



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
600 Washington Street
Boston, MA 02111
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MassHealth
Eligibility Letter 113
November 15, 2003

TO: Division Staff
FROM: Beth Waldman, Acting Commissioner *Beth Waldman*
RE: **Changes to the Estate Recovery Program**

This letter transmits revised regulations about the Estate Recovery Program.

The revisions change the source of fair-market value and the criteria for obtaining an estate recovery waiver.

Determination of fair-market value includes property tax assessment and other sources as the primary indicator when evaluating an agreement to sell and calculating the equity value.

The regulations change the criteria for obtaining an estate recovery waiver due to hardship. The qualifying annual gross income of the individual's family group is reduced from 200% of the FPL to 133% of the FPL. Any waiver granted is now conditional for a two-year period, at which time, if all circumstances remain the same, the waiver will become permanent.

These regulations are effective November 15, 2003.

MANUAL UPKEEP

<u>Insert</u>	<u>Remove</u>	<u>Trans. By</u>
501.010	501.010	E.L. 105
501.013	----	----
501.014 (1 of 2)	501.014 (1 of 2)	E.L. 95
515.011 (1 of 2)	515.011	E.L. 105
515.011 (2 of 2)	----	----
515.012 (1 of 2)	515.012 (1 of 2)	E.L. 63

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**Chapter 501
Page 501.010**

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501.010: Responsibilities of Applicants and Members

(A) Responsibility to Cooperate. The applicant or member must cooperate with the Division in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining available health insurance.

(B) Responsibility to Report Changes. The applicant or member must report to the Division, within 10 days or as soon as possible, changes that may affect eligibility. Such changes include, but are not limited to, income, the availability of health insurance, and third-party liability.

(C) Cooperation with Quality Control. The Quality Control Division will periodically conduct an independent review of eligibility factors in a sampling of case files. When a case file is selected for review, the member must cooperate with the representative of Quality Control. Cooperation includes, but is not limited to, a personal interview and the furnishing of requested information. If the member does not cooperate, MassHealth benefits may be terminated for the family group.

501.011: Referrals to Investigative Units

Intentional false statements or fraudulent acts made in connection with obtaining medical benefits or payments under MassHealth are punishable under M.G.L. c. 118E, § 39 by fines, imprisonment, or both. In all cases of suspected fraud, Division staff will make a referral to the Bureau of Special Investigations, or other appropriate agencies.

501.012: Recovery of Overpayment of Medical Benefits

The Division has the right to recover payment for medical benefits to which the member was not entitled, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 501.012 will limit the Division's right to recover overpayments.

501.013: Estate Recovery

(A) Introduction.

(1) The Division will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. Recovery is limited to payment for all services provided while the member was aged 55 or older.

(2) The estate includes all real and personal property and other assets in the member's probate estate and, for persons who die on or after July 1, 2003, any other real and personal property and other assets in which the member, immediately prior to death, had any legal title or interest, to the extent of such interest.

(B) Deferral of Estate Recovery. Recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is under 21 years of age, or a child of any age who is blind or permanently and totally disabled.

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(C) Waiver of Estate Recovery Due to Hardship. For claims presented on or after November 15, 2003, recovery will be waived if:

- (1) a sale of real property would be required to satisfy a claim against the member's estate;
and
- (2) a person who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:
 - (a) the person lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for MassHealth or other assistance from the Division and continues to live in the property at the time the Division first presented its claim for recovery against the deceased member's estate;
 - (b) the person has inherited or received an interest in the property from the deceased member's estate as defined in 130 CMR 501.013(A)(2) and 515.011(A)(2);
 - (c) the person is not being forced to sell the property by other devisees or heirs at law;
and
 - (d) at the time the Division first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.
- (3) The waiver will be conditional for a period of two years from the date the Division mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the Division to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), or the property is sold or transferred, or the person does not use the property as their primary residence, the Division will be notified and its claim will be payable in full.

(D) Outstanding Claims.

- (1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the Division's then-existing regulations were met.
- (2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

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(E) Fair-Market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the Division's claim in full, the fair-market value and equity value of all real property that is part of the deceased member's estate must be verified prior to the sale or transfer of said property.

(1) The executor or administrator of the probate estate, or in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must verify the fair-market value by sending to the Division a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (a) a special-purpose tax assessment;
- (b) based on a fixed-rate-per-acre method; or
- (c) based on an assessment ratio or providing only a range.

(2) The executor or administrator of the probate estate or, in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official of a bank, savings and loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.

(3) The Division may also obtain an assessment from a knowledgeable source.

501.014: Voter Registration

(A) Voter registration forms will be made available through the Division of Medical Assistance to applicants and members who are:

- (1) U.S. citizens; and
- (2) aged 18 or older, or who will be aged 18 on or before the date of the next election, in accordance with the National Voter Registration Act of 1993.

(B) Applicants and members will be:

- (1) informed of the availability of voter registration forms at application, at the time of an eligibility review, and when there is an address change;
- (2) offered assistance in completing the voter registration form unless such assistance is refused; and
- (3) able to submit voter registration forms, in person or by mail, to the Division of Medical Assistance for transmittal to the proper election offices.

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Page 515.011**

515.011: Estate Recovery**(A) Introduction.**

(1) The Division will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. Recovery is limited to payment for all services that were provided:

(a) while the member was 65 or older; except, on or after October 1, 1993, while the member was aged 55 or older; or

(b) on or after March 22, 1991, while the member, regardless of age, was institutionalized, and the Division determined that the member could not reasonably be expected to return home.

(2) The estate includes all real and personal property and other assets in the member's probate estate and, for persons who die on or after July 1, 2003, any other real and personal property and other assets in which the member, immediately prior to death, had any legal title or interest, to the extent of such interest.

(B) Exception. No recovery for nursing facility or other long-term-care services may be made from the estate of any person who:

(1) was institutionalized;

(2) notified the Division that he or she had no intent of returning home; and

(3) on the date of admission to the long-term-care institution, had long-term-care insurance that met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(C) Deferral of Estate Recovery. Recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is under 21 years of age, or a child of any age who is blind or permanently and totally disabled.

(D) Waiver of Estate Recovery Due to Hardship.

(1) For claims presented on or after November 15, 2003, recovery will be waived if:

(a) a sale of real property would be required to satisfy a claim against the member's probate estate; and

(b) an individual who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:

(i) the individual lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for MassHealth or other assistance and continues to live in the property at the time the Division first presented its claim for recovery against the deceased member's estate;

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(ii) the individual has inherited or received an interest in the property from the deceased member's estate as defined in 130 CMR 501.013(A)(2) and 515.011(A)(2);

(iii) the individual is not being forced to sell the property by other devisees or heirs at law; and

(iv) at the time the Division first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.

(2) The waiver will be conditional for a period of two years from the date the Division mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for the Division to waive recovery still exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(b)(iv), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two-year period, the circumstances and conditions for waiver no longer exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(b)(iv), or the property is sold or transferred, or the individual does not use the property as their primary residence, the Division will be notified and its claim will be payable in full.

(E) Outstanding Claims.

(1) For claims presented between April 1, 1995, and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the Division's then-existing regulations were met.

(2) For claims presented before April 1, 1995, a waiver for hardship did not exist.

(F) Fair-Market Value and Equity Value. If there will be insufficient proceeds from the sale or transfer of the property to satisfy the Division's claim in full, the fair-market value and equity value of all real property that is part of the deceased member's estate must be verified prior to the sale or transfer of said property.

(1) The executor or administrator of the probate estate or, in the case of real property that passes outside the probate estate, the person or entity to whom legal title or interest passed, must verify the fair-market value by sending to the Division a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (a) a special-purpose assessment;
- (b) based on a fixed-rate-per-acre method; or
- (c) based on an assessment ratio or providing only a range.

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(2) The executor or administrator of the probate estate or, in the case of real property that passed outside the probate estate, the person or entity to whom legal title or interest passed, must also provide a comparable market analysis or a written appraisal of the property value from a knowledgeable source. A knowledgeable source includes one of the following: a licensed real-estate agent or broker, a real-estate appraiser, or an official from a bank, savings or loan association, or similar lending organization. The knowledgeable source must not have any real or apparent conflict-of-interest relationship with the estate.

(3) The Division may also obtain an assessment from a knowledgeable source.

515.012: Real Estate Liens

(A) Liens. A real estate lien enables the Division to recover the cost of medical benefits paid or to be paid on behalf of a member. Before the death of a member, the Division will place a lien against any property in which the member has a legal interest, subject to the following conditions:

- (1) per court order or judgement; or
- (2) without a court order or judgement, if all of the following requirements are met:
 - (a) the member is an inpatient receiving long-term or chronic care in a nursing facility or other medical institution;
 - (b) none of the following relatives lives in the property:
 - (i) a spouse;
 - (ii) a child under the age of 21, or a blind or permanently and totally disabled child; or
 - (iii) a sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution;
 - (c) the Division determines that the member cannot reasonably be expected to be discharged from the medical institution and return home; and