

**HOUSE . . . . . No. 5188**

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**The Commonwealth of Massachusetts**

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*August 10, 2022*

To the Honorable Senate and House of Representatives,

Pursuant to Part the Second, Chapter I, Section I, Article II of the Constitution of the Commonwealth of Massachusetts, I am returning to you unsigned House Bill No. 4792, “An Act to Preserve Special Needs Trusts for Disabled Seniors.”

This bill proposes to amend MassHealth’s enabling statute to require MassHealth to treat a transfer of assets into a special needs trust by an individual over age 65 as a permissible transfer for fair market value, with the result that trust assets would not be countable for determining Medicaid eligibility.

I recognize the importance of special needs trusts as an important tool to support the needs of individuals with disabilities. Under State and Federal law, all assets placed in a special needs trust at least 5 years before a disabled individual turns 65 are noncountable for Medicaid eligibility purposes and available to them for their entire lives, without limitation. Outside of this carefully defined circumstance, however, Federal Medicaid law prohibits the use of special needs trusts as a way to avoid Medicaid eligibility rules that otherwise apply to all individuals age 65 and older.

This bill is designed to create an exception to those eligibility rules, and as such it violates existing Federal Medicaid law as interpreted by the United States Court of Appeals for the First Circuit and explicit written guidance from the Center for Medicare and Medicaid Services (CMS). The Commonwealth’s MassHealth program would be out of compliance with Federal law if this bill were to be enacted, putting Federal financial participation (FFP) at risk.

For these reasons, I am returning House Bill No. 4792 unsigned.

Respectfully submitted,

Charles D. Baker,  
*Governor*