



## **Massachusetts FY2018 Budget Ushers In New Requirement of Licensure For Home Health Agencies in the State**

*Hinckley Allen Health Care*

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In July of 2017, Massachusetts Governor Baker signed the FY2018 budget, which includes changes to the state's public health landscape. One of them is a new state law requiring all home health agencies operating in Massachusetts to hold a license issued by the state's Department of Public Health (DPH).

The specified penalties for violating the licensure requirements are significant and far-reaching. The DPH is authorized to impose a fine of up to \$10,000 on any person or entity who despite lacking a license granted by the DPH, advertises, announces, establishes, maintains, or "is concerned" in establishing or maintaining a home health agency, with each day of noncompliance constituting a separate offense.

The home health agency sector historically has been subject to limited regulatory oversight by the state. Certification standards were limited to providers participating in Medicare or MassHealth. Recently revised Medicare rules for beneficiaries receiving home health agency services require those agencies to employ qualified staff, abide by enumerated patient rights, and observe other consumer protections. Similarly, the MassHealth Provider Manual sets forth eligibility criteria for home health agencies that seek to participate in the state's Medicaid program, such as agreeing to periodic inspections by MassHealth and meeting certain MassHealth member care standards.

Implementing licensure requirements for home health agencies is an initiative of the Baker administration and is likely a response to certain instances of fraud and substandard care within the Commonwealth's home health agency landscape. A [2016 MassHealth Audit](#) revealed \$22.9 million in improper billing among nine home health agencies and nine adult foster care agencies in the state.<sup>[1]</sup> Auditors found that the offending agencies kept

insufficient records of care and provided unauthorized services to MassHealth members. In 2017, the Massachusetts Attorney General's Office brought charges against the owners of a home health agency for overbilling and falsely billing the Medicaid program approximately \$2.7 million<sup>[2]</sup> and obtained a settlement of \$14 million from a national home care agency operating in Massachusetts, for overbilling and receiving overpayments from MassHealth.<sup>[3]</sup>

To date, the DPH has not issued draft licensure regulations. Although the substance of the licensing requirements remains to be seen, the need to comply in order to avoid substantial penalties is clear.

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***Part one of a multi-part series discussing the anticipated Massachusetts home health agency licensing regulations and providing background on the underlying public policy driving this state initiative.***

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[1]MassHealth Audit Finds \$22.9 Million in Improper Billing by Home Health and Adult Foster Care Programs, Mass.gov (2016), <http://www.mass.gov/eohhs/gov/newsroom/masshealth/masshealth-audit-finds-22-9-million-improper-billing.html> (last visited Mar 1, 2018).

[2]Owner of Home Health Agency Arrested for \$2.7 Million MassHealth False Billing Scheme, Mass.gov (2017), <https://www.mass.gov/news/owner-of-home-health-agency-arrested-for-27-million-masshealth-false-billing-scheme> (last visited Mar 1, 2018).

[3]AG Secures More Than \$14 Million From Home Health Agency, Mass.gov (2017), <https://www.mass.gov/news/ag-secures-more-than-14-million-from-home-health-agency> (last visited Mar 1, 2018).

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