

**HOUSE . . . . . No. 1246**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Christine P. Barber***

*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 protecting the homes of seniors and disabled people on MassHealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/5/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/17/2021</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/17/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/17/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/17/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/17/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/18/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/21/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/22/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/23/2021</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/25/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/25/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>3/4/2021</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>3/6/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/5/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>3/16/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>3/16/2021</i>

<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>3/16/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>3/16/2021</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>3/25/2021</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>3/25/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>4/1/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/8/2021</i>

**HOUSE . . . . . No. 1246**

By Ms. Barber of Somerville, a petition (accompanied by bill, House, No. 1246) of Christine P. Barber and others relative to the adjustment or recovery of medical assistance and protecting the homes of seniors and disabled people on MassHealth. Health Care Financing.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act protecting the homes of seniors and disabled people on MassHealth.

*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. Chapter 118E of the General Laws is hereby amended by striking out  
2 section 31 and inserting in place thereof the following section:-

3 Section 31. (a) This subsection shall apply to estates of individuals dying prior to April 1,  
4 1995. There shall be no adjustment or recovery of medical assistance correctly paid except as  
5 follows:

6 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
7 regardless of age, who was an inpatient in a nursing facility or other medical institution when the  
8 individual received such assistance. Recovery of the assistance shall be limited to assistance  
9 provided on or after March 22, 1991.

10 (2) Recovery from Persons Age 65 and Over: From the estate of an individual who was  
11 65 years of age or older when the individual received such assistance. Any recovery may be  
12 made only after the death of the surviving spouse, if any, and only at a time when the individual

13 has no surviving child who is under age 21 or is blind or permanently and totally disabled. The  
14 division shall waive recovery where it would result in undue hardship, as defined by the division  
15 in its regulations.

16 (b) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in  
17 which a petition for admission to probate of a decedent's will or for administration of a  
18 decedent's estate is filed prior to [the effective date of the amendment]. There shall be no  
19 adjustments or recovery of medical assistance correctly paid except as follows:

20 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
21 regardless of age, who was an inpatient in a nursing facility or other medical institution when the  
22 individual received such assistance. Recovery of the assistance shall be limited to assistance  
23 provided on or after March 22, 1991.

24 (2) Recovery from Persons Age 65 and Over: From the estate of an individual who was  
25 65 years of age or older when the individual received the assistance.

26 (3) Recovery from Persons Age 55 and Over for Post-October 1, 1993 Medicaid: From  
27 the estate of an individual who was 55 years of age or older when the individual received such  
28 assistance, where the assistance was for services provided on or after October 1, 1993.

29 Any recovery under this subsection may be made only after the death of the surviving  
30 spouse, if any, and only at a time when the individual has no surviving child who is under age 21  
31 or is blind or permanently and totally disabled. The division shall waive recovery if recovery  
32 would work an undue hardship, as defined by the division in its regulations.

33 (c) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in  
34 which a petition for admission to probate of a decedent's will or for administration of a  
35 decedent's estate is filed on or after [effective date of amendment]. There shall be no adjustments  
36 or recovery of medical assistance correctly paid except as follows:

37 (1) Recovery from the Permanently Institutionalized: From the estate of an individual,  
38 regardless of age, who was an inpatient in a nursing facility or other medical institution within  
39 the meaning of 42 USC 1396p(a)(1)(B)(i) when he or she received such assistance. Recovery of  
40 such assistance shall be limited to assistance provided on or after March 22, 1991.

41 (2) Recovery from Persons Age 55 and Over for Post-October 1, 1993 Medicaid: From  
42 the estate of an individual who was 55 years of age or older when the individual received such  
43 assistance, where such assistance was for services provided on or after October 1, 1993, but only  
44 for medical assistance consisting of nursing facility services, home and community-based  
45 services, and related hospital and prescription drug services for which estate recovery is  
46 mandated by 42 USC 1396p(b)(1)(B)(i) or other federal law.

47 Any recovery under this subsection may be made only after the death of the surviving  
48 spouse, if any, and only at a time when the individual has no surviving child who is under age 21  
49 or is blind or disabled. The division shall not recover for capitated payments made to managed  
50 care entities that exceed the actual cost of medical services received by the decedent.

51 The division shall waive recovery:

52 (i) if such recovery is not cost effective, including when the total gross assets of the  
53 estate, less any claims that have priority over MassHealth, or mortgages or liens on real property,  
54 in a probate estate are \$25,000 or less; or

55 (ii) if such recovery would create an undue hardship. The division shall promulgate  
56 regulations defining undue hardship that shall include, but not be limited to, cases in which:

57 (A) a sale of real property would be required to satisfy a claim against the probate estate;  
58 and the property is occupied as the home of a surviving spouse, child under age 21, child of any  
59 age who is blind or disabled, surviving sibling with a legal interest in the property or a child to  
60 whom the decedent could have transferred the home during his or her lifetime with no transfer of  
61 asset penalty pursuant to 42 USC 1396p(c)(2)(A) or (B); or

62 (B) a sale of real property would be required to satisfy a claim against the probate estate,  
63 and the property is occupied as the home of an individual who has lived in it for at least 1 year  
64 prior to the death of the decedent provided that if at the time of death the decedent was a nursing  
65 facility resident, the individual must have lived in the home for at least 1 year prior to the  
66 decedent's nursing facility admission, has inherited or received a legal or equitable interest in the  
67 property, is not being forced to sell by other devisees or heirs at law and whose income is 400  
68 per cent of the federal poverty level or less at the time of the decedent's death; or

69 (C) a sale of real property would be required to satisfy a claim against the probate estate,  
70 at the time the notice of claim is filed the property is occupied as the home of an individual who  
71 has lived in it for at least 2 consecutive years prior to the decedent becoming institutionalized or  
72 before the decedent's death, and during that time the individual provided a level of care that kept  
73 the decedent from needing to be admitted to a nursing home, and the individual has inherited or  
74 received a legal or equitable interest in the property, and is not being forced to sell by other  
75 devisees or heirs at law; or

76 (D) the gross income of a devisee or heir was 400 per cent of the federal poverty level or  
77 less during the 2 years prior to the date of presentment of the division's claim, in which case, the  
78 division shall waive recovery in an amount equal to the value of the devisee's or heir's interest in  
79 the estate up to a maximum of \$50,000 per qualifying individual; provided, if there are multiple  
80 individuals who qualify for this waiver, the maximum amount waived is \$100,000 per estate; or

81 (E) the sale of a homestead of modest value, as defined by the division consistent with  
82 federal guidelines, would be required to satisfy the claim; or

83 (F) other compelling circumstances in which recovery would create a financial hardship  
84 for one or more devisees or heirs at law whose income is 400 percent of the federal poverty level  
85 or less.

86 (d) For purposes of this section, "estate" shall mean all real and personal property and  
87 other assets includible in the decedent's probate estate under the General Laws, provided that it  
88 shall not include certain property of American Indians that the Secretary has exempted from  
89 Medicaid estate recovery pursuant to 42 USC 1396p(b)(3)(B) or Government reparation  
90 payments to special populations that are exempt from Medicaid estate recovery pursuant to  
91 federal law.

92 (e) There shall be no adjustments or recovery of medical assistance correctly paid from  
93 the estate of an individual who was receiving such assistance pursuant to the CommonHealth  
94 program for disabled adults.

95 (f) For purposes of this section, medical assistance shall not include medical assistance  
96 for medicare cost-sharing or for benefits described in 42 USC 1396a(a)(10)(E) that are exempt  
97 from Medicaid estate recovery.

98 (g) The division is also authorized during an individual's lifetime to recover all assistance  
99 correctly provided on or after April 1, 1995, if property against which the division has a lien or  
100 encumbrance under section 34 is sold. No lien or encumbrance shall be valid against any bona  
101 fide purchaser for value or take priority against any subsequent mortgagee for value unless and  
102 until it is recorded in the registry of deeds where the property lies.

103 Repayment shall not be required under this subsection while any of the following  
104 relatives lawfully resides in the property: (1) a sibling who had been residing in the property for  
105 at least 1 year immediately prior to the individual being admitted to a nursing facility or other  
106 medical institution; or (2) a child who (i) had been residing in the property for at least two years  
107 immediately prior to the parent being admitted to a nursing facility or other medical institution;  
108 (ii) establishes to the satisfaction of the division that the child provided care which permitted the  
109 parent to reside at home during that 2-year period rather than in an institution; and (iii) has  
110 lawfully resided in the property on a continuous basis while the parent has been in the medical  
111 institution.

112 If repayment is not yet required because a relative specified above is still lawfully  
113 residing in the property and the individual wishes to sell the property, the purchaser shall take  
114 possession subject to the lien or the division shall release the lien if the individual agrees to (1)  
115 either set aside sufficient assets to satisfy the lien or give bond to the division with sufficient  
116 sureties and (2) repay the division as soon as the specified relative is no longer lawfully residing  
117 in the property. Notwithstanding the foregoing or any general or special law to the contrary, the  
118 division and the parties to the sale may by agreement enter into an alternative resolution of the  
119 division's lien. This subsection shall not limit the division's ability to recover from the  
120 individual's estate under subsection (a), (b), or (c) or as otherwise provided under any general or



121 special law. The division shall provide a release of any lien where repayment shall not be  
122 required within 60 days of receiving notice of the change in circumstances resulting in  
123 repayments no longer being required.

124 SECTION 2. Said chapter 118E is further amended by striking out section 32 and  
125 inserting in place thereof the following section:-

126 Section 32. (a) Notwithstanding any provision of law to the contrary, a petition for  
127 admission to probate of a decedent's will or for administration of a decedent's estate shall include  
128 a sworn statement that copies of said petition and death certificate have been sent to the division  
129 by certified mail in accordance with sections 3–306(f) and 3–403(f) of chapter 190B. Within 30  
130 days of a request by the division, a personal representative shall complete and send to the  
131 division by certified mail a form prescribed by the division and provide such further information  
132 as the division may require. In the event a petitioner fails to send copies of the petition and death  
133 certificate to the division and the decedent received medical assistance for which the division is  
134 authorized to recover under section 31, any person receiving a distribution of assets from the  
135 decedent's estate shall be liable to the division to the extent of such distribution.

136 (b) The division may present claims against a decedent's estate as follows: (1) within 4  
137 months after approval of the official bond of the personal representative, file a written statement  
138 of the amount claimed with the registry of probate where the petition was filed and deliver or  
139 mail a copy thereof to the personal representative. The claim shall be deemed presented upon the  
140 filing of the claim in the registry of probate; or (2) within 1 year after date of death of the  
141 decedent, commence an action under the provisions of section 9 of chapter 197.

142 (c) When presenting its claim by written statement under subsection (b), the division shall  
143 also notify the personal representative of

144 (1) the circumstances and conditions which must exist for the division to be required to  
145 defer recovery under section 31;

146 (2) the circumstances and conditions which must exist for the division to waive recovery  
147 under its regulations for undue hardship;

148 (3) how to obtain a detailed accounting of the claim;

149 (4) limitations on estate recovery related to the decedent having a long term care policy;

150 (5) the limitation described in subsections (d), (e) and (f) of section 31; and

151 (6) the personal representative's obligation to mail a copy of the division's written  
152 statement to all individuals who may be entitled to deferral or waiver of estate recovery pursuant  
153 to section 31 and of the personal representative's obligation to give the division notice of  
154 circumstances and conditions for deferral or waiver that he or she has reason to believe exist.  
155 The division shall also supply a form that may be used to notify the division of circumstances  
156 and conditions that require deferral or waiver of recovery.

157 (d) If the division presents a claim against the decedent's estate pursuant to subsection (b)  
158 the personal representative shall forthwith send a copy of the written statement by certified mail  
159 of the amount claimed to individuals who may be entitled to deferral or waiver of estate recovery  
160 pursuant to section 31 and the personal representative shall give the division notice of  
161 circumstances and conditions for deferral or waiver that he or she has reason to believe exist.  
162 The personal representative shall have 60 days from the date of presentment or 30 days from the

163 date the agency responds to a request for a detailed accounting, whichever is later, to mail notice  
164 to the division by certified mail of one or more of the following findings: (1) the claim is  
165 disallowed in whole or in part, or (2) circumstances and conditions where the division is required  
166 to defer recovery under section 31 exist, or (3) circumstances and conditions where the division  
167 will waive recovery for undue hardship under its regulations exist. A notice under clause (2) or  
168 (3) shall state the specific circumstances and conditions which exist. The division shall notify the  
169 personal representative what supporting documentation it requires to determine if the  
170 circumstances in clause (2) or (3) exist and shall cooperate with the personal representative in  
171 supplying information in the possession of the agency. The division shall send a written notice to  
172 the personal representative stating whether or not it is satisfied that circumstances and conditions  
173 under clause (2) or (3) exist. If the division denies that said circumstances exist, its notice shall  
174 explain with specificity the reason for the denial and the opportunity for either an administrative  
175 hearing before the MassHealth Board of Hearings or a hearing in an action commenced by the  
176 division pursuant to subsection (f) if no administrative hearing is requested. Any party aggrieved  
177 by a decision of the MassHealth board of hearings may seek a de novo review in any action  
178 commenced by the division pursuant to subsection (f). Failure to mail a notice under clauses (1),  
179 (2), or (3) within the time allowed from presentment shall be deemed an allowance of the claim  
180 for purposes of subsection (g).

181 (e) If the division at any time within the period for presenting claims under subsection (b)  
182 amends the amount due, the personal representative shall have an additional 60 days to mail  
183 notice to the division under clause 1 of subsection (d).

184 (f) If the division receives a disallowance under clause (1) of subsection (d), the division  
185 may commence an action to enforce its claim in a court of competent jurisdiction within 60 days

186 after receipt of said notice of disallowance. If the division receives a notice under clause (2) or  
187 (3) of said subsection (d), with which it disagrees, the division may commence an action in a  
188 court of competent jurisdiction within 60 days after receipt of said notice or within 30 days of a  
189 final decision of the MassHealth board of hearings with which it disagrees, whichever is later. If  
190 the division commences an action to enforce its claim, any and all costs and fees incurred by the  
191 Personal Representative in defense of such claim shall be recognized as costs and expenses  
192 incurred in the administration of the estate and such expenses shall be given priority pursuant to  
193 clause (1) of subsection (a) of section 3-805 of chapter 190B. If the division fails to commence  
194 an action after receiving a notice under clause (2) of said subsection (d), the division shall defer  
195 recovery while the circumstances or conditions specified in said notice continue to exist. If the  
196 division fails to commence an action after receiving a notice under clause (3) of subsection (d),  
197 the division shall waive recovery for undue hardship.

198 (g) Unless otherwise provided in any judgment entered, claims allowed pursuant to this  
199 section shall bear interest at the rate provided under section 6I of chapter 231 commencing 4  
200 months plus 60 days after approval of the official bond of the personal representative.  
201 Notwithstanding the foregoing, if the division fails to commence an action after receipt of a  
202 notice under clause (2) of subsection (d), interest at the rate provided under section 6I of chapter  
203 231 shall not commence until the circumstances or conditions specified in the notice received by  
204 the division under said clause (2) cease to exist. The personal representative shall notify the  
205 division within 30 calendar days of any change in the circumstances or conditions asserted in  
206 said clause (2) notice, and upon request by the division, shall provide updated documentation  
207 verifying that the circumstances or conditions continue to exist. If the division's claim has been  
208 allowed as provided herein and no circumstances and conditions requiring that the division defer

209 recovery under section 31 exist, it may petition the probate court for an order directing the  
210 personal representative to pay the claim to the extent that funds are available or for such further  
211 relief as may be required.

212 (h) Notice of a petition by a personal representative for a license to sell real estate shall  
213 be given to the division in any estate where: (1) the division has filed a written statement of  
214 claim with the registry of probate as provided in subsection (b); or (2) the division has filed with  
215 the registry of probate a notice, as prescribed under subsection (a) of section 9 of chapter 197,  
216 that an action has been commenced.

217 (i) In all cases where:—

218 (1) the division determines it may have a claim against a decedent's estate;

219 (2) a petition for administration of the decedent's estate or for admission to probate of the  
220 decedent's will has not been filed; and

221 (3) more than 1 year has passed from the decedent's date of death, the division is hereby  
222 authorized to designate a public administrator to be appointed and to serve pursuant to chapter  
223 194 subject to the time limitations under chapter 190B. Said designation by the division shall  
224 include a statement of the amount claimed. This provision shall apply to all estates in which no  
225 petition for administration of the decedent's estate or for admission to probate of the decedent's  
226 will has been filed as of the effective date of this section, regardless of the decedent's date of  
227 death. Said public administrator shall have the same rights and duties as the personal  
228 representative and the same 60-day opportunity to send notice to the division

229 (1) that the claim is disallowed in whole or in part; or

230 (2) circumstances and conditions where the division is required to defer recovery under  
231 section 31 exist; or

232 (3) circumstances and conditions where the division will waive recovery for undue  
233 hardship under its regulations exist.

234 (j) If the personal representative wishes to sell or transfer any real property against which  
235 the division has filed a lien or claim not yet enforceable because circumstances or conditions  
236 specified in section 31 continue to exist, the division shall release the lien or claim if the personal  
237 representative agrees to (1) either set aside sufficient assets to satisfy the lien or claim, or to give  
238 bond to the division with sufficient surety or sureties and (2) repay the division as soon as the  
239 circumstances or conditions which resulted in the lien or claim not yet being enforceable no  
240 longer exist. Notwithstanding the foregoing provision or any general or special law to the  
241 contrary, the division and the parties to the sale may by agreement enter into an alternative  
242 resolution of the division's lien or claim.

243 SECTION 3. Said chapter 118E is further amended by inserting after section 34 the  
244 following section:-

245 Section 34A. (a) The division shall give notice of the conditions in which it may seek  
246 estate recovery, including, but not limited to, an explanation of what constitutes an estate, what  
247 services and expenses are subject to recovery, what Medicaid spending or property is exempt  
248 from estate recovery, the relationship between a life-time lien and estate recovery and provisions  
249 for deferral or waiver of estate recovery. The notice shall be in clear and non-technical language  
250 with citation to the applicable law. The notice should also explain how an individual may obtain  
251 an accounting of the current amount of MassHealth spending potentially subject to recovery. The

252 notice must be supplied to individuals potentially subject to estate recovery at the time of  
253 application, at least annually thereafter so long as said individuals are eligible for MassHealth,  
254 and at the time any lien is released.

255 (b) The division shall give an additional notice to any individual who is required to enroll  
256 or given the option to enroll in any Medicaid managed care organization, accountable care  
257 organization, senior care options plan, integrated care organization, prepaid health plan or any  
258 other delivery system in which Medicaid spending takes the form of a fixed monthly premium or  
259 other capitated amount who may be subject to estate recovery. Said additional notice shall be  
260 prior to enrollment in managed care, and shall explain how the amount of MassHealth spending  
261 subject to estate recovery is determined when MassHealth spending is a fixed monthly payment  
262 or capitated amount, and how the member may obtain the amount of said fixed payment or  
263 capitated amount subject to estate recovery.

264 SECTION 4. The executive office shall file a state plan amendment or waiver  
265 application, as may be required, to implement the provisions of this Act.