

The Commonwealth of Massachusetts

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**In the Year Two Thousand Twelve**  
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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  
2 end thereof the following sections:

3           Section 29. (a) 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 shall have no fewer than 30 days after the date of the final  
10 decision, including court appeals, to impose a period of ineligibility to request the consideration  
11 of an undue hardship waiver.

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

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

18           (2) the individual has made reasonable attempts to retrieve the transferred resources or  
19 receives adequate compensation;

20           (3) there is no available less costly alternative to institutional care that would meet the  
21 individual's care needs; and

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

24           (b) A nursing facility does not have to express an intent to discharge the individual for  
25 nonpayment in order for a hardship waiver to be granted.

26           (c) The division shall promulgate regulations incorporating these criteria for  
27 consideration of an undue hardship waiver request.