



COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

February 18, 2022

Assistant Secretary Amanda Cassel Kraft
Office of MassHealth
One Ashburton Place, 11th Floor
Boston, MA 02108

RE: Financial Eligibility for Individuals in Need of Home and Community-Based Services

Dear Assistant Secretary Cassel Kraft,

Thank you for your leadership of MassHealth and its associated programs. We are writing to respectfully urge your quick action on new CMS (Center for Medicaid and Medicare Services) guidance that will provide significant relief to seniors and people with disabilities who are nursing home eligible but would like to access community-based care under the Home and Community Based Services Waiver (HCBS). We are aware that CMS sent a letter dated December 7, 2021 to the state Medicaid Directors (CMS Guidance SMD# 21-004, State Flexibilities to Determine Financial Eligibility for Individuals in Need of Home and Community-Based Services), giving states greater flexibility in applying income and resource eligibility standards to make HCBS services more accessible.

We respectfully request that MassHealth apply to CMS to allow the agency to implement the following:

- 1) A disregard of income over 300% of the federal benefit rate for HCBS applicants aged 65 and older and those with disabilities;
- 2) A disregard of the assets (and income) of the spouse of the HCBS applicant, which was MassHealth policy prior to 2017, at which time CMS required the imposition of a spousal asset limit to comply with ACA spousal impoverishment protections. CMS has clarified on Page 8 of its 12/7/21 Guidance that states like Massachusetts that previously disregarded resources can now return to a disregard of spousal resources.

Both of these improvements are permitted in the new guidance from CMS and the quicker Massachusetts applies for these changes, the sooner seniors and individuals with disabilities with incomes slightly over the threshold can start receiving care at home rather than being forced into nursing home care. CMS explains in the letter that "(T)his option presents states with a critical tool to use in their efforts to "rebalance" their Medicaid coverage of long-term services and supports (LTSS) from institutional to community-based care." We agree.

As you know, currently, seniors and people with disabilities, who are nursing home eligible and who apply for HCBS waiver programs, must meet an income limit of 300% of the federal benefit rate (\$2,523 in 2022). If an applicant is over that limit, they can still qualify for the program after they spend their income down to \$542 a month, by meeting a deductible. This deductible is calculated for 6 months at a time requiring the applicant to spend down the difference between \$542 and the income level multiplied by 6 months before they can get HCBS services at home. For instance, if the applicant has \$2524, just \$1 over the threshold, in order to be on the program they have to spend almost \$12,000 first before receiving services ($\$2524 - \$542 = \$1982 \times 6 = \$11,892$), and again each six month period thereafter.

According to the December 2021 guidance from CMS, states are now being given greater flexibility in calculating income and resources, thereby eliminating the barriers to community based care facing individuals who are slightly over the income level:

“This new option permits states to adopt higher effective income and resource eligibility standards for people who need HCBS, either for all such individuals or for a particular cohort of such individuals. The option affords states with broad discretion in selecting the cohorts of individuals needing HCBS for whom the state will apply higher effective income or resource standards.”

Living in Massachusetts requires much more than \$542 a month to meet living expenses such as homeowners' insurance, rent, mortgage payments, utilities, and food. As a result, many applicants are forced to make the unfortunate decision to leave their homes and enter a nursing home which is paid for by MassHealth. With the new guidance from CMS, disregarding the income over the 300% federal benefit rate eliminates the spend down payment or deductible which is a significant barrier to community based care, allowing nursing home eligible individuals the choice to stay in their communities and receive services in their home.

The other area of guidance provided in the CMS letter addresses the issue of spousal assets. Before the ACA spousal impoverishment provisions were implemented in Massachusetts in January 2017, MassHealth did not count the assets of a spouse of an applicant for HCBS services. Allowing a spouse to keep assets was a way to avoid nursing home placement and make sure the community spouse could continue to live independently in the community. The ACA required states to allow spouses to keep a community spouse resource allowance, in an effort to ensure that spouses were not impoverished. Although this was a very positive change for spouses in other states, in Massachusetts it put a limit on the asset amount the spouse could keep where there had been no limit before. CMS acknowledges the negative impact these ACA provisions had on community spouses in some states and in this new guidance allows those states to return to a pre-ACA policy:

“CMS is aware that a few states preferred the pre-ACA method of effectively permitting a couple to keep all resources when one spouse needs 1915(c) waiver services, but that options for accomplishing this have generally been unavailable, with both the ACA's spousal impoverishment provision being in effect and there being no exceptions to the comparability mandate in a state's use of 1902(r)(2)-based disregards. Now, however,

the construction rule permits the targeting of resource (and income) disregards at married medically needy individuals who are eligible for 1915(c) (or other HCBS) services, such that states may ultimately permit such couples to keep all resources.”

This new guidance allows MassHealth to return to the policy in place before the ACA, allowing spouses to keep their assets. This policy also goes a long way in facilitating community-based care as it makes HCBS services accessible to seniors without the concern of impoverishing their spouse.

Given the stress on our nursing homes, the benefits of aging in the community, and the cost of living for seniors in Massachusetts, we respectfully request MassHealth work with CMS to implement these changes. Thank you for your work and your consideration.

Sincerely,

Jo Comerford
State Senator
*Hampshire, Franklin,
Worcester district*

Susannah Whipps
State Representative
2nd Franklin district

Anne Gobi
State Senator
*Worcester, Hampden,
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Jim O' Day
State Representative
14th Worcester district

Adam Hinds
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State Representative
3rd Berkshire district

Natalie Higgins
State Representative
4th Worcester district

Alan Silvia
State Representative
7th Bristol district

Patricia Jehlen
State Senator
Second Middlesex district

Linda Dean Campbell
State Representative
15th Essex district

Antonio Cabral
State Representative
13th Bristol district

Vanna Howard
State Representative
17th Middlesex district

Michelle Ciccolo
State Representative
15th Middlesex district

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State Senator
*First Suffolk and Middlesex
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4th Barnstable district

Mindy Domb
State Representative
3rd Hampshire district

Thomas Stanley
State Representative
9th Middlesex district

Brian Murray
State Representative
10th Worcester district

Christine Barber
State Representative
34th Middlesex district

Colleen Garry
State Representative
36th Middlesex district

Ruth Balsler
State Representative
12th Middlesex district

Steve Owens
State Representative
29th Middlesex district

Steve Ultrino
State Representative
33rd Middlesex district

Tram Nguyen
State Representative
18th Essex district

Adam Scanlon
State Representative
14th Bristol district

John Barrett
State Representative
1st Berkshire district

Michael Kushmerek
State Representative
3rd Worcester district

John Cronin
State Senator
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Mike Connolly
State Representative
26th Middlesex district

Natalie Blais
State Representative
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State Representative
11th Middlesex district

Meghan Kilcoyne
State Representative
12th Worcester district

Nika Elugardo
State Representative
15th Suffolk district

Tami Gouveia
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14th Middlesex district

Carol Doherty
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Christina Minicucci
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14th Essex district

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17th Suffolk district

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David Robertson
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David Rogers
State Representative
24th Middlesex district

Adam Gomez
State Senator
Hampden District

Michael Brady
State Senator
Second Plymouth and Bristol district

Paul Donato
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35th Middlesex district

Lindsay Sabadosa
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1st Hampshire district

Edward Philips
State Representative
8th Norfolk district

Tackey Chan
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Patricia Duffy
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Mark Cusack
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Timothy Whelan
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Brian Ashe
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2nd Hampden district

Joan Meschino
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Brendan Crighton
State Senator
Third Essex district

Cindy Friedman
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Fourth Middlesex district

Alice Peisch
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14th Norfolk district

Carmine Gentile
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13th Middlesex district

Michael Finn
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Peter Capano
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11th Essex district

Patrick Kearney
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4th Plymouth district

John Keenan
State Senator
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Mike Rush
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Joseph McKenna
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18th Worcester district

Walter Timilty
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John Rogers
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Sally Kerans
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Kate Lipper-Garabedian
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Jessica Giannino
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