



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued June 28, 2021

Office of Medicaid (MassHealth)—Review of Estate Recovery

For the period July 1, 2016 through December 31, 2018





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Making government work better

June 28, 2021

Ms. Marylou Sudders, Secretary
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor
Boston, MA 02108

Dear Secretary Sudders:

I am pleased to provide this performance audit of MassHealth. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2016 through December 31, 2018. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to MassHealth for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: Daniel Tsai, Assistant Secretary and Director, Office of Medicaid
Alda Rego, Assistant Secretary for Administration and Finance, Executive Office of Health and Human Services
David Greco, Director of Program Integrity, Office of Medicaid
Andrew Vargas-Vila, Deputy Compliance Director, Executive Office of Health and Human Services
Joan Senatore, Director of Compliance, Office of Medicaid
Amanda Sachs, Executive Assistant to Secretary Sudders

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LIST OF ABBREVIATIONS

CHCF	Center for Health Care Financing
CMR	Code of Massachusetts Regulations
ERU	Estate Recovery Unit
MMIS	Medicaid Management Information System
OSA	Office of the State Auditor
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982

EXECUTIVE SUMMARY

The Office of the State Auditor (OSA) receives an annual appropriation for the operation of a Medicaid Audit Unit to help prevent and identify fraud, waste, and abuse in the Commonwealth's Medicaid program. This program, known as MassHealth, is administered under Chapter 118E of the Massachusetts General Laws by the Executive Office of Health and Human Services, through the Division of Medical Assistance. Medicaid is a joint federal-state program created by Congress in 1965 as Title XIX of the Social Security Act. At the federal level, the Centers for Medicare & Medicaid Services, within the United States Department of Health and Human Services, administer the Medicare program and work with state governments to administer state Medicaid programs.

OSA has conducted a performance audit of MassHealth claims for estate recovery for the period July 1, 2016 through December 31, 2018. During this period, MassHealth recovered \$96,618,866 for Medicaid expenses paid by 3,440 estates. The average estate recovery was approximately \$28,087. The purpose of this audit was to determine whether MassHealth ensures that estate recovery does not create undue financial hardships for low- and middle-income families.

The audit was conducted as part of OSA's ongoing independent statutory oversight of the state's Medicaid program. As with any government program, public confidence is essential to this program's success and continued support.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 9	MassHealth's estate recovery may cause some families to incur undue financial hardship.
Recommendations Page 10	<ol style="list-style-type: none">1. MassHealth should establish a cost-effectiveness threshold to prevent undue financial hardship for members' survivors.2. MassHealth should better promote its undue-hardship waiver process for members' survivors.

Post-Audit Action

By the end of our audit fieldwork, MassHealth had put in place the following estate recovery policy reforms:

- expanded criteria for members' heirs to qualify for undue-hardship waivers
- an expanded number of low-income individuals and families eligible for waivers
- new waivers, permanent immediately upon qualification
- two new waivers: the Care Provided Hardship Waiver and the Income-Based Hardship Waiver.

OVERVIEW OF AUDITED ENTITY

Under Chapter 118E of the Massachusetts General Laws, the Executive Office of Health and Human Services, through the Division of Medical Assistance, administers the state's Medicaid program, known as MassHealth. MassHealth provides access to healthcare for approximately 1.9 million low- and moderate-income children, families, seniors, and people with disabilities annually. In fiscal year 2018, MassHealth paid healthcare providers more than \$15 billion, of which approximately 50% was funded by the Commonwealth. Medicaid expenditures represented approximately 39% of the Commonwealth's total fiscal year 2018 budget of approximately \$40 billion.

Estate Recovery

According to Section 515.011(A)(2) of Title 130 of the Code of Massachusetts Regulations (CMR), an estate "includes all real and personal property or other assets in the member's probate estate." MassHealth recovers funds by filing claims in probate court against deceased members' estates for Medicaid expenses paid on their behalf. This process, estate recovery, is used to supplement funds available for medical assistance programs and limit the tax burden on citizens of the Commonwealth caused by rising medical costs. Funds recouped through estate recovery are returned to state and federal medical programs to help provide assistance to those in need. There are two types of estate recovery cases: voluntary cases, which have assets less than or equal to \$25,000 and do not include real estate because the decedents did not have any real estate in their names, and non-voluntary cases, which have assets greater than \$25,000 or include real estate.

MassHealth contracts with the Center for Health Care Financing (CHCF) to maintain an Estate Recovery Unit (ERU). CHCF is a unit within Commonwealth Medicine, a consulting division of the University of Massachusetts Medical School. CHCF's role is to identify deceased MassHealth members, monitor probate filings, assert recovery claims, identify estate assets, and recover the cost of all MassHealth benefits from estates.

According to 130 CMR 515.011(1),

Recovery is limited to payment for all services provided

*(a) while the member was 65 years of age or older, except on or after October 1, 1993,
while the member was 55 years of age or older; and*

(b) on or after March 22, 1991, while the member, regardless of age, was institutionalized, and the MassHealth agency determined that the member could not reasonably be expected to return home.

Recovery takes place only after the deaths of both the recipient and the surviving spouse, if any.

ERU records cases in the Sohema case management tracking system. This system tracks assets and recovery of MassHealth expenses from the estates of deceased former members. Cases are created when ERU receives copies of probate petitions and death certificates from estate representatives, as required by Section 32(a) of Chapter 118E of the General Laws. After creating a case, ERU obtains the related medical billing history and then tracks the case to file a claim against the estate in probate court. Once a personal representative is appointed for the deceased member's estate, the claim amount is finalized. Claims must be filed within four months after a personal representative is appointed or, according to Section 32(i)(2) of Chapter 118E of the General Laws, a public administrator is appointed (within one year after the date of death if a personal representative is not appointed in that time). If the estate does not respond to the claim within 60 days of ERU's presentment to the estate, it becomes allowed as a matter of law. However, within those 60 days, the personal representative may request an undue-hardship waiver, deferral, or exception, as discussed below.

Undue-Hardship Waiver

MassHealth may waive estate recovery if it determines that satisfaction of the claim would cause an undue hardship on the member's survivors. According to 130 CMR 501.013(D), "An undue hardship does not exist solely because recovery will prevent any heir from receiving an anticipated inheritance." For an undue-hardship waiver to be granted, all four of the following conditions must be met:

1. the survivor has continuously lived in the real property for at least one year before the member was eligible for MassHealth and will continue to live there
2. the survivor has inherited or received an interest in the real property from the member's estate
3. the survivor is not being forced to sell the real property by other heirs
4. when MassHealth first presented its claim for recovery against the estate, the gross annual income of the family group was less than or equal to 133% of the federal poverty income level for the family size.

During our audit period, the undue-hardship waiver was conditional for two years from the date MassHealth mailed notice that the waiver requirements had been met. If, at the end of two years, all

the conditions for a waiver were still met (including the income standards) and the real property had not been sold or transferred, the waiver became permanent. If, at any time during the two years, the conditions were no longer met (including the income standards), or the real property was sold or transferred, or the survivor did not use the real property as a primary residence, the claim could be payable in full.

Deferral

According to 130 CMR 515.011(C),

Recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is younger than 21 years old, or a child of any age who is blind or permanently and totally disabled.

In addition, Section 31(d) of Chapter 118E of the General Laws allows estate recovery to be deferred when certain relatives, such as siblings or caretakers who are a member's adult children, lawfully reside in real property that is part of the estate. For example, a person who has provided necessary care that allowed his/her parent to live at home before being admitted to a nursing facility or other medical institution, lives in the parent's real property, and has lawfully and continuously lived there while the parent has been in a nursing facility or other medical institution is eligible for a deferral.

Exception

According to 130 CMR 515.011(B)(1),

No recovery for nursing facility or other long-term-care services may be made from the estate of any person who meets the following requirements.

- (a) The member was institutionalized; and*
- (b) The member notified the MassHealth agency that he or she had no intent of returning home; and*
- (c) On the date of admission to the long-term-care institution, the member had long-term-care insurance.*

Resolution of Claims

Resolution of an allowed claim is determined by an analysis of the estate's probate assets and allowable expenses. Both assets and expenses must be recorded and documented in Sohema. Under Section 3-805 of Chapter 190B of the General Laws, MassHealth obtains recovery from the balance of estate assets

after other expenses (such as administrative costs, reasonable funeral expenses, debts, and federal and state taxes) have been paid. MassHealth closes cases after recovery. If no recovery is made in a case, MassHealth closes the case after documenting that either expenses exceeded the value of the assets or no recoverable benefits had been paid.

Estate Recovery Governance

Estate recovery is governed by a combination of federal and state laws and regulations. According to Section 1396p(b)(1) of Title 42 of the United States Code, “the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan.” The federal Omnibus Budget Reconciliation Act of 1993 requires all states to seek reimbursement of (at a minimum) long-term-care costs paid for members from all real property and assets that pass from their estates to their survivors under state probate law. At the state level, Section 31(b)(3) of Chapter 118E of the General Laws and 130 CMR 515.011 require MassHealth to recover all Medicaid costs for medical assistance.

The federal Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) allows TEFRA liens, or pre-death liens, also referred to as living liens. Under 130 CMR 515.012, living liens are placed on any real property in which a member who is receiving long-term or chronic care in a nursing facility or other medical institution has a legal interest (for example, being the sole owner of the real property, owning it jointly with another, or holding a life estate¹ in it). A living lien on a real property gives MassHealth authority to recover Medicaid payments that have been made if the real property is sold. Federal law does not allow a living lien to be recorded for real property if it is inhabited by a MassHealth member’s spouse, child under 21, child of any age who is blind or has a disability, or sibling who co-owns the property and has lived there for at least a year before the member was admitted to a nursing home. If these conditions are no longer met, MassHealth may place a lien on the real property. After a member dies, MassHealth may file a claim in probate court to recover the member’s paid Medicaid costs.

1. According to 130 CMR 515.011, a life estate exists “when all of the remainder legal interest in a property is transferred to another, while the legal interest for life rights to use, occupy, or obtain income or profits from the property is retained.”

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of MassHealth claims for estate recovery for the period July 1, 2016 through December 31, 2018.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where the objective is discussed in this report.

Objective	Conclusion
1. Does MassHealth ensure that estate recovery activities do not create financial hardships for low- and middle-income families?	No; see Finding 1

Methodology

We gained an understanding of the internal controls we deemed significant to our audit objective through inquiries. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address the objective.

- We obtained data from MassHealth, which gave us a list of estate recovery receipts from July 1, 2016 through December 31, 2018, obtained from Sohema. As part of obtaining the data, OSA interviewed knowledgeable agency officials about the data. We performed validity and integrity tests on the data provided, which included testing for blank fields, scanning for duplicate records, and looking for dates outside the audit period. We tested a sample of the estate recovery receipts to verify that the receipt totals agreed with members' Medicaid Management Information System (MMIS) All Services Reports, which track and total all Medicaid expenses paid for members for which MassHealth seeks reimbursement. Based on these procedures, we determined that the data obtained were sufficiently reliable for the purposes of this report.
- We obtained data from MMIS for testing purposes. To test the reliability of the data, we relied on work performed by OSA in a separate project that tested certain information system controls in MMIS. As part of that work, OSA reviewed existing information, tested selected system controls, and interviewed knowledgeable agency officials about the data. As part of our current

audit, we performed validity and integrity tests on all claim data, which included testing for blank fields, scanning for duplicate records, and testing for dates outside the audit period. Based on these procedures, we determined that the data obtained were sufficiently reliable for the purposes of this report.

- We determined the number of estate recovery cases and the total cash receipts collected from the information provided. During the audit period, there were a total of 16,474 cases (14,338 closed and 2,136 active), for which the cash receipts totaled \$82,737,594. Individual receipts ranged from \$19 to \$719,866. Of these cases, 7,650 were for nominal cash receipts (amounts of \$25,000 or less), which totaled \$3,430,026. Cash receipts for the remaining 8,824 cases totaled \$79,307,568.
- We calculated the number of undue-hardship waiver cases from the information provided. We determined that there were a total of 152 undue-hardship waiver cases, with a total reported claim amount of \$19,804,056. Of these waivers, 30 were pending decision, 31 were granted, 38 were rejected, and 53 were withdrawn by the estates.
- We analyzed data from members' MMIS All Services Reports to determine whether they agreed with the MassHealth claim amounts. From our calculation, we determined that in 6 (14%) of the instances we reviewed, the two amounts agreed without exception. In 21 (49%) of the instances, the MMIS All Services Report amount was greater than the MassHealth claim amount, and in 16 (37%), the MMIS All Services Report amount was less than the MassHealth claim amount.

DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE

1. MassHealth’s estate recovery may cause some families to incur undue financial hardship.

The amount of money MassHealth seeks to recover through its estate recovery process may cause some families to incur undue financial hardship. Specifically, although MassHealth allows undue-hardship waivers, only a small number of members’ survivors actually petition for them and even fewer are approved. The resulting financial hardship could place a burden on families. Also, MassHealth pursues estate recovery amounts below \$25,000, which may not be cost effective.

Estates that cannot pay MassHealth expenses because of limited resources, and that meet the eligibility requirements of Chapter 515.011(D) of Title 130 of the Code of Massachusetts Regulations (CMR), can apply for undue-hardship waivers. Our testing determined that only 152 undue-hardship waivers were applied for during the audit period and 31 (20%) of those were granted.

Waiver Status	Number of Cases	Claim Amount	Percentage of Cases
Pending	30	\$ 3,654,979	20%
Granted	31	3,657,923	20%
Rejected	38	5,298,185	25%
Withdrawn	53	7,192,969	35%
Total	<u>152</u>	<u>\$19,804,056</u>	<u>100%</u>

Federal law allows states to waive estate recovery when it is not cost effective and the cost-effectiveness threshold is made public through the state’s official Medicaid plans. However, 46% of MassHealth’s estate recoveries during the audit period were for nominal amounts of \$25,000 or less, and the total of these recoveries (\$3,430,026) represented only 4% of the total cash receipts for the audit period.

Authoritative Guidance

Under the Omnibus Budget Reconciliation Act of 1993, every state must seek reimbursement from its Medicaid beneficiaries’ estates upon their deaths for (at a minimum) long-term-care expenses, which can include nursing and prescription costs paid for Medicaid members. However, this law does not set a specific cost-effectiveness threshold for states to follow. Sections 31 and 32 of Chapter 118E of the

Massachusetts General Laws require reimbursement for all Medicaid expenses paid and allow MassHealth to charge estates interest on unpaid claim balances. Section 6B of Chapter 231 of the General Laws states that interest is charged at 12% per year. MassHealth has created an undue-hardship waiver under 130 CMR 515.011(D)(b), which lists the four conditions that must exist to seek relief from this process.

Some states,² such as Georgia, do not pursue estate recovery amounts under \$25,000; in other words, \$25,000 is their cost-effectiveness threshold. Rule 111-3-1-.07 of the Rules and Regulations of the State of Georgia states, "Estates with a gross value of \$25,000 or less are exempt from estate recovery." Massachusetts has not established a cost-effectiveness threshold and pursues even nominal recoupments (some as low as \$19). However, we believe that such a threshold would represent a best practice for a cost-effectiveness threshold that Massachusetts should follow.

Reasons for Issue

Massachusetts has not established a cost-effectiveness threshold for recovery from estates with minimal assets. In addition, MassHealth does not actively promote its undue-hardship waiver process for its members' survivors; this resulted in few applications for waivers, which in turn led to even fewer approvals.

Recommendations

1. MassHealth should establish a cost-effectiveness threshold to prevent undue financial hardship for members' survivors.
2. MassHealth should better promote its undue-hardship waiver process for members' survivors.

Auditee's Response

MassHealth agrees with OSA's recommendations . . . and has implemented policy reforms effective May 14, 2021 that address the issues contained in those recommendations.

MassHealth has already promulgated regulations that took effect on May 14, 2021, implementing a cost effectiveness threshold entirely exempting estates with a total value of \$25,000 or less from estate recovery. Accordingly, MassHealth no longer files claims in any probate estate with \$25,000 or less of assets. . . .

2. The states are Alabama, Alaska, Arkansas, Colorado, Connecticut, Georgia, Idaho, Kansas, Louisiana, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Vermont, and Virginia.

MassHealth has already promulgated regulations effective May 14, 2021, significantly expanding its criteria for undue hardship waivers. MassHealth has also greatly streamlined the waiver process and created new hardship waiver request forms that provide clear, detailed instructions on how to qualify for the waivers. These forms and instructions are available online . . . and are also sent out by mail to all estate representatives when MassHealth files a claim in a probate estate.

The auditee also said, "It is estimated that these expanded hardship waivers will return approximately \$17,200,000 to Massachusetts families each year."