

**HOUSE . . . . . No. 02086**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Kate Hogan*

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 passage of the accompanying bill:

An Act to establish criteria for MassHealth hardship waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>

# HOUSE . . . . . No. 02086

By Ms. Hogan of Stow, a petition (accompanied by bill, House, No. 2086) of Khan and others for legislation to establish criteria for MassHealth hardship waivers Joint Committee on Health Care Financing.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to establish criteria for MassHealth hardship waivers.

*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 28 of Chapter 118E of the General Laws is hereby amended by inserting at the end
- 2 thereof the following sections:
- 3 In accordance with P.L. 109-171 amending Section 1917(c)(2)(D) of the Social Security Act, the
- 4 division shall establish criteria and procedures for determining whether undue hardship exists as
- 5 a result of the imposition of a period of ineligibility, which shall include written notice to said
- 6 individual that an undue hardship waiver shall be granted and an opportunity to appeal. An
- 7 individual shall have no fewer than 30 days after the date of the final decision including court
- 8 appeals to impose a period of ineligibility to request an undue hardship waiver.
- 9 There shall be a rebuttable presumption that an institutionalized individual is eligible for an
- 10 undue hardship waiver if the individual provides documentation that all of the following criteria
- 11 are met:

12 1) the individual has insufficient available resources (excluding the community spouse resource  
13 allowance) to provide medical care, food, shelter, clothing and other necessities of life such that  
14 the individual would be at risk of serious deprivation or harm;

15 2) the individual has made reasonable attempts to retrieve the transferred resources or receives  
16 adequate compensation. Reasonable attempts shall not include the filing of frivolous lawsuits;

17 3) there is no available least costly alternative to institutional care that would meet the individual's  
18 care needs; and

19 4) the period of ineligibility will not be a mere inconvenience to the applicant but rather will  
20 create a situation that would subject the applicant to risk of serious deprivation. A nursing  
21 facility does not have to express an intent to discharge the individual for nonpayment in order for  
22 a hardship waiver to be granted.

23 The division shall promulgate regulations incorporating these criteria for consideration of an  
24 undue hardship waiver request.