to the extent that any such person or fiduciary refuses to  
44 pay the patient liability amount due under Medicaid, provided that the person or fiduciary is in  
45 receipt of written notice from the department of the patient liability amount at the time such  
46 income is received by the fiduciary or person, and provided further that the liability of the person  
47 or fiduciary shall be for amounts going forward from the receipt of the notice. The facility shall  
48 send a written notice of its intent to file the action to any person or fiduciary that it intends to  
49 name as a defendant in the action at least 30 days before filing an action pursuant to this  
50 subsection.

51 (f) No judgment obtained in any proceeding under this section shall be acted upon  
52 through execution, levy, or otherwise during the pendency of any actually completed and filed  
53 application for Medicaid. Attachments and trustee process to secure any judgment or potential

54 judgment shall be permitted subject to the discretion of the court to protect facilities from non-  
55 payment or from the failure of the resident, or that resident's fiduciary, to cooperate in obtaining  
56 Medicaid.

57 (g) Nothing contained in this section shall prohibit or otherwise diminish any other  
58 causes of action possessed by any such long-term care facility. The death of the resident shall not  
59 nullify or otherwise affect the liability of the person or persons charged with the cost of care  
60 rendered or the patient liability amount as referenced in this section.

61 (g) A fiduciary under this section shall not be personally liable for the acts or omissions  
62 of the fiduciary's predecessor, if any, solely by reason of his or her role as successor fiduciary.