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## **Attorney General's Advisory:** **Economic Impact Payments and Long-Term Care Residents**

The Attorney General's Office (AGO) issues this advisory to notify long-term care facilities, residents in such facilities, and family members of such residents about their rights and responsibilities with respect to economic impact payments made under the Consolidated Appropriations Act, 2021.

Earlier this year, the AGO received reports of allegations that some long-term care facilities were taking economic impact payments made to their residents under the CARES Act. The AGO issues this advisory to help avoid confusion about the status of economic impact payments under the Consolidated Appropriations Act, 2021.

Economic impact payments made pursuant to Consolidated Appropriations Act, 2021 are, much like they were under the CARES Act,<sup>1</sup> a tax credit.<sup>2</sup> Tax credits do not count as "resources" for federal benefit programs, including MassHealth.<sup>3</sup> Because stimulus payments are not counted as "resources" for federal benefit programs, receiving a stimulus payment does not change a resident's monthly payment to the nursing facility (often called a "patient pay amount" or "share of cost"). Accordingly, nursing home residents are entitled to receive the full value of their economic impact payment for their own use.<sup>4</sup>

Under federal tax law, "[N]otwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds." 26 U.S.C § 6409.

Moreover, "[M]assHealth members have the right to manage their own financial affairs and the nursing facility must not require residents to deposit their personal funds with the facility." 130 C.M.R. § 456.601. Refusing to give residents or their families access to their stimulus checks,

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<sup>1</sup> Coronavirus Aid, Relief, and Economic Security Act, S. 3548, 116<sup>th</sup> Cong. (2020)

<sup>2</sup> Consolidated Appropriations Act, 2021, H.R. 133, 116<sup>th</sup> Cong. (2020).

<sup>3</sup><https://www.consumer.ftc.gov/blog/2020/05/did-nursing-home-or-assisted-living-facility-take-your-stimulus-check>

<sup>4</sup> See <https://www.cms.gov/newsroom/press-releases/nursing-home-residents-right-retain-federal-economic-incentive-payments> ("[CMS] is aware of allegations that some nursing homes are seizing residents economic impact payments . . . authorized under the CARES Act. This practice is prohibited . . .").

requiring residents to deposit their checks into their facility account, or dispersing their checks incrementally constitutes a breach of the MassHealth provider contract and such practices are plain violations of 130 C.M.R. § 456.601.

A facility's seizure of a resident's economic impact payment could constitute misappropriation of the resident's property, which would be a violation of federal and state regulations governing long-term care facilities. *See* 42 C.F.R. § 483.12 (defining misappropriation of resident's property as "the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent."); *see also* 105 CMR 155.003 (same).

To report a concern, please contact the Medicaid Fraud Division of the Attorney General's Office, which has statutory authority to prosecute abuse, neglect, and misappropriation of funds of residents in long-term care facilities, at 617-963-2360. To report a complaint about a nursing facility, please contact the Department of Public Health's Complaint Line at (800) 462-5540.

Dated: January 8, 2021