SENATE DOCKET, NO. 119 FILED ON: 1/11/2013

SENATE . . . . . No. 502

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 passage of the accompanying:

An Act to establish criteria for Masshealth hardship waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Harriette L. Chandler	*First Worcester*
Kay Khan	*11th Middlesex*
Gale D. Candaras	*First Hampden and Hampshire*
Cory Atkins	*14th Middlesex*
James J. O'Day	*14th Worcester*
James M. Murphy	*4th Norfolk*
John V. Fernandes	*10th Worcester*
Denise Provost	*27th Middlesex*

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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 502) of Harriette L. Chandler, Kay Khan, Gale D. Candaras, Cory Atkins 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. *490* OF 2011-2012.]

The Commonwealth of Massachusetts

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:

SECTION 1: Section 28 of chapter 118E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end thereof the following sections:

In accordance with P.L. 109-171 amending Section 1917(c)(2)(D) of the Social Security Act, the division shall establish criteria and procedures for determining whether undue hardship exists as a result of the imposition of a period of ineligibility, which shall include written notice to said individual that an undue hardship exception exists, a timely process for determining whether an undue hardship waiver shall be granted and an opportunity to appeal. An individual shall have no fewer than 30 days after the date of the final decision including court appeals to impose a period of ineligibility to request an undue hardship waiver.

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:

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;

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

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

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

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