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4. Program Regulations

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449.401: Introduction

130 CMR 449.000 establishes the requirements for correctional facilities participating in MassHealth that provide services required for eligible individuals by the Consolidated Appropriations Act, 2023 (CAA 2023). All participating correctional facilities must also comply with MassHealth regulations including, but not limited to, 130 CMR 450.000: *Administrative and Billing Regulations*.

449.402: Definitions

The following terms used in 130 CMR 449.000 have the meanings given in 130 CMR 449.402 unless the context clearly requires a different meaning. Eligibility for reimbursement of services defined in 130 CMR 449.000 is not determined by these definitions, but by application of 130 CMR 449.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

Adjudication. The court process that determines if an individual committed the act for which they are charged.

Adverse Incident. An occurrence that represents actual or potential serious harm to the wellbeing of a member or to others under the care of a participating provider. Adverse incidents may be the result of the actions of a member served, actions of a staff member providing services, or incidents that compromise the health and safety of the member, or operations of the provider.

Clinical Laboratory. As defined in 130 CMR 401.402: Clinical Laboratory.

Consolidated Appropriations Act (CAA, 2023). The Consolidated Appropriations Act of 2023 that was signed into law by Congress on December 29<sup>th</sup>, 2022, thereby amending 42 U.S.C. 1396(a)(84), 42 U.S.C. 1396a(nn)(3), 42 U.S.C. 1396d(a), 42 U.S.C. 1397bb, 42 U.S.C. 1397jj(b).

Correctional Facility. Any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law.

Former Foster Care Youth. Youth who meet the eligibility criteria for former foster care children, including individuals younger than age 26 who meet the criteria for the group upon attaining either age 18 or a higher age (up to 21).

Inmate. A committed offender or such other person as is placed in custody in a correctional facility in accordance with law.

Inmate of a Participating Correctional Facility. A committed offender or such other person as is placed in custody in a participating correctional facility in accordance with law.

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ORP Provider. A provider who orders, refers, or prescribes a covered service to a MassHealth member.

Participating Correctional Facility (Facility). Any correctional facility that is enrolled as a MassHealth provider, that is not an institution of mental diseases as defined in 42 CFR 435.1010: *Definitions relating to institutional status*, and that is either

- (1) a Department of Corrections state prison, or
- (2) a county jail or house of correction, or
- (3) a Department of Youth Services hardware-secure or staff-secure track 1 facility or unit.

Post-adjudication. The time period following adjudication.

Rendering Provider. A Massachusetts licensed practitioner providing covered services to MassHealth members.

Warm Hand-off. A continuity of care tool to transition case management activities from a pre-release case management to a post-release case manager. Warm hand-offs should include a meeting between the individual, and both the pre-release and post-release case manager. It should also include a review of the person-centered care plan and the next steps to ensure continuity of case management and follow-up as the individual transitions into the community.

#### 449.403: Qualifying Individuals

(A) In order to qualify to receive covered services (further defined in 449.414), the individual must meet each of the following criteria:

- (1) meet the definition of an inmate of a participating correctional facility;
- (2) be eligible for MassHealth;
- (3) be held post-adjudication; and
- (4) be an individual younger than 21 years old or a former foster care youth from 18 up to, but not including, 26 years old.

(B) For information on member eligibility and coverage types, *see* 130 CMR 450.107: *Eligible Members and the MassHealth Card*.

#### 449.404: Participating Correctional Facility Eligibility

(A) A correctional facility is eligible to enroll as a participating correctional facility only if the correctional facility meets all provider participation requirements in 130 CMR 449.000 and 450.000: *Administrative and Billing Regulations*.

(B) Clinical Laboratory Services by Eligible Facility. In addition to meeting the requirements in 130 CMR 449.404(A), a participating facility or partnering contractor that operates a clinical laboratory must be certified as a clinical laboratory by the Centers for Medicare & Medicaid Services, based on the criteria set forth in 130 CMR 401.404(A)(2). 42 CFR Part 493: *Laboratory Requirements* sets forth the conditions of the Clinical Laboratory Improvement Amendments of

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1988 (CLIA). A participating facility that conducts CLIA-waived testing only must obtain a

CLIA Certificate of Waiver by meeting the exemption conditions under 42 CFR Part 493 Subpart B: *Certificate of Waiver* and submitting an application for a Certificate of Waiver. Participating facilities that conduct laboratory testing that is not CLIA waived must be in compliance with the Certificate of Waiver, Certificate of Compliance, Certificate for PPM procedures, or Certificate of Accreditation applicable to the category of examinations or procedures performed by the laboratory.

(C) Radiology Services by Eligible Facility. In addition to meeting the requirements in 130 CMR 449.404(A) and (B), a participating facility or partnering contractor that provides radiologic services must meet the conditions under 42 CFR 482.26: *Condition of participation: Radiologic services* and under 42 CFR 483.50: *Laboratory, radiology, and other diagnostic services*.

#### 449.405: Participating Correctional Facility Enrollment Process

(A) The applicant must submit the appropriate provider enrollment application to the MassHealth agency. The MassHealth agency may request additional information or perform a site inspection to evaluate the applicant's compliance with the regulations in 130 CMR 449.000.

(1) Based on the information in the enrollment application, information known to the MassHealth agency about the applicant, and the findings from any site inspection deemed necessary, the MassHealth agency will determine whether the applicant is eligible for enrollment.

(2) The MassHealth agency will notify the applicant of the determination in writing within 60 days of the MassHealth agency receiving a completed application. An application will not be considered complete until the applicant has responded to all MassHealth requests for additional information, and MassHealth has completed any required site inspection.

(B) If the MassHealth agency determines that the applicant is not eligible for enrollment, the notice will contain a statement of the reasons for that determination, including but not limited to incomplete application materials and recommendations for corrective action, if appropriate, so that the applicant may reapply for enrollment once corrective action has been completed.

(C) Enrollment is valid only for the facility or facilities described in the application and is not transferable. Any additional facility established by the applicant at another location must apply for enrollment and be enrolled with the MassHealth agency to receive payment.

#### 449.406: Services Provided Under a Contract

(A) Introduction. A participating facility may provide covered services directly or through contractual arrangements made by the participating facility. If a participating facility provides services via contractual arrangements, the contractor must also meet the requirements outlined in 130 CMR 449.000. Whether the services are provided directly or through contracts, the participating facility is responsible for submitting claims for services and for meeting the requirements in 130 CMR 449.000 and all other applicable state and federal requirements. A participating facility may provide services through contracts in the following situations:

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- (1) when a participating facility, in order to be approved to participate in MassHealth, makes arrangements with another agency or organization to provide some or all of the covered services that it does not provide directly; or
- (2) when a participating facility that is already approved for participation in MassHealth makes arrangements with others to provide services it does not provide.

(B) Contract Requirements.

- (1) If the participating facility contracts with another provider participating in MassHealth (e.g., hospital, independent clinical laboratory, independent diagnostic testing facility, or pharmacy), a written contract must document the services to be provided and the corresponding financial arrangements.
- (2) If the participating facility contracts with a provider that does not participate in MassHealth, the written contract must include
  - (a) a description of the services to be provided;
  - (b) the duration of the agreement and how frequently it is to be reviewed;
  - (c) a description of how personnel are supervised;
  - (d) a statement that the contracting organization will provide its services in accordance with any plan of care established for the member with the correctional facility's staff;
  - (e) a description of the contracting organization's standards for personnel, including qualifications, functions, supervision, and in-service training;
  - (f) a description of the method of determining reasonable costs and payments by the participating facility for the specific services to be provided by the contracting organization; and
  - (g) an assurance that the contracting organization will comply with Title VI of the Civil Rights Act and all relevant MassHealth provider requirements.

449.407: Reporting Requirements

Each participating facility must comply with the reporting requirements that pertain to the practice, facility, policies or staffing of the participating facility as directed by the MassHealth agency, and in compliance with 130 CMR 450.000: *Administrative and Billing Regulations* and 130 CMR 449.000.

449.408: Revocation of Enrollment and Sanctions

(A) The MassHealth agency has the right to review a participating facility's continued compliance with the conditions for enrollment referred to in 130 CMR 449.404 and the reporting requirements in 130 CMR 449.408 upon reasonable notice and at any reasonable time during the participating facility's hours of operation. The MassHealth agency has the right to revoke the enrollment, subject to any applicable provisions of 130 CMR 450.000: *Administrative and Billing Regulations*, if such review reveals that the participating facility has failed to or ceased to meet such conditions.

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(B) If the MassHealth agency determines that there exists good cause for the imposition of a lesser sanction than revocation of enrollment, it may withhold payment, temporarily suspend the participating facility from participation in MassHealth, or impose some other lesser sanction as the MassHealth agency sees fit, pursuant to the processes set forth in 130 CMR 450.000, as applicable.

449.409: In-state Providers: Maximum Allowable Fees

(A) The Executive Office of Health and Human Services (EOHHS) determines the payment rate for covered services in accordance with 101 CMR 317.00: *Rates for Medicine Services*, 101 CMR 314.00: *Rates for Dental Services*; 101 CMR 316.00: *Rates for Surgery and Anesthesia Services*; 101 CMR 318.00: *Rates for Radiology Services*; 101 CMR 320.00: *Rates for Clinical Laboratory Services*; and 101 CMR 444.00: *Rates for Certain Substance Use Disorder Services*. Payment is subject to the conditions, exclusions, and limitations set forth in 130 CMR 449.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

(B) Administrative Operations. Payment by the MassHealth agency for covered services includes payment for administrative operations and for all aspects of service delivery not explicitly included in 130 CMR 449.000, such as, but not limited to

- (1) staff supervision or consultation with another staff member;
- (2) providing information for the coordination of referrals; and
- (3) recordkeeping.

449.410: Site Inspections

(A) The MassHealth agency, and their agents and designated contractors may, at any time, conduct announced or unannounced site inspections of any and all participating facility locations to determine compliance with applicable regulations, which can include auditing activities in accordance with 130 CMR 450.000: *Administrative and Billing Regulations*. Such site inspections need not pertain to any actual or suspected deficiency in compliance with the regulations.

(B) After any site inspection where deficiencies are observed, the MassHealth agency will prepare a written site inspection report. The site inspection report will include the deficiencies found, and the period within which the deficiency must be corrected. The participating facility must submit a corrective action plan, within the timeframe set forth by the MassHealth agency, for each of the deficiencies cited in the report, including the specific corrective steps to be taken, a timetable for these steps, and the date by which full compliance will be achieved. The MassHealth agency will review the corrective action plan and will accept the corrective action plan only if it conforms to these requirements.

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449.411: Covered Services

(A) Participating facilities that provide covered services must meet the staff requirements outlined in 130 CMR 449.415 and as more fully described in provider bulletins and other guidance that may be issued by the MassHealth agency.

(B) Legal Basis.

(1) In accordance with federal law, and notwithstanding any limitations implied or expressed elsewhere in MassHealth regulations or other publications, the MassHealth agency has established the correctional facility provider type to deliver the services required for eligible individuals by CAA 2023.

(2) Any participating facility may provide covered services; however, in delivering covered services, providers must follow the requirements of 130 CMR 449.414(C).

(C) Covered services include:

(1) Targeted Case Management (TCM).

(a) The TCM service must be provided during the 30 days prior to the individual's release.

(b) The TCM service must include the following elements:

1. Comprehensive assessment and periodic reassessment of individual needs, to determine the need for any medical, educational, social, or other services, including:

- a. taking client history;
- b. identifying the individual's needs and completing related documentation; and
- c. gathering information from other sources such as family members, medical providers, social workers, and educators (if necessary), to form a complete assessment of the eligible individual.

2. Development (and periodic revision) of a specific person-centered care plan based on the information collected through the assessment that

- a. specifies the goals and actions to address the medical, social, educational, and other services needed by the individual;
- b. includes activities such as ensuring the active participation of the eligible individual, and working with the individual (or the individual's authorized health care decision maker) and others to develop those goals; and
- c. identifies a course of action to respond to the assessed needs of the eligible individual.

3. Referral and related activities, including but not limited to referrals to appropriate care and services available in the geographic region of the home or residence of the eligible individual, (such as scheduling appointments for the individual) to help the eligible individual obtain needed services, including activities that help link the individual with medical, social, and educational providers or other programs and services that can provide needed services to address identified needs and achieve goals specified in the care plan.

4. A warm hand-off to a post-release case manager to transition case management and support continuity of care of needed services that are documented in the person-centered care plan.

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(2) Screening and Diagnostics.

- (a) Screenings and diagnostics must be provided in the 30 days before the individual's release, as follows:
- (b) Screenings for individuals younger than 21 years of age must include
  - 1. services indicated as medically necessary in accordance with the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) requirements in 130 CMR 450.140; and
  - 2. any additional screenings required by EOHHS as announced in sub-regulatory guidance, including but not limited to a behavioral health screening.
- (c) Screenings for Former Foster Care Youth ages 21 through 25 must include the screenings required by EOHHS as announced in sub-regulatory guidance, including but not limited to a behavioral health screening.
- (d) Diagnostics must include any diagnostics indicated as medically necessary based upon the required screenings that are feasible for the participating facility to provide.

449.412: Staffing Requirements

- (A) Rendering providers working within participating facilities may provide covered services.
- (B) Rendering providers must
  - (1) be licensed, registered, certified, or otherwise appropriately credentialed or recognized practitioners under Massachusetts state scope of practice statutes; and
  - (2) have the necessary experience and receive appropriate training, as applicable to a given carceral facility.
- (C) ORP providers must be enrolled in MassHealth, pursuant to 130 CMR 450.000 and regulations governing the ORP provider's provider type. ORP providers may enroll in MassHealth as a non-billing provider as described in 130 CMR 450.212(E) or as a billing provider.
  - (1) The following types of providers are ORP providers: certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, dentist, licensed independent clinical social worker, optometrist, pharmacist (if authorized to prescribe), physician, physician assistant, podiatrist, psychiatric clinical nurse specialist, or psychologist.
  - (2) Claims for services listed in 130 CMR 449.415(C)(2) require an order, referral, or prescription from a MassHealth-enrolled ORP provider. Claims for the following services listed in 130 CMR 449.415(C)(2)(a) through (q) that do not have an order, referral, or prescription from a MassHealth-enrolled ORP provider will be denied.

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- (a) any service that requires a Primary Care Clinician referral (*see* 130 CMR 450.118(J));
- (b) any service that requires a Primary Care ACO Participating Primary Care Provider referral (*see* 130 CMR 450.119(I));
- (c) Adult Day Health;
- (d) Adult Foster Care;
- (e) Continuous Skilled Nursing;
- (f) Durable Medical Equipment;
- (g) Eyeglasses;
- (h) Group Adult Foster Care;
- (i) Home Health;
- (j) Independent Nurse;
- (k) Labs and Diagnostic Tests;
- (l) Medications;
- (m) Orthotics;
- (n) Oxygen/Respiratory Equipment;
- (o) Prosthetics;
- (p) Psychological Testing;
- (q) Therapy (Physical, Occupational, or Speech and Language).

(D) Case Manager Qualifications. The case manager must have, or work under the supervision of an individual with, at minimum, a bachelor's degree in a related field or two years of professional or paraprofessional experience in human services, criminal justice, social work, social casework, guidance, vocational counseling, employment counseling, educational counseling or correctional facility work.

#### 449.413: Supervision, Training, and Other Staff Requirements

(A) Staff Supervision Requirements. Each staff member must receive supervision appropriate to the staff member's skills and level of professional development. Supervision must occur in accordance with the program's policies and procedures and must include review of specific member issues, as well as a review of general principles and practices related to mental health, substance use disorder, and medical conditions.

(B) Staff Training. The participating facility must ensure that staff receive training to enhance and broaden their skills. Recommended training topics include but are not limited to:

- (1) common diagnoses across medical and behavioral healthcare;
- (2) engagement and outreach skills and strategies;
- (3) service coordination skills and strategies;
- (4) behavioral health and medical services, community resources, and natural supports;
- (5) principles of recovery and wellness;
- (6) cultural competence;
- (7) managing professional relationships with members including but not limited to boundaries, confidentiality, and peers as CSP workers;

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- (8) service termination;
- (9) motivational interviewing;
- (10) accessibility and accommodations;
- (11) trauma-informed care;
- (12) traumatic brain injuries; and
- (13) safety protocols.

(C) Staff Professional Standards. Any staff, of any discipline, operating in the participating facility must comport with the standards and scope of practice delineated in their professional licensure and be in good standing with their board of professional licensure, as applicable. Each participating facility must notify the MassHealth agency of any staff who are sanctioned by the Department of Public Health or sanctioned by their board of licensure, as applicable.

(D) Staffing Plan. The participating facility must maintain a staffing plan that includes policies and procedures to ensure all staffing and supervision requirements pursuant to 130 CMR 449.000 are met. The staffing plan must include a safety protocol outlining how adverse incidents are documented and addressed.

(E) Conflict of Interest. The participating facility must ensure appropriate protections against conflicts of interest in the service planning and delivery of covered services.

#### 449.414: Recordkeeping Requirements

(A) Release of Information. Each participating facility must obtain written authorization from each member or the member's legal guardian to release information obtained by the participating facility, to other community-based providers, federal and state regulatory agencies, and, when applicable, referral providers or other relevant parties to the extent necessary to carry out the purposes of the program and to meet regulatory requirements. All such information must be released on a confidential basis and in accordance with all applicable requirements.

(B) Member Records.

- (1) Participating facilities must maintain member records in accordance with 130 CMR 450.000: *Administrative and Billing Regulations*. When a member is referred to any other provider, the program must maintain the original member record and forward a copy of the information in 130 CMR 449.414(C) and (D) to the other provider.
- (2) Member records must be complete, accurate, and properly organized.

(C) Participating facilities must maintain case records that document for all individuals receiving TCM the following:

- (1) the name of the individual;
- (2) the dates of the case management services;
- (3) the name of the provider agency (if relevant) and the person providing the case management service;

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- (4) the nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;
  - (5) whether the individual has declined services in the care plan;
  - (6) the need for, and occurrences of, coordination with other case managers;
  - (7) a timeline for obtaining needed services; and
  - (8) a timeline for reevaluation of the plan.
- (D) The member's record must include at least the following information:
- (1) the member's name and case number, MassHealth identification number, gender identity, date of birth, marital status, next of kin, and date of initial contact;
  - (2) the place of service;
  - (3) the member's description of the problem, and any additional information from other sources, including the referral source, if any;
  - (4) written documentation that the member receiving services meets the clinical standards published by the MassHealth agency;
  - (5) the relevant medical, psychosocial, educational, and vocational history;
  - (6) a needs assessment of the member;
  - (7) short- and long-range goals that are realistic and obtainable and a time frame for their achievement;
  - (8) the member's service plan, updates, and related participating facility service planning meetings, including a schedule of activities and services necessary to achieve the member's goals, signed by both the participating facility staff person and the member;
  - (9) written record of all services provided, including face-to-face, virtual, and collateral contacts, with progress notes;
  - (10) a written record of the reassessments that includes recommendations for revision of the service plan, when indicated, and the names of the reviewers;
  - (11) the name(s) of the participating facility staff person(s) responsible for providing services to the member;
  - (12) reports on all collateral consultations and collaborations with family, friends, and outside professionals, including probation, parole or correctional institution staff, who are involved in the member's treatment;
  - (13) all information and correspondence to and from other involved agencies, including appropriately signed and dated consent forms;
  - (14) when discharged, a discharge summary, including a summary of the member's services, a brief summary of the member's condition and response to services on discharge, achievement of goals, and recommendations for appropriate services that should be provided in subsequent programs by the same or other agencies to accomplish the member's long-range goals, and the program's future responsibility for the member's care; and
  - (15) if the member fails to keep appointments or to adequately participate in the service plan, participating facility staff must make every effort to encourage the member to do so, and these follow-up efforts must be documented in the member's record.
  - (16) if the member is receiving TCM, all of the documentation listed in 130 CMR 449.417(C).

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(E) Program Records. The participating facility must retain documentation reflecting compliance with the requirements of 130 CMR 449.000, including 130 CMR 449.403.

(F) Other Records and Reports as Directed by EOHHS. The participating facility must maintain other records and reports as directed by EOHHS.

(G) Availability of Records. Any and all health records must be made available to the MassHealth agency upon request.

#### 449.415: Administration

(A) Organization. The participating facility must maintain an organizational chart showing major operating programs of the organization, the personnel in charge of each program, and the lines of authority,

(B) Staff Development and Supervision. Each staff member must receive supervision appropriate to the person's skills and level of professional development. Supervision must be documented and must occur within the context of a formalized relationship that provides frequent and regularly scheduled individual or group personal contact with the supervisor.

#### 449.416: Service Limitations

Funding Availability. Reimbursement for MassHealth services is subject to limitations based on the availability of full federal financial participation, and any other applicable federal statute, regulation, or payment limit.

#### 449.417: Severability

The provisions of 130 CMR 449.000 are severable. If any provision of 130 CMR 449.000 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 130 CMR 449.000 or application of those provisions to applicable individuals, entities, or circumstances.

#### REGULATORY AUTHORITY

130 CMR 449.000: M.G.L. c. 118E, §§ 7 and 12.

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