



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



MassHealth
Eligibility Letter 238
May 14, 2021

TO: MassHealth Staff
FROM: Daniel Tsai, Assistant Secretary for MassHealth
RE: **Revisions to Estate Recovery Requirements**

MassHealth has amended 130 CMR 501.000 and 130 CMR 515.000 to update the requirements of MassHealth's estate recovery program.

These amendments clarify existing estate recovery requirements: when estate recovery is required, who is subject to estate recovery, what payments are subject to estate recovery, and what exceptions exist for estate recovery. These amendments also codify a new exception to estate recovery. MassHealth will waive its right to recovery when the total assets in a MassHealth member's estate are valued at \$25,000 or less. MassHealth has determined that it is not cost effective to pursue estate recovery in such cases.

Additionally, these amendments modify the existing waiver of estate recovery due to undue hardship, to eliminate the requirement that the waiver is conditional for a two-year period. Currently, MassHealth waives its estate recovery claim if at the end of the two-year conditional period all criteria and circumstances for the waiver are still met. These amendments eliminate the conditional period and MassHealth will waive recovery upon its initial determination that the criteria and circumstances for the waiver are met.

Finally, these amendments create the following two new hardship waivers of estate recovery due to undue hardship:

Care Provided Hardship Waiver

MassHealth will waive its estate recovery claim upon application by the personal representative or public administrator of the estate and a determination that the following criteria are met:

- (1) the heir resided in the home for two years prior to member's admission to an institution or death;
- (2) during that time, the member needed and the heir provided a level of care that avoided the member's admission to a facility;
- (3) the heir continues to live in the home at the time the notice of claim is filed;
- (4) the heir was left an interest in the property under the member's will, inherited the property under laws of intestacy, or the member's legal title or interest otherwise passes to the heir by operation of law;
- (5) the sale of the property is required to satisfy the claim; and,
- (6) the heir is not being forced to sell the property by other devisees or heirs.

Income-Based Hardship Waiver

The personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of heir(s) who inherited an interest in the member's estate. If MassHealth determines that the family group of the heir(s) had a gross income below 400% of the federal poverty level for two years prior to the date of the MassHealth notice of claim being filed, MassHealth will waive recovery in an amount equal to the value of each qualifying heir's interest in the estate up to a maximum of \$50,000 per qualifying heir. If there is more than one qualifying heir in an estate, the total amount of the waived amount will be limited to a total of \$100,000.

There is a new webpage dedicated to estate recovery, www.mass.gov/estaterecovery, which includes a new FAQ document as well as the new hardship waiver application form that will be processed for existing estate recovery cases by the Estate Recovery Unit.

These regulations are effective May 14, 2021.

MANUAL UPKEEP

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501.012: Recovery of Overpayment of Medical Benefits

The MassHealth agency has the right to recover payment for medical benefits to which the member was not entitled at the time the benefit was received, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 501.012: *Recovery of Overpayment of Medical Benefits* will limit the MassHealth agency's right to recover overpayments.

501.013: Estate Recovery

(A) Introduction.

- (1) The MassHealth agency will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. 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.
 - (c) Effective for dates of death on or after December 31, 2016, MassHealth will offset the estate recovery claim by the total of any premiums paid to the MassHealth agency on behalf of the member when the member was 55 years of age or older.
- (2) The estate includes all real and personal property and other assets in the member's probate estate.
- (3) Notwithstanding 130 CMR 501.013(A)(1) and in accordance with 42 U.S.C. 1396p(b)(B), the MassHealth agency 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*.
 - (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) Exceptions.

- (1) Long-term Care Insurance Exception. 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 that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014: *Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions* and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).
- (2) Cost Effectiveness Exception. Effective for dates of death on or after May 14, 2021, in probate estates of members where the probate petition certifies under the penalties of perjury

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that the total assets in a member's estate are valued at \$25,000 or less, MassHealth has determined that it is not cost effective to pursue recovery. In such estates, MassHealth waives its right to recovery, and will not file a claim or otherwise pursue recovery. MassHealth reserves the right to file a claim and recover in such estates if probate filings do not sufficiently identify the value of the estate or if later probate filings or proceedings or investigation identify or establish that the total assets in the estate exceed \$25,000.00.

(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 Undue Hardship. The MassHealth agency will waive its estate recovery claim if the agency determines that satisfaction of the claim would cause an undue hardship. An undue hardship does not exist solely because recovery will prevent any heir from receiving an anticipated inheritance. The duly court-appointed personal representative or public administrator of the deceased member's probate estate may apply for a waiver of estate recovery due to undue hardship. The application for a waiver and supporting documents must be received by the MassHealth agency within 60 days of the agency's notice of claim. The types of Waivers of Estate Recovery Due to Undue Hardship are:

(1) Waiver of Estate Recovery Due to Residence and Financial Hardship.

(a) For notice of claims presented on or after November 15, 2003, but before May 14, 2021, recovery will be waived if MassHealth determines all of the following conditions have been met.

1. a sale of real property would be required to satisfy a claim against the member's probate estate; and
2. 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:
 - a. the individual lived in the property on a continual basis for two years prior to the member's admission to an institution or death 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;
 - b. 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);
 - c. the individual is not being forced to sell the property by other devisees or heirs at law; and
 - d. at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the individual's family group was less than or equal to 133 % of the applicable federal-poverty-level income standard for the appropriate family size.
3. The waiver will be conditional for a period of two years from the date the MassHealth agency mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(D)(1)(a)2. d., and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income

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standards under 130 CMR 501.013(D)(1)(a)2. d, the property is sold or transferred, or the individual does not use the property as their primary residence, the MassHealth agency will be notified and its claim may be payable in full.

(b) For claims presented on or after May 14, 2021, and upon application of a waiver of estate recovery due to residence and undue hardship by the personal representative or public administrator of the estate, MassHealth will waive recovery without a conditional two-year waiting period provided the personal representative or public administrator establishes to the satisfaction of the MassHealth agency that all the criteria for a residence and undue hardship waiver in 130 CMR 501.013(D)(1)(a)1. and 2. are currently met.

(c) Any waivers arising out of notice of claims presented before May 14, 2021, which did not become permanent and binding pursuant to the two-year conditional requirements set forth in 130 CMR 501.013(D)(1)(a)3., and which had not been satisfied and were still subject to the two-year conditional requirements of that subsection as of May 14, 2021, will become permanent and binding.

(2) Waiver of Estate Recovery Based on Care Provided. For claims presented on or after May 14, 2021, for an heir or devisee inheriting a legal interest in the deceased member's home, the MassHealth agency will waive estate recovery if MassHealth determines to its satisfaction all of the following conditions have been met.

(a) the heir or devisee resided in the member's home on a continual basis for two years prior to member's admission to an institution or death;

(b) during that time, the member needed and the heir or devisee provided a level of care that avoided the member's admission to a facility;

(c) the heir or devisee continues to live in the property at the time the notice of claim is filed;

(d) the heir or devisee was left an interest in the home under the member's will, or inherited the property under the laws of intestacy;

(e) the heir is not being forced to sell the property by other devisees or heirs; and

(f) the property would have to be sold to satisfy the claim.

(3) Waiver of Estate Recovery Due to Financial Hardship Based on Income.

(a) For claims presented on or after May 14, 2021, the personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of an heir or heirs or devisee or devisees. If there are multiple heirs or devisees, the personal representative or public administrator must apply for an Income-based waiver separately on behalf of each individual. To be considered a qualifying heir or devisee, the personal representative or public administrator of the estate must establish:

1. the qualifying heir or devisee is inheriting an interest in the member's estate under the member's probate estate; and,

2. the family group of a qualifying heir or devisee has a Gross Income below 400% of the federal poverty level for the two-year period prior to the date the notice of claim is filed.

If MassHealth determines that both conditions have been met, the heir is considered a qualifying heir.

(b) MassHealth will waive recovery in an amount equal to the value of the qualifying heir's or devisee's interest in the estate up to a maximum of \$50,000 per qualifying heir or devisee. If there is more than one qualifying heir or devisee in an estate, the total amount of the agency's estate recovery claim waived for qualifying heirs or devisees shall be limited to a total of \$100,000.

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(c) An estate with qualifying heirs or devisees, regardless of whether or not there are non-qualifying heirs, will be subject to estate recovery based on the lesser of:

1. the value of the estate remaining after deducting the amount waived from the total value of the estate for qualifying heirs and devisees; or
2. the amount of the MassHealth claim remaining after deducting the amount waived from the total value of the MassHealth claim.

(d) Example 1. The value of the estate is \$400,000 and the MassHealth claim is \$60,000. There are two heirs who qualify for the waiver, each with an interest in the estate of \$50,000 or greater. There are also two heirs who do not qualify. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$300,000 left in the estate, but after deducting the \$100,000 waived amount from the \$60,000 MassHealth claim there is nothing left in the MassHealth claim. The result is no estate recovery.

(e) Example 2. The value of the estate is \$350,000 and the MassHealth claim is \$500,000. There are two qualifying heirs, each with an interest in the estate of \$50,000 or greater. There are also two non-qualifying heirs. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$250,000 left in the estate, and after deducting the \$100,000 waived amount from the \$500,000 MassHealth claim there is \$400,000 remaining in the MassHealth claim. In this example, MassHealth would recover \$250,000, since it is less than \$400,000.

(E) Outstanding Claims.

- (1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the then-existing MassHealth regulations were met.
- (2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

(F) Fair-market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the MassHealth agency's claim in full from property on which MassHealth has a recorded lien, the fair-market value and equity value of all real property that is part of the deceased member's probate estate must be verified prior to the sale or transfer of said property.

- (1) The personal representative or public administrator of the probate estate must verify the fair-market value by sending to the MassHealth agency a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:
 - (a) a special-purpose tax assessment;
 - (b) based on a fixed-rate-per-acre method; or
 - (c) based on an assessment ratio or providing only a range.
- (2) The personal representative or public administrator of the probate estate must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official of a bank, savings and loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.
- (3) The MassHealth agency may also obtain an assessment from a knowledgeable source.

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(G) Exemption of Certain Assets from Estate Recovery for American Indians and Alaska Natives.

- (1) For notice of claims presented on or after July 1, 2009, and upon application for exemption of certain assets from estate recovery by the personal representative or public administrator of the member's estate, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:
- (a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;
 - (b) ownership interest in trust and non-trust property, including real property and improvements:
 - 1. located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act at 43 U.S.C. chapter 33, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or
 - 2. for any federally recognized tribe not described in 130 CMR 501.013(G)(1)(b)1., located within the most recent boundaries of a prior federal reservation;
 - (c) income left as a remainder in an estate derived from property protected in 130 CMR 501.013(G)(1)(b), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;
 - (d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or
 - (e) ownership interests in or usage rights to items not covered by 130 CMR 501.013(G)(1)(a) through (d) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.
- (2) Protection of non-trust property described in 130 CMR 501.013(G)(1) is limited to circumstances when it passes from an Indian, as defined in § 4 of the Indian Health Care Improvement Act at 25 U.S.C. chapter 18, to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or step-children, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

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Countable Income – the types of income that are considered in the determination of eligibility.

Countable-income Amount – gross income less certain business expenses and income deductions.

Couple – two persons married to each other according to the laws of the Commonwealth of Massachusetts.

Coverage Date – the date medical coverage begins.

Coverage Type – a scope of medical services, other benefits, or both that is available to members who meet specific eligibility criteria. MassHealth coverage types include the following: MassHealth Standard (Standard), MassHealth Limited (Limited), MassHealth Family Assistance (Family Assistance), MassHealth Senior Buy-in (Senior Buy-in), and MassHealth Buy-in (Buy-in). The scope of services or covered benefits for each coverage type is found at 130 CMR 450.105: *Coverage Types*.

Curing of a Transfer – the return, following the transfer for less than fair-market value of a portion of, or the full uncompensated value of, a resource to the individual.

Day – a calendar day unless a business day is specified.

Deductible – the total dollar amount of incurred medical expenses that an applicant whose income exceeds MassHealth income standards must be responsible for before the applicant is eligible for MassHealth, as described at 130 CMR 520.028: *Eligibility for a Deductible*.

Deductible Period – a specified six-month period within which an applicant for MassHealth, whose income exceeds MassHealth income standards, may become eligible through incurred and/or paid medical expenses equaling or exceeding the deductible of the applicant or the spouse.

Disability Determination Unit – a unit that consists of physicians and disability evaluators who determine permanent and total disability using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. This unit may be a part of a state agency or under contract with a state agency.

Disabled – having a permanent and total disability.

Eligibility Process – activities conducted for the purpose of determining, redetermining, and maintaining the eligibility of a MassHealth applicant or member.

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Fair Hearing – an administrative, adjudicatory proceeding conducted according to 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to determine the legal rights, duties, benefits, or privileges of applicants and members.

Fair-market Value – an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer.

Family Group – a family, couple, or individual.

Federal Poverty Level (FPL) – income standards issued annually in the *Federal Register* to account for the last calendar year's increase in prices as measured by the Consumer Price Index.

Fee-for-service – a method of paying for medical services provided by any MassHealth participating provider with no limit on provider choice.

Global Developmental Skills – a child's average developmental skill level, taking into account the physical, psychological, motor, intellectual, emotional, communicative, and social aspects of the child's functional capabilities.

Grantor – an individual or spouse who creates a trust.

Gross Income – the total money earned or unearned, such as wages, salaries, rents, pensions, or interest, received from any source without regard to deductions.

Guardian – an individual or entity appointed as guardian by the probate and family court under the provisions of M.G.L. c. 201.

Guardianship Fees and Related Expenses – fees for guardianship services and incurred expenses that are essential to enable an incompetent applicant or member to gain access to or consent to medical treatment.

Health Insurance – coverage of health-care services by a health-insurance company, a hospital-service corporation, a medical-services corporation, a managed care organization, or Medicare. Coverage of health-care services by MassHealth, Health Safety Net (HSN), or Children's Medical Security Plan (CMSP) is not considered health insurance.

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Health Safety Net (HSN) – a source of funding for certain health care under 101 CMR 613.00: *Health Safety Net Eligible Services* and 614.00: *Health Safety Net Payments and Funding*.

Incarceration – the confinement in a penal institution of an individual. An individual is not incarcerated if he or she is on parole, probation, or home release, and does not return to the institution for overnight stays.

Income Deductions – specified deductions, as described in 130 CMR 520.011: *Standard Income Deductions* through 520.014: *Long-term-care Earned-income Deductions* that may be made from the gross income of an applicant or member.

Incompetent Applicant or Member – an applicant or member who has been adjudicated as incompetent and in need of a guardian by the probate and family court under the provisions of M.G.L. c. 201.

Institution (Medical) – a public or private facility providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 522.000: *Other Division Programs*. This includes acute inpatient hospitals, licensed nursing facilities, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and rehabilitation hospitals.

Institutionalization – placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days.

Interpreter – a person who translates for an applicant or member who has limited English proficiency or a hearing impairment.

Irrevocable Trust – a trust that cannot be in any way revoked by the grantor.

Jointly Held Resources – resources that are owned by an individual in common with another person or persons in a joint tenancy, tenancy-in-common, or similar arrangement.

Lawfully Present Immigrants – see 130 CMR 518.003(A): *Lawfully Present Immigrants*.

Life Estate – a life estate is established 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.

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Limited English Proficiency – persons who are unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language.

Look-back Period – a period of consecutive months that the MassHealth agency may review for transfers of resources to determine if a period of ineligibility for payment of nursing-facility services should be imposed.

Lump-sum Payment – a one-time only payment that represents either a windfall payment, or the accumulation of recurring countable income, such as retroactive unemployment compensation or federal veterans' retirement benefits.

MassHealth Agency – the Executive Office of Health and Human Services in accordance with the provisions of M.G.L. c. 118E.

Medical Benefits – payment for medical services provided to a MassHealth member.

Member – a person determined by the MassHealth agency to be eligible for MassHealth.

Navigator – an individual who is certified by the Health Connector to assist an applicant with electronic and paper applications to establish eligibility and enroll in coverage through the Health Connector. In addition, a navigator provides outreach and education about insurance options offered through the Health Connector.

Nonqualified Individuals Lawfully Present – see 130 CMR 518.003(A)(3): *Nonqualified Individuals Lawfully Present*.

Nonqualified Person Residing under Color of Law (nonqualified PRUCOL) – see 130 CMR 518.003(C): *Nonqualified Persons Residing under Color of Law (nonqualified PRUCOLs)*.

Nursing-facility Resident – an individual who is a resident of a nursing facility, is a resident in any institution, including an intermediate-care facility for the mentally retarded (ICF/MR), for whom payment is based on a level of care equivalent to that received in a nursing facility, is in an acute hospital awaiting placement in a nursing facility, or lives in the community and would be institutionalized without community-based services provided in accordance with 130 CMR 519.007(B): *Home- and Community Based Services Waiver*.

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Other Noncitizens – see 130 CMR 518.003(D): *Other Noncitizens*.

Patient-paid Amount – the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts.

Period of Ineligibility – the period of time during which the MassHealth agency denies or withholds payment for nursing-facility services because the individual has transferred resources for less than fair-market value.

Permanent and Total Disability – a disability as defined under Title XVI of the Social Security Act or under applicable state laws.

(1) For Adults and 18-year-olds.

(a) The condition of an individual, 18 years of age or older, who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that

1. can be expected to result in death; or
2. has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) For purposes of 130 CMR 515.001: Permanent and Total Disability, an individual 18 years of age or older is determined to be disabled only if his or her physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work, but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives, whether a specific job vacancy exists, or whether the individual would be hired if he or she applied for work. "Work that exists in the national economy" means work that exists in significant numbers, either in the region where such an individual lives or in several regions of the country.

(2) For Children Younger than 18 Years Old. The condition of an individual younger than 18 years old who has any medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitations, as defined in Title XVI of the Social Security Act, and can be expected to cause death or can be expected to last for a continuous period of not less than 12 months. Disability for children eligible for MassHealth Commonwealth under 130 CMR 519.012(B): *Certain Institutionalized Immigrant Children* is determined in accordance with the definition for permanent and total disability for children younger than 18 years old in 130 CMR 501.001: *Definition of Terms*.

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Reapplication – the MassHealth agency’s reopening of the application process when the application has been denied pursuant to 130 CMR 516.001(D): *Receipt of Corroborative Information*.

Redetermination – a review of a member’s circumstances to establish whether or not 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 60 years of age 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 Application or Application – the request for health benefits for an individual who is 65 years of age and older, or not living in the community that is received by the MassHealth agency and includes all required information and a signature by the applicant or his or her authorized representative.

Senior Care Organization – an organization that participates in MassHealth under a contract with the MassHealth agency and Centers for Medicare & Medicaid Services (CMS) 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.

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.

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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 younger than 65 years old.
- (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.

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 65 years of age 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.

Tax Dependent – a qualifying child or qualifying relative, other than the taxpayer or spouse, who entitles the taxpayer to claim a dependency exemption. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Filer – any individual, including his or her spouse if married filing jointly, who intends to file a federal tax return for the year in which a member of the tax household is seeking or receives benefits and who claims an exemption for him or herself. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Household – all members who are claimed on the tax return, including the tax filer(s) and all dependents.

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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) The MassHealth agency offers the following types of coverage: MassHealth Standard, MassHealth Family Assistance, 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 and the spouse's income and assets, as described in 130 CMR 519.000: *MassHealth: Coverage Types* and 520.000: *MassHealth: Financial Eligibility*, and immigration status, as described in 130 CMR 518.000: *MassHealth: Citizenship and Immigration*.

(C) The MassHealth agency may limit the number of people who can be enrolled in MassHealth Family Assistance. When the MassHealth agency imposes such a limit, no new applicants 65 years of age or older who are subject to these limitations will be added to MassHealth Family Assistance, and current MassHealth Family Assistance 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 Family Assistance 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 Family Assistance 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. The MassHealth agency 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.

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(b) DTA also administers the Emergency Aid to the Elderly, Disabled and Children (EAEDC) Program. MassHealth provides coverage to those persons receiving EAEDC cash assistance as follows:

1. MassHealth Standard: children younger than 19 years old, young adults 19 and 20 years old who are citizens, qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present, parents and caretakers who are citizens or qualified noncitizens, and elders 65 years of age or older who are citizens or qualified noncitizens;
 2. Mass Health CarePlus: adults 21 through 64 years of age who are citizens or qualified noncitizens; and
 3. MassHealth Family Assistance: children younger than 19 years old, young adults 19 and 20 years of age who are nonqualified persons living under color of law (PRUCOLs), parents and caretakers who are qualified noncitizens barred, nonqualified individuals lawfully present, nonqualified PRUCOLs, adults 21 through 64 years of age, and elders 65 years of age or older who are qualified noncitizens barred, nonqualified individual lawfully present, or nonqualified PRUCOLs.
- (2) Social Security Administration (SSA). The Social Security Administration administers the Supplemental Security Income (SSI) program and determines the eligibility of persons 65 years of age or older. Persons receiving SSI who 65 years of age or older are automatically eligible for MassHealth Standard coverage.
- (3) Health Connector. The Health Connector is Massachusetts' health insurance marketplace where individuals, families, and small businesses can shop among qualified health insurance carriers and choose a health insurance plan. The Health Connector administers Qualified Health Plans (QHP), premium tax credits (PTC), and the ConnectorCare program. The single, streamlined application is used to determine eligibility for both Health Connector and MassHealth programs as described in 130 CMR 516.000: *MassHealth: The Eligibility Process*. The Health Connector and MassHealth also coordinate eligibility notices and eligibility appeals.

515.005: Receiving Public Assistance from Another State.

Persons who are receiving public assistance from another state are not eligible for MassHealth.

(130 CMR 515.006 Reserved)

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(C) Cooperation with Quality Control. The Quality Control Division periodically conducts an independent review of eligibility factors in a sampling of case files. When a case file is selected for review, the member must cooperate with the representative of Quality Control. Cooperation includes, but is not limited to, a personal interview and the furnishing of requested information. If the member does not cooperate, MassHealth benefits may be terminated.

515.009: Referrals to Investigative Units

Intentional false statements or fraudulent acts made in connection with obtaining medical benefits or payments under MassHealth are punishable under M.G.L. c. 118E, § 39 by fines, imprisonment, or both. In all cases of suspected fraud, MassHealth agency staff will make a referral to the Bureau of Special Investigations, or other appropriate agencies.

515.010: Recovery of Overpayment of Medical Benefits

The MassHealth agency has the right to recover payment of medical benefits to which the member was not entitled at the time the benefit was received, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 515.010 will limit the MassHealth agency's right to recover overpayments.

515.011: Estate Recovery

(A) Introduction.

- (1) The MassHealth agency will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. 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.
 - (c) Effective for dates of death on or after December 31, 2016, MassHealth will offset the estate recovery claim by the total of any premiums paid to the MassHealth agency on behalf of the member when the member was 55 years of age or older.
- (2) The estate includes all real and personal property and other assets in the member's probate estate.
- (3) Notwithstanding 130 CMR 515.011(A)(1) and in accordance with 42 U.S.C. 1396p(b)(B), the MassHealth agency 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*.
 - (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.

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(B) Exceptions.

(1) Long-term-care Insurance Exception. 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 that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(2) Cost Effectiveness Exception. Effective for dates of death on or after May 14, 2021, in probate estates of members where the probate petition certifies under the penalties of perjury that the total assets in a member's estate are valued at \$25,000 or less, MassHealth has determined that it is not cost effective to pursue recovery. In such estates, MassHealth waives its right to recovery, and will not file a claim or otherwise pursue recovery. MassHealth reserves the right to file a claim and recover in such estates if probate filings do not sufficiently identify the value of the estate or if later probate filings or proceedings or investigation identify or establish that the total assets in the estate exceed \$25,000.00.

(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 Undue Hardship. The MassHealth agency will waive its estate recovery claim if the agency determines that satisfaction of the claim would cause an undue hardship. An undue hardship does not exist solely because recovery will prevent any heir from receiving an anticipated inheritance. The duly court-appointed personal representative or public administrator of the deceased member's probate estate may apply for a waiver of estate recovery due to undue hardship. The application for a waiver and supporting documents must be received by the MassHealth agency within 60 days of the agency's notice of claim.

The types of Waivers of Estate Recovery Due to Undue Hardship are:

(1) Waiver of Estate Recovery Due to Residence and Financial Hardship.

- (a) For notice of claims presented on or after November 15, 2003, but before May 14, 2021, recovery will be waived if MassHealth determines all of the following conditions have been met.
 - 1. a sale of real property would be required to satisfy a claim against the member's probate estate; and
 - 2. 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:
 - a. the individual lived in the property on a continual basis for two years prior to the member's admission to an institution or death 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;
 - b. 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);
 - c. the individual is not being forced to sell the property by other devisees or heirs at law; and

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- d. at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the individual's family group was less than or equal to 133% of the applicable federal-poverty-level income standard for the appropriate family size.
3. The waiver will be conditional for a period of two years from the date the MassHealth agency mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(a)2.(d), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(a)2.(d), the property is sold or transferred, or the individual does not use the property as their primary residence, the MassHealth agency will be notified and its claim may be payable in full.
- (b) For claims presented on or after May 14, 2021, and upon application of a waiver of estate recovery due to residence and undue hardship by the personal representative or public administrator of the estate, MassHealth will waive recovery without a conditional two-year waiting period provided the personal representative or public administrator establishes to the satisfaction of the MassHealth agency that all the criteria for a residence and undue hardship waiver in 130 CMR 515.011(D)(1)(a)1. and 2. are currently met.
- (c) Any waivers arising out of notice of claims presented before May 14, 2021, which did not become permanent and binding pursuant to the two-year conditional requirements set forth in 130 CMR 515.011(D)(1)(a)(3), and which had not been satisfied and were still subject to the two-year conditional requirements of that subsection as of May 14, 2021, will become permanent and binding.
- (2) Waiver of Estate Recovery Based on Care Provided. For claims presented on or after May 14, 2021, for an heir or devisee inheriting a legal interest in the deceased member's home, the MassHealth agency will waive estate recovery if MassHealth determines to its satisfaction all of the following conditions have been met.
- (a) the heir or devisee resided in the member's home on a continual basis for two years prior to member's admission to an institution or death;
 - (b) during that time, the member needed and the heir or devisee provided a level of care that avoided the member's admission to a facility;
 - (c) the heir or devisee continues to live in the property at the time the notice of claim is filed;
 - (d) the heir or devisee was left an interest in the home under the member's will, or inherited the property under the laws of intestacy;
 - (e) the heir is not being forced to sell the property by other devisees or heirs; and
 - (f) the property would have to be sold to satisfy the claim.

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(3) Waiver of Estate Recovery Due to Financial Hardship Based on Income.

(a) For claims presented on or after May 14, 2021, the personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of an heir or heirs or devisee or devisees. If there are multiple heirs or devisees, the personal representative or public administrator must apply for an Income-based waiver separately on behalf of each individual. To be considered a qualifying heir or devisee, the personal representative or public administrator of the estate must establish:

1. the qualifying heir or devisee is inheriting an interest in the member's estate under the member's probate estate; and,
2. the family group of a qualifying heir or devisee has a Gross Income below 400% of the federal poverty level for the two year period prior to the date the notice of claim is filed.

If MassHealth determines that both conditions have been met, the heir is considered a qualifying heir.

(b) MassHealth will waive recovery in an amount equal to the value of the qualifying heir's or devisee's interest in the estate up to a maximum of \$50,000 per qualifying heir or devisee. If there is more than one qualifying heir or devisee in an estate, the total amount of the agency's estate recovery claim waived for qualifying heirs or devisees shall be limited to a total of \$100,000.

(c) An estate with qualifying heirs or devisees, regardless of whether or not there are non-qualifying heirs, will be subject to estate recovery based on the lesser of:

1. the value of the estate remaining after deducting the amount waived from the total value of the estate for qualifying heirs and devisees; or
2. the amount of the MassHealth claim remaining after deducting the amount waived from the total value of the MassHealth claim.

(d) Example 1. The value of the estate is \$400,000 and the MassHealth claim is \$60,000. There are two heirs who qualify for the waiver, each with an interest in the estate of \$50,000 or greater. There are also two heirs who do not qualify. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$300,000 left in the estate, but after deducting the \$100,000 waived amount from the \$60,000 MassHealth claim there is nothing left in the MassHealth claim. The result is no estate recovery.

(e) Example 2. The value of the estate is \$350,000 and the MassHealth claim is \$500,000. There are two qualifying heirs, each with an interest in the estate of \$50,000 or greater. There are also two non-qualifying heirs. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$250,000 left in the estate, and after deducting the \$100,000 waived amount from the \$500,000 MassHealth claim there is \$400,000 remaining in the MassHealth claim. In this example, MassHealth would recover \$250,000, since it is less than \$400,000.

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(E) Outstanding Claims.

- (1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the then-existing MassHealth regulations were met.
- (2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

(F) Fair-market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the MassHealth agency's claim in full from a property on which MassHealth has recorded a lien, the fair-market value and equity value of all real property that is part of the deceased member's probate estate must be verified prior to the sale or transfer of said property.

- (1) The personal representative or public administrator of the probate estate must verify the fair-market value by sending to the MassHealth agency a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:
 - (a) a special-purpose tax assessment;
 - (b) based on a fixed-rate-per-acre method; or
 - (c) based on an assessment ratio or providing only a range.
- (2) The personal representative or public administrator of the probate estate must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official of a bank, savings and loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.
- (3) The MassHealth agency may also obtain an assessment from a knowledgeable source.

(G) Exemption of Certain Assets from Estate Recovery for American Indians and Alaska Natives.

- (1) For notice of claims presented on or after July 1, 2009, and upon application for exemption of certain assets from estate recovery by the personal representative or public administrator of the member's estate, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:
 - (a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;
 - (b) ownership interest in trust and non-trust property, including real property and improvements
 1. located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act at 43 U.S.C. chapter 33, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or
 2. for any federally recognized tribe not described in 130 CMR 515.011(G)(1)(b)1., located within the most recent boundaries of a prior federal reservation;
 - (c) income left as a remainder in an estate derived from property protected in 130 CMR 515.011(G)(1)(b), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as

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coming from protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or

(e) ownership interests in or usage rights to items not covered by 130 CMR 515.011(G)(1)(a) through (d) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in 130 CMR 515.011(G)(1) is limited to circumstances when it passes from an Indian, as defined in section 4 of the Indian Health Care Improvement Act at 25 U.S.C. chapter 18, to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or stepchildren, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

515.012: Real Estate Liens

(A) Liens. A real estate lien enables the MassHealth agency to recover the cost of medical benefits paid or to be paid on behalf of a member. Before the death of a member, the MassHealth agency will place a lien against any property in which the member has a legal interest, subject to the following conditions:

(1) per court order or judgment; or

(2) without a court order or judgment, if all of the following requirements are met:

(a) the member is an inpatient receiving long-term or chronic care in a nursing facility or other medical institution;

(b) none of the following relatives lives in the property:

1. a spouse;

2. a child younger than 21 years old, or a blind or permanently and totally disabled child; or

3. a sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution;

(c) the MassHealth agency determines that the member cannot reasonably be expected to be discharged from the medical institution and return home; and

(d) the member has received notice of the MassHealth determination that the above conditions have been met and that a lien will be placed. The notice includes the member's right to a fair hearing.

(B) Recovery. If property against which the MassHealth agency has placed a lien under 130 CMR 515.012(A) is sold, the MassHealth agency may recover all payment for services provided on or after April 1, 1995. This provision does not limit the MassHealth agency's ability to recover from the member's estate in accordance with 130 CMR 515.011.

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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, or at any time thereafter, 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
 1. 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;
 2. 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
 3. 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.

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515.013: Voter Registration

- (A) Voter registration forms are available through the MassHealth agency to applicants and members who are
 - (1) U.S. citizens; and
 - (2) 18 years of age or older, or who will be 18 years old on or before the date of the next election, in accordance with the National Voter Registration Act of 1993.

- (B) Applicants and members are
 - (1) informed of the availability of voter registration forms at application, at the time of an eligibility review, and when there is an address change;
 - (2) offered assistance in completing the voter registration application form unless such assistance is refused; and
 - (3) able to submit voter registration forms to the MassHealth agency for transmittal to the proper election offices.

- (C) MassHealth agency staff must not
 - (1) seek to influence an applicant's or member's political preference or party registration;
 - (2) display any political preference or party allegiance to the applicant or member;
 - (3) make any statement to an applicant or member or take any action intended to influence the applicant's or member's decision regarding voter registration; or
 - (4) make any statement to an applicant or member or take any action intended to lead the applicant or member to believe that the decision to register or not has any bearing on the availability of services or benefits.

- (D) Completed voter registration application forms that are submitted to the MassHealth agency are transmitted to the proper local election office for processing within five days of receipt.

515.014: Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions

For purposes of the financial eligibility exemption under 130 CMR 520.007(G)(8)(d), concerning treatment of the former home as an asset, and the exemption under 130 CMR 515.011(B) and 515.012(C), concerning repayment of assistance provided for nursing facility and other long-term-care services (hereafter collectively referred to as “MassHealth exemptions”), a long-term-care insurance policy must provide certain minimum coverage requirements as determined by the Division of Insurance.

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(A) Under Division of Insurance regulations at 211 CMR 65.09(1)(e)(2), to qualify for the MassHealth exemptions, an individual must be a covered person under an individual, group, or employment-based group policy issued on or after March 15, 1999, that meets the individual policy minimum standards of 211 CMR 65.05: *Minimum Standards for Individual Policies* and all of the following requirements.

- (1) Scope of Benefits. The policy must cover nursing and custodial care in a nursing facility licensed by the Department of Public Health.
- (2) Daily Dollar Benefits. The policy must have available benefits of at least \$125 per coverage day in a nursing facility, except where the actual expense incurred is less, regardless of whether accrued benefits are measured in terms of days or dollar amount.
- (3) Nursing Facility Coverage Days: Lifetime Benefit Period. The policy must have benefits available sufficient to cover at least 730 days in a nursing facility.
- (4) Elimination Period. No policy may have an elimination period (days on which services are provided to an insured before the policy begins to pay benefits) longer than 365 days in a nursing facility. The application of more than one elimination period is not allowed unless the insured has received no benefits for a period of at least 180 consecutive days. In lieu of an elimination period, the policy may have a deductible of no more than \$54,750.

(B) All policies issued prior to March 15, 1999, need only comply with the minimum standards of 211 CMR 65.05: *Minimum Standards for Individual Policies*, and the limitations and exclusion provision of 211 CMR 65.06: *Mandatory Benefit Offers for Individual Policies*, which were effective from April 1, 1989, through September 2, 1999.

(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, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

515.015: Reimbursement of Certain Out-of-Pocket Medical Expenses

(A) Eligibility Requirements. The following Standard coverage members are entitled to reimbursement for certain medical expenses for which they paid, subject to the provisions of 130 CMR 515.015:

- (1) an individual who
 - (a) applied for Supplemental Security Income (SSI);
 - (b) was denied SSI benefits by the Social Security Administration; and
 - (c) had his or her initial Social Security Administration denial overturned through a reconsideration process, administrative hearing, appeals counsel review, federal court review, or reopening under the Social Security Administration rules on administrative finality; or
- (2) an individual who
 - (a) applied for MassHealth;
 - (b) was denied MassHealth; and
 - (c) had his or her initial denial overturned by a subsequent decision, MassHealth, the fair hearing process, or the judicial review process.

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(B) Limitations.

(1) Reimbursement is limited to bills incurred on or after the coverage start date for the applicable coverage type as described in 130 CMR 519.000: *MassHealth: Coverage Types*, and paid between the date of the erroneous eligibility decision and the date on which the member is notified of MassHealth eligibility. The bill must have been paid by the member, the member's spouse, the parent of a member, or a legal guardian.

(2) Reimbursement is also limited to amounts actually paid for care or services that would have been covered under MassHealth had eligibility been determined correctly, even if these amounts exceed the MassHealth rate. Before reimbursing a member for care or services that would have required prior authorization, MassHealth may require submission of medical evidence for consideration under the prior-authorization standards. Reimbursement is available even though the medical care or services were furnished by a provider who does not participate in MassHealth.

(C) Verification.

(1) Applicants or members seeking reimbursement must provide MassHealth with

- (a) a bill for medical services that includes
1. the provider's name;
 2. a description of the services provided; and
 3. the date the service was provided; and

(b) proof of payment of the bill presented, such as a canceled check or receipt.

(2) Recipients of SSI must also provide documents from the Social Security Administration establishing the date of application and the date of application denial.

REGULATORY AUTHORITY

130 CMR 515.000: M.G.L. c. 118E, §§ 7 and 12