



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
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MassHealth
 Eligibility Letter 199
 June 1, 2010

TO: MassHealth Staff

FROM: Terence G. Dougherty, Medicaid Director *TGD*

RE: **Home- and Community-Based Services Waivers for Persons with Acquired Brain Injury**

MassHealth is implementing regulations governing eligibility for two Home- and Community-Based Services Waivers for persons with acquired brain injury. To be eligible for either of the waivers, the member must meet certain clinical and age requirements as well as eligibility requirements for MassHealth Standard.

The ABI Waiver with Residential Habilitation (ABI-RH) is for members who need services in a provider-operated residence that has supervision and staffing 24 hours a day, 7 days a week.

The ABI Waiver with No Residential Habilitation (ABI-N) is for members who can move to their own home or apartment or to the home of someone else.

These regulations are effective June 11, 2010.

MANUAL UPKEEP

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(2) Pregnancy is verified by a written statement from a competent medical authority certifying the pregnancy.

519.007: Individuals Who Would Be Institutionalized

130 CMR 519.007 describes the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services.

(A) The Kaileigh Mulligan Program. The Kaileigh Mulligan Program enables severely disabled children under the age of 18 years to remain at home. The income and assets of their parents are not considered in the determination of eligibility.

(1) Eligibility Requirements. Children under the age of 18 years may establish eligibility for the Kaileigh Mulligan Program by meeting the following requirements. They must

- (a) (i) meet Title XVI disability standards in accordance with the definition of permanent and total disability for children under the age of 18 years in 130 CMR 515.001 or have been receiving SSI on August 22, 1996; and
 - (ii) continue to meet Title XVI disability standards that were in effect before August 22, 1996;
- (b) have \$2,000 or less in countable assets;
- (c) (i) have a countable-income amount of \$72.80 or less; or
 - (ii) if greater than \$72.80, meet a deductible in accordance with 130 CMR 520.028 et seq.; and
- (d) require a level of care equivalent to that provided in a hospital or nursing facility in accordance with 130 CMR 519.007(A)(3) and (4).

(2) Additional Requirements. The MassHealth agency must have determined

- (a) that care provided outside an institution is appropriate; and
- (b) that the estimated cost paid by the MassHealth agency would not be more than the estimated cost paid if the child were institutionalized.

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(3) Level of Care That Must Be Required in a Hospital. To require the level of care provided in a hospital, the child must have a medical need for the following:

- (a) direct administration of at least two discrete skilled-nursing services (as defined in 130 CMR 515.001) on a daily basis, each of which requires complex nursing procedures, such as administration of intravenous hyperalimentation, changing tracheotomy tubes, assessment or monitoring related to an uncontrolled seizure disorder, assessment or monitoring related to an unstable cardiopulmonary status, or other unstable medical condition;
- (b) direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on at least a weekly basis;
- (c) ongoing use of invasive medical technologies or techniques to sustain life (such as ventilation, hyperalimentation, gastrostomy tube feeding), or dialysis, or both; and
- (d) at least one of the following:
 - (i) assistance in one or more activities of daily living (ADLs), as defined in 130 CMR 515.001, beyond what is required at an age-appropriate activity level; or
 - (ii) one or more skilled therapeutic services (occupational therapy, physical therapy, or speech and language therapy), provided directly by or under the supervision of a licensed therapist at least five times a week.

(4) Level of Care That Must Be Required in a Skilled-Nursing Facility. To require the level of care provided in a skilled-nursing facility, the child must be nonambulatory and meet the following requirements.

- (a) A child 12 months of age or older must have global developmental skills (as defined in 130 CMR 515.001) not exceeding those of a 12-month-old child as indicated by a developmental assessment performed by the child's physician or by another certified professional. In addition, the child's developmental skills level must not be expected to improve.
- (b) A child less than 12 months of age must have global developmental skills significantly below an age-appropriate level and such skills must not be expected to progress at an age-appropriate rate as indicated by a developmental assessment performed by the child's physician or by another certified professional.

(c) Regardless of age, the child must also require all of the following:

- (i) direct administration of at least two discrete skilled-nursing services on a daily basis, each of which requires complex nursing procedures as described at 130 CMR 519.007(A)(3);
- (ii) direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on a monthly basis;
- (iii) assistance in one or more ADLs beyond what is required at an age-appropriate activity level; and
- (iv) any combination of skilled therapeutic services (physical therapy, occupational therapy, speech and language therapy) provided directly by or under the supervision of a licensed therapist at least five times a week.

(B) Home- and Community-Based Services Waiver.

(1) Clinical and Age Requirements. The Home- and Community-Based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing-facility services to receive certain waiver services at home if he or she

- (a) is 60 years of age or older and, if under age 65, is permanently and totally disabled in accordance with Title XVI standards; and
- (b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home- and Community-Based Services Waiver authorized under Section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must

- (a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);
- (b) have a countable-income amount less than or equal to 300 percent of the federal benefit rate (FBR) for an individual; and
- (c) have countable assets of \$2,000 or less and have not transferred resources for the sole purpose of obtaining MassHealth as described at 130 CMR 520.018 and 520.019.

(3) Financial Standards Not Met. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.007(B)(2) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004, by meeting a deductible as described at 130 CMR 520.028 et seq., or by both.

(C) Program of All-Inclusive Care for the Elderly (PACE).

(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community.

(a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.

(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).

(c) Persons enrolled in PACE have services delivered through managed care

(i) in day-health centers;

(ii) at home; and

(iii) in specialty or inpatient settings, if needed.

(2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must meet all of the following criteria:

(a) be aged 55 or older;

(b) meet Title XVI disability standards if aged 55 through 64;

(c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;

(d) live in a designated service area;

(e) have medical services provided in a specified community-based PACE program;

(f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004; and

(g) have a countable-income amount less than or equal to 300 percent of the federal benefit rate (FBR) for an individual.

(3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028 et seq.

(D) Home- and Community-Based Services Waiver for Persons with Mental Retardation.

(1) Clinical Requirements. The Home- and Community-Based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of inpatient care at an intermediate-care facility for the mentally retarded to receive certain waiver services at home or in the community provided he or she

(a) has mental retardation/developmental disability in accordance with Department of Developmental Services standards; and

(b) would be institutionalized in an intermediate-care facility for the mentally retarded unless he or she receives one or more of the services administered by the Department of Developmental Services under the Home- and Community-Based Services Waiver authorized under Section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must meet all of the following criteria:

(a) have countable income that is less than or equal to 300 percent of the federal benefit rate (FBR) for an individual;

(b) have countable assets of \$2,000 or less; and

(c) have not transferred resources for the sole purpose of obtaining MassHealth, as described in 130 CMR 520.018 and 520.019.

(3) Financial Eligibility Standards Not Met. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.007(D)(2) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004, by meeting a deductible as described in 130 CMR 520.028 et seq., or by both.

(E) Home- and Community-Based Services Waiver for Young Children with Autism.

(1) Clinical Requirements. The Home- and Community-Based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of inpatient care at an intermediate-care facility for the mentally retarded to receive certain waiver services at home or in the community provided he or she

(a) has a confirmed diagnosis of an autism spectrum disorder (which includes autistic disorder, pervasive developmental disorder-not otherwise specified (PDD-NOS), Rhett's syndrome, childhood disintegrative disorder, and Asperger's syndrome);

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(b) would be institutionalized in an intermediate-care facility for the mentally retarded unless he or she receives one or more of the services administered by the Department of Developmental Services under the Home- and Community-Based Services Waiver authorized under Section 1915(c) of the Social Security Act; and

(c) is able to be safely served in the community.

(2) Eligibility Requirements and Limitations.

(a) The applicant or member must be under nine years of age.

(b) The child must be eligible for MassHealth Standard in accordance with 130 CMR 505.002(C)(1) and (2).

(c) Assets are not considered in the eligibility determination.

(d) The number of children who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency or its agent.

(F) Home- and Community-Based Services Waiver for Persons with Traumatic Brain Injury.

(1) Clinical and Age Requirements. The Home- and Community-Based Services Waiver for Persons with Traumatic Brain Injury allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services or chronic or rehabilitation hospital services to receive specified waiver services in the home or community if he or she

(a) is 18 years of age or older and, if under age 65, is totally and permanently disabled in accordance with Title XVI standards;

(b) has traumatic brain injury, as defined in Massachusetts Rehabilitation Commission (MRC) regulations at 107 CMR 12.02;

(c) needs one or more of the services administered by MRC under the Home- and Community-Based Services Waiver authorized under Section 1915(c) of the Social Security Act; and

(d) is able to be safely served in the community.

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(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must

- (a) meet the requirements of 130 CMR 519.007(F)(1);
- (b) have a countable income amount that is less than or equal to 300 percent of the federal benefit rate (FBR) for an individual;
- (c) have countable assets of \$2,000 or less; and
- (d) have not transferred resources for the purpose of obtaining MassHealth, as described in 130 CMR 520.018 and 520.019.

(3) Enrollment Limits. Enrollment in this waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency or its agent.

(G) Home- and Community-Based Services Waivers for Persons with Acquired Brain Injury.

(1) Residential Habilitation Waiver for Persons with Acquired Brain Injury.

(a) Clinical and Age Requirements. The Residential Habilitation Waiver for Persons with Acquired Brain Injury, as authorized under Section 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services or chronic disease or rehabilitation hospital services to receive residential habilitation and other specified waiver services in a provider-operated 24-hour supervised residential setting if he or she meets all of the following criteria:

- (i) is 22 years of age or older and, if under age 65, is totally and permanently disabled in accordance with Title XVI standards;
- (ii) acquired, after reaching age 22, a brain injury including, without limitation, brain injuries caused by external force, but not including Alzheimer's disease and similar neuro-degenerative diseases, the primary manifestation of which is dementia;
- (iii) is an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for the waiver;
- (iv) is not expected to incur annual MassHealth expenditures, including MassHealth expenditures under the Residential Habilitation Waiver, in excess of the individual cost limit specified in the Residential Habilitation Waiver;
- (v) needs residential habilitation under the Residential Habilitation Waiver; and
- (vi) is able to be safely served in the community within the terms of the Residential Habilitation Waiver.

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(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must

- (i) meet the requirements of 130 CMR 519.007 (G)(1)(a);
- (ii) have countable income that is less than or equal to 300 percent of the federal benefit rate (FBR) for an individual;
- (iii) have countable assets of \$2,000 or less; and
- (iv) not have transferred resources for the purpose of obtaining MassHealth, as described in 130 CMR 520.018 and 520.019.

(c) Enrollment Limits. Enrollment in the Residential Habilitation Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency. Applications will be subject to an open application period and a random-selection process, as may be announced from time to time by the MassHealth agency. Applications that are not submitted during an open enrollment application period will be denied.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the Residential Habilitation Waiver are eligible for the waiver services described in 130 CMR 630.405(A).

(2) Non-Residential Habilitation Waiver for Persons with Acquired Brain Injury.

(a) Clinical and Age Requirements. The Non-Residential Habilitation Waiver for Persons with Acquired Brain Injury, as authorized under Section 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services or chronic disease or rehabilitation hospital services to receive specified waiver services, other than residential rehabilitation, in the home or community if he or she meets all of the following criteria:

- (i) is 22 years of age or older and, if under age 65, is totally and permanently disabled in accordance with Title XVI standards;
- (ii) acquired, after reaching age 22, a brain injury including, without limitation, brain injuries caused by external force, but not including Alzheimer's disease and similar neuro-degenerative diseases, the primary manifestation of which is dementia;
- (iii) is an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for the waiver;
- (iv) is not expected to incur annual MassHealth expenditures, including MassHealth expenditures under the Non-Residential Habilitation Waiver, in excess of the individual cost limit specified in the Non-Residential Habilitation Waiver;

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(v) needs one or more of the services under the Non-Residential Habilitation Waiver; and

(vi) is able to be safely served in the community within the terms of the Non-Residential Habilitation Waiver.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must

(i) meet the requirements of 130 CMR 519.007 (G)(2)(a);

(ii) have countable income that is less than or equal to 300 percent of the federal benefit rate (FBR) for an individual;

(iii) have countable assets of \$2,000 or less; and

(iv) not have transferred resources for the purpose of obtaining MassHealth, as described in 130 CMR 520.018 and 520.019.

(c) Enrollment Limits. Enrollment in the Non-Residential Habilitation Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency. Applications will be subject to an open enrollment period and a random-selection process, as may be announced from time to time by the MassHealth agency. Applications that are not submitted during an open enrollment application period will be denied.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the Non-Residential Habilitation waiver are eligible for the waiver service described in 130 CMR 630.405(B).

(130 CMR 519.008 Reserved)