

April 23, 2021

Daniel Tsai, Assistant Secretary for MassHealth  
Executive Office of Health and Human Services  
One Ashburton Place, 11th Floor  
Boston, MA 02108

Submitted by email to [1115-Comments@Mass.gov](mailto:1115-Comments@Mass.gov)

Re: MassHealth Section 1115 Amendment Comments

Dear Assistant Secretary Tsai:

Thank you for the opportunity to submit comments on MassHealth's proposed Section 1115 waiver amendment. These comments are submitted by 16 Massachusetts health advocacy and provider organizations.

MassHealth's Section 1115 waiver amendment demonstrates its commitment to ensuring that Massachusetts residents are able to access critical health services both during and after the pandemic. We support all the requests contained in MassHealth's waiver amendment, and recommend adding one more: the reinstatement of three month retroactive coverage.

### **Medicare Savings Plans**

We support MassHealth's request to waive the asset test for applicants of the Medicare Savings Program (MSP, also known as "MassHealth Buy-In") with household income up to 165% FPL. This waiver would bring MassHealth into compliance with state law. In 2019, Massachusetts passed through a budget provision an expansion of income and asset eligibility for MSP, which went into effect January 1, 2020. MSP helps low-income older adults and people with disabilities on Medicare by paying their Medicare premiums and out-of-pocket costs. Massachusetts' MSP eligibility expansion increased the income limitations by 30% FPL, raising the highest income eligibility limit to 165% FPL. Waiving the asset test for MSP applicants with household income up to 165% FPL will enable Commonwealth members and MassHealth Standard members who were not subject to an asset test to participate in the MSP expansion.

MassHealth's request seeks to further expand MSP eligibility by making it possible for MassHealth Standard members who are eligible through the State Plan to also be eligible for MSP benefits that would pay their Medicare Part B premiums.

We strongly supported Massachusetts' MSP expansion, and we support this waiver request. It will significantly reduce Medicare costs for tens of thousands of Medicare beneficiaries, and promote much-needed economic security for low-income older adults and people with disabilities.

## **Postpartum Eligibility Extension**

We applaud MassHealth for acting quickly to extend postpartum eligibility for full Medicaid coverage from 60 days to 12 months. Although the American Rescue Plan Act (ARPA) created a state option for this extension to go into effect April 1, 2022, MassHealth has demonstrated its strong commitment to maternal health by requesting authority to implement this extension *this year*, and requesting that it be available to people regardless of their immigration status.

The maternal mortality rate has been steadily rising in the U.S. for decades.<sup>1</sup> Further, communities of color are disproportionately impacted by maternal mortality: the rate of pregnancy-related deaths for Black and Indigenous people is 3-5x higher than for non-Hispanic white people.<sup>2</sup> A majority of pregnancy-related deaths are preventable, and a significant percentage occur between 60 days and 12 months postpartum. MassHealth's request to extend postpartum eligibility to 12 months for all eligible people regardless of immigration status is an important step in addressing the maternal health crisis.

## **Expansion of the BH-JI Project**

We applaud MassHealth's plan to expand services for the justice involved population. The proposed expansion of Massachusetts' Behavior Health Supports for Individuals who are Justice-Involved ("BH-JI") program would provide much-needed community supports tailored to address the particularized needs of individuals re-entering society.

As MassHealth acknowledges, the first few months after release and re-entry into the community is a challenging transition, fraught with significant health risks and health-related social needs. MassHealth further acknowledges the racial disparities in health and in the criminal justice system, making this program of community supports a necessary step towards race equity and justice. We applaud MassHealth's focus on the re-entry population and agree that providing particularized community supports during their transition into society will improve their health and stability and increase their likelihood of a successful transition.

## **Authority to Provide Clinic Services Outside of Clinic Locations**

Ensuring access to behavioral health services has been a longstanding challenge across the country and in Massachusetts. Mental Health America's report on the State of Mental Health in America reported that in 2017 and 2018, 19% of U.S. adults were experiencing a mental illness. The report also found that approximately 50% of Massachusetts residents who experienced a mental illness did not receive treatment, and approximately 22% of Massachusetts residents who experienced a mental illness reported that they even when tried to seek treatment, they were unable to access it.<sup>3</sup> The COVID-19 pandemic has exacerbated an already dire behavioral health

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<sup>1</sup> Manatt Health, *Medicaid's Crucial Role in Combating the Maternal Mortality and Morbidity Crisis*, March 2020.

<sup>2</sup> Centers for Disease Control and Prevention, *Press Release: Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths*, September, 2019. Available at: <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html>

<sup>3</sup> Mental Health America, *2021 The State of Mental Health in America*, pages 12, 24-25. Available at: <https://www.mamh.org/assets/files/2021-State-of-Mental-Health-in-America.pdf>

crisis. The CDC reported just a few months into the pandemic that in June, 2020, 40% of U.S. adults reported struggling with mental health or substance use.<sup>4</sup> Unfortunately, though not surprisingly, the CDC found that communities of color are experiencing the highest rise in pandemic-related behavioral health complications, as they have suffered disproportionate hardship caused by the pandemic.<sup>5</sup>

Recognizing the need for change, MassHealth's request for authority to provide clinic services outside of clinic locations is part of its long-term plan to reform behavioral health services in Massachusetts. MassHealth provides outpatient behavioral health services as clinic-based services. Expanding the availability of these services to non-clinic settings, such as delivery via telehealth, at a person's home, or at a mobile community site, will help fulfill EOHHS' promise to provide behavioral health services in a community-focused way, which reduces some of the barriers to accessing necessary care. We support this as a critical step towards addressing the longstanding behavioral health crisis, which predates and has been exacerbated by the pandemic, and which disproportionately impacts communities of color.

### **Hospital at Home Program**

For many years there has been a growing movement, recently accelerated by the COVID-19 pandemic, to increase the availability of health services and supports in people's homes. As part of this movement, both Mass General Brigham and Atrius Health have operated "hospital at home" programs in recent years, offering medically necessary acute inpatient hospital services in patients' homes. In 2019, Mass General Brigham physicians conducted a study of the home hospital model of care, and found that it significantly lowered the cost of care and improved patient outcomes with 70% lower readmission rates.<sup>6</sup>

In response to the COVID-19 pandemic, CMS authorized the provision of hospital at home services for the duration of the public health emergency. Seeing the success of hospital at home programs in Massachusetts, MassHealth now seeks to extend these services beyond the public health emergency. We support this request. The need for and benefits of in-home hospital care predates and will outlast the pandemic.

### **Three Month Retroactive Coverage**

While we applaud MassHealth for the steps it has taken to improve eligibility and access to critical health services in its Section 1115 waiver amendment, there is one thing we'd like to add: reinstatement of three month retroactive coverage. The original 1997 MassHealth Section 1115 demonstration and each renewal since then has included a waiver of the three calendar months of retroactive eligibility that federal law requires states to make available to applicants. 42 USC

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<sup>4</sup> Centers for Disease Control and Prevention, *Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic*, August 14, 2020. Available at: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>

<sup>5</sup> Centers for Disease Control and Prevention, *Racial and Ethnic Disparities in the Prevalence of Stress and Worry, Mental Health Conditions, and Increased Substance Use Among Adults During the COVID-19 Pandemic*, February, 2021. Available at: [https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a3.htm?s\\_cid=mm7005a3\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a3.htm?s_cid=mm7005a3_w)

<sup>6</sup> Levine, David; Ouchi, Kei; Blanchfield, Bonnie; Diamond, Keren; Licurse, Adam; Pu, Charles; Schnipper, Jeffrey, *Hospital-Level Care at Home for Acutely Ill Adults: a Pilot Randomized Controlled Trial*, *Journal of General Internal Medicine*, February, 2018. Available at: <https://link.springer.com/article/10.1007/s11606-018-4307-z>

§1396(a)(34). As a result, MassHealth provides 3 month retroactive coverage for members 65 years old and over, and only 10 days retroactive coverage for members under 65. However, in response to the COVID-19 public health emergency, MassHealth temporarily reinstated three month retroactive coverage for those under age 65. This temporary reinstatement will end once the national public health emergency ends, which may be as early as January, 2022. While we also recommend that MassHealth seek to restore three month retroactive coverage in its Section 1115 waiver renewal, that renewal will not go into effect until July 1, 2022. To close this potential 6 month gap, we recommend that MassHealth include restoration of 3 month retroactive coverage in its Section 1115 waiver amendment request.

Full retroactive eligibility strongly fosters the purposes of the Medicaid Act, the Affordable Care Act, and Massachusetts health reform by reducing the number of months that a household is uninsured. It reduces the burden of medical debt suffered by the poor. The existence of medical debt often deters patients from seeking follow-up care, and contributes to a cascade of financial problems that adversely affect health. Retroactive coverage also fairly compensates safety net providers that provide care to patients uninsured at the time of their visit, and accommodates the practical barriers that may interfere with the ability of individuals dealing with many other pressing problems or limitations that delay completion of an application.

MassHealth's temporary reinstatement of three month retroactive coverage during the COVID-19 public health emergency has proven to be an important protection. Here are two examples, one from a hospital-based Certified Application Counselor (CAC) and one from Health Law Advocates:

Patient was admitted to the hospital for substance use treatment. Patient and hospital staff believed they still had private coverage through their parent because it ran as active coverage. Patient later learned (well after the 10-day retro period had passed) that the policy had been terminated at the time of their admission, and the insurance company was just slow in updating their enrollment records. This resulted in the patient receiving a bill for \$4,000 for the cost of their admission. The patient ended up being MassHealth eligible, and was able to have the admission and bill covered, only because of the three month retro flexibility allowed during the COVID pandemic.

Client had a 23-day MassHealth coverage gap and incurred \$2,575 in debt to a hospital for emergency services without realizing that she was uninsured. By the time she realized she was uninsured and re-enrolled in MassHealth, the 10-day retroactive period did not cover the dates of service. After MassHealth implemented the three month retroactive coverage policy for the duration of the Public Health Emergency, HLA helped this client obtain three month retroactive coverage that fully covered the debt.

Retroactive coverage serves a valuable purpose and should be available to Medicaid members under age 65 in Massachusetts just as it is in almost all other states.

Thank you for the opportunity to submit these comments. If you have further questions, please contact Kate Symmonds of Massachusetts Law Reform Institute at [ksymmonds@mlri.org](mailto:ksymmonds@mlri.org) or 617-357-0700 ext. 349.

Yours truly,

Kate Symmonds  
Health Law Attorney  
Massachusetts Law Reform Institute

These comments are also submitted by the following Massachusetts organizations:

Advocacy for Access of Berkshire Medical Center  
Boston Center for Independent Living  
The Center for Health Law and Policy Innovation of Harvard Law School  
The Central West Justice Center  
Community Research Initiative  
The Disability Law Center  
Disability Policy Consortium  
Greater Boston Legal Services  
Health Care For All  
Health Law Advocates  
The Justice Center of Southeast Massachusetts  
Massachusetts Immigrant and Refugee Advocacy Coalition  
Massachusetts League of Community Health Centers  
MassADAPT  
MetroWest Legal Services