

**Commonwealth of Massachusetts
Office of Medicaid**

NOTICE OF PUBLIC HEARING

Coronavirus Update: Due to the coronavirus emergency, MassHealth is holding public hearings remotely. All public hearings will occur on the advertised dates and times. Details and instructions for participating and testifying remotely (such as through phone line or online connection) at the remote public hearings will be published online at www.mass.gov/service-details/masshealth-public-hearings and are included in this notice below. If you plan to testify at the remote hearing, MassHealth strongly encourages you to register in advance; see below for instructions. MassHealth encourages you to submit written testimony in addition to, or instead of, providing testimony at the hearing; see below for instructions. Additionally, requests for copies of proposed regulations will not be accepted in person. Details for obtaining copies of proposed regulations are set forth below.

To join the hearing online, go to <https://statema.webex.com>, and enter meeting ID 644 151 469. To join the hearing by phone, call (866) 692-3580, and enter meeting ID 644 151 469# when prompted.

Pursuant to the authority of M.G.L. c. 6A, s. 16 and in accordance with M.G.L. c. 30A, a public hearing will be held on Tuesday, January 5, 2021, at 10 a.m. relative to the adoption of:

130 CMR 501.000: Health Care Reform: MassHealth: General Policies and 130 CMR 515.000: MassHealth: General Policies

MassHealth proposes to amend its regulations under the authority of M.G.L. c. 118E, section 31, to update the requirements of MassHealth's Estate Recovery Program.

First, the proposed amendments clarify existing estate recovery requirements. The amendments are intended to ensure consistency between 130 CMR 501.000 and 130 CMR 515.000, and to clarify 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.

Second, these amendments codify a new exception to estate recovery, whereby 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.

Third, these amendments modify the existing waiver of estate recovery due to 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 would eliminate the conditional period and MassHealth would waive recovery upon its initial determination that the criteria and circumstances for the waiver are met.

Finally, these amendments would create two new waivers of estate recovery due to undue hardship.

The first new waiver is a Care Provided Hardship Waiver, whereby MassHealth will waive its estate recovery claim upon application by the personal representative 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 and/or receiving an institutional level of care in the community 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 or receiving an institutional level of care in the community;
- (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.

The second new waiver is an Income-Based Hardship Waiver, whereby the personal representative 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 shall be limited to a total of \$100,000.

The proposed regulation is planned to go into effect no sooner than April 16, 2021. There is no fiscal impact on cities and towns.

Individuals who notify MassHealth of their intent to testify at the hearing will be afforded an earlier opportunity to speak. Speakers are strongly encouraged to notify MassHealth of their intention to testify at the hearing by registering online at www.mass.gov/service-details/masshealth-public-hearings. Individuals may also submit written testimony by emailing masshealthpublicnotice@state.ma.us. Please submit electronic testimony as an attached Word document or as text within the body of the email with the name of the regulation in the subject line. All submissions must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100

Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony must be submitted by 5:00 p.m. on Tuesday, January 5, 2021.

All persons desiring to review the current draft of the proposed actions may go to www.mass.gov/service-details/masshealth-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAaccommodations@state.ma.us or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

MassHealth may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/masshealth-public-hearings.

November 30, 2020