




Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
600 Washington Street
Boston, MA 02111
www.mass.gov/dma

MassHealth
Long-Term-Care Facility Bulletin 85
April 2003

TO: Nursing Facilities, Chronic Disease and Rehabilitation Inpatient Hospitals, Psychiatric Inpatient Hospitals, State School ICFs/MR, and Rest Homes Participating in MassHealth

FROM: Douglas S. Brown, Acting Commissioner 

RE: MassHealth Eligibility Representative Designation
MassHealth Permission to Share Information

Introduction

The Division is amending its confidentiality procedures about who can be provided with, or can have access to, an individual's case information. These revised confidentiality procedures are in accordance with the Privacy Rule of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996. This bulletin does not address MassHealth eligibility information accessible through the Recipient Eligibility Verification System (REVS) or MassHealth claims procedures.

Please be advised that effective April 14, 2003, MassHealth will not be able to share applicant or member information unless written authorization as described in this bulletin is received.

Regulation Changes

The Division has revised its member regulations and policies concerning the use, disclosure, and accessibility of an individual's "protected health information" (PHI), and "individually identifiable health information." (These terms are found in the HIPAA privacy rules.) These revised regulations include changing the name, description, and function of the terms "authorized representative" and "representative" used during the MassHealth eligibility process and the appeal process. These changes are found in [MassHealth Eligibility Letter 95](#), dated September 1, 2002.

The Division no longer uses the terms "authorized representative" and "representative" to describe a person who "acts on behalf of" or "acts as" the MassHealth applicant or member during the eligibility or appeals process. The following two new terms are used instead.

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Regulation Changes
(cont.)

- **Eligibility Representative.** This is someone who acts “on behalf of” an applicant or member during the eligibility process. The eligibility representative may act “as” the applicant or member. This person must know enough about the applicant or member **to take responsibility** for the accuracy of the statements made during the eligibility process. This person must receive copies of all eligibility notices sent to the applicant or member. When an applicant or member designates an eligibility representative, this designation is valid for MassHealth eligibility issues.
- **Appeal Representative.** This is someone who acts “on behalf of” an appellant during the appeal process. An appellant can be either an applicant or member. The appellant may designate an appeal representative by completing the “Request for a Fair Hearing” form, which is found on the reverse side of any Division notice allowing such requests. An appeal representative may also be someone who is legally appointed to act on behalf of the applicant or member, such as a legal guardian or holder of power of attorney, and must submit or have already submitted verification of such status. The “Request for a Fair Hearing” is also available as a stand-alone form.

The complete definitions for both types of representative are found in the MassHealth member regulations at [130 CMR 501.001](#) and [515.001](#); appeal representative is also defined at [130 CMR 610.004](#).

**MassHealth Eligibility
Representative
Designation Form**

The eligibility representative must be designated on the Division’s new [MassHealth Eligibility Representative Designation Form \[ERD \(04/03\)\]](#).

The ERD is a one-page, two-sided form. It is divided into three sections. The sections to be completed depend upon certain circumstances, as described below.

Section I: This section is completed when the applicant or member IS ABLE to complete and sign the form. This section has two parts.

- **Part A** is completed and signed by the applicant or member.
- **Part B** is completed and signed by the chosen eligibility representative who agrees to assume the duties and responsibilities of the eligibility representative.

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**MassHealth Eligibility
Representative
Designation Form
(cont.)**

Section II: This section is completed when the applicant or member CANNOT PROVIDE written designation. It is completed and signed by the eligibility representative who certifies by signing that the applicant or member:

- is not able to provide written designation of the eligibility representative due to a mental or physical condition;
- has been told of the eligibility representative designation; and
- has been told that the eligibility representative designation can be cancelled at any time by the applicant or member.

Section III: This section is completed and signed by the eligibility representative when the eligibility representative HAS ALREADY BEEN LEGALLY APPOINTED to act on behalf of the applicant or member, or on behalf of the applicant's or member's estate.

- The eligibility representative "appointed by law" can be a legal guardian, conservator, holder of power of attorney, or health-care proxy, or, if the applicant or member is deceased, the estate's administrator or executor.
- A copy of the applicable current legal document confirming the appointment is required and must be placed in the case file.

The ERD includes instructions for completion, and specific language concerning the use, disclosure, and accessibility of eligibility information. The eligibility representative designation remains in effect until it is changed or cancelled in writing. Incomplete ERDs will not be processed, and will be returned to the applicant or member for completion.

**How Applicants and
Members Obtain the
ERD**

Applicants and members may obtain the ERD in the following ways.

- At application—The ERD is included in both the Medical Benefit Request (MBR) and the MassHealth Application (MHA) packages, and with the MassHealth Buy-In Application (MHBI-1) and the MassHealth Asset Assessment (MH/AA) form.
- At eligibility reviews—The ERD is enclosed with the MassHealth Eligibility Review forms (ERVs and MERs), the Long-Term-Care Eligibility Review (LTC-ER), and the MassHealth Eligibility Review Form for Home- and Community-Based Services Waiver Participants (HCBSW-Review).
- Upon request from a MassHealth Enrollment Center or the MassHealth Customer Service Center.
- On-line—The ERD will be available on-line, and may be downloaded from the Division's Web site at www.mass.gov/dma.

The Division will accept a legible fax copy of the completed form.

**MassHealth Permission
to Share Information**

The “contact person” block has been removed from the MBR and ERVs. Any information written in the “contact person” block on an MBR or ERV received by MassHealth on or after April 14, 2003, will not be honored. Although the “contact person” block has been eliminated, applicants, members, or their eligibility representatives may want additional persons or entities to be notified of eligibility decisions or to know certain information.

If the applicant or member wants the Division to share eligibility notices and certain other specified information either verbally or in writing with a person or entity who is not the eligibility representative, written authorization must be provided. This written authorization can be provided on a new Division form, the [MassHealth Permission to Share Information \[PSI \(Rev. 04/03\)\]](#) form. The PSI form is completed and signed by the applicant or member, or by the eligibility representative, to tell the Division what specific information is to be shared, with whom, and for what duration. **The Division encourages those requesting access to an applicant’s or member’s PHI (who are not eligibility representatives) to use the MassHealth PSI form to ensure that all required elements for processing the request to share information are received.** However, the Division will accept written authorization that is submitted on a form other than the MassHealth PSI form if it includes **all** the following **required** elements.

- Name of applicant or member.
 - A description of the specific information to be shared.
 - Name of the person or entity (usually the Division of Medical Assistance) to whom the applicant or member is granting the authorization to share his or her PHI.
 - Name, address, and telephone number (and fax number, if applicable) of the person (or entity) with whom the applicant or member is authorizing the Division to share this information.
 - The purpose of the requested disclosure. The applicant or member may indicate the reasons for this disclosure request or simply state “at my request.”
 - An end date to indicate when this permission to share is no longer valid. As of this end date, the sharing of information including issuing copies of eligibility notices is no longer permitted.
 - Applicant or member signature and date. If the PSI form is signed by someone, such as an eligibility representative, parent, or guardian, on behalf of the applicant or member, the signer must indicate his or her authority to act on behalf of the applicant or member.
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**MassHealth Permission
to Share Information**
(cont.)

- Statements that:
 - a. the information being shared may be subject to redisclosure by the recipient of the information and, therefore, may lose privacy protection; and
 - b. the applicant or member may cancel the authorization at any time (except when action has already been taken based on the authorization). The form must also describe how the applicant or member may cancel the authorization.

The MassHealth PSI form is available from MassHealth Forms Distribution upon request. It will also be available on-line, and may be downloaded from the Division's Web site at www.mass.gov/dma. A legible fax copy of the completed PSI form is acceptable.

Effective April 14, 2003, all existing "contact person" information will be removed from MassHealth files if MassHealth does not have appropriate authorization. The best way to avoid delay in having information shared with you, if the applicant or member wants MassHealth to share such information, is to submit the PSI form, or equivalent permission, along with eligibility documents. (For example, enclose the PSI, or equivalent permission, with an MBR if the applicant wants MassHealth to send you eligibility notices pertaining to that MBR.) Submission of a fully completed and signed PSI, or equivalent permission, will permit MassHealth to share the indicated information as of the date that such form is received.

**Sharing Applicant or
Member Eligibility
Notices**

The Division is permitted to send copies of applicant or member eligibility notices to other parties if:

- the Division has received an ERD designating such parties as the applicant's or member's eligibility representative;
 - the Division has received a valid written authorization to share eligibility notices (PSI, or equivalent permission, containing all required elements as described above); or
 - existing Division policy at [130 CMR 516.007\(C\)](#) requires it to do so.
 - a. This regulation applies only in long-term-care institutional cases. In addition to the eligibility representative, this regulation allows eligibility notices to be sent to the institution and the community spouse of an institutionalized individual, without requiring written authorization.
 - b. However 130 CMR 516.007(C) does not authorize spouses who live together in the community to receive copies of each other's eligibility notices without either a completed ERD form designating the spouse as the eligibility representative, or a completed PSI form, or equivalent permission, as described above.
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ERD vs PSI

In deciding which form to use, the ERD or the PSI, it is necessary to consider the following.

- If, during the eligibility process, the applicant or member wants a person to sign MassHealth forms, or someone other than the applicant or member (such as a guardian) wants to sign on behalf of the applicant or member, he or she is signing “as” the applicant or member, and must know enough about the applicant or member **to be responsible** for the accuracy and completeness of the information provided. ***This person is the eligibility representative and the ERD must be completed.***
 - If the applicant or member only wants to share certain information and/or eligibility notices with someone who is not otherwise authorized to receive that information, ***the PSI form, or equivalent permission, must be completed.***
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Cancelling or Changing ER Designation or Permission to Share Information

An applicant or member may, at any time, cancel or change the eligibility representative designation or the permission to share information authorization. The ERD and PSI forms instruct the applicant or member to send a letter to the Privacy and Security Office, 600 Washington Street, Boston, MA 02111, stating that he or she wants to cancel the authority of these documents.

If the completed authorization to share information statement is on a form other than that provided by the Division, that form must also include the method to cancel.

Submitting an ERD or PSI Form

When submitting the ERD or PSI form, or equivalent permission, use Appendix B of the MassHealth All-Provider Manual for information about where to send the forms.

Revised forms

MassHealth eligibility documents (applicant and member forms and notices, etc.) have been revised effective April 1, 2003, to reflect new terminology and requirements.

The following new or revised documents may be ordered from MassHealth Distribution in the usual manner.

- Medical Benefit Request (MBR-1)
- MassHealth Member Booklet (HCR-2)
- MassHealth Application (MHA)
- MassHealth and You Guide (MH + You Guide)
- Personal-Care Attendant Supplement (PCA-SUPP)
- Long-Term-Care Supplement (LTC-SUPP)
- MassHealth Permission to Share Information form (PSI)
- MassHealth Eligibility Representative Designation Form (ERD)
- MassHealth Buy-In Application (MHBI-1)
- MassHealth Adult Disability Supplement (MADS-A)
- Disability Supplement for Children (MADS-C)

Please order and begin using appropriate new and revised forms as soon as possible. Discontinue use of all obsolete forms upon receipt of revised forms.

Questions

If you have any questions about ordering the forms, please contact the MassHealth Provider Services Department at 617-628-4141 or 1-800-325-5231.
