HOUSE DOCKET, NO. 472 FILED ON: 1/13/2023

HOUSE . . . . . No. 1168

The Commonwealth of Massachusetts

PRESENTED BY:

Christine P. Barber

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 adoption of the accompanying bill:

An Act protecting the homes of seniors and disabled people on MassHealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Christine P. Barber	*34th Middlesex*	*1/13/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/20/2023*
Brian W. Murray	*10th Worcester*	*1/29/2023*
Vanna Howard	*17th Middlesex*	*2/1/2023*
Kevin G. Honan	*17th Suffolk*	*2/3/2023*
Jack Patrick Lewis	*7th Middlesex*	*2/5/2023*
David Paul Linsky	*5th Middlesex*	*2/8/2023*
Tricia Farley-Bouvier	*2nd Berkshire*	*2/9/2023*
Mathew J. Muratore	*1st Plymouth*	*2/10/2023*
Patrick Joseph Kearney	*4th Plymouth*	*2/10/2023*
Jennifer Balinsky Armini	*8th Essex*	*2/12/2023*
Kay Khan	*11th Middlesex*	*2/15/2023*
Jacob R. Oliveira	*Hampden, Hampshire and Worcester*	*2/17/2023*
Kate Lipper-Garabedian	*32nd Middlesex*	*2/22/2023*
Natalie M. Higgins	*4th Worcester*	*2/23/2023*
Samantha Montaño	*15th Suffolk*	*2/25/2023*
Tram T. Nguyen	*18th Essex*	*2/27/2023*
Erika Uyterhoeven	*27th Middlesex*	*3/23/2023*

Jason M. Lewis	*Fifth Middlesex*	*4/6/2023*
Mindy Domb	*3rd Hampshire*	*4/8/2023*
Adrian C. Madaro	*1st Suffolk*	*5/17/2023*

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HOUSE . . . . . No. 1168

By Representative Barber of Somerville, a petition (accompanied by bill, House, No. 1168) of Christine P. Barber and others relative to the adjustment or recovery of medical assistance and protecting the homes of seniors and disabled people on MassHealth. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act protecting the homes of seniors and disabled people on MassHealth.

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 is hereby amended by striking out section 31 and inserting in place thereof the following section:-

Section 31. (a) This subsection shall apply to estates of individuals dying prior to April 1, 1995. There shall be no adjustment or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when the individual received such assistance. Recovery of the assistance shall be limited to assistance provided on or after March 22, 1991.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was 65 years of age or older when the individual received such assistance. Any recovery may be made only after the death of the surviving spouse, if any, and only at a time when the individual

has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery where it would result in undue hardship, as defined by the division in its regulations.

(b) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in which a petition for admission to probate of a decedent's will or for administration of a decedent's estate is filed prior to [the effective date of the amendment]. There shall be no adjustments or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when the individual received such assistance. Recovery of the assistance shall be limited to assistance provided on or after March 22, 1991.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was 65 years of age or older when the individual received the assistance.

(3) Recovery from Persons Age 55 and Over for Post–October 1, 1993 Medicaid: From the estate of an individual who was 55 years of age or older when the individual received such assistance, where the assistance was for services provided on or after October 1, 1993.

Any recovery under this subsection may be made only after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery if recovery would work an undue hardship, as defined by the division in its regulations.

(c) This subsection shall apply to estates of individuals dying on or after April 1, 1995 in which a petition for admission to probate of a decedent's will or for administration of a decedent's estate is filed on or after [effective date of amendment]. There shall be no adjustments or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution within the meaning of 42 USC 1396p(a)(1)(B)(i) when he or she received such assistance. Recovery of such assistance shall be limited to assistance provided on or after March 22, 1991.

(2) Recovery from Persons Age 55 and Over for Post–October 1, 1993 Medicaid: From the estate of an individual who was 55 years of age or older when the individual received such assistance, where such assistance was for services provided on or after October 1, 1993, but only for medical assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services for which estate recovery is mandated by 42 USC 1396p(b)(1)(B)(i) or other federal law.

Any recovery under this subsection may be made only after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under age 21 or is blind or disabled. The division shall not recover for capitated payments made to managed care entities that exceed the actual cost of medical services received by the decedent.

The division shall waive recovery:

(i) if such recovery is not cost effective, including when the total gross assets of the estate, less any claims that have priority over MassHealth, or mortgages or liens on real property, in a probate estate are $25,000 or less; or

(ii) if such recovery would create an undue hardship. The division shall promulgate regulations defining undue hardship that shall include, but not be limited to, cases in which:

(A) a sale of real property would be required to satisfy a claim against the probate estate; and the property is occupied as the home of a surviving spouse, child under age 21, child of any age who is blind or disabled, surviving sibling with a legal interest in the property or a child to whom the decedent could have transferred the home during his or her lifetime with no transfer of asset penalty pursuant to 42 USC 1396p(c)(2)(A) or (B); or

(B) a sale of real property would be required to satisfy a claim against the probate estate, and the property is occupied as the home of an individual who has lived in it for at least 1 year prior to the death of the decedent provided that if at the time of death the decedent was a nursing facility resident, the individual must have lived in the home for at least 1 year prior to the decedent's nursing facility admission, has inherited or received a legal or equitable interest in the property, is not being forced to sell by other devisees or heirs at law and whose income is 400 per cent of the federal poverty level or less at the time of the decedent's death; or

(C) a sale of real property would be required to satisfy a claim against the probate estate, at the time the notice of claim is filed the property is occupied as the home of an individual who has lived in it for at least 2 consecutive years prior to the decedent becoming institutionalized or before the decedent's death, and during that time the individual provided a level of care that kept the decedent from needing to be admitted to a nursing home, and the individual has inherited or received a legal or equitable interest in the property, and is not being forced to sell by other devisees or heirs at law; or

(D) the gross income of a devisee or heir was 400 per cent of the federal poverty level or less during the 2 years prior to the date of presentment of the division's claim, in which case, the division shall waive recovery in an amount equal to the value of the devisee's or heir's interest in the estate up to a maximum of $50,000 per qualifying individual; provided, if there are multiple individuals who qualify for this waiver, the maximum amount waived is $100,000 per estate; or

(E) the sale of a homestead of modest value, as defined by the division consistent with federal guidelines, would be required to satisfy the claim; or

(F) other compelling circumstances in which recovery would create a financial hardship for one or more devisees or heirs at law whose income is 400 percent of the federal poverty level or less.

(d) For purposes of this section, "estate" shall mean all real and personal property and other assets includible in the decedent's probate estate under the General Laws, provided that it shall not include certain property of American Indians that the Secretary has exempted from Medicaid estate recovery pursuant to 42 USC 1396p(b)(3)(B) or Government reparation payments to special populations that are exempt from Medicaid estate recovery pursuant to federal law.

(e) There shall be no adjustments or recovery of medical assistance correctly paid from the estate of an individual who was receiving such assistance pursuant to the CommonHealth program for disabled adults or for payment of personal care attendant services.

(f) For purposes of this section, medical assistance shall not include medical assistance for Medicare cost-sharing or for benefits described in 42 USC 1396a(a)(10)(E) that are exempt from Medicaid estate recovery.

(g) The division is also authorized during an individual's lifetime to recover all assistance correctly provided on or after April 1, 1995, if property against which the division has a lien or encumbrance under section 34 is sold. No lien or encumbrance shall be valid against any bona fide purchaser for value or take priority against any subsequent mortgagee for value unless and until it is recorded in the registry of deeds where the property lies.

Repayment shall not be required under this subsection while any of the following relatives lawfully resides in the property: (1) a sibling who had been residing in the property for at least 1 year immediately prior to the individual being admitted to a nursing facility or other medical institution; or (2) a child who (i) had been residing in the property for at least two years immediately prior to the parent being admitted to a nursing facility or other medical institution; (ii) establishes to the satisfaction of the division that the child provided care which permitted the parent to reside at home during that 2-year period rather than in an institution; and (iii) has lawfully resided in the property on a continuous basis while the parent has been in the medical institution.

If repayment is not yet required because a relative specified above is still lawfully residing in the property and the individual wishes to sell the property, the purchaser shall take possession subject to the lien or the division shall release the lien if the individual agrees to (1) either set aside sufficient assets to satisfy the lien or give bond to the division with sufficient sureties and (2) repay the division as soon as the specified relative is no longer lawfully residing in the property. Notwithstanding the foregoing or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien. This subsection shall not limit the division's ability to recover from the individual's estate under subsection (a), (b), or (c) or as otherwise provided under any general or

special law. The division shall provide a release of any lien where repayment shall not be required within 60 days of receiving notice of the change in circumstances resulting in repayments no longer being required.

SECTION 2. Said chapter 118E is further amended by striking out section 32 and inserting in place thereof the following section:-

Section 32. (a) Notwithstanding any provision of law to the contrary, a petition for admission to probate of a decedent's will or for administration of a decedent's estate shall include a sworn statement that copies of said petition and death certificate have been sent to the division by certified mail in accordance with sections 3–306(f) and 3–403(f) of chapter 190B. Within 30 days of a request by the division, a personal representative shall complete and send to the division by certified mail a form prescribed by the division and provide such further information as the division may require. In the event a petitioner fails to send copies of the petition and death certificate to the division and the decedent received medical assistance for which the division is authorized to recover under section 31, any person receiving a distribution of assets from the decedent's estate shall be liable to the division to the extent of such distribution.

(b) The division may present claims against a decedent's estate as follows: (1) within 4 months after approval of the official bond of the personal representative, file a written statement of the amount claimed with the registry of probate where the petition was filed and deliver or mail a copy thereof to the personal representative. The claim shall be deemed presented upon the filing of the claim in the registry of probate; or (2) within 1 year after date of death of the decedent, commence an action under the provisions of section 9 of chapter 197.

(c) When presenting its claim by written statement under subsection (b), the division shall also notify the personal representative of

(1) the circumstances and conditions which must exist for the division to be required to defer recovery under section 31;

(2) the circumstances and conditions which must exist for the division to waive recovery under its regulations for undue hardship;

(3) how to obtain a detailed accounting of the claim;

(4) limitations on estate recovery related to the decedent having a long term care policy;

(5) the limitation described in subsections (d), (e) and (f) of section 31; and

(6) the personal representative's obligation to mail a copy of the division's written statement to all individuals who may be entitled to deferral or waiver of estate recovery pursuant to section 31 and of the personal representative's obligation to give the division notice of circumstances and conditions for deferral or waiver that he or she has reason to believe exist. The division shall also supply a form that may be used to notify the division of circumstances and conditions that require deferral or waiver of recovery.

(d) If the division presents a claim against the decedent's estate pursuant to subsection (b) the personal representative shall forthwith send a copy of the written statement by certified mail of the amount claimed to individuals who may be entitled to deferral or waiver of estate recovery pursuant to section 31 and the personal representative shall give the division notice of circumstances and conditions for deferral or waiver that he or she has reason to believe exist. The personal representative shall have 60 days from the date of presentment or 30 days from the

date the agency responds to a request for a detailed accounting, whichever is later, to mail notice to the division by certified mail of one or more of the following findings: (1) the claim is disallowed in whole or in part, or (2) circumstances and conditions where the division is required to defer recovery under section 31 exist, or (3) circumstances and conditions where the division will waive recovery for undue hardship under its regulations exist. A notice under clause (2) or (3) shall state the specific circumstances and conditions which exist. The division shall notify the personal representative what supporting documentation it requires to determine if the circumstances in clause (2) or (3) exist and shall cooperate with the personal representative in supplying information in the possession of the agency. The division shall send a written notice to the personal representative stating whether or not it is satisfied that circumstances and conditions under clause (2) or (3) exist. If the division denies that said circumstances exist, its notice shall explain with specificity the reason for the denial and the opportunity for either an administrative hearing before the MassHealth Board of Hearings or a hearing in an action commenced by the division pursuant to subsection (f) if no administrative hearing is requested. Any party aggrieved by a decision of the MassHealth board of hearings may seek a de novo review in any action commenced by the division pursuant to subsection (f). Failure to mail a notice under clauses (1), (2), or (3) within the time allowed from presentment shall be deemed an allowance of the claim for purposes of subsection (g).

(e) If the division at any time within the period for presenting claims under subsection (b) amends the amount due, the personal representative shall have an additional 60 days to mail notice to the division under clause 1 of subsection (d).

(f) If the division receives a disallowance under clause (1) of subsection (d), the division may commence an action to enforce its claim in a court of competent jurisdiction within 60 days

after receipt of said notice of disallowance. If the division receives a notice under clause (2) or (3) of said subsection (d), with which it disagrees, the division may commence an action in a court of competent jurisdiction within 60 days after receipt of said notice or within 30 days of a final decision of the MassHealth board of hearings with which it disagrees, whichever is later. If the division commences an action to enforce its claim, any and all costs and fees incurred by the Personal Representative in defense of such claim shall be recognized as costs and expenses incurred in the administration of the estate and such expenses shall be given priority pursuant to clause (1) of subsection (a) of section 3-805 of chapter 190B. If the division fails to commence an action after receiving a notice under clause (2) of said subsection (d), the division shall defer recovery while the circumstances or conditions specified in said notice continue to exist. If the division fails to commence an action after receiving a notice under clause (3) of subsection (d), the division shall waive recovery for undue hardship.

(g) Unless otherwise provided in any judgment entered, claims allowed pursuant to this section shall bear interest at the rate provided under section 6I of chapter 231 commencing 4 months plus 60 days after approval of the official bond of the personal representative. Notwithstanding the foregoing, if the division fails to commence an action after receipt of a notice under clause (2) of subsection (d), interest at the rate provided under section 6I of chapter 231 shall not commence until the circumstances or conditions specified in the notice received by the division under said clause (2) cease to exist. The personal representative shall notify the division within 30 calendar days of any change in the circumstances or conditions asserted in said clause (2) notice, and upon request by the division, shall provide updated documentation verifying that the circumstances or conditions continue to exist. If the division's claim has been allowed as provided herein and no circumstances and conditions requiring that the division defer

recovery under section 31 exist, it may petition the probate court for an order directing the personal representative to pay the claim to the extent that funds are available or for such further relief as may be required.

(h) Notice of a petition by a personal representative for a license to sell real estate shall be given to the division in any estate where: (1) the division has filed a written statement of claim with the registry of probate as provided in subsection (b); or (2) the division has filed with the registry of probate a notice, as prescribed under subsection (a) of section 9 of chapter 197, that an action has been commenced.

(i) In all cases where:—

(1) the division determines it may have a claim against a decedent's estate;

(2) a petition for administration of the decedent's estate or for admission to probate of the decedent's will has not been filed; and

(3) more than 1 year has passed from the decedent's date of death, the division is hereby authorized to designate a public administrator to be appointed and to serve pursuant to chapter 194 subject to the time limitations under chapter 190B. Said designation by the division shall include a statement of the amount claimed. This provision shall apply to all estates in which no petition for administration of the decedent's estate or for admission to probate of the decedent's will has been filed as of the effective date of this section, regardless of the decedent's date of death. Said public administrator shall have the same rights and duties as the personal representative and the same 60-day opportunity to send notice to the division

(1) that the claim is disallowed in whole or in part; or

(2) circumstances and conditions where the division is required to defer recovery under section 31 exist; or

(3) circumstances and conditions where the division will waive recovery for undue hardship under its regulations exist.

(j) If the personal representative wishes to sell or transfer any real property against which the division has filed a lien or claim not yet enforceable because circumstances or conditions specified in section 31 continue to exist, the division shall release the lien or claim if the personal representative agrees to (1) either set aside sufficient assets to satisfy the lien or claim, or to give bond to the division with sufficient surety or sureties and (2) repay the division as soon as the circumstances or conditions which resulted in the lien or claim not yet being enforceable no longer exist. Notwithstanding the foregoing provision or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien or claim.

SECTION 3. Said chapter 118E is further amended by inserting after section 34 the following section:-

Section 34A. (a) The division shall give notice of the conditions in which it may seek estate recovery, including, but not limited to, an explanation of what constitutes an estate, what services and expenses are subject to recovery, what Medicaid spending or property is exempt from estate recovery, the relationship between a life-time lien and estate recovery and provisions for deferral or waiver of estate recovery. The notice shall be in clear and non-technical language with citation to the applicable law. The notice should also explain how an individual may obtain an accounting of the current amount of MassHealth spending potentially subject to recovery. The

notice must be supplied to individuals potentially subject to estate recovery at the time of application, at least annually thereafter so long as said individuals are eligible for MassHealth, and at the time any lien is released.

(b) The division shall give an additional notice to any individual who is required to enroll or given the option to enroll in any Medicaid managed care organization, accountable care organization, senior care options plan, integrated care organization, prepaid health plan or any other delivery system in which Medicaid spending takes the form of a fixed monthly premium or other capitated amount who may be subject to estate recovery. Said additional notice shall be prior to enrollment in managed care, and shall explain how the amount of MassHealth spending subject to estate recovery is determined when MassHealth spending is a fixed monthly payment or capitated amount, and how the member may obtain the amount of said fixed payment or capitated amount subject to estate recovery.

SECTION 4. The executive office shall file a state plan amendment or waiver application, as may be required, to implement the provisions of this Act.