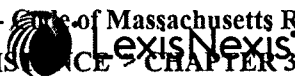


106 CMR 362.200

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The Massachusetts Administrative Code titles are current through Register No. 1487, dated January 20, 2023

MA - State of Massachusetts Regulations 106: DEPARTMENT OF TRANSITIONAL
 ASSISTANCE > CHAPTER 362.000: SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM:
 NONFINANCIAL ELIGIBILITY STANDARDS



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362.200: 362.200: Citizens, Noncitizens, Canadian-born or Mexican-born Native Americans and Members of Hmong and Highland Laotian Tribes

To be eligible for SNAP benefits an individual must be:

- (A) A citizen of the United States, defined as an individual born in one of the United States, District of Columbia, Commonwealth of Puerto Rico, Guam, and or the Virgin Islands. In addition, nationals from American Samoa or Swain's Island shall be regarded as United States citizens for SNAP purposes;
- (B) A noncitizen who meets one of the requirements of 106 CMR 362.220;
- (C) A Native American Indian born in Canada or Mexico covered by Section 289 of the Immigration and Nationality Act (INA) or who is a member of a tribe as defined in Section 4(e) of the Indian Self Determination and Education Assistance Act; or
- (D) A member of a Hmong or Highland Laotian tribe who meets the requirements of 106 CMR 362.235.

A written statement certifying, under penalty of perjury, to the truth of the information contained in the application of the citizenship or noncitizen status of each household member applying for SNAP benefits, must be provided in accordance with 106 CMR 361.100(C).

If a household member does not meet the above requirements, other household members may still apply for and, if eligible, receive benefits.

Statutory Authority

REGULATORY AUTHORITY

106 CMR 362.000: M.G.L. c. 18, § 10.

CODE OF MASSACHUSETTS REGULATIONS

Content Type:

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The Massachusetts Administrative Code titles are current through Register No. 1487, dated January 20, 2023

MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 501.000: HEALTH CARE REFORM: MASSHEALTH: GENERAL POLICIES

501.001: 501.001: Definition of Terms

The terms listed in 130 CMR 501.001 have the following meanings for the purposes of MassHealth, as described in 130 CMR 501.000 through 508.000: *Health Care Reform: MassHealth: Managed Care Requirements*. In the event that a definition conflicts with federal law, the federal law supersedes.

Accountable Care Organization (ACO) - an entity that enters into a population-based payment model contract with EOHHS as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population. ACOs include Accountable Care Partnership Plans, Primary Care ACOs, and MCO-Administered ACOs.

Accountable Care Partnership Plan - a type of ACO with which the MassHealth agency contracts under its ACO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis and which is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and which is organized primarily for the purpose of providing health care services.

Access to Health Insurance - the ability to obtain employer-sponsored health insurance for an uninsured family member where an employer would contribute at least 50% of the premium cost, and the health insurance offered would meet the basic-benefit level.

American Indian or Alaska Native - a person who

- (1) is a member of a federally recognized tribe, band, or group as defined in Title 25 of U.S.C.;
- (2) is an Eskimo, Aleut, or other Alaska Native enrolled by the Secretary of the Interior, pursuant to the Alaska Native Claims Settlement Act at 43 U.S.C. 1601 *et seq.*; or
- (3) has been determined eligible to receive health care services from **Indian** Health Care Providers as an **Indian** pursuant to 42 CFR 136.12 or Title V of the **Indian** Health Care Improvement Act.

Appeal - a written request, by an aggrieved applicant or member, for a fair hearing.

Appeal Representative - an Appeal Representative as defined in 130 CMR 610.004: *Definitions*.

Applicant - an individual who completes and submits an application for MassHealth.

Application - a request for health benefits that is received by the MassHealth agency and includes all required

information and a signature by the applicant or his or her authorized representative. The application may be submitted at www.MAHealthConnector.org, or the applicant may complete a paper application, complete a telephone application, or apply in person at a MassHealth Enrollment Center (MEC).

Authorized Representative -

(1) a person or an organization identified as the authorized representative of an applicant or member in a completed Authorized Representative Designation Form or another form prescribed by the MassHealth agency that has been signed by the authorized representative and, if applicable, the applicant or member and submitted to the MassHealth agency and in which the authorized representative agrees to comply with applicable rules regarding confidentiality and conflicts of interest in the course of representing the applicant or member; provided that such person or organization must be

(a) a person or organization designated by the applicant or member in writing to act responsibly on his or her behalf in connection with the eligibility process and other ongoing communications with the MassHealth agency;

(b) a person acting responsibly on behalf of the applicant or member and who is sufficiently aware of such applicant's or member's circumstances to assume responsibility for the accuracy of the statements made on his or her behalf during the eligibility process and in other communications with the MassHealth agency, such as a family member or friend; provided that the applicant or member in this case cannot provide written designation and does not otherwise have an individual who can act on his or her behalf such as an existing authorized representative, guardian, conservator, personal representative of the estate, holder of power of attorney, or an invoked health care proxy; or

(c) a person who has, under applicable law, authority to act on behalf of the applicant or member in making decisions related to health care or payment for health care including, but not limited to, a guardian, conservator, personal representative of the estate of an applicant or member, holder of power of attorney, or an invoked health care proxy.

(2) An authorized representative shall have the authority to complete and sign an application on the applicant's behalf, select a health plan on the applicant's or member's behalf, complete and sign a renewal form on the member's behalf, receive copies of the applicant's or member's notices and other communications from the MassHealth agency (which may include protected health care information, personal data, and financial information), and act on behalf of the applicant or member in all other matters with the MassHealth agency or the Connector, including representing the applicant or member at an appeal provided that, with respect to a person serving as an authorized representative pursuant to 130 CMR 501.001: **Authorized Representative(1)(c)**, authority to act on behalf of the applicant or member is determined by the applicable law or underlying legal document.

Basic-benefit Level (BBL) - benefits provided under a health-insurance plan that include a broad range of medical benefits as defined in the minimum creditable coverage core services requirements in 956 CMR 5.03(1)(a); provided that the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under that plan does not exceed the maximum amounts described at IRC § 223(c)(2) for high deductible health plans.

Behavioral Health Contractor - the entity contracted with EOHHS to provide, arrange for, and coordinate behavioral health care and other services to members on a capitated basis.

Blindness - a visual impairment, as defined in Title XVI of the Social Security Act. Generally **Blindness** means visual acuity with correction of 20/200 or less in the better eye, or a peripheral field of vision contracted to a 10 [degrees] radius or less, regardless of the visual acuity.

Business Day - any day during which the MassHealth agency's offices are open to serve the public.

Caretaker Relative - an adult who is the primary care giver for a child, is related to the child by blood, adoption, or marriage, or is a spouse or former spouse of one of those relatives, and lives in the same home as that child, provided that neither parent is living in the home.

Case File - the permanent written collection of documents and information required to determine eligibility and to provide benefits to applicants and members.

Certified Application Counselor (CAC) - an individual who is certified by the MassHealth agency and the Connector to provide assistance in completing applications and renewal forms.

Child - a person younger than 19 years old.

Citizen - *see* 130 CMR 504.002: *U.S. Citizen*.

Commonwealth Health Insurance Connector Authority or Health Connector or Connector - the entity established pursuant to M.G.L. c. 176Q, § 2.

ConnectorCare - the program administered by the Health Connector pursuant to M.G.L. c. 176Q to provide premium assistance payments and point-of-service cost-sharing subsidies to eligible individuals enrolled in health plans.

Couple - two persons who are married to each other according to the laws of the Commonwealth of Massachusetts.

Coverage Date - the date medical coverage begins.

Coverage Type - a scope of medical services, other benefits, or both that is available to members who meet specific eligibility criteria. MassHealth coverage types include the following: MassHealth Standard (Standard), MassHealth CommonHealth (CommonHealth), MassHealth CarePlus (CarePlus), MassHealth Family Assistance (Family Assistance), Small Business Employee Premium Assistance Program (SBE Premium Assistance Program), and MassHealth Limited (Limited). The scope of services or covered benefits for each coverage type is found at 130 CMR 450.105: *Coverage Types*.

Custodial Parent -

(1) the parent with whom a child's physical custody has been established by a court order or binding separation, divorce, or custody agreement; or

(2) if no such order or agreement exists, the parent with whom the child spends most nights; or

(3) if the child spends an equal number of nights with each parent, it is determined by the Internal Revenue Service (IRS) tax rules.

Day - a calendar day, unless a business day is specified.

Deductible - the total dollar amount of incurred medical expenses that an applicant, whose income exceeds MassHealth income standards, must be responsible for before the applicant is eligible for MassHealth as described at 130 CMR 506.009: *The One-time Deductible*.

Deductible Period - a specified six-month period within which an applicant for MassHealth, whose income exceeds MassHealth income standards, may become eligible, on the basis of disability, through incurred and/or paid medical expenses of the applicant or any member of the MassHealth Disabled Adult Household as described in 130 CMR 506.009: *The One-time Deductible*.

Disabled - having a permanent and total disability.

Disabled Adult Household - *see* 130 CMR 506.002(C): *MassHealth Disabled Adult Household*.

Disabled Working Adult - a person who is engaged in substantial gainful activity, but otherwise meets the definition of disabled as defined in Title XVI of the Social Security Act.

Disability Evaluation Services (DES) - a unit that consists of physicians and disability evaluators who determine permanent and total disability of an applicant or member seeking coverage under a MassHealth program for which disability is a criterion using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. This unit may be a part of a state agency or under contract with a state agency.

Duals Demonstration Dual Eligible Individual - for purposes of the Duals Demonstration Program, a MassHealth member must meet all of the following criteria:

(1) be 21 through 64 years of age at the time of enrollment;

(2) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth

CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;

(3) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*; and

(4) live in a designated service area of an ICO.

Duals Demonstration Program - the MassHealth state Demonstration to Integrate Care for Duals Demonstration Dual Eligible Individuals.

Eligibility Process - activities conducted for the purposes of determining, redetermining, and maintaining the eligibility of a MassHealth applicant or member.

Fair Hearing - an administrative, adjudicatory proceeding conducted according to 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to determine the legal rights, duties, benefits, or privileges of applicants and members.

Family Group - a family, couple, or individual.

Federal Poverty Level (FPL) - income standards issued annually in the *Federal Register* to account for the last calendar year's increase in prices as measured by the *Consumer Price Index*.

Fee-for-service - a method of paying for medical services provided by any MassHealth participating provider with no limit on provider choice.

Filing Status - an Internal Revenue Service term. The five filing statuses are single, married filing a joint return, married filing a separate return, head of household, and qualifying widow(er) with dependent children. The rate at which income is taxed is determined by the filing status.

Gross Income - the total money earned or unearned, such as wages, salaries, rents, pensions, or interest, received from any source without regard to deductions.

Health Insurance - coverage of health-care services by a health-insurance company, a hospital-service corporation, a medical-service corporation, a managed-care organization, or Medicare. Coverage of health-care services by MassHealth, Health Safety Net (HSN), or Children's Medical Security Plan (CMSP) is not considered health insurance.

Health Safety Net - a source of funding for certain health-care under 101 CMR 613.00: *Health Safety Net Eligible Services* and 614.00: *Health Safety Net Payments and Funding*.

Hospital-determined Presumptive Eligibility - the MassHealth agency will provide time-limited coverage, in accordance with 130 CMR 502.003(H): *Hospital Determined Presumptive Eligibility*, for individuals who are determined to be presumptively eligible by a qualified hospital, as defined at 130 CMR 450.110(B).

Incarceration - the confinement in a penal institution of an individual. An individual is not incarcerated if he or she is on parole, probation, or home release, and does not return to the institution for overnight stays.

Inconsistency Period - the time frame that an individual has to provide verifications needed to determine eligibility for health insurance offered by the Connector.

Integrated Care Organization (ICO) - an organization with a comprehensive network of medical, behavioral-health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with the Executive Office of Health and Human Services (EOHHS) and the Centers for Medicare & Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. ICOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services.

Interpreter - a person who translates for an applicant or member who has limited English proficiency or a hearing impairment.

Lawfully Present Immigrants - see 130 CMR 504.003(A): *Lawfully Present Immigrants*.

Limited English Proficiency - persons who are unable to communicate effectively in English because their primary language is not English and who have not developed fluency in the English language.

Lump-sum Payment - a one-time only payment that represents either a windfall payment, or the accumulation of recurring countable income, such as retroactive unemployment compensation or federal veterans' retirement benefits. Payments such as gifts, inheritances, and personal injury awards, to the extent that they are not included in modified adjusted gross income, are not considered lump-sum payments.

Managed Care - a system of primary care and other medical services that are provided and coordinated by a MassHealth managed-care provider, a SCO, an ICO, or the behavioral health contractor in accordance with the provisions of 130 CMR 450.117: *Managed Care Participation* and 508.000: *MassHealth: Managed Care Requirements*.

Managed Care Organization (MCO) - any entity with which the MassHealth agency contracts under its MCO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis, and is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and is organized primarily for the purpose of providing health care services.

MassHealth Agency - the Executive Office of Health and Human Services in accordance with the provisions of M.G.L. c. 118E.

MassHealth MAGI Household - *see* 130 CMR 506.002(B): *MassHealth MAGI Household Composition*.

MassHealth Managed-care Provider - an MCO, Accountable Care Partnership Plan, Primary Care ACO, or the Primary Care Clinician Plan.

MCO-administered ACO - a type of ACO with which the MassHealth agency contracts under its ACO program and is administered through an MCO.

Medical Benefits - payment for health insurance or medical services provided to a MassHealth member.

Member - an individual determined by the MassHealth agency to be eligible for MassHealth.

Modified Adjusted Gross Income (MAGI) - modified adjusted gross income as defined in section 36(B)(d)(2) of the Internal Revenue Code with the following exceptions:

- (1) an amount received as a lump sum only counts as income in the month received;
- (2) scholarships, awards, or fellowship grants used for education purposes, and not for living expenses, are excluded from income;
- (3) certain taxable income received by American Indians and Alaska Natives is excluded from income as described in 42 CFR § 435.603(e).

Navigator - an individual who is certified by the Health Care Connector, to assist an applicant with electronic and paper applications to establish eligibility and enroll in coverage through the Health Care Connector. In addition, a navigator provides outreach and education about insurance options offered through the Health Connector.

Nonqualified Individuals Lawfully Present - *see* 130 CMR 504.003(A)(3): *Nonqualified Individuals Lawfully Present*.

Nonqualified Person Residing under Color of Law (Nonqualified PRUCOLs) - *see* 130 CMR 504.003(C): *Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs)*.

One-adult-with-one-child Policy - a health insurance policy that covers a family consisting of one adult and one child.

Other Noncitizen - *see* 130 CMR 504.003(D): *Other Noncitizens*.

Parent of a Child Younger than 19 Years Old - natural, adoptive, or stepmother or stepfather of a child.

Permanent and Total Disability - a disability as defined under Title XVI of the Social Security Act or under applicable state laws.

(1) For Adults 18 Years of Age or Older.

(a) The condition of an individual, 18 years of age or older, who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that

1. can be expected to result in death; or
2. has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) For purposes of 130 CMR 501.001: **Permanent and Total Disability**, an individual 18 years of age or older is determined to be disabled only if his or her physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work, but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives, whether a specific job vacancy exists, or whether the individual would be hired if he or she applied for work. "Work that exists in the national economy" means work that exists in significant numbers, either in the region where such an individual lives or in several regions of the country.

(2) **For Children Younger than 18 Years Old**. The condition of an individual younger than 18 years old who has any medically determinable physical or mental impairment, or combination of impairments, of comparable severity to an impairment or combination of impairments that disables an adult, or are of such severity that the child is unable to engage in age-appropriate activities, as defined in Title XVI of the Social Security Act as in effect on July 1, 1996.

Person with Breast or Cervical Cancer - an individual who has submitted verification that he or she has breast or cervical cancer.

Person who is HIV Positive - a person who has submitted verification that he or she has tested positive for the human immunodeficiency virus (HIV).

Premium - a charge for payment to the MassHealth agency that may be assessed to members of MassHealth Standard, MassHealth CommonHealth, MassHealth Family Assistance, or the Children's Medical Security Plan (CMSP).

Premium Assistance Payment - an amount contributed by the MassHealth agency toward the cost of health insurance coverage for certain MassHealth members who meet the criteria in 130 CMR 506.012: *Premium Assistance Payments*.

Premium Billing Family Group (PBFG) - a group of persons who live together.

(1) The group can be an individual, a couple who are two persons married to each other according to the rules of the Commonwealth of Massachusetts, or a family.

(2) Two parents are members of the same premium billing family group if they are mutually responsible for one or more children who live with them.

(3) A family making up a PBFG may consist of

(a) a child or children younger than 19 years old, any of their children, and their parents. A child who is absent from the home to attend school is considered as living in the home;

(b) siblings younger than 19 years old and any of their children who live together even if no adult parent or caretaker relative is living in the home; or

(c) a child or children younger than 19 years old, any of their children, and their caretaker relative when no parent is living in the home.

Premium Tax Credit (PTC) - payment made pursuant to 26 U.S. C. § 36B on behalf of an eligible individual to reduce the costs of a health benefit plan premium to the individual.

Primary Care ACO - a type of ACO with which the MassHealth agency contracts under its ACO program.

Primary Care Clinician (PCC) Plan - a managed-care option administered by the MassHealth agency through which enrolled members receive primary care and other medical services. *See* 130 CMR 450.118: *Primary Care Clinician (PCC) Plan*.

Protected Noncitizens - *see* 130 CMR 504.003(B): *Protected Noncitizens*.

Provisional Eligibility - approval for MassHealth benefits when an applicant's certain self-attested circumstances show eligibility for MassHealth benefits but further verification is required for continued eligibility. (*See* 130 CMR 502.003: *Verification of Eligibility Factors*.)

Qualified Noncitizens - *see* 130 CMR 504.003(A)(1): *Qualified Noncitizens*.

Qualified Noncitizens Barred - *see* 130 CMR 504.003(A)(2): *Qualified Noncitizens Barred*.

Quality Control - a system of continuing review to measure the accuracy of eligibility decisions.

Qualified Health Plan (QHP) - a health plan licensed under M.G.L. c. 175, 176A, 176B, or 176G that has received the Commonwealth Health Insurance Connector's Seal of Approval as meeting the criteria under 45 CFR § 155.1000 and is offered through the Health Connector in accordance with the provisions of 45 CFR § 155.1010.

Redetermination- a review of a member's circumstances to establish whether he or she remains eligible for benefits.

Senior Care Organization (SCO) - an organization that participates in MassHealth under a contract with the MassHealth agency and the Centers for Medicare & Medicaid Services to provide a comprehensive network of medical, health-care, and social-service providers that integrates all components of care, either directly or through subcontracts. SCOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services.

Sibling - natural (full or half-blood), adoptive, or stepbrother or stepsister.

Spouse - a person married to the applicant or member according to the laws of the Commonwealth of Massachusetts.

Substantial Gainful Activity - generally, employment that provides a set amount of gross earnings as determined by the Social Security Administration (SSA) under Title XVI of the Social Security Act.

Tax Dependent - a qualifying child or qualifying relative, other than the taxpayer or spouse, who entitles the taxpayer to claim a dependency exemption. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Filer - any individual, including his or her spouse if married filing jointly, who intends to file a federal tax return for the year in which a member of the tax household is seeking or receives benefits and who claims an exemption for himself or herself. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Household - all members who are claimed on the tax return, including the tax filer(s) and all dependents.

Third-party - any person, entity, or program that is or may be responsible to pay all or part of the expenditures for medical benefits.

Young Adult - an individual 19 or 20 years old.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 501.00: M.G.L. c. 118E, §§ 7 and 12.

CODE OF MASSACHUSETTS REGULATIONS

Document: 130 CMR 501.013

130 CMR 501.013**Copy Citation**

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 501.000: HEALTH CARE REFORM: MASSHEALTH: GENERAL POLICIES

501.013: 501.013: Estate Recovery

(A) Introduction.

(1) The MassHealth agency 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

(a) while the member was 65 years of age or older, except on or after October 1, 1993, while the member was 55 years of age or older; and

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

(c) Effective for dates of death on or after December 31, 2016, MassHealth will offset the estate recovery claim by the total of any premiums paid to the MassHealth agency on behalf of the member when the member was 55 years of age or older.

(2) The estate includes all real and personal property and other assets in the member's probate estate.

(3) Notwithstanding 130 CMR 501.013(A)(1) and in accordance with 42 U.S.C. 1396p(b)(B), the MassHealth agency will not recover Medicare cost-sharing benefits described at 42 U.S.C. 1396(a)(10)(E) with dates of payment on or after January 1, 2010, for persons who received such benefits under 130 CMR 505.002: *MassHealth Standard*, 505.007: *MassHealth Senior Buy-in and Buy-in*, 130 CMR 519.010: *MassHealth Senior Buy-in*, and 519.011: *MassHealth Buy-in*.

(a) The date of payment for Medicare cost-sharing deductibles, coinsurance, and copayments is the date the MassHealth agency received the claim.

(b) The date of payment for premium payments is the date the MassHealth agency paid the premium.

(B) Exceptions.

(1) **Long-term Care Insurance Exception.** No recovery for nursing facility or other long-term care services may be made from the estate of any person who meets the following requirements.

(a) The member was institutionalized; and

(b) The member notified the MassHealth agency that he or she had no intent of returning home; and

(c) On the date of admission to the long-term care institution, the member had long-term care insurance that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014: *Long-term-care Insurance Minimum*

Coverage Requirements for MassHealth Exemptions and the Division of Insurance regulations at 211 CMR 65.09(1)(e)2.

(2) Cost Effectiveness Exception. Effective for dates of death on or after May 14, 2021, in probate estates of members where the probate petition certifies under the penalties of perjury that the total assets in a member's estate are valued at \$ 25,000 or less, MassHealth has determined that it is not cost effective to pursue recovery. In such estates, MassHealth waives its right to recovery, and will not file a claim or otherwise pursue recovery. MassHealth reserves the right to file a claim and recover in such estates if probate filings do not sufficiently identify the value of the estate or if later probate filings or proceedings or investigation identify or establish that the total assets in the estate exceed \$ 25,000.00.

(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 younger than 21 years old, or a child of any age who is blind or permanently and totally disabled.

(D) Waiver of Estate Recovery Due to Undue Hardship. The MassHealth agency will waive its estate recovery claim if the agency determines that satisfaction of the claim would cause an undue hardship. An undue hardship does not exist solely because recovery will prevent any heir from receiving an anticipated inheritance. The duly court-appointed personal representative or public administrator of the deceased member's probate estate may apply for a waiver of estate recovery due to undue hardship. The application for a waiver and supporting documents must be received by the MassHealth agency within 60 days of the agency's notice of claim. The types of Waivers of Estate Recovery Due to Undue Hardship are:

(1) Waiver of Estate Recovery Due to Residence and Financial Hardship.

(a) For notice of claims presented on or after November 15, 2003, but before May 14, 2021, recovery will be waived if MassHealth determines all of the following conditions have been met.

1. a sale of real property would be required to satisfy a claim against the member's probate estate; and
2. 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:

- a. the individual lived in the property on a continual basis for two years prior to the member's admission to an institution or death and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;
- b. 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);
- c. the individual is not being forced to sell the property by other devisees or heirs at law; and
- d. at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the individual's family group was less than or equal to 133 % 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 MassHealth agency 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 MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(D)(1)(a)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(D)(1)(a)2.d., the property is sold or transferred, or the individual does not use the property as their primary residence, the MassHealth agency will be notified and its claim may be payable in full.

(b) For claims presented on or after May 14, 2021, and upon application of a waiver of estate recovery due to residence and undue hardship by the personal representative or public administrator of the estate, MassHealth will

waive recovery without a conditional two-year waiting period provided the personal representative or public administrator establishes to the satisfaction of the MassHealth agency that all the criteria for a residence and undue hardship waiver in 130 CMR 501.013(D)(1)(a)1. and 2. are currently met.

(c) Any waivers arising out of notice of claims presented before May 14, 2021, which did not become permanent and binding pursuant to the two-year conditional requirements set forth in 130 CMR 501.013(D)(1)(a)3., and which had not been satisfied and were still subject to the two-year conditional requirements of that subsection as of May 14, 2021, will become permanent and binding.

(2) Waiver of Estate Recovery Based on Care Provided. For claims presented on or after May 14, 2021, for an heir or devisee inheriting a legal interest in the deceased member's home, the MassHealth agency will waive estate recovery if MassHealth determines to its satisfaction all of the following conditions have been met.

(a) the heir or devisee resided in the member's home on a continual basis for two years prior to member's admission to an institution or death;

(b) during that time, the member needed and the heir or devisee provided a level of care that avoided the member's admission to a facility;

(c) the heir or devisee continues to live in the property at the time the notice of claim is filed;

(d) the heir or devisee was left an interest in the home under the member's will, or inherited the property under the laws of intestacy;

(e) the heir is not being forced to sell the property by other devisees or heirs; and

(f) the property would have to be sold to satisfy the claim.

(3) Waiver of Estate Recovery Due to Financial Hardship Based on Income.

(a) For claims presented on or after May 14, 2021, the personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of an heir or heirs or devisee or devisees. If there are multiple heirs or devisees, the personal representative or public administrator must apply for an Income-based waiver separately on behalf of each individual. To be considered a qualifying heir or devisee, the personal representative or public administrator of the estate must establish:

1. the qualifying heir or devisee is inheriting an interest in the member's estate under the member's probate estate; and,

2. the family group of a qualifying heir or devisee has a Gross Income below 400% of the federal poverty level for the two-year period prior to the date the notice of claim is filed.

If MassHealth determines that both conditions have been met, the heir is considered a qualifying heir.

(b) MassHealth will waive recovery in an amount equal to the value of the qualifying heir's or devisee's interest in the estate up to a maximum of \$ 50,000 per qualifying heir or devisee. If there is more than one qualifying heir or devisee in an estate, the total amount of the agency's estate recovery claim waived for qualifying heirs or devisees shall be limited to a total of \$ 100,000.

(c) An estate with qualifying heirs or devisees, regardless of whether or not there are non-qualifying heirs, will be subject to estate recovery based on the lesser of:

1. the value of the estate remaining after deducting the amount waived from the total value of the estate for qualifying heirs and devisees; or

2. the amount of the MassHealth claim remaining after deducting the amount waived from the total value of the MassHealth claim.

(d) Example 1. The value of the estate is \$ 400,000 and the MassHealth claim is \$ 60,000. There are two heirs who qualify for the waiver, each with an interest in the estate of \$ 50,000 or greater. There are also two heirs who do not qualify. In this example, the waived amount is \$ 100,000 (50,000 + 50,000). After deducting the \$ 100,000 waived amount from the estate there is \$ 300,000 left in the estate, but after deducting the \$ 100,000 waived amount from the

\$ 60,000 MassHealth claim there is nothing left in the MassHealth claim. The result is no estate recovery.

(e) Example 2. The value of the estate is \$ 350,000 and the MassHealth claim is \$ 500,000. There are two qualifying heirs, each with an interest in the estate of \$ 50,000 or greater. There are also two non-qualifying heirs. In this example, the waived amount is \$ 100,000 (50,000 + 50,000). After deducting the \$ 100,000 waived amount from the estate there is \$ 250,000 left in the estate, and after deducting the \$ 100,000 waived amount from the \$ 500,000 MassHealth claim there is \$ 400,000 remaining in the MassHealth claim. In this example, MassHealth would recover \$ 250,000, since it is less than \$ 400,000.

(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 then-existing MassHealth 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 MassHealth agency's claim in full from property on which MassHealth has a recorded lien, the fair-market value and equity value of all real property that is part of the deceased member's probate estate must be verified prior to the sale or transfer of said property.

(1) The personal representative or public administrator of the probate estate must verify the fair-market value by sending to the MassHealth agency 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 personal representative or public administrator of the probate estate 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 MassHealth agency may also obtain an assessment from a knowledgeable source.

(G) Exemption of Certain Assets from Estate Recovery for American Indians and Alaska Natives.

(1) For notice of claims presented on or after July 1, 2009, and upon application for exemption of certain assets from estate recovery by the personal representative or public administrator of the member's estate, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:

(a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

(b) ownership interest in trust and non-trust property, including real property and improvements:

1. located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act at 43.U.S.C. chapter 33, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

2. for any federally recognized tribe not described in 130 CMR 501.013(G)(1)(b)1., located within the most recent boundaries of a prior federal reservation;

(c) income left as a remainder in an estate derived from property protected in 130 CMR 501.013(G)(1)(b), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural

resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an **Indian** or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or

(e) ownership interests in or usage rights to items not covered by 130 CMR 501.013(G)(1)(a) through (d) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in 130 CMR 501.013(G)(1) is limited to circumstances when it passes from an **Indian**, as defined in the **Indian** Health Care Improvement Act at 25 U.S.C. c. 18, § 4 to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or step-children, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 501.00: M.G.L. c. 118E, §§ 7 and 12.

CODE OF MASSACHUSETTS REGULATIONS

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 504.000: HEALTH CARE REFORM: MASSHEALTH: CITIZENSHIP AND IMMIGRATION

504.002: 504.002: U.S. Citizens

A citizen of the United States is

- (A) an individual who was born in the United States or its territories, including Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI), except those born to a foreign diplomat, and who otherwise qualifies for U.S. citizenship under § 301 *et seq.* of the Immigration and Nationality Act (INA);
 - (B) an individual born of a parent who is a U.S. citizen or who otherwise qualifies for U.S. citizenship under § 301 *et seq.* of the Immigration and Nationality Act;
 - (C) a naturalized citizen; or
 - (D) a national (both citizen national and noncitizen national) as defined in 130 CMR 504.002(D)(1) or (2).
- (1) **Citizen National.** A citizen national is an individual who otherwise qualifies as a U.S. citizen under § 301 *et seq.* of the Immigration and Nationality Act.
- (2) **Noncitizen National.** A noncitizen national is an individual who was born in one of the outlying possessions of the United States, including American Samoa and Swain's Island, to a parent who is a noncitizen national.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 504.000: M.G.L. c. 118E, §§ 7 and 12.

CODE OF MASSACHUSETTS REGULATIONS

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 506.000: HEALTH CARE REFORM: MASSHEALTH: FINANCIAL REQUIREMENTS

506.004: 506.004: Noncountable Household Income

The following types of income are noncountable in the determination of eligibility for individuals described in 130 CMR 506.002:

- (A) TAFDC, EAEDC, or SSI income;
- (B) federal veteran benefits that are not taxable in accordance with IRS rules;
- (C) income-in-kind;
- (D) roomer and boarder income derived from persons residing in the applicant's or member's principal place of residence;
- (E) most workers' compensation income;
- (F) pretax contributions to salary reduction plans for payment of dependent care, transportation, and certain health expenses within allowable limits;
- (G) child support received;
- (H) taxable amounts received as a lump sum, except in the month received;
- (I) income received by independent foster-care adolescents described in 130 CMR 505.002(H): *Eligibility Requirements for Former Foster-care Individuals*;
- (J) income from children and tax dependents who are not expected to be required to file a tax return under *Internal Revenue Code*, U.S.C. Title 26, § 6012(a)(1) for the taxable year in which eligibility for MassHealth is being determined, whether or not the children or the tax dependents files a tax return; and
- (K) any other income that is excluded by federal laws other than the Social Security Act.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 506.000: M.G.L. c. 118E, §§ 7 and 12.

Document: 130 CMR 506.015

130 CMR 506.015**Copy Citation**

The Massachusetts Administrative Code titles are current through Register No. 1487, dated January 20, 2023

MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 506.000: HEALTH CARE REFORM: MASSHEALTH: FINANCIAL REQUIREMENTS

506.015: 506.015: Copayment and Cost Sharing Requirement Exclusions

(A) Excluded Individuals.

(1) The following individuals do not have to pay the copayments described in 130 CMR 506.016:

(a) members younger than 21 years old;

(b) members who are pregnant or in the postpartum period that extends through the last day of the second calendar month following the month in which their pregnancy ends (for example, if the woman gave birth May 15<th>, she is exempt from the copayment requirement until August 1<st>);

(c) MassHealth Limited members;

(d) MassHealth Senior Buy-In members or MassHealth Standard members for drugs covered under Medicare Parts A and B only, when provided by a Medicare-certified provider;

(e) members who are inpatients in nursing facilities, chronic-disease or rehabilitation hospitals, or intermediate care facilities for individuals with intellectual disabilities or who are admitted to a hospital from such a facility or hospital;

(f) members receiving hospice services;

(g) persons receiving medical services through the Emergency Aid to the Elderly, Disabled and Children Program pursuant to 130 CMR 450.106: *Emergency Aid to the Elderly, Disabled and Children Program*, if they do not receive MassHealth Standard, MassHealth CarePlus, or MassHealth Family Assistance;

(h) members who are former foster care individuals and who are eligible for MassHealth Standard until they reach the age of 21 or the age of 26, as specified in 130 CMR 505.002(H): *Eligibility Requirements for Former Foster-Care Individuals*;

(i) members who are American Indians or Alaska Natives who are currently receiving or have ever received an item or service furnished by the Indian Health Service, an Indian tribe, a tribal organization, or an urban Indian organization, or through referral, in accordance with federal law;

(j) "referred eligible" members, who are:

1. persons who receive Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA) and who receive MassHealth Standard under 130 CMR 505.002(A)(2) or 130 CMR 519.002(B);

2. persons who receive Transitional Aid to Families with Dependent Children (TAFDC) cash assistance from the Department of Transitional Assistance (DTA) and who receive MassHealth Standard under 130 CMR 505.002(A)(3);

3. children, young adults, and parents and caretaker relatives who receive Emergency Aid to the Elderly, Disabled and Children (EAEDC) cash assistance and who receive MassHealth Standard under 130 CMR 505.002(K) or 130 CMR 519.002(D), MassHealth Family Assistance under 130 CMR 505.005(G) or 130 CMR 519.013(C), or MassHealth CarePlus under 130 CMR 505.008(B);
 4. children receiving medical assistance under 130 CMR 522.003: *Adoption Assistance and Foster Care Maintenance*, because they are receiving Title IV-E or state-subsidized adoption or foster-care assistance;
 5. persons who receive extended eligibility for MassHealth Standard under 130 CMR 505.002(L)(1) and (2) or 130 CMR 519.002(C); and
 6. persons who receive MassHealth Standard or CarePlus because they are eligible for Refugee Medical Assistance (RMA) under 130 CMR 522.002: *Refugee Resettlement Program*; and
- (k) members whose applicable income for the purposes of calculating copayments is at or below 50% of the FPL when adjusted for family size.
- (2) Members who are inpatients in a hospital do not have to pay a copayment for pharmacy services provided as part of the hospital stay.
- (B) Excluded Services.** The following services are excluded from the copayment requirement described in 130 CMR 506.016:
- (1) family planning services and supplies such as oral contraceptives, contraceptive devices, such as diaphragms and condoms, and contraceptive jellies, creams, foams, and suppositories;
 - (2) detoxification and maintenance treatment of an individual for substance use disorders using FDA approved medications (including methadone, buprenorphine, buprenorphine/naloxone, and naltrexone);
 - (3) preventive services assigned a grade of 'A' or 'B' by the United States Preventive Services Task Force (USPSTF), or such broader exclusion as specified by MassHealth;
 - (4) all approved vaccines and their administration, recommended by the Advisory Committee on Immunization Practices (ACIP);
 - (5) smoking cessation products and drugs;
 - (6) emergency services; and
 - (7) provider-preventable services as defined in 42 CFR 447.26(b).

Statutory Authority

REGULATORY AUTHORITY

130 CMR 506.000: M.G.L. c. 118E, §§ 7 and 12.

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 515.000: MASSHEALTH: GENERAL POLICIES

515.001: Definition of Terms

The terms listed in 130 CMR 515.001 have the following meanings for purposes of MassHealth, as described in 130 CMR 515.000 through 522.000: *MassHealth: Other Division Programs*.

Activities of Daily Living (ADLs) - self-care activities including, but not limited to, bathing, grooming, dressing, eating, and toileting.

Affidavit - a written or printed statement of fact sworn to or affirmed before a person having legal authority to administer such an oath.

American Indian or Alaska Native - a person who

- (1) is a member of a federally recognized tribe, band, or group as defined in Title 25 of U.S.C.;
- (2) is an Eskimo, Aleut, or other Alaska Native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act at 43 U.S.C. 1601 *et seq.*; or
- (3) has been determined eligible to receive health-care services from Indian Health Care Providers as an Indian pursuant to 42 CFR § 136.12 or Title V of the Indian Health Care Improvement Act.

Annuity - a legal instrument that makes payments for a designated period of time or for life, regardless if the payments are principal, interest, or both.

Appeal - a written request, by an aggrieved applicant or member, for a fair hearing.

Appeal Representative - a person who

- (1) is sufficiently aware of the appellant's circumstances to assume responsibility for the accuracy of the statements made during the appeal process, and who has provided the Office of Medicaid Board of Hearings with written authorization from the appellant to act on the appellant's behalf during the appeal process;
- (2) has, under applicable law, authority to act on behalf of an appellant in making decisions related to health care or payment for health care. An appeal representative may include, but is not limited to, a guardian, conservator, executor, administrator, holder of power of attorney, or health-care proxy;
- (3) is a licensed attorney who notifies the MassHealth Board of Hearings that he or she represents the appellant in an appeal. This shall also include a non-lawyer supervised by a licensed attorney; or

(4) is an authorized representative meeting the requirements of 130 CMR 501.001: **Appeal Representative**(1), (2), or (3).

Applicant - a person who completes and submits an application for MassHealth, and is awaiting the decision of eligibility.

Application - *see Senior Application.*

Asset Limit - the maximum dollar value of assets that can be owned by, or available to, the applicant, member, or the spouse, which if exceeded, results in ineligibility.

Assets - property including, but not limited to, real estate, personal property, and funds. This term has the same meaning as **resources** as defined in 42 U.S.C. 1396p(e)(5).

Authorized Representative.

(1) a person or organization designated as the authorized representative of an applicant or member in a completed, signed Authorized Representative Designation Form or similar designation document submitted to the MassHealth agency in which the authorized representative agrees to comply with rules regarding confidentiality in the course of representing the applicant or member, provided that such person or organization must satisfy one of the following criteria:

(a) an authorized representative may be a person or organization appointed by the applicant or member to act responsibly on his or her behalf in connection with the eligibility process and other ongoing communications with the MassHealth agency. Such person or organization shall have the authority to complete and sign an application on the applicant's behalf, select a health plan, complete and sign a renewal form, receive copies of the applicant or member's notices and other communications from the MassHealth agency which may include protected health-care information, personal data, and financial information and unless otherwise specified, act on behalf of the applicant or member in all other matters with the MassHealth agency or the Health Connector;

(b) an authorized representative may be a person acting responsibly on behalf of the applicant or member who is sufficiently aware of such applicant's or member's circumstances to assume responsibility for the accuracy of the statements made on his or her behalf during the eligibility process and in other communications with the MassHealth agency. Such person shall have the authority to complete and sign an application on the applicant's behalf, select a health plan, complete and sign a renewal form, receive copies of the applicant or member's notices and other communications from the MassHealth agency which may include protected health-care information, personal data, and financial information; or

(c) an authorized representative may be a person acting responsibly on behalf of the applicant or member who has, under applicable law, authority to act on behalf of such applicant or member in making decisions related to health care or payment for health care including, but not limited to, a guardian, conservator, executor, administrator, holder of power of attorney, or health-care proxy. The extent of such person's authority to act on behalf of the applicant or member is determined by the applicable law or underlying legal document; and

(2) As a condition of any organization serving as an authorized representative under 130 CMR 515.001: **Authorized Representative**(1)(a), a provider or staff member or volunteer of such organization must not have a conflict of interest and must affirm that he or she will adhere to 42 CFR part 431, subpart F.

Blindness - a visual impairment as defined in Title XVI of the Social Security Act. Generally, "blindness" means visual acuity with correction of 20/200 or less in the better eye, or a peripheral field of vision contracted to a 10 <degrees> radius or less, regardless of the visual acuity.

Burial Trust - a trust established by an individual solely for funeral expenses, burial expenses, or both.

Business Day - any day during which the MassHealth agency's offices are open to serve the public.

Caretaker Relative - an adult who is the primary caregiver for a child, is related to the child by blood, adoption, or marriage, or is a spouse or former spouse of one of those relatives, and lives in the same home as that child, provided that neither parent is living in the home.

Case File - the permanent collection of written documents and electronic information required to determine eligibility and to provide benefits to applicants and members.

Certified Application Counselor (CAC) - an individual who is certified by the MassHealth agency and the Connector to provide assistance in completing applications and renewal forms.

Citizen - *see* 130 CMR 518.002: *U.S. Citizens*.

Commonwealth Health Insurance Connector Authority, Health Connector or Connector - the entity established pursuant to M.G.L. c. 176Q, § 2.

Community Resident - a person who lives in a noninstitutional setting in the community.

Competent Medical Authority - a physician or psychiatrist licensed by any state, a psychologist licensed by the Commonwealth of Massachusetts, or both.

ConnectorCare - the program administered by the Health Connector pursuant to M.G.L. c. 176Q to provide premium assistance payments and points-of-service cost-sharing subsidies to eligible individuals enrolled in health plans.

Countable Income - the types of income that are considered in the determination of eligibility.

Countable-income Amount - gross income less certain business expenses and income deductions.

Couple - two persons married to each other according to the laws of the Commonwealth of Massachusetts.

Coverage Date - the date medical coverage begins.

Coverage Type - a scope of medical services, other benefits, or both that is available to members who meet specific eligibility criteria. MassHealth coverage types include the following: MassHealth Standard (Standard), MassHealth Limited (Limited), MassHealth Family Assistance (Family Assistance), MassHealth Senior Buy-in (Senior Buy-in), and MassHealth Buy-in (Buy-in). The scope of services or covered benefits for each coverage type is found at 130 CMR 450.105: *Coverage Types*.

Curing of a Transfer - the return, following the transfer for less than fair-market value of a portion of, or the full uncompensated value of, a resource to the individual.

Day - a calendar day, unless a business day is specified.

Deductible - the total dollar amount of incurred medical expenses that an applicant whose income exceeds MassHealth income standards must be responsible for before the applicant is eligible for MassHealth, as described at 130 CMR 520.028: *Eligibility for a Deductible*.

Deductible Period - a specified six-month period within which an applicant for MassHealth, whose income exceeds MassHealth income standards, may become eligible, through incurred and/or paid medical expenses equaling or exceeding the deductible of the applicant or the spouse.

Disability Determination Unit - a unit that consists of physicians and disability evaluators who determine permanent and total disability using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. This unit may be a part of a state agency or under contract with a state agency.

Disabled - having a permanent and total disability.

Eligibility Process - activities conducted for the purpose of determining, redetermining, and maintaining the eligibility of a MassHealth applicant or member.

Fair Hearing - an administrative, adjudicatory proceeding conducted according to 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to determine the legal rights, duties, benefits, or privileges of applicants and members.

Fair-market Value - an estimate of the value of a resource if sold at the prevailing price. For transferred resources,

the fair market value is based on the prevailing price at the time of transfer.

Family Group - a family, couple, or individual.

Federal Poverty Level (FPL) - income standards issued annually in the *Federal Register* to account for the last calendar year's increase in prices as measured by the Consumer Price Index.

Fee-for-service - a method of paying for medical services provided by any MassHealth participating provider with no limit on provider choice.

Global Developmental Skills - a child's average developmental skill level, taking into account the physical, psychological, motor, intellectual, emotional, communicative, and social aspects of the child's functional capabilities.

Grantor - an individual or spouse who creates a trust.

Gross Income - the total money earned or unearned, such as wages, salaries, rents, pensions, or interest, received from any source without regard to deductions.

Guardian - an individual or entity appointed as guardian by the probate and family court under the provisions of M.G.L. c. 201.

Guardianship Fees and Related Expenses - fees for guardianship services and incurred expenses that are essential to enable an incompetent applicant or member to gain access to or consent to medical treatment.

Health Insurance - coverage of health-care services by a health-insurance company, a hospital-service corporation, a medical-services corporation, a managed care organization, or Medicare. Coverage of health-care services by MassHealth, Health Safety Net (HSN), or Children's Medical Security Plan (CMSP) is not considered health insurance.

Health Safety Net (HSN) - a source of funding for certain health care under 101 CMR 613.00: *Health Safety Net Eligible Services* and 101 CMR 614.00: *Health Safety Net Payments and Funding*.

Incarceration - the confinement in a penal institution of an individual. An individual is not incarcerated if he or she is on parole, probation, or home release, and does not return to the institution for overnight stays.

Income Deductions - specified deductions, as described in 130 CMR 520.011: *Standard Income Deductions* through 130 CMR 520.014: *Long-term-care Earned-income Deductions*, that may be made from the gross income of an applicant or member.

Incompetent Applicant or Member - an applicant or member who has been adjudicated as incompetent and in need of a guardian by the probate and family court under the provisions of M.G.L. c. 201.

Institution (Medical) - a public or private facility providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 130 CMR 522.000: *Other Division Programs*. This includes acute inpatient hospitals, licensed nursing facilities, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and rehabilitation hospitals.

Institutionalization - placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days.

Interpreter - a person who translates for an applicant or member who has limited English proficiency or a hearing impairment.

Irrevocable Trust - a trust that cannot be in any way revoked by the grantor.

Jointly Held Resources - resources that are owned by an individual in common with another person or persons in a joint tenancy, tenancy-in-common, or similar arrangement.

Lawfully Present Immigrants - *see* 130 CMR 518.003(A): *Lawfully Present Immigrants*.

Life Estate - a life estate is established when all of the remainder legal interest in a property is transferred to another, while the legal interest for life rights to use, occupy, or obtain income or profits from the property is retained.

Limited English Proficiency - persons who are unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language.

Look-back Period - a period of consecutive months that the MassHealth agency may review for transfers of resources to determine if a period of ineligibility for payment of nursing-facility services should be imposed.

Lump-sum Payment - a one-time only payment that represents either a windfall payment or the accumulation of recurring countable income, such as retroactive unemployment compensation or federal veterans' retirement benefits.

MassHealth Agency - the Executive Office of Health and Human Services in accordance with the provisions of M.G.L. c. 118E.

Medical Benefits - payment for medical services provided to a MassHealth member.

Member - a person determined by the MassHealth agency to be eligible for MassHealth.

Navigator - an individual who is certified by the Health Connector to assist an applicant with electronic and paper applications to establish eligibility and enroll in coverage through the Health Connector. In addition, a navigator provides outreach and education about insurance options offered through the Health Connector.

Nonqualified Individuals Lawfully Present - *see* 130 CMR 518.003(A)(3): *Nonqualified Individuals Lawfully Present*.

Nonqualified Person Residing under Color of Law (nonqualified PRUCOL) - *see* 130 CMR 518.003(C): *Nonqualified Persons Residing under Color of Law (nonqualified PRUCOLs)*.

Nursing-facility Resident - an individual who is a resident of a nursing facility, is a resident in any institution, including an intermediate-care facility for the mentally retarded (ICF/MR), for whom payment is based on a level of care equivalent to that received in a nursing facility, is in an acute hospital awaiting placement in a nursing facility, or lives in the community and would be institutionalized without community-based services provided in accordance with 130 CMR 519.007(B): *Home- and Community Based Services Waiver*.

Other Noncitizens - *see* 130 CMR 518.003(D): *Other Noncitizens*.

Patient-paid Amount - the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts.

Period of Ineligibility - the period of time during which the MassHealth agency denies or withholds payment for nursing-facility services because the individual has transferred resources for less than fair market value.

Permanent and Total Disability - a disability as defined under Title XVI of the Social Security Act or under applicable state laws.

(1) For Adults and 18-year-olds.

(a) The condition of an individual, 18 years of age or older, who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that

1. can be expected to result in death; or
2. has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) For purposes of 130 CMR 515.001: **Permanent and Total Disability**, an individual 18 years of age or older is determined to be disabled only if his or her physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work, but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives, whether a specific job vacancy exists, or whether the individual would be hired if he or she applied for work. "Work that exists in the national economy" means work that exists in significant numbers, either in the region where such an individual lives or in several regions of the country.

(2) For Children Younger than 18 Years Old. The condition of an individual younger than 18 years old who has any medically determinable physical or mental impairment, or combination of impairments, that causes marked and

severe functional limitations, as defined in Title XVI of the Social Security Act, and can be expected to cause death or can be expected to last for a continuous period of not less than 12 months. Disability for children eligible for MassHealth CommonHealth under 130 CMR 519.012(B): *Certain Institutionalized Immigrant Children* is determined in accordance with the definition for permanent and total disability for children younger than 18 years old in 130 CMR 501.001: *Definition of Terms*.

Personal Needs Allowance (PNA) - the designated portion of monthly income that a person in long-term care is allowed to retain for personal expenses. In some instances, the MassHealth agency pays all or a portion of the PNA to the member. The PNA must not be used for payment of any item included in the daily rate at the long-term-care facility.

Personal Needs Allowance (PNA) Account - an account administered by a long-term-care facility on behalf of a member. Regulations regarding the administration of PNA accounts are contained in 130 CMR 456.601: *Personal Needs Allowance Account* through 456.615: *Annual Accounting to the Division of PNA Balance*.

Pooled Trust - Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a trust that meets all the following criteria as determined by the MassHealth agency.

- (1) The trust was created by a nonprofit organization.
- (2) A separate account is maintained for each beneficiary of the trust, but the assets of the trust are pooled for investment and management purposes.
- (3) The account in a pooled trust was created for the sole benefit of the individual by the individual, the individual's parents or grandparents, or by a legal guardian or court acting on behalf of the individual.
- (4) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual. The trust may retain reasonable and appropriate amounts as determined by the MassHealth agency.
- (5) The individual was disabled at the time his or her account in the pool was created.

Effective 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a trust that meets all the following criteria as determined by the MassHealth agency:

- (1) The trust was created by a nonprofit organization.
- (2) A separate account is maintained for each beneficiary of the trust, but the assets of the trust are pooled for investment and management purposes.
- (3) The account in a pooled trust was created for the sole benefit of the individual by the individual, the individual's parents or grandparents, or by a legal guardian or court acting on behalf of the individual.
- (4) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual and, if applicable, early termination of the account up to the amount paid by the MassHealth agency for services to the individual. The trust may retain reasonable and appropriate amounts as determined by the MassHealth agency.
- (5) The individual was disabled at the time his or her account in the pool was created and funded.
- (6) The trust must include provisions that the trustee will promptly provide written notice of the death of the individual, proposed early termination or transfer of the account, and trust accountings to the MassHealth agency or its designee.

Premium Tax Credit - payment made pursuant to 26 U.S.C. § 36B on behalf of an eligible individual to reduce the costs of a health benefit plan premium to the individual.

Promissory Note - a written promise to pay another.

Protected Noncitizens - see 130 CMR 518.003(B): *Protected Noncitizens*.

Qualified Health Plan (QHP) - a health plan licensed under M.G.L. chs. 175, 176A, 176B, or 176G that has received the Commonwealth Health Insurance Connector's Seal of Approval as meeting the criteria under 45 CFR § 155.1000 and is offered through the Health Connector in accordance with the provisions of 45 CFR § 155.1010.

Qualified Noncitizens - *see* 130 CMR 518.003(A)(1): *Qualified Noncitizens*.

Qualified Noncitizens Barred - *see* 130 CMR 518.003(A)(2): *Qualified Noncitizens Barred*.

Quality Control - a system of continuing review to measure the accuracy of eligibility decisions.

Reapplication - the MassHealth agency's reopening of the application process when the application has been denied pursuant to 130 CMR 516.001(D): *Receipt of Corroborative Information*.

Redetermination - a review of a member's circumstances to establish whether or not he or she remains eligible for benefits.

Resources - all income and assets owned by the individual or the spouse. For the purposes of determining eligibility, resources include income and assets to which the individual or the spouse is or would be entitled whether or not they are actually received. This term has the same meaning as **assets** as defined in 42 U.S.C. § 1396p(e)(1).

Reverse Mortgage - a loan on the equity value of a house paid in installments by a lender to the homeowner who is 60 years of age or older.

Revocable Trust - a trust whose terms allow the grantor to take action to regain any of the property or funds in the trust.

Senior Application or Application - the request for health benefits for an individual who is 65 years of age and older, or not living in the community that is received by the MassHealth agency and includes all required information and a signature by the applicant or his or her authorized representative.

Senior Care Organization - an organization that participates in MassHealth under a contract with the MassHealth agency and Centers for Medicare & Medicaid Services (CMS) to provide a comprehensive network of medical, health-care, and social-service providers that integrates all components of care, either directly or through subcontracts. Senior care organizations are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services.

Skilled-nursing Services - the planning, provision, and evaluation of goal-oriented nursing care that requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that must be provided by a registered nurse, a licensed practical nurse, or a licensed vocational nurse.

Special-needs Trust - Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a special-needs trust is one that meets all the following criteria as determined by the MassHealth agency.

- (1) The trust was created for a disabled individual younger than 65 years old.
- (2) The trust was created for the sole benefit of the individual by the individual's parent, grandparent, legal guardian, or a court.
- (3) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual.
- (4) When the member has lived in more than one state, the trust must provide that the funds remaining upon the death of the member are distributed to each state in which the member received Medicaid based on each state's proportionate share of the total amount of Medicaid benefits paid by all states on the member's behalf.

Effective 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a trust that meets all the following criteria as determined by the MassHealth agency:

- (1) The trust was created for a disabled individual younger than 65 years old.

(2)

(a) The trust was created for the sole benefit of the individual, by the individual, on or after December 13, 2016; or

(b) The trust was created for the sole benefit of the individual by the individual's parent, grandparent, legal guardian, conservator, or a court.

(3) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual.

(4) When the member has lived in more than one state, the trust must provide that the funds remaining upon the death of the member or early termination of the trust are distributed to each state in which the member received Medicaid based on each state's proportionate share of the total amount of Medicaid benefits paid by all states on the member's behalf.

(5) The trust must include provisions that the trustee will promptly provide written notice of the death of the individual, proposed early termination, and any other changes, such as the appointment of another trustee, as well as accountings or other documents of the administration of the trust to the MassHealth agency or its designee.

Spouse - a person married to the applicant or member according to the laws of the Commonwealth of Massachusetts.

Stream of Income - income received on a regular basis.

Substantial Gainful Activity - generally, employment that provides a set amount of gross earnings as determined by the Social Security Administration (SSA) under Title XVI of the Social Security Act.

Supplemental Security Income (SSI) Program - a program that provides financial assistance to needy persons who are 65 years of age or older, blind, or disabled. This program is established under Title XVI of the Social Security Act and is administered by the Social Security Administration. Such persons automatically receive MassHealth.

Tax Dependent - a qualifying child or qualifying relative, other than the taxpayer or spouse, who entitles the taxpayer to claim a dependency exemption. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Filer - any individual, including his or her spouse if married filing jointly, who intends to file a federal tax return for the year in which a member of the tax household is seeking or receives benefits and who claims an exemption for him or herself. An individual who files a return but is claimed as a dependent by someone else is still a tax dependent.

Tax Household - all members who are claimed on the tax return, including the tax filer(s) and all dependents.

Third Party - any individual, entity, or program that is or may be responsible to pay all or part of the expenditures for medical benefits.

Trust - a legal device satisfying the requirements of state law that places the legal control of property or funds with a trustee. It also includes, but is not limited to, any legal instrument, device, or arrangement that is similar to a trust, including transfers of property by a grantor to an individual or a legal entity with fiduciary obligations so that the property is held, managed, or administered for the benefit of the grantor or others. Such arrangements include, but are not limited to, escrow accounts, pension funds, and similar devices as managed by an individual or entity with fiduciary obligations.

Trustee - any individual or legal entity that holds or manages a trust.

Uncompensated Value - the difference between the fair market value of the resource or interest in the resource at the time of transfer less any outstanding debts and the actual amount the individual received for the resource. The MassHealth agency uses the uncompensated value in the calculation of the period of ineligibility.

Statutory Authority

REGULATORY AUTHORITY

Document: 130 CMR 515.011

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 515.000: MASSHEALTH: GENERAL POLICIES

515.011: Estate Recovery

(A) Introduction.

(1) The MassHealth agency 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

(a) while the member was 65 years of age or older, except on or after October 1, 1993, while the member was 55 years of age or older; and

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

(c) Effective for dates of death on or after December 31, 2016, MassHealth will offset the estate recovery claim by the total of any premiums paid to the MassHealth agency on behalf of the member when the member was 55 years of age or older.

(2) The estate includes all real and personal property and other assets in the member's probate estate.

(3) Notwithstanding 130 CMR 515.011(A)(1) and in accordance with 42 U.S.C. 1396p(b)(B), the MassHealth agency will not recover Medicare cost-sharing benefits described at 42 U.S.C. 1396(a)(10)(E) with dates of payment on or after January 1, 2010, for persons who received such benefits under 130 CMR 505.002: *MassHealth Standard*, 505.007: *MassHealth Senior Buy-in and Buy-in*, 130 CMR 519.010: *MassHealth Senior Buy-in (Qualified Medicare Beneficiaries/OMB)*, and 130 CMR 519.011: *MassHealth Buy-in*.

(a) The date of payment for Medicare cost-sharing deductibles, coinsurance, and copayments is the date the MassHealth agency received the claim.

(b) The date of payment for premium payments is the date the MassHealth agency paid the premium.

(B) Exceptions.

(1) **Long-term-care Insurance Exception.** No recovery for nursing facility or other long-term-care services may be made from the estate of any person who meets the following requirements.

(a) The member was institutionalized; and

(b) The member notified the MassHealth agency that he or she had no intent of returning home; and

(c) On the date of admission to the long-term-care institution, the member had long-term-care insurance that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(2) Cost Effectiveness Exception. Effective for dates of death on or after May 14, 2021, in probate estates of members where the probate petition certifies under the penalties of perjury that the total assets in a member's estate are valued at \$ 25,000 or less, MassHealth has determined that it is not cost effective to pursue recovery. In such estates, MassHealth waives its right to recovery, and will not file a claim or otherwise pursue recovery. MassHealth reserves the right to file a claim and recover in such estates if probate filings do not sufficiently identify the value of the estate or if later probate filings or proceedings or investigation identify or establish that the total assets in the estate exceed \$ 25,000.00.

(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 younger than 21 years old, or a child of any age who is blind or permanently and totally disabled.

(D) Waiver of Estate Recovery Due to Undue Hardship. The MassHealth agency will waive its estate recovery claim if the agency determines that satisfaction of the claim would cause an undue hardship. An undue hardship does not exist solely because recovery will prevent any heir from receiving an anticipated inheritance. The duly court-appointed personal representative or public administrator of the deceased member's probate estate may apply for a waiver of estate recovery due to undue hardship. The application for a waiver and supporting documents must be received by the MassHealth agency within 60 days of the agency's notice of claim. The types of Waivers of Estate Recovery Due to Undue Hardship are:

(1) Waiver of Estate Recovery Due to Residence and Financial Hardship.

(a) For notice of claims presented on or after November 15, 2003, but before May 14, 2021, recovery will be waived if MassHealth determines all of the following conditions have been met.

1. a sale of real property would be required to satisfy a claim against the member's probate estate; and
2. 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:
 - a. the individual lived in the property on a continual basis for two years prior to the member's admission to an institution or death and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;
 - b. 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);
 - c. the individual is not being forced to sell the property by other devisees or heirs at law; and
 - d. at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the gross annual income of the individual's family group was less than or equal to 133% 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 MassHealth agency 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 MassHealth agency to waive recovery still exist, including meeting the same income standards under 130 CMR 515.011(D)(1)(a)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 515.011(D)(1)(a)2.d., the property is sold or transferred, or the individual does not use the property as their primary residence, the MassHealth agency will be notified and its claim may be payable in full.

(b) For claims presented on or after May 14, 2021, and upon application of a waiver of estate recovery due to residence and undue hardship by the personal representative or public administrator of the estate, MassHealth will waive recovery without a conditional two-year waiting period provided the personal representative or public administrator establishes to the satisfaction of the MassHealth agency that all the criteria for a residence and undue

hardship waiver in 130 CMR 515.011(D)(1)(a)1. and 2. are currently met.

(c) Any waivers arising out of notice of claims presented before May 14, 2021, which did not become permanent and binding pursuant to the two-year conditional requirements set forth in 130 CMR 515.011(D)(1)(a)3., and which had not been satisfied and were still subject to the two-year conditional requirements of 130 CMR 515.011(D)(1)(a)3. as of May 14, 2021, will become permanent and binding.

(2) Waiver of Estate Recovery Based on Care Provided. For claims presented on or after May 14, 2021, for an heir or devisee inheriting a legal interest in the deceased member's home, the MassHealth agency will waive estate recovery if MassHealth determines to its satisfaction all of the following conditions have been met.

(a) the heir or devisee resided in the member's home on a continual basis for two years prior to member's admission to an institution or death;

(b) during that time, the member needed and the heir or devisee provided a level of care that avoided the member's admission to a facility;

(c) the heir or devisee continues to live in the property at the time the notice of claim is filed;

(d) the heir or devisee was left an interest in the home under the member's will, or inherited the property under the laws of intestacy;

(e) the heir is not being forced to sell the property by other devisees or heirs; and

(f) the property would have to be sold to satisfy the claim.

(3) Waiver of Estate Recovery Due to Financial Hardship Based on Income.

(a) For claims presented on or after May 14, 2021, the personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of an heir or heirs or devisee or devisees. If there are multiple heirs or devisees, the personal representative or public administrator must apply for an Income-based waiver separately on behalf of each individual. To be considered a qualifying heir or devisee, the personal representative or public administrator of the estate must establish:

1. the qualifying heir or devisee is inheriting an interest in the member's estate under the member's probate estate; and,

2. the family group of a qualifying heir or devisee has a Gross Income below 400% of the federal poverty level for the two-year period prior to the date the notice of claim is filed. If MassHealth determines that both conditions have been met, the heir is considered a qualifying heir.

(b) MassHealth will waive recovery in an amount equal to the value of the qualifying heir's or devisee's interest in the estate up to a maximum of \$ 50,000 per qualifying heir or devisee. If there is more than one qualifying heir or devisee in an estate, the total amount of the agency's estate recovery claim waived for qualifying heirs or devisees shall be limited to a total of \$ 100,000.

(c) An estate with qualifying heirs or devisees, regardless of whether or not there are non-qualifying heirs, will be subject to estate recovery based on the lesser of:

1. the value of the estate remaining after deducting the amount waived from the total value of the estate for qualifying heirs and devisees; or

2. the amount of the MassHealth claim remaining after deducting the amount waived from the total value of the MassHealth claim.

(d) Example 1. The value of the estate is \$ 400,000 and the MassHealth claim is \$ 60,000. There are two heirs who qualify for the waiver, each with an interest in the estate of \$ 50,000 or greater. There are also two heirs who do not qualify. In this example, the waived amount is \$ 100,000 (50,000 + 50,000). After deducting the \$ 100,000 waived amount from the estate there is \$ 300,000 left in the estate, but after deducting the \$ 100,000 waived amount from the \$ 60,000 MassHealth claim there is nothing left in the MassHealth claim. The result is no estate recovery.

(e) Example 2. The value of the estate is \$ 350,000 and the MassHealth claim is \$ 500,000. There are two qualifying heirs, each with an interest in the estate of \$ 50,000 or greater. There are also two non-qualifying heirs. In this

example, the waived amount is \$ 100,000 (50,000 + 50,000). After deducting the \$ 100,000 waived amount from the estate there is \$ 250,000 left in the estate, and after deducting the \$ 100,000 waived amount from the \$ 500,000 MassHealth claim there is \$ 400,000 remaining in the MassHealth claim. In this example, MassHealth would recover \$ 250,000, since it is less than \$ 400,000.

(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 then-existing MassHealth 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 MassHealth agency's claim in full from a property on which MassHealth has recorded a lien, the fair-market value and equity value of all real property that is part of the deceased member's probate estate must be verified prior to the sale or transfer of said property.

(1) The personal representative or public administrator of the probate estate must verify the fair-market value by sending to the MassHealth agency 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 personal representative or public administrator of the probate estate 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 MassHealth agency may also obtain an assessment from a knowledgeable source.

(G) Exemption of Certain Assets from Estate Recovery for American Indians and Alaska Natives.

(1) For notice of claims presented on or after July 1, 2009, and upon application for exemption of certain assets from estate recovery by the personal representative or public administrator of the member's estate, recovery from the following American Indian and Alaska Natives income, resources, and property will be waived:

(a) certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

(b) ownership interest in trust and non-trust property, including real property and improvements

1. located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act at 43 U.S.C. chapter 33, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

2. for any federally recognized tribe not described in 130 CMR 515.011(G)(1)(b)1., located within the most recent boundaries of a prior federal reservation;

(c) income left as a remainder in an estate derived from property protected in 130 CMR 515.011(G)(1)(b), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the

individual can clearly trace it as coming from protected sources; or

(e) ownership interests in or usage rights to items not covered by 130 CMR 515.011(G)(1)(a) through (d) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(2) Protection of non-trust property described in 130 CMR 515.011(G)(1) is limited to circumstances when it passes from an Indian, as defined in the Indian Health Care Improvement Act at 25 U.S.C. c. 18, § 4 to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses or stepchildren, that their culture would nevertheless protect as family members, to a tribe or tribal organization, or to one or more Indians.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 515.000: M.G.L. c. 118E, §§ 7 and 12

CODE OF MASSACHUSETTS REGULATIONS

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MA - Code of Massachusetts Regulations > TITLE 130: DIVISION OF MEDICAL ASSISTANCE > CHAPTER 520.000: MASSHEALTH: FINANCIAL ELIGIBILITY

520.015: Noncountable Income

The following types of income are not considered in determining the financial eligibility of the applicant or member:

- (A) the income of any individual who is a recipient of EAEDC or SSI;
- (B) the portion of the income that is disregarded
 - (1) for disabled adult children according to 130 CMR 519.004: *Disabled Adult Children*; and
 - (2) under the Pickle Amendment according to 130 CMR 519.003: *Pickle Amendment Cases*;
- (C) income-in-kind;
- (D) money received from a loan secured by the equity in the home of an individual who is aged 60 or older (reverse mortgage);
- (E) veterans' aid and attendance benefits, unreimbursed medical expenses, housebound benefits, enhanced benefits (\$ 90 Veterans' Administration pension to long-term-care-facility residents, including veterans and their childless surviving spouses who live in a state veterans' home), or veterans' benefits that are based on need and are provided by municipalities to resident veterans;
- (F) the amount of the increase due to a social security cost-of-living adjustment (COLA), if the amount of such increase can be verified, until the subsequent federal-poverty-level adjustment for applicants and members who are community residents;
- (G) retroactive RSDI and SSI benefit payments;
- (H) income received by individuals who have verified their membership as an **American Indian** or Alaska Native and who are members of an **Indian** tribe, a tribal organization, or an urban **Indian** organization in accordance with federal law that meets one of the following:
 - (1) distributions from Alaska Native Corporations and Settlement Trusts;
 - (2) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;
 - (3) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extractions and harvest from
 - (a) rights of ownership or possession in any lands described in 130 CMR 520.008(K); or
 - (b) federally protected rights about off-reservation hunting, fishing, gathering, or usage of natural resources;
 - (4) distributions resulting from real property ownership interests related to natural resources and improvements

- (a) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or
- (b) resulting from the exercise of federally protected rights relating to such real property ownership interests;
- (5) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to applicable tribal law or custom;
- (6) student financial assistance provided under the Bureau of Indian Affairs education programs; or
- (I) any other income considered noncountable under Title XIX.

Statutory Authority

REGULATORY AUTHORITY

130 CMR 520.000: M.G.L.C.118E, §§ 7 and 12.

CODE OF MASSACHUSETTS REGULATIONS

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