



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
www.mass.gov/masshealth



MassHealth
Eligibility Letter 214
November 15, 2014

TO: MassHealth Staff

FROM: Kristin L. Thorn, Medicaid Director

RE: Revisions to Regulations about Exceptions to Estate Recovery

MassHealth is revising the regulations about exceptions to estate recovery to conform to amendments to M.G.L. c. 118E, section 33.

The words “when purchased” are being added to the exceptions about long-term-care insurance. This changes the timing as to when the long-term-care insurance had to have met the requirements of MassHealth at 130 CMR 515.014 and the Division of Insurance at 211 CMR 65.09(I)(e)(2) to meet one of the criteria to qualify for the estate recovery exception. If, on the date of admission to the long-term-care institution, the member has long-term-care insurance that, when purchased, met the MassHealth and the Division of Insurance requirements, the insurance policy is allowable for the exception.

These regulations are effective December 15, 2014.

MANUAL UPKEEP

<u>Insert</u>	<u>Remove</u>	<u>Trans. By</u>
515.011 (1 of 3)	515.011 (1 of 3)	E.L. 213
515.012 (2 of 2)	515.012 (2 of 2)	E.L. 213

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(3) Notwithstanding 130 CMR 515.011(A)(1) and in accordance with 42 U.S.C. 1396p(b)(B), MassHealth will not recover Medicare cost-sharing benefits described at 42 U.S.C. 1396(a)(10)(E) with dates of payment on or after January 1, 2010, for persons who received such benefits under 130 CMR 505.002: *MassHealth Standard*, 505.007: *MassHealth Senior Buy-In and Buy-In*, 519.010: *MassHealth Senior Buy-In*, and 519.011: *MassHealth Buy-In*, when they were 55 years of age or older.

(a) The date of payment for Medicare cost-sharing deductibles, coinsurance, and copayments is the date the MassHealth agency received the claim.

(b) The date of payment for premium payments is the date the MassHealth agency paid the premium.

(B) Exception. No recovery for nursing facility or other long-term-care services may be made from the estate of any person who

(1) was institutionalized;

(2) notified the MassHealth agency that he or she had no intent of returning home; and

(3) on the date of admission to the long-term-care institution, had long-term-care insurance that, when purchased, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(C) Deferral of Estate Recovery. 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.

(D) Waiver of Estate Recovery Due to Financial Hardship.

(1) For claims presented on or after November 15, 2003, recovery will be waived if

(a) a sale of real property would be required to satisfy a claim against the member's probate estate; and

(b) an individual who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:

(i) the individual lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for MassHealth or other assistance from the MassHealth agency and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;

(ii) the individual has inherited or received an interest in the property from the deceased member's estate as defined in 130 CMR 501.013(A)(2) and 515.011(A)(2);

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- (C) Exception. No recovery for nursing-facility or other long-term-care services may be made under 130 CMR 515.012(B) if the member
- (1) was institutionalized;
 - (2) notified the MassHealth agency that he or she had no intention of returning home; and
 - (3) on the date of admission to a long-term-care institution, had long-term-care insurance that, when purchased, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).
- (D) Repayment Deferred.
- (1) In the case of a lien on a member's home, repayment under 130 CMR 515.012 is not required while any of the following relatives are still lawfully living in the property:
 - (a) a sibling who has been living in the property for at least one year before the member's admission to the nursing facility or other medical institution; or
 - (b) a son or daughter who
 - (i) has been living in the property for at least two years immediately before the member was admitted to a nursing facility or other medical institution;
 - (ii) establishes to the satisfaction of the MassHealth agency that he or she provided care that permitted the parent to live at home during the two-year period before institutionalization; and
 - (iii) has lived lawfully in the property on a continual basis while the parent has been in the institution.
 - (2) Repayment from the estate of a member that would otherwise be recoverable under any regulation is still required even if the relatives described in 130 CMR 515.012(D) are still living in the property.
- (E) Dissolution. The MassHealth agency will discharge a lien placed against property under 130 CMR 515.012(A) if the member is released from the medical institution and returns home.
- (F) Verification. The applicant or member must cooperate in providing verification as to whether the conditions under 130 CMR 515.012(A) exist, and in providing any information necessary for the MassHealth agency to place a lien.
- (G) Recording Fee. The MassHealth agency is not required to pay a recording fee for filing a notice of lien or encumbrance, or for a release or discharge of a lien or encumbrance under 130 CMR 515.012.