SENATE No. 663

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 to protect MassHealth applicants facing undue hardship.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Harriette L. Chandler	First Worcester	
Kate Hogan	3rd Middlesex	
Angelo J. Puppolo, Jr.	12th Hampden	1/28/2019
Bradford Hill	4th Essex	1/30/2019
Kay Khan	11th Middlesex	1/30/2019
David F. DeCoste	5th Plymouth	1/31/2019
James B. Eldridge	Middlesex and Worcester	1/31/2019
Thomas M. Stanley	9th Middlesex	1/31/2019
Sean Garballey	23rd Middlesex	2/4/2019
James K. Hawkins	2nd Bristol	2/5/2019

SENATE DOCKET, NO. 1222 FILED ON: 1/17/2019

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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 663) of Harriette L. Chandler, Kate Hogan, Angelo J. Puppolo, Jr., Bradford Hill and other members of the General Court for legislation to establish criteria for Masshealth hardship waivers. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 606 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court (2019-2020)

An Act to protect MassHealth applicants facing undue hardship.

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, as appearing in the 2016 Official

2 Edition, is hereby amended by inserting after section 28 the following section:—

3	Section 28A. A nursing facility resident may claim undue hardship in order to eliminate
4	the period of ineligibility. In accordance with P.L. 109-171 amending Section 1917(c)(2)(D) of
5	the Social Security Act, the division shall establish procedures for determining whether undue
6	hardship exists as a result of the imposition of a period of ineligibility, which shall include
7	written notice to said individual that an undue hardship exception exists, a timely process for
8	determining whether an undue hardship waiver shall be granted and an opportunity to appeal an
9	adverse determination. An individual may request an undue hardship waiver within 90 days
10	after the date of the final decision to impose a period of ineligibility, including judicial appeals.

(a) There shall be a rebuttable presumption that an institutionalized individual is eligible
for an undue hardship waiver if the individual provides documentation that all of the following
criteria are met:

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

- 17 2) the individual has made reasonable attempts to retrieve the transferred resources or18 receives adequate compensation;
- 19 3) there is no available less costly alternative to institutional care that would meet the20 individual's care needs; and

4) the period of ineligibility will not be a mere inconvenience to the applicant but rather
will create a situation that would subject the applicant to risk of serious deprivation.

- 23 (b) A nursing facility need not express an intent to discharge the individual for
- 24 nonpayment in order for a hardship waiver to be granted.
- 25 (c) The division shall promulgate regulations incorporating these criteria for

26 consideration of an undue hardship waiver request.