SENATE DOCKET, NO. 1582 FILED ON: 1/19/2023

SENATE . . . . . No. 745

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:
Ryan C. Fattman	*Worcester and Hampden*

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SENATE . . . . . No. 745

By Mr. Fattman, a petition (accompanied by bill, Senate, No. 745) of Ryan C. Fattman for legislation relative to fiduciary responsibility. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *767* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

Chapter 118E of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following section:-

Section 80. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

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

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

"Department", the department of public health.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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