*To sign-on to this letter, please email* [*vpulos@mlri.org*](mailto:vpulos@mlri.org) *by tomorrow Thursday, May 27 at 5 pm with the full name of your organization if your organization is signing-on or, for individuals, with your name and title or affiliation. The letter will go out Friday. Thanks!*

May 28, 2021

Marylou Sudders, Secretary of Health and Human Services

Daniel Tsai, Assistant Secretary for MassHealth and Medicaid

RE: Including more non-citizens in the expansion of HCBS under Section 9817 of the ARP

Dear Secretary Sudders and Assistant Secretary Tsai,

The undersigned health care provider and advocacy organizations and individuals urge EOHHS to take advantage of additional funding available under Section 9817 of the American Rescue Plan Act to begin to address the serious gap in home and community based services (HCBS) for certain non-citizen residents of the Commonwealth. We appreciate that EOHHS issued a Request for Information regarding optimal uses of Section 9817 funds to which many of the undersigned organizations responded. However, it was only on May 13, 2021 with the release of written CMS guidance to State Medicaid Directors that CMS made clear that state spending for enhanced HCBS pursuant to Section 9817 was not limited to Medicaid reimbursed services and created an opportunity to address one more critical need in the HCBS system. We urge EOHHS to take advantage of this opportunity to invest at least a portion of the substantial amount of new resources available to the state towards more equitable provision of HCBS for noncitizens not yet eligible for full-scope Medicaid (MassHealth Standard) but on the path to becoming eligible.

The Problem

A recent news story profiled the plight of one non-citizen who, absent HCBS, could no longer be cared for at home, and spent the last three years in a hospital bed with no safe options for discharge as her health and functional abilities declined. **Hundreds Of Immigrants Who Need Long-Term Care Get Stuck In Hospitals Because Of MassHealth Limits,** [https://www.wbur.org/commonhealth/2021/05/19/immigrants-hospitals-long-term-care-masshealth](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.wbur.org%2fcommonhealth%2f2021%2f05%2f19%2fimmigrants-hospitals-long-term-care-masshealth&c=E,1,ZZJCq_pjyktkH9k9RBBsioLmqG4WOm007ozIKftZcmWBwllCzUJbJ3OJgYAvohPnFI4WSN6VVlQJDRv5M46sjPpZOQcJbBGzC1DK0Z9zdOko-_iOZ7xOS64,&typo=1&ancr_add=1) This is just one example of a problem that has faced immigrant families, health care providers and policy makers since a 1996 change in federal law restricted the scope of lawfully present immigrants who are eligible to obtain MassHealth Standard. Since then, Massachusetts has provided basic health care coverage to lawfully present low-income elderly and disabled immigrants through state-funded MassHealth Family Assistance. State-funded coverage includes some types of HCBS such as Home Health Agency services, and short-term nursing facility stays but excludes most of the home and community based state plan services or HCBS waiver services that enable individuals to avoid long term institutional care. As a result, those requiring additional supports to remain at home may end up in hospitals long after they are ready for discharge to a more appropriate setting. Now, the State has new resources available to help address this critical gap in services.

The Opportunity

Section 9817 offers a large infusion of enhanced federal matching funds conditioned on participating States using state funds equivalent to the amount of added federal revenue to implement or supplement the implementation of one or more activities to enhance, expand, or strengthen HCBS under the Medicaid program. In its May 13, 20221 Guidance CMS stated:

* We note that states are not limited to using state funds equivalent to the amount of the increased FMAP for services that are otherwise covered in Medicaid; however, FFP is only available for covered services. Please also note that, regardless of whether a state intends to claim FFP, the state should follow the reporting requirements described below under Required Reporting on Activities to Enhance, Expand, or Strengthen HCBS under the Medicaid Program for approval of the activity under section 9817 of the ARP. (CMS Letter p. 5, emphasis added)

Increasing access to state-funded HCBS for non-citizens not yet eligible for full-scope Medicaid is an activity that may enhance, expand or strengthen HCBS under the Medicaid program, in the following way for example:

* Increased state-funded HCBS may be used to provide bridge funding for those non-citizens who will be eligible for Medicaid HCBS such as low-income lawful permanent residents within the 5 year waiting period for MassHealth Standard, as well as asylum applicants, or pre-1996 entrants with pending legalization proceedings who will not be subject to the 5 year bar when their pending application for status is granted.
* Such bridge funding will strengthen the Medicaid HCBS system by enabling these individuals to receive the services they need to remain at home and avoid hospital or other facility-based care or to return home with necessary supports after a hospitalization until such time as they qualify for Medicaid HCBS. Otherwise, such individuals, like the immigrant profiled in the recent news story, are more likely to be placed in a nursing home when they later do qualify for MassHealth Standard.
* A pilot program operating at least through March 31, 2024 would not only benefit the individuals, families, and health care providers directly affected, it would supply valuable information about the extent of the problem, the effectiveness of bridge funding and potential long term policies that will continue and expand HCBS to all residents of the Commonwealth who need such services.

Thank you for considering this additional recommendation for uses of Section 9817 funds. For more information about the contents of this letter, please contact Victoria Pulos, [vpulos@mlri.org](mailto:vpulos@mlri.org) 617-357-0700 Ext 318.

This letter is endorsed by the following organizations and individuals:

Organizations *(Full name of Org)*

Health Law Advocates

Massachusetts Law Reform Institute

Individuals *(Name & Title or Affiliation if not signing on behalf of Organization)*