

SENATE No. 762

The Commonwealth of Massachusetts

PRESENTED BY:

Robyn K. Kennedy

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 to protect MassHealth applicants facing undue hardship.

PETITION OF:

NAME:

Robyn K. Kennedy

DISTRICT/ADDRESS:

First Worcester

SENATE No. 762

By Ms. Kennedy, a petition (accompanied by bill, Senate, No. 762) of Robyn K. Kennedy for legislation to establish criteria for Masshealth hardship waivers. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 741 OF 2021-2022.]

The Commonwealth of Massachusetts

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

An Act to protect MassHealth applicants facing undue hardship.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 118E of the General Laws, as appearing in the 2018 Official
2 Edition, is hereby amended by inserting after section 28 the following section:—

3 Section 28A.

4 (a) A nursing facility resident may claim undue hardship in order to eliminate the period
5 of ineligibility. In accordance with P.L. 109-171 amending Section 1917(c)(2)(D) of the Social
6 Security Act, the division shall establish procedures for determining whether undue hardship
7 exists as a result of the imposition of a period of ineligibility, which shall include written notice
8 to said individual that an undue hardship exception exists, a timely process for determining
9 whether an undue hardship waiver shall be granted and an opportunity to appeal an adverse

10 determination. An individual may request an undue hardship waiver within 90 days after the
11 date of the final decision to impose a period of ineligibility, including judicial appeals.

12 (b) There shall be a rebuttable presumption that an institutionalized individual is eligible
13 for an undue hardship waiver if the individual provides documentation that all of the following
14 criteria are met:

15 1) the individual has insufficient available resources, excluding the community spouse
16 resource allowance, to provide medical care, food, shelter, clothing and other necessities of life
17 such that the individual would be at risk of serious deprivation or harm;

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

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

22 4) the period of ineligibility will not be a mere inconvenience to the applicant but rather
23 will create a situation that would subject the applicant to risk of serious deprivation.

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

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