FILED ON: 10/11/2013

HOUSE . . . . . No. 3705

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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. Chapter 118E of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after section 28 the following section:—

Section 28A. A nursing facility resident may claim undue hardship in order to eliminate the period of ineligibility. In accordance with P.L. 109-171 amending Section 1917(c)(2)(D) of the Social Security Act, the division shall establish 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 adverse determination. An individual may request an undue hardship waiver within 90 days 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:

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;

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

3) there is no available less costly alternative to institutional care that would meet the 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.

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

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