



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Office of Medicaid**  
 600 Washington Street  
 Boston, MA 02111  
 www.mass.gov/masshealth



MassHealth  
 Eligibility Letter 185  
 April 15, 2009

**TO:** MassHealth Staff

**FROM:** Tom Dehner, Medicaid Director

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**RE:** Marriage Equality Law

State law (M.G.L. c. 118E, § 61) now requires MassHealth to apply existing spousal rules to determine eligibility for medical benefits for people in same-gender marriages. Accordingly, MassHealth will treat all marriages the same, regardless of gender, in assessing eligibility for all programs determined by MassHealth.

The definition of “spouse” in MassHealth regulations at 130 CMR 501.001 and 515.001 has been revised.

These regulations are being issued as emergency regulations, effective October 31, 2008.

**MANUAL UPKEEP**

| <u>Insert</u>    | <u>Remove</u>    | <u>Trans. By</u> |
|------------------|------------------|------------------|
| 501.001 (6 of 6) | 501.001 (6 of 6) | E.L. 171         |
| 501.002          | 501.002          | E.L. 136         |
| 501.004          | 501.004          | E.L. 136         |
| 515.001 (7 of 8) | 515.001 (7 of 8) | E.L. 156         |
| 515.001 (8 of 8) | 515.001 (8 of 8) | E.L. 95          |
| 515.002          | 515.002          | E.L. 136         |
| 515.004          | 515.004          | E.L. 123         |

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Chapter 501  
Page 501.001  
(6 of 6)

Rev. 10/31/08

Person Who Is HIV Positive – a person who has submitted verification that he or she has tested positive for the human immunodeficiency virus (HIV).

Premium – a charge for payment to the MassHealth agency that may be assessed to members of MassHealth Standard, MassHealth CommonHealth, MassHealth Family Assistance, or the Children’s Medical Security Plan (CMSP).

Premium Assistance Payment – an amount contributed by the MassHealth agency toward the cost of employer-sponsored health-insurance coverage for certain MassHealth members.

Presumptive Eligibility – a time-limited period of conditional eligibility for children based on the applicant’s declaration of family group gross income.

Primary Care Clinician (PCC) Plan – a managed-care option administered by the MassHealth agency through which enrolled members receive primary care and other medical services. See 130 CMR 450.118.

Qualified Employer – a small employer who:

- (1) purchases health insurance that meets the Basic-Benefit Level;
- (2) contributes at least 50 percent of the cost of employees’ health-insurance premiums; and
- (3) has completed an Employer Application form and been approved by the MassHealth agency or its contractor as a qualified employer pursuant to 130 CMR 650.010(A).

Quality Control – a system of continuing review to measure the accuracy of eligibility decisions.

Senior Care Organization – an organization that participates in MassHealth under a contract with the MassHealth agency and the Centers for Medicare and Medicaid Services to provide a comprehensive network of medical, health-care, and social-service providers that integrates all components of care, either directly or through subcontracts. Senior care organizations are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services.

Small Business – see definition for small employer.

Small Employer – an employer that has no more than 50 employees who work 30 hours or more a week, or a self-employed individual.

Spouse – a person married to the applicant or member according to the laws of the Commonwealth of Massachusetts. Effective for applications and eligibility review forms received on or after October 31, 2008, notwithstanding the unavailability of federal financial participation, no person who is recognized as a spouse under the laws of the Commonwealth will be denied benefits that are otherwise available under M.G.L. c. 118E due to the provisions of 1 U.S.C. § 7 or any other federal nonrecognition of spouses of the same gender. If a member’s eligibility changes as the result of updated or corrected information about marital status, the change in eligibility will be effective as of the date the MassHealth agency receives the new information, but no sooner than October 31, 2008.

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Chapter 501  
Page 501.002

Rev. 10/31/08

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Substantial Gainful Activity – generally, employment that provides a set amount of gross earnings as determined by the Social Security Administration (SSA) under Title XVI of the Social Security Act.

Third Party – any individual, entity, or program that is or may be responsible to pay all or part of the expenditures for medical benefits.

501.002: Introduction to MassHealth

(A) The MassHealth agency is responsible for the administration and delivery of health-care services to eligible low- and moderate-income individuals, couples, and families under MassHealth.

(B) 130 CMR 501.000 through 508.000 provide the MassHealth requirements for children, families, disabled persons, persons who are HIV positive, women with breast or cervical cancer, and certain individuals or couples who are under age 65 and not institutionalized. These requirements are prescribed under an 1115 Medicaid Research and Demonstration Waiver approved by the U.S. Department of Health and Human Services on April 24, 1995, and authorized by Chapter 203 of the Massachusetts Acts and Resolves of 1996: An Act Providing Improved Access to Health Care; and under Title XXI of the Social Security Act and authorized by Chapter 170 of the Massachusetts Acts and Resolves of 1997: An Act Expanding Access and Quality Health Care for Working Families, Children, and Senior Citizens in the Commonwealth.

(C) 130 CMR 515.000 through 522.000 provide the MassHealth requirements for persons who are institutionalized, aged 65 or older, or who would be institutionalized without community-based services as defined by Title XIX of the Social Security Act.

(D) The MassHealth agency will determine eligibility for low-income subsidies under Medicare Part D, as set forth in the Medicare Prescription Drug and Improvement and Modernization Act of 2003 and as described in federal regulations at 20 CFR Part 418.

501.003: MassHealth Coverage Types

(A) The MassHealth agency provides access to health care by determining eligibility for the coverage type that provides the most comprehensive benefits for an individual or family who may be eligible.

(B) MassHealth offers several coverage types: Standard, Prenatal, CommonHealth, Family Assistance, Basic, Essential, and Limited. The coverage type for which a person is eligible is determined based on the individual's income and circumstances, as described in 130 CMR 503.000 through 505.000.

(C) The MassHealth agency may limit the number of people who can be enrolled in MassHealth CommonHealth, MassHealth Family Assistance, and MassHealth Essential. When the MassHealth agency imposes such a limit, no new adult applicants (aged 19 or older) subject to these limitations will be added to these coverage types, and current adult members in these coverage types who have lost eligibility for more than 30 days for any reason will not be allowed to reenroll until the MassHealth agency is able to reopen enrollment for adults in these coverage types. Excluded from these limitations are parents receiving benefits under 130 CMR 505.005(C).

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Chapter 501  
Page 501.004

Rev. 10/31/08

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- (D) Applicants who cannot be enrolled under MassHealth CommonHealth, MassHealth Family Assistance, or MassHealth Essential, pursuant to 130 CMR 501.003(C), will be placed on a waiting list when their eligibility has been determined. When the MassHealth agency is able to open enrollment for adult applicants, the applications will be processed in the order they were placed on the waiting list.
- (E) (1) Medical coverage for MassHealth CommonHealth for persons who are enrolled from a waiting list will begin on the date that the application or new determination is processed from the waiting list.
- (2) (a) Family Assistance Premium Assistance payments for persons enrolled from the waiting list will begin in the month that the application or new determination is processed from the waiting list, or in the month that the health insurance deduction begins, whichever is later.
- (b) Medical coverage for Family Assistance Purchase of Medical Benefits for persons who are enrolled from a waiting list will begin on the date that the application or new determination is processed from the waiting list.
- (3) (a) Essential Premium Assistance payments for persons enrolled from the waiting list will begin in the calendar month following verification of the member's health insurance information. Coverage before enrollment for MassHealth Essential members who are aliens with special status is described in 130 CMR 505.007(E).
- (b) Medical coverage for Essential Purchase of Medical Benefits for persons enrolled from a waiting list will begin on the date specified in MassHealth's notice of enrollment in the MassHealth Primary Care Clinician (PCC) Plan. There is no coverage for Essential members before the member's effective enrollment date, except as described in 130 CMR 505.007(E) for aliens with special status eligible for MassHealth Essential with MassHealth Limited.

501.004: Administration of MassHealth

(A) MassHealth. MassHealth formulates requirements and determines eligibility for all MassHealth coverage types.

(B) Other Agencies.

(1) Department of Transitional Assistance (DTA).

(a) The Department of Transitional Assistance administers the Transitional Aid to Families with Dependent Children (TAFDC) Program. Persons who meet the requirements of section 1931 of Title XIX (42 U.S.C. § 1396u-1) are automatically eligible for MassHealth Standard coverage.

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Rev. 10/31/08

Chapter 515  
(7 of 8) Page 515.001

Pooled Trust — a trust that meets all the following criteria as determined by the MassHealth agency.

- (1) The trust was created by a nonprofit organization.
- (2) A separate account is maintained for each beneficiary of the trust, but the assets of the trust are pooled for investment and management purposes.
- (3) The account in a pooled trust was created for the sole benefit of the individual by the individual, the individual's parents or grandparents, or by a legal guardian or court acting on behalf of the individual.
- (4) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual. The trust may retain reasonable and appropriate amounts as determined by the MassHealth agency.
- (5) The individual was disabled at the time his or her account in the pool was created.

Promissory Note — a written promise to pay another.

Quality Control — a system of continuing review to measure the accuracy of eligibility decisions.

Reapplication — the MassHealth agency's reopening of the application process when the application has been denied pursuant to 130 CMR 516.001(D).

Redetermination — a review of a member's circumstances to establish whether he or she remains eligible for benefits.

Resources — all income and assets owned by the individual or the spouse. For the purposes of determining eligibility, resources include income and assets to which the individual or the spouse is or would be entitled whether or not they are actually received. This term has the same meaning as "assets" as defined in 42 U.S.C. 1396p(e)(1).

Reverse Mortgage — a loan on the equity value of a house paid in installments by a lender to the homeowner who is aged 60 or older.

Revocable Trust — a trust whose terms allow the grantor to take action to regain any of the property or funds in the trust.

Senior Medical Benefit Request (SMBR) — a form prescribed by the MassHealth agency to be completed by the applicant or eligibility representative, and submitted to the MassHealth agency as a request for MassHealth benefits.

Skilled-Nursing Services — the planning, provision, and evaluation of goal-oriented nursing care that requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that must be provided by a registered nurse, a licensed practical nurse, or a licensed vocational nurse.

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Rev. 10/31/08

Chapter 515  
(8 of 8) Page 515.001

Special-Needs Trust — a special-needs trust is one that meets all the following criteria as determined by the MassHealth agency.

- (1) The trust was created for a disabled individual under the age of 65.
- (2) The trust was created for the sole benefit of the individual by the individual's parent, grandparent, legal guardian, or a court.
- (3) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual.
- (4) When the member has lived in more than one state, the trust must provide that the funds remaining upon the death of the member are distributed to each state in which the member received Medicaid based on each state's proportionate share of the total amount of Medicaid benefits paid by all states on the member's behalf.

Spouse — a person married to the applicant or member according to the laws of the Commonwealth of Massachusetts. Effective for applications and eligibility review forms received on or after October 31, 2008, notwithstanding the unavailability of federal financial participation, no person who is recognized as a spouse under the laws of the Commonwealth will be denied benefits that are otherwise available under M.G.L. c. 118E due to the provisions of 1 U.S.C. § 7 or any other federal nonrecognition of spouses of the same gender. If a member's eligibility changes as the result of updated or corrected information about marital status, the change in eligibility will be effective as of the date the MassHealth agency receives the new information, but no sooner than October 31, 2008.

Stream of Income — income received on a regular basis.

Substantial Gainful Activity — generally, employment that provides a set amount of gross earnings as determined by the Social Security Administration (SSA) under Title XVI of the Social Security Act.

Supplemental Security Income (SSI) Program — a program that provides financial assistance to needy persons who are aged 65 or older, blind, or disabled. This program is established under Title XVI of the Social Security Act and is administered by the Social Security Administration. Such persons automatically receive MassHealth.

Third Party — any individual, entity, or program that is or may be responsible to pay all or part of the expenditures for medical benefits.

Trust — a legal device satisfying the requirements of state law that places the legal control of property or funds with a trustee. It also includes, but is not limited to, any legal instrument, device, or arrangement that is similar to a trust, including transfers of property by a grantor to an individual or a legal entity with fiduciary obligations so that the property is held, managed, or administered for the benefit of the grantor or others. Such arrangements include, but are not limited to, escrow accounts, pension funds, and similar devices as managed by an individual or entity with fiduciary obligations.

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Chapter 515  
Page 515.002

---

Rev. 10/31/08

Trustee — any individual or legal entity that holds or manages a trust.

Uncompensated Value — the difference between the fair-market value of the resource or interest in the resource at the time of transfer less any outstanding debts and the actual amount the individual received for the resource. The MassHealth agency uses the uncompensated value in the calculation of the period of ineligibility.

515.002: Introduction to MassHealth

(A) The MassHealth agency is responsible for the administration and delivery of health-care services to low- and moderate-income individual and couples.

(B) 130 CMR 515.000 through 522.000 provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. These regulations are intended to conform to all applicable federal and state laws and will be interpreted accordingly.

(C) 130 CMR 501.000 through 508.000 provide the MassHealth requirements for coverage of noninstitutionalized low- and moderate-income persons under age 65, as prescribed under an 1115 Medicaid Research and Demonstration Waiver.

(D) The MassHealth agency will determine eligibility for low-income subsidies under Medicare Part D, as set forth in the Medicare Prescription Drug and Improvement and Modernization Act of 2003 and as described in federal regulations at 20 CFR Part 418.

515.003: MassHealth Coverage Types

(A) The MassHealth agency provides access to health care by determining eligibility for the coverage type that provides the most comprehensive benefits for a person who may be eligible. Generally, members are provided services on a fee-for-service basis as defined at 130 CMR 515.001.

(B) MassHealth offers the following types of coverage: MassHealth Standard, MassHealth Essential, MassHealth Limited, MassHealth Senior Buy-In, and MassHealth Buy-In. The type of coverage for which a person is eligible is based on the person's or the spouse's income and assets, as described in 130 CMR 519.000 and 520.000, and immigration status, as described in 130 CMR 518.000.

Trans. by E.L. 185

MASSHEALTH  
GENERAL POLICIES

Chapter 515  
Page 515.004

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Rev. 10/31/08

(C) The MassHealth agency may limit the number of people who can be enrolled in MassHealth Essential. When the MassHealth agency imposes such a limit, no new applicants aged 65 or older who are subject to these limitations will be added to MassHealth Essential, and current MassHealth Essential members who have lost eligibility for more than 30 days for any reason will not be allowed to reenroll until the MassHealth agency is able to reopen enrollment for adults.

(1) Applicants who cannot be enrolled under MassHealth Essential pursuant to 130 CMR 515.003(C), will be placed on a waiting list when their eligibility has been determined. When the MassHealth agency is able to open enrollment for adult applicants, the applications will be processed in the order they were placed on the waiting list.

(2) Medical coverage for MassHealth Essential for persons enrolled from a waiting list will begin on the date that the application or new determination is processed from the waiting list.

515.004: Administration of MassHealth

(A) MassHealth. MassHealth formulates requirements and determines eligibility for all MassHealth coverage types.

(B) Other Agencies.

(1) Department of Transitional Assistance (DTA). The Department of Transitional Assistance administers the Emergency Aid for the Elderly, Disabled and Children (EAEDC) Program. Persons receiving EAEDC who are 65 or older are automatically eligible for MassHealth Standard coverage, if they meet the citizen and immigration rules for MassHealth Standard at 130 CMR 518.002. Aliens with special status described in 130 CMR 518.002(D) who are receiving EAEDC who are aged 65 or older are automatically eligible for MassHealth Essential coverage pursuant to 130 CMR 515.003(C).

(2) Social Security Administration (SSA). District Social Security offices administer the Supplemental Security Income (SSI) Program and determine the eligibility of persons aged 65 or older. Persons receiving SSI who are 65 or older are automatically eligible for MassHealth Standard coverage.