

MassHealth Estate Recovery Policy Update

November 2020

MassHealth is making the first reforms to estate recovery policy in almost two decades to prevent undue hardship for members and their families and to support low and middle-income families retain some assets while remaining in compliance with federal and state law.

- Estate recovery is a federally required process to ensure that assets belonging to Medicaid beneficiaries are used to pay for their health care, while protecting their use of some of those assets (e.g., their homes) during their lifetimes.
- MassHealth is required by federal and state law to be reimbursed for the cost of a member's care after their death if they leave a probate estate.
 - Federal law requires states to recover the cost of certain services related to long-term services & supports (LTSS) for individuals age 55+, and the cost of all services for institutionalized individuals regardless of age.
 - Similar to just under half of all other states, state law in Massachusetts also requires estate recovery for the cost of all non-LTSS expenses for individuals age 55+.

MassHealth already allows certain deferrals and exemptions from estate recovery.

- MassHealth defers estate recovery in certain circumstances, such as if the member has a surviving spouse, a child under age 21, or a disabled child of any age.
- The entire recovery of assets is waived for heirs with income under 133% of the federal poverty limit who live in the home and meet other specific criteria.
- The sale of a home is often required to satisfy an estate recovery claim, however, in cases where the home is occupied by heirs who are not eligible for a deferral or waiver, **MassHealth does not force the sale of a home and works to find solutions that allow family members to remain in the home.**

MassHealth has already taken a number of steps to provide relief from estate recovery requirements in response to the COVID-19 pandemic while also remaining in compliance with federal and state law.

- MassHealth has stopped filing notices of claims and recovering from estates with a total value of \$25,000 or less, an exemption that will become permanent with the proposed reforms.
- MassHealth has stopped sending demand letters to estate representatives to collect on claims, including interest accrued on unpaid claims, during the public health emergency.

MassHealth's proposed reforms will increase protections for low-income individuals and families by significantly reducing the number of estates subject to estate recovery and limiting the amount recovered in certain circumstances.

- MassHealth will **no longer file claims on estates with a total value of \$25,000 or less.** This new exemption will eliminate approximately 50% of cases currently subject to estate recovery.
- MassHealth will **expand its criteria for undue hardship:**
 - **Heirs with income under 400% of the federal poverty limit would have up to \$50,000 excluded from the estate recovery.**
 - If there are multiple heirs that qualify for this waiver, the maximum exclusion will be \$100,000.
 - In most cases, \$50,000 exceeds the value of the estate and therefore many heirs who qualify for this waiver will be entirely exempt from any estate recovery.
 - **Heirs that have lived in the decedent's home and provided care for two years prior to the decedent entering into a permanent institution (e.g. nursing home) or passing away would be exempt from estate recovery if the home would need to be sold to satisfy the claim.**

Currently, estate recoveries in Massachusetts account for a total of ~\$25M net revenue for the Commonwealth. These reforms would reduce revenue to the Commonwealth from estate recoveries by approximately \$12M net annually.

MassHealth will codify these reforms in regulations to be proposed in November 2020, with a target effective date in early 2021. The updates to MassHealth estate recovery policy will be accompanied by enhanced member notification materials.

- MassHealth will be revising its application and member notices related to estate recovery to ensure applicants and members have clear information about estate recovery requirements, including these new exemptions and hardship waiver criteria.
- MassHealth will create a website with information on estate recovery, including frequently asked questions and links to hardship waiver applications.