

MASSHEALTH ESTATE RECOVERY HARDSHIP WAIVER REQUEST FORM



General Instructions:

This form is effective for all notices of claims presented by MassHealth on or after May 14, 2021. This form must be completed by the court-appointed personal representative or public administrator of the estate so that MassHealth can determine if the estate qualifies for a hardship waiver. The personal representative or public administrator must complete a separate form for each individual heir of the estate who may qualify for a waiver.

This form applies to three types of waivers. The personal representative or public administrator may apply for one or any combination of the three waivers listed below. An estate may qualify for no more than one of the three waivers. The personal representative or public administrator must indicate below which waiver(s) are being requested and must submit all required documentation for each waiver requested for each individual heir of the estate.

- 1. Residence and Financial Hardship Waiver.** If any heir of an estate qualifies for this waiver, the entire MassHealth claim is waived and the estate is not eligible for the Care Provided or Income-Based waivers.
- 2. Care Provided Waiver.** An heir of an estate may qualify for this waiver if the estate does not qualify for a Residence and Financial Hardship waiver. If any heir of an estate qualifies for this waiver, the entire MassHealth claim is waived and the estate is not eligible for the Income-Based waiver.
- 3. Income-Based Waiver.** An heir may qualify for this waiver if the estate does not qualify for the Residence and Financial Hardship waiver or the Care Provided waiver.

You must send this completed form and all required documentation listed below as soon as possible, but no more than 60 days after the MassHealth notice of claim is filed in the probate court. You can send by certified mail to:

MassHealth Estate Recovery Unit
PO Box 15205
Worcester, MA 01615

For more information on estate recovery, see 130 CMR 501.000, 130 CMR 515.000, and www.mass.gov/estaterecovery.

Estate Information

Estate of

Name of Personal Representative(s) or Public Administrator(s)

.....
.....

Phone number of Personal Representative(s) or Public Administrator(s)

Email of Personal Representative(s) or Public Administrator(s)

Name of Attorney Representing the Estate

Name of Heir Requesting Hardship Waiver(s)

Name of Parent and/or Legal Guardian if Heir is Under 18 Years of Age

I/we,..... court-appointed personal representative(s) or public administrator(s) of the estate of, request that MassHealth waive its estate recovery claim due to undue hardship and further assert that this heir meets the applicable waiver requirements as listed below.

Personal Representative or Public Administrator Signature

..... Date

Personal Representative or Public Administrator Signature

..... Date

Please check each waiver you are applying for.

Residence and Financial Hardship Waiver

If the sale of real property is required to satisfy a claim presented by MassHealth on or after May 14, 2021, estate recovery may be waived if an heir was using the property as a principal place of residence on the date of the member's death and all the following conditions are met:

- (1) the heir lived in the property on a continual basis for at least two years prior to the member's admission to an institution or death and continues to live in the property when MassHealth files its notice of claim;
- (2) the heir inherited an interest in the property from the deceased member's estate;
- (3) the heir is not being forced to sell the property by other devisees or heirs; and
- (4) at the time MassHealth first presented its claim, the annual gross income of the heir's family group was less than or equal to 133% of the applicable federal poverty level income standard.

If all conditions are met, MassHealth will waive its estate recovery claim in full.

Documentation required for a Residence and Financial Hardship Waiver.

- Affidavit signed by the requesting heir (or parent or legal guardian if heir is under 18 years of age) under the pains and penalties of perjury attesting to the following:
 - The sale of real estate would be required to satisfy the claim;
 - They lived in the property on a continual basis for at least two years prior to the member's admission to an institution or death and continues to live in the property;
 - All other devisees or heirs at law are not forcing a sale of the real estate;
 - The amount of gross income, size of family group, and that there is no other income for the family group.
- Copy of current deed to the real estate.
- Probate inventory listing all probate assets and values.
- Supporting documentation for residency, including letter from the town, voting records, school records, or driver's license.
- Copy of the deceased member's will filed in probate, if any.
- Copy of Massachusetts Probate Court (MPC) Form 162 Surviving Spouse, Children, Heirs at Law.

- Copy of Massachusetts Probate Court (MPC) Form 163 listing devisees if a will was filed in probate.
- Affidavit(s), signed under the pains and penalties of perjury, from all other devisees or heirs at law that they are not forcing a sale of the home.
- Supporting documentation for income, including tax returns, W2s, paystubs, SSI, SSDI (monthly benefit statement or direct deposit) showing the gross annual income of the applicant/requestor's family group as less than or equal to 133% of the applicable federal poverty level income standard for the appropriate family size.

MassHealth may request additional documentation in order to substantiate your request.

Care Provided Hardship Waiver

For MassHealth notices of claims presented on or after May 14, 2021, the personal representative or public administrator of an estate may apply for a waiver of estate recovery based on care the heir provided to the member. The following criteria must be met:

- (1) the heir resided in the home continuously for two years prior to the member's admission to an institution or before the member's 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 inherited an interest in the property from the deceased member's estate;
- (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.

If all conditions are met, MassHealth will waive its estate recovery claim in full.

Documentation required for a Care Provided Hardship Waiver.

- Affidavit signed by the requesting heir (or parent or legal guardian if heir is under 18 years of age) under the pains and penalties of perjury attesting to the following:
 - The requesting heir lived in the real estate located at continuously for two years before the member's admission to an institution or the member's death, and continues to reside in the premises; and
 - A sale of the home is required to satisfy the MassHealth claim; and
 - None of the other heirs and devisees are forcing a sale of the home.
- Supporting residency documentation, including letter from the town, voting records, school records, or driver's license.
- Copy of current deed for real estate.
- Signed letter on a physician's letterhead, from a physician who treated the member during the time the requesting heir provided care to the member and who was familiar with the member's medical history, attesting that the member would have required admission to a facility but for the care provided by the requesting heir.*
- Copy of the deceased member's will filed in probate, if any.

* MassHealth reserves the right to request the deceased member's medical records from the attesting physician for the two years of treatment prior to the member's admission to a facility or the member's death.

- Copy of Massachusetts Probate Court (MPC) Form 162 Surviving Spouse, Children, Heirs at Law.
- Copy of Massachusetts Probate Court (MPC) Form 163 listing devisees if a will was filed in probate.
- Probate inventory showing probate assets and values.
- Affidavit(s), signed under the pains and penalties of perjury, from all other devisees or heirs at law that they are not forcing a sale of the home.

MassHealth may request additional documentation in order to substantiate your request.

Income-Based Hardship Waiver

For MassHealth notices of claims presented on or after May 14, 2021, the personal representative or public administrator of an estate may apply for a full or partial waiver of estate recovery based on the income of heir(s) who inherited an interest in the member's estate. If there are multiple requesting heirs, the personal representative or public administrator must complete this form separately for each heir. In order for an heir to qualify for this waiver, MassHealth must determine that the requesting heir's family group had a gross income below 400% of the applicable federal poverty level (FPL) for two years prior to the date of the notice of claim being filed. After this determination:

- (1) MassHealth will waive estate recovery in an amount equal to the value of the qualifying heir's interest in the estate, up to a maximum of \$50,000 per qualifying heir. If there are multiple qualifying heirs in the estate, the total waived amount will not exceed \$100,000 in any circumstances.
- (2) An estate with qualifying heir(s), regardless of whether or not there are other non-qualifying heirs, will be subject to estate recovery on the lesser of:
 - a) the remaining value of the estate after deducting priority expenses and the amount excluded for qualifying heir(s); or
 - b) the remaining value of the MassHealth claim after deducting the amount excluded for qualifying heir(s) from the total value of the MassHealth claim.

Documentation required for an Income-Based Hardship Waiver.

- Copy of the deceased member's will filed in probate, if any.
- Copy of Massachusetts Probate Court (MPC) Form 162 Surviving Spouse, Children, Heirs at Law.
- Copy of Massachusetts Probate Court (MPC) Form 163 listing devisees if a will was filed in probate.
- Supporting income documentation for the current year, including paystubs, SSI, or SSDI (monthly benefit statement or direct deposit) which shows the applicant/requestor's family group's gross income is less than 400% of the FPL.
- Affidavit signed by the requesting heir, (or parent or legal guardian if heir is under 18 years of age), under the pains and penalties of perjury, attesting to the following to the best of the requesting heir's knowledge:
 - For the **current** calendar year:
 - What the family group's size is; and
 - That the family group's gross income (for as many months as are available) is \$....., which is less than 400% of the FPL; and
 - That there is no other income for the current year.

- For each of the **prior** two years:
 - What the family group's size was; and
 - That the family group's gross income was \$....., which was less than 400% of the FPL for the applicable time period(s); and
 - That there was no other income.

Supporting documentation for income, including tax returns, any and all W2s, paystubs, SSI, and/or SSDI (monthly benefit statement or direct deposit) for the two years prior to the date the claim was filed showing the requesting heir's family group's gross income was \$....., which was less than 400% of the FPL for the applicable time period(s).

Inventory showing all probate assets and the values.

Final Probate Account, when available.

If a final accounting is not available at the time the personal representative or public administrator submits the request form for the heir, the personal representative or public administrator must timely submit the request form. If an heir qualifies for the Income-Based Waiver, the personal representative or public administrator must submit this documentation when available before MassHealth can determine the amount waived. MassHealth reserves the right to request additional supporting information at any time in this process.

HUD Settlement Statement/Closing Disclosure Statement for sale of real estate.

Documentation of expenses with priority over MassHealth's claim, including but not limited to expenses of administering the estate, reasonable funeral costs, and debts and taxes owed to federal or state government.

MassHealth may request additional documentation in order to substantiate your request.