# SENATE . . . . . No. 2221

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)

## The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court**
**(2017-2018)**

by striking out sections 130 and inserting in place thereof the following:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by inserting after section 143 the following 6 sections:-

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

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

SECTION 143B. Notwithstanding any general or special law to the contrary, the secretary of health and human services shall study the impact of implementing section 132 and section143A. The report shall be conducted in consultation with an advisory group consisting of representatives from community advisory councils under section 9D of 118E of the General Laws, and the program of all-inclusive care for the elderly and home care providers and senior care option providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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