

## **A New Opportunity for Seniors and People with Disabilities Enrolled in MassHealth Home & Community Based Waivers To Maintain Eligibility After an Increase in Income**

**August 29, 2019 rev.**

### **What are Home and Community Based Services waivers?**

MassHealth has several different home-and-community-based-services (HCBS) waivers that offer added benefits to enable people who are clinically eligible for nursing home or other facility-based care to remain at home or in a community-based setting. These HCBS waivers also apply special financial eligibility standards for MassHealth including an income standard based on three times the SSI federal benefit rate (3X FBR). In 2019 this monthly income standard is \$2313. The income of a spouse is not counted and the individual's assets are calculated under the same rules that apply to nursing home residents. The largest waiver is the "Frail Elder Waiver" available to over 19,000 individuals age 65 or older and disabled individuals age 60-64. There are also other HCBS waivers for certain individuals with brain injuries, developmental disabilities, and for nursing home residents. See 130 CMR 519.007(B),(D),(F),(G) and (H).

### **How was post-eligibility income treated before the change in policy?**

In the past, if someone enrolled in MassHealth through one of the HCBS waivers and later experienced an increase in income that put them over the special income standard they would receive a termination notice. The termination notice would include a calculation of the amount they would have to "spenddown" in order to re-qualify for MassHealth. See, 130 CMR 519.007(B)(3). The spenddown was calculated over a 6 month period as 6 times the difference between their countable monthly income and \$522. See, 130 CMR 520.035. If they could meet the spenddown by incurring bills for medical and related expenses that equaled the spenddown amount, they could requalify for the balance of the 6-month period after which a new 6-month deductible would have to be met.

### **How is post-eligibility income treated under the new policy?**

MassHealth has changed the way it treats income "post-eligibility" for HCBS enrollees. This change does not affect *initial* eligibility for MassHealth. It applies to people who initially qualify for a HCBS because their income is under the special income standard, and who **later** experience an increase in income.

Under the new policy, when current enrollees experience an increase in income, they will not be terminated as over-income subject to a spenddown. Instead, they will be notified that they are still eligible but may have to pay a monthly amount to maintain ongoing benefits.

The monthly amount is similar to the "patient paid amount" that people have to pay for nursing home care, however the way it is calculated recognizes the expenses of living in the community.

The monthly amount is based on the difference between an individual's countable monthly income and the sum of the following: \$2313 (3 X FBR), monthly unreimbursed medical costs like a Part B premium, and an allowance for a spouse or family member calculated the same way as the allowance for nursing home residents with a community spouse. See, MassHealth Frail Elder Waiver, Appendix B-5 (pp 37-44 of 280), 2019-2023.

### **How many people will this change affect?**

MassHealth estimates that on an ongoing basis this change in policy will affect about 20-30 HCBS waiver enrollees per year. MassHealth has also reinstated HCBS benefits to some HCBS enrollees whose benefits were terminated based on excess income.

### **How will be people be notified about PETI?**

MassHealth has not yet automated the noticing related to this change. This means HCBS waiver enrollees will still be sent computer-generated notices terminating benefits and calculating a 6-month spenddown. However, the MassHealth Waiver Eligibility Unit will follow up these notices with a manually-issued notice informing the individual that he or she is still eligible for MassHealth HCBS but may be assessed a monthly amount at some future point. MassHealth is still working out the operational details of calculating, billing and collecting the fee. No one has yet been assessed a fee.

MassHealth Customer Service and MassHealth Enrollment Center workers may not be aware of this policy. However, an eligibility operations memo should be issued soon.

### **What are potential advocacy issues to look out for?**

This change is a significant improvement over the old spenddown system. Under the new policy, many of those able to remain eligible may have no fee at all. And even those assessed a fee, will have a more feasible way of maintaining eligibility than under the spenddown. Meanwhile, there are some unsettled issues about the effective date of this change in policy. Also, until the change is automated, there will be a heightened risk of people falling through the cracks. Here are some potential advocacy issues:

- Current HCBS enrollees who may receive a termination notice for being over-income with a 6-month spenddown calculation instead of the continued eligibility notice under the new policy.
- Former HCBS enrollees whose benefits were terminated for being over-income and who were not reinstated under the new policy but should have been.
- Former HCBS enrollees who incurred medical expenses under the old policy that MassHealth would have covered had the new policy been in effect and may be entitled to reimbursement.

### **Will the changes in post-eligibility treatment of income apply to PACE?**

MassHealth has the option of using the HCBS post-eligibility treatment of income rules to PACE but is not required to do so. 42 CFR 460.184. So far, it appears the new policy is not being applied to PACE.

### **Where is there more information about post-eligibility treatment of income?**

At this point, our information about this change in policy is based on June 2019 notices reinstating HCBS eligibility for individuals who had been terminated as over-income, interviews with MassHealth officials, and the language in the HCBS waiver documents posted on the CMS website. However, we are expecting an eligibility operations memo from MassHealth with more information. While it is possible that further program regulations and sub-regulatory guidance will differ from the information in this fact sheet, we wanted to alert the advocacy community to this new policy without further delay.

Post-eligibility treatment of income in the HCBS waivers is required in federal Medicaid rules. See 42 CFR 435.726. Each of MassHealth's HCBS waiver documents are posted on the Medicaid.gov State Waivers List website and describe post-eligibility treatment of income. <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html>

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