

HOUSE No. 614

By Mr. Kennedy of Brockton, petition of Thomas P. Kennedy relative to establishing a hardship waiver for Medicaid beneficiaries. Elder Affairs.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT ESTABLISHING A HARDSHIP WAIVER FOR MEDICAID BENEFICIARIES.

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 is hereby amended by adding
2 after Section 9E, the following Section 9F:—

3 Section 9F. Nursing Home Residents’ Entitlement to Hardship
4 Relief.

5 (1) The Division shall waive a period of ineligibility due to a dis-
6 qualifying transfer of resources if ineligibility would cause a nursing
7 home resident undue hardship under the following criteria:—

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

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

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

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

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

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

32 (b) All reasonable attempts to retrieve a transferred resource shall
33 be deemed to be exhausted within the meaning of subsection (1)(b)
34 if (i) the nursing home resident or a guardian or conservator for the
35 nursing home resident certifies in writing that reasonable efforts to
36 retrieve the transferred resource have been unsuccessful, or (ii) the
37 nursing home resident, or his or her guardian or conservator, or
38 family member certifies in writing that the sole trustee of a Medicaid
39 qualifying trust is an individual whose whereabouts is unknown or
40 who is incapable of competently fulfilling his or her fiduciary duties
41 and the resident, guardian, conservator or family member is making
42 a good faith effort to contact the missing trustee or to secure the
43 appointment of a competent successor trustee.

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

47 (d) A nursing home resident shall satisfy the criterion in subsec-
48 tion (1)(d) that a less costly non-institutional alternative is reason-
49 ably available to the resident by (a) establishing through a written
50 certification of a licensed health care professional that the resident
51 (i) requires one skilled service daily performed by or under the
52 supervision of a registered nurse or licensed therapist, or (ii) the resi-
53 dent's medical or mental condition is such that the resident requires
54 a combination of one skilled nursing service and services necessary
55 for the resident to perform two activities of daily living; (b)
56 obtaining the written certification of a physician that no community
57 discharge plan safely ensures that the resident will attain or maintain
58 his or her highest practical physical, mental, and psychosocial well-
59 being; or (c) obtaining the written certification of a physician that no
60 community provider is willing to provide services that ensure that
61 the resident will attain or maintain his or her highest practical phys-
62 ical, mental, and psychosocial well-being.

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

67 (4) The division shall act on a nursing home resident's request for
68 hardship relief within fourteen days from receipt of the request. A
69 nursing home resident shall be entitled to appeal the denial of a
70 request for hardship relief to the division's board of hearings. While
71 a request for hardship relief is pending or is the subject of an appeal
72 to the division's board of hearing, the division shall provide for pay-
73 ments for nursing facility services to the extent permitted by federal
74 law in order to hold the bed for the resident at his or her facility.