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Senator Patricia D. Jehlen  
State House, Room 513  
Boston, MA 02133

Representative Alice K. Wolf,  
State House, Room 167  
Boston, MA 02133

Dear Chairwoman Jehlen and Chairwoman Wolf,

When we met last month, we promised to take a closer look at House Bill 536 and Senate Bill 59, both titled An Act to Assist Families Care for Elders. These bills would require that MassHealth allow individuals to give assets to caregivers, including family members, in exchange for personal services to be provided at fair market value, and these assets would be excluded as countable resources for establishing MassHealth eligibility. At our meeting, Daryl Villaruz from Representative Kahn's office and Tom Brophy from Senator Montigny's office outlined the intent of the bill sponsors, and since then Daryl has provided us with laws or regulations in five states that have established personal services contract exclusions.

From the information Daryl provided, it is clear that each of these five states maintains much tighter restrictions on these contracts than would H 536 / S 59. For example:

Appropriate rate of reimbursement: House Bill 536 and Senate Bill 59 require that "payment for services is commensurate with a reasonable wage scale, based on the fair market value of the actual job performed and the qualifications of the caregiver." We were told during the meeting that fair market value was meant to be in the \$10 - \$20 hourly range. However, if the caregiver is a nurse providing nursing services, a lawyer providing legal services, or a plumber providing home maintenance services, the language would seem to require paying much higher market rates for these services. Other states place strict limits on reimbursement rates. Several states require that rates be commensurate with rates of services paid to unlicensed persons. Vermont limits reimbursement rates to \$10 per hour. Kansas limits amounts paid to either rates paid to similarly-situated unlicensed individuals or federal minimum wage.

Administrative burden: House Bill 536 and Senate Bill 59 contain no provisions that might limit the administrative burden of collecting, examining, and verifying the legitimacy and accuracy of these personal services contracts. In particular, it will be very difficult to verify that contracts are valid, that fair market value has been paid, and that

future services promised for lump sum payments are actually provided. New York and New Hampshire place the entire burden of documenting personal contract exclusions on the member. New York expressly presumes that all resources were transferred for the purpose of establishing eligibility for Medicaid and requires the member to supply convincing evidence to the contrary.

Advance payments for services: House Bill 536 and Senate Bill 59 allow excluding "lump sum payments for services to be provided in the future." Four of the five states require that services be rendered before payments are made. The fifth state, New York, has strict requirements for documenting receipt of services. By allowing payments before services are provided and not providing a viable method (such as New York's) to recoup excess exclusions, these bills leave an open door for individuals to exclude resources incorrectly and excessively.

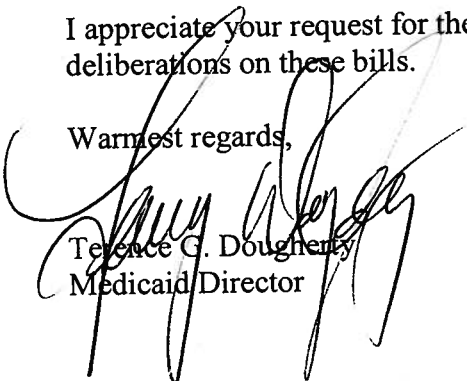
Other limits on personal services contracts: House Bill 536 and Senate Bill 59 contain no other limits on personal services contracts and do not define what constitutes a contract. In contrast, Maine only permits exclusion of services pursuant to such contracts if "at the time of the receipt of the services, the service [was] recommended in writing...by the applicant's physician as necessary to prevent the transfer...to residential care or nursing facility care." Vermont has an overall limit on such asset transfers of \$30,000. Most of these five states specify that individuals have the right to terminate personal service contracts at any time. House Bill 536 and Senate Bill 59 do not specify whether individuals could terminate these personal services contracts; individuals who pay an advance lump sum and later elect to terminate the contract may have trouble recovering their funds.

Of course, even if these bills were re-written to match the most restrictive language in these various states and to correct the "self-dealing" problem we discussed during our meeting, they would still have significant cost implications for the MassHealth program. The fiscal impact of House Bill 536 and Senate Bill 59 is enormous. We estimate current estate recovery collections would decrease by \$54 million to \$164 million per year. The new resource exclusions would allow other persons to become newly-eligible; we do not currently have an estimate for this additional cost. We also estimate this legislation would necessitate approximately \$2 million in annual administrative expenses.

As we discussed, the current budget environment makes it very difficult to advocate any costly program changes. While we appreciate the intent of the legislation to provide compensation to family caregivers for the important services they provide, we cannot support this legislation at this time.

I appreciate your request for these comments, and I hope you find them helpful in your deliberations on these bills.

Warmest regards,



Terence G. Dougherty  
Medicaid Director