

# SENATE . . . . . No. 2221

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Senate, November 9, 2017 -- Text of Amendment #9 (Senator Cyr) to the Senate Committee Bill furthering health empowerment and affordability by leveraging transformative health care (Senate, No. 2202)

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## The Commonwealth of Massachusetts

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**In the One Hundred and Ninetieth General Court**  
**(2017-2018)**  
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1 by striking out sections 130 and inserting in place thereof the following:-

2 “SECTION 130. Notwithstanding any general or special law to the contrary, the  
3 executive office of health and human services shall apply for a federal waiver to permit passive  
4 enrollment of individuals eligible for Medicare into the MassHealth senior care options program.  
5 The office may apply for a federal waiver to receive Medicaid matching funds for a Medicare  
6 recipient or member of the executive office of elder affairs home care program who is not  
7 otherwise eligible for Medicaid and lacks income and assets to pay for 135 days of skilled  
8 nursing facility care. An individual passively enrolled in the MassHealth senior care options  
9 program shall be provided with notice and the ability to opt-out that is not less than that which is  
10 required under section 132.

11 The executive office of health and human services may engage the technical assistance  
12 and program design expertise of an external evaluator, if available, and share relevant data with  
13 the evaluator in order to implement this section in accordance with rigorous evaluation for  
14 program impact and cost-effectiveness. Any completed evaluation shall be filed with the clerks

15 of the senate and house of representatives, the joint committee on health care financing and the  
16 senate and house committees on ways and means.

17 At the end of each fiscal year, each SCO shall provide to MassHealth an audited  
18 statement of its medical loss ratio for the past year. If a SCO's audited medical loss ratio is below  
19 the minimum as determined by MassHealth, the SCO shall provide additional benefits or  
20 services to its enrollees in the following contract year in an amount that would raise its medical  
21 loss ratio to the minimum level as determined by MassHealth and shall submit a plan to  
22 MassHealth detailing how such benefits or services shall be provided to its plan enrollees. Not  
23 later than September 1, MassHealth shall provide a report to the senate and house committees on  
24 ways and means that provides an overview of the audited statements received and a description  
25 of: (i) any plans submitted by a SCO to reduce overhead; (ii) the percentage of each SCO's  
26 administrative overhead expended on social determinants of health and flexible services for SCO  
27 members within the past year; (iii) the number of each SCO's members voluntarily and  
28 involuntarily disenrolled with the level of acuity and reasons for such disenrollments; and (iv)  
29 the number of each SCO's members who experienced an increase or decrease in payment rate.”;  
30 and

31 by striking out sections 132 and 133 and inserting in place thereof the following 2  
32 sections:-

33 “SECTION 132. (a) The executive office of health and human services may establish  
34 senior care options as a default for MassHealth integrated medical and home care services and  
35 enroll MassHealth-eligible consumers enrolled in the executive office of elder affairs home care

36 program into the MassHealth senior care options program under section 9D of chapter 118E of  
37 the General Laws.

38 (b) A person shall not be enrolled into the SCO program under subsection (a) if the  
39 person is 85 years of age or older, if the person has high acuity and is on the Frail Elder Waiver  
40 or if the person is a recipient of a department of developmental services home and community-  
41 based services waiver.

42 (c) A person shall not be enrolled into the SCO program under subsection (a) unless,  
43 prior to enrollment:

44 (i) the person is provided written notification, which shall include language support and  
45 provide conspicuous notice of the ability to opt-out of enrollment by mail and by telephone or, if  
46 permissible under privacy law, electronic mail, not less than 3 times, 1 of which shall be not less  
47 than 60 days prior to enrollment and 1 of which shall be not less than 30 days prior to  
48 enrollment;

49 (ii) the person is provided information by the senior care options provider about the  
50 details of the plan and its benefits which shall include language support, options to opt out of  
51 enrollment by mail or telephone and, if permissible under privacy law, electronic mail, and  
52 information on independent options counseling;

53 (iii) MassHealth has provided the person with information about options for enrolling in  
54 voluntary programming including Program of All Inclusive Care for the Elderly or PACE plans,  
55 senior care optionor SCO plans, home and community-based services waiver program for frail  
56 elders or any other voluntary, elective benefit to which they are entitled to supplement or replace  
57 their MassHealth benefits;

58 (iv) MassHealth has provided the person with educational materials that shall include, but  
59 not be limited to: (1) a definition of a SCO and how it functions; (2) enrollment eligibility  
60 standards; (3) the location of SCOs; (4) a complete list of their participating providers; (5) the  
61 range of available services; (6) consumer rights under Medicare and Medicaid, as applicable; and  
62 (7) an assistance worksheet for determining health care options and quality of care  
63 measurements;

64 (v) MassHealth and the SCO have conducted a matching process that considers the  
65 person's most important provider in medical or home care; and

66 (vi) MassHealth has determined that a senior care option plan in the person's geographic  
67 area has an adequate network and the capacity to serve the person.

68 (d) Within 30 days after being enrolled into a SCO from the executive office of elder  
69 affairs home care program, the SCO shall provide a member with a culturally-competent,  
70 comprehensive assessment which shall include an in-person opportunity to disenroll.

71 (e) The SCO shall pay for continuity of care from all out-of-network providers in  
72 compliance with federal continuity of care requirements and shall implement an individual and  
73 integrated care plan for the member; provided however, that the individual care plan shall be  
74 approved by the member.

75 (f) The SCO shall fund home care program services if the member so chooses in the care  
76 plan and shall contract with an ASAP unless otherwise prohibited by section 9D of chapter 118E.  
77 MassHealth may permit a risk-sharing relationship between the SCO and the ASAP in which the  
78 2 entities share the financial risk of providing coordinated services to enrollees under a system of  
79 capitated or subcapitated rate payments. Consistent with said section 9D of said chapter 118E,

80 ASAPs under contract with SCOs shall employ geriatric support service coordinators, who shall  
81 be members of the primary care team.

82 (g) (i) a SCO shall conform to the minimum medical loss ratio as established by the  
83 division of medical assistance for its category. At the end of each fiscal year, the SCO shall  
84 provide to the division an audited statement of its medical loss ratio for the past year. If an SCO's  
85 audited medical loss ratio is below the minimum as determined by the division for its category,  
86 the SCO shall provide additional benefits or services to its enrollees in the following contract  
87 year in an amount that would raise its medical loss ratio to the minimum level established by the  
88 division for its category and shall submit a plan to the division detailing how such benefits or  
89 services shall be provided to its plan enrollees.

90 (ii) Not later than October 1, an SCO and an ASAP shall annually issue an information  
91 statement report. The report shall detail and document expenses on overhead or administration,  
92 including the percentage spent for each item and the percentage of overhead or administration  
93 spending that is directly provided to benefit consumers, the actual and percentage of money  
94 spend on social determinants of health, the assesses acuity level of its members as compared to  
95 the previous year and the number of members who have disenrolled, with a reason for  
96 disenrollment and the level of acuity of the person who disenrolls. The report shall be provided  
97 to the clerks of the house of representatives and the senate.

98 (h) A member shall have the right to opt out of the SCO at any time before enrollment or  
99 the right to disenroll at any time after enrollment. Notice of disenrollment may be provided to  
100 the division of medical assistance or the SCO and disenrollment notices received by the division

101 or the SCO by the twentieth day of the month shall be effective on the first day of the following  
102 month.

103 SECTION 133. The executive office of health and human services may support the  
104 development of pilot programs of supportive housing and affordable housing providers, in  
105 coordination with health plans that service individuals eligible for Medicaid, Medicare or both  
106 including, but not limited to, the program for all-inclusive care for the elderly, senior care  
107 options and other managed care organizations and, in consultation with aging services access  
108 points, community partners and other stakeholders, to pilot any of the following: (i) establishing  
109 coordinated care protocols and staffing supports within housing sites that are funded with pooled  
110 resources to provide a critical mass of plan members necessary for care coordination and targeted  
111 investment within the housing site; (ii) creating financing models that include social impact  
112 bonds or other sources; and (iii) establishing care coordination between the housing providers  
113 and health plans.

114 The executive office of health and human services may engage the technical assistance  
115 and program design expertise of an external evaluator, if available, and share relevant data with  
116 the evaluator to implement this section in accordance with a rigorous evaluation of program  
117 impact and cost-effectiveness. Any completed evaluation shall be filed with the clerks of the  
118 senate and house of representatives, the joint committee on health care financing and the senate  
119 and house committees on ways and means.”; and

120 by inserting after section 143 the following 6 sections:-

121 “SECTION 143A. The executive office of health and human services and the secretary  
122 of elder affairs may transfer funds between item 9110-1630 of section 2 of chapter 47 of the acts

123 of 2017 and item 4000-0601 of said section 2 of said chapter 47 for the costs of consumers  
124 enrolled in the home care program who enroll in the MassHealth senior care options program or  
125 for the costs of senior care options enrollees who opt out of senior care options and return to the  
126 home care program; provided, however, that transfers shall account for capitation payments. The  
127 amount transferred to said item 4000-0601 of said section 2 of said chapter 47 shall not exceed  
128 the estimated annual cost of care in the home care program for participating senior care options  
129 enrollees and funds shall not be transferred in any fiscal year if the transfer results in a waiting  
130 list for services provided by said item 9110-1630 of said section 2 of said chapter 47.; and

131 SECTION 143B. Notwithstanding any general or special law to the contrary, the  
132 secretary of health and human services shall study the impact of implementing section 132 and  
133 section 143A. The report shall be conducted in consultation with an advisory group consisting of  
134 representatives from community advisory councils under section 9D of 118E of the General  
135 Laws, and the program of all-inclusive care for the elderly and home care providers and senior  
136 care option providers.

137 The report shall report on the number of MassHealth-eligible home care consumers  
138 enrolled in the senior care options program, the number of consumers planned to be enrolled, the  
139 timeline for the enrollment and the expected capacity of SCOs to accept new enrollees. The  
140 study shall include a review of: (i) methods for expanding the enrollment in home and  
141 community-based long-term care support services, including the senior care options program, the  
142 program of all-inclusive care for the elderly and the home care program; (ii) methods to  
143 maximize the availability of federal financial participation; and (iii) methods to ensure consumer  
144 choice of services, enhance care outcomes and improve the quality of services and consumer  
145 satisfaction measures. The study shall further analyze the impact on ASAP and home care

146 agencies if said sections 132 and 143A were implemented. The analyses shall include a study of  
147 projected finances, caseload and capacity of ASAPs and home care agencies.

148           If the results of the study required in the previous paragraphs determine that  
149 implementation of said sections 132 and 143A are in the best interests of the commonwealth and  
150 consumers, the secretary shall submit an implementation plan to effectuate said sections 132 and  
151 143A to the clerks of the house of representatives and senate and the clerks shall refer the plan to  
152 an appropriate committee. The plan shall detail the results of the study and articulate the reasons  
153 why implementation is in the best interests of the commonwealth and consumers. The plan shall  
154 be designed to minimize disruption to home care agencies. The implementation plan shall  
155 ensure the robust implementation of the protections provided in said sections 132 and 143A,  
156 including prior notice and clear ability to opt out and shall further detail the enrollment process,  
157 the timetable of implementation, the number of enrollees, the amount of funding associated with  
158 those enrollees, fiscal impacts to MassHealth and the executive office of elder affairs in spending  
159 and revenue, the best method to conduct a funding transfer and impacts on consumers.

160           Sections 132 and 143A shall not take effect unless the implementation plan has been  
161 approved by the general court.”;

162           SECTION 143C. Upon the implementation of section 132 or 143A, if they are so  
163 implemented, the secretary of health and human services shall report every 6 months on the  
164 impacts of senior care options as a default for MassHealth integrated medical and home care  
165 services. The report shall include the number and percentage of opt outs from enrollment, the  
166 percentage of enrollees assessed that continue to receive home care services, the amount of



167 transferred funds associated with the enrollment and the amount of federal matching funds  
168 projected to accrue to the senior care options program.

169 The report shall further detail the impacts on home care agencies and ASAPs. The report  
170 shall include a fiscal analysis of the home care agencies and ASAPs, including projected  
171 finances, caseload, and capacity of ASAPs and home care agencies.

172 The report shall be filed with the clerks of the senate and the house of representatives and  
173 the senate and house committees on ways and means.

174 and further by inserting after section X the following section:-

175 SECTION 143D. The executive office of health and human services shall file a report  
176 with the senate and house committees on ways and means not later than March 1, 2018 detailing  
177 the projected fiscal impact, number of enrollees and administrative capacity to implement a buy-  
178 in option for individuals that surpass the income eligibility level to participate in the program for  
179 all-inclusive care for the elderly, or PACE and the senior care options program.;

180 SECTION 143E. The secretary of health and human services shall conduct a study on  
181 the advisability and feasibility of establishing a community choice counseling program that  
182 assists Medicaid-eligible individuals with home and community-based service options.

183 The secretary shall also report on: (i) the applicability of modeling the community choice  
184 counseling program after the Community Choice Counseling program offered by the state of  
185 New Jersey; (ii) opportunities to apply for a federal waiver to maximize federal financial  
186 participation to employ care providers to conduct mandatory preadmissions counseling services  
187 within long-term care facilities; and (iii) a proposed preadmission counseling plan that best

188 enforces preadmissions counseling required under section 9 of chapter 118E of the General laws  
189 which may include a process under which MassHealth may withhold payments to long-term care  
190 facilities if preadmission counseling does not occur for any individual without first receiving  
191 written documentation that the individual has received preadmission counseling on home and  
192 community-based service options pursuant to this section or that the patient has waived their  
193 right to such counseling. The secretary shall file a report of the secretary's findings not later than  
194 January 1, 2019 to the joint committee on elder affairs, the joint committee on health care  
195 financing and the chairs of the house and senate committees on ways and means.

196 SECTION 143F. A person seeking admission to a long-term care facility paid for by  
197 MassHealth shall receive preadmission counseling for long-term care services which shall  
198 include an assessment of community-based service options. A person seeking care in a long-term  
199 care facility on a private-pay basis shall be offered preadmission counseling. The division shall  
200 report annually to the general court the number of individuals who received preadmission  
201 counseling under this section and the number of diversions to the community generated by the  
202 preadmission counseling program.”