



## **What changes has the MassHealth agency made to the policy of providing continuous coverage during the COVID-19 public health emergency?**

**June 14, 2021**

### **Summary**

- *The continuous coverage protection for people enrolled in MassHealth on March 18, 2020 or later is tied to the federal public health emergency (PHE) which will continue at least through Dec. 31, 2021. This protection will NOT end June 15, 2021 when the Governor is ending the state public health emergency.*
- *The continuous coverage protection is still in place. This means no one enrolled in federally reimbursed MassHealth Medicaid will lose coverage in 2021 based on a change in circumstances that would ordinarily make them ineligible for coverage and no one will lose coverage for failure to return a renewal form or failure to submit requested proofs. It also bars premium increases for individuals during the PHE.*
- *If people are no longer eligible for their current coverage, most will still be protected in their current coverage and will now get a notice informing them that their current coverage is being protected during the federal PHE.*
- *However, some people enrolled in the kinds of comprehensive MassHealth coverage now being called “Tier One” --MassHealth Standard, CommonHealth, CarePlus, and Family Assistance-- may be found eligible for another type of Tier One coverage with fewer benefits during the federal PHE but only if:*
  - *They are no longer eligible for their current Tier One coverage,*
  - *They are eligible for a different kind of Tier One coverage, and*
  - *If their current coverage is federally-reimbursed MassHealth Medicaid coverage, the Tier One Coverage for which they are eligible is also federally-reimbursed MassHealth Medicaid coverage.*
- *Most people who now have Tier One coverage will not meet these three conditions and will remain in their current coverage, but some people may be notified of a change in coverage. Most people changing coverage within Tier One will not suffer any harm. However, some people with disabilities may not have all the benefits they need covered unless they take action. This memo provides more information for advocates to help their patients and clients understand what is happening and to keep the coverage they need during the federal PHE.*
- *Another change announced in May 2021 is that MassHealth has returned to the pre-COVID rule that put a time-limit on how long people who are found eligible for ConnectorCare can remain on full-scope Health Safety Net (not just HSN for dental*

services). *The ConnectorCare eligible but not enrolled must take action to enroll in ConnectorCare or most will have only HSN dental for the remainder of 2021.*

- *This paper describes permissible changes in more detail and identifies ways that advocates can help people understand their notices and help people who must take action to maintain access to the services they need.*
- *Like many of the MassHealth changes that have been put in place quickly to adapt to the COVID-19 pandemic, the renewal process and protections described here may not work as intended, we need your eyes and ears to let us know when that happens.*

## **Background**

### *The federal protection*

A federal law enacted on Mar. 18, 2020 called the Families First Coronavirus Response Act, offered states enhanced federal matching funds in return for protecting individuals enrolled in Medicaid on March 18, 2020 or later from losing coverage for any reason other than a move out of state during the national public health emergency (PHE).<sup>1</sup> It also prohibited premium increases for Medicaid members during the PHE. Massachusetts accepted the enhanced funding and is required to provide this continuous coverage and premium protection until the last day of the month that the federal PHE ends.

On November 2, 2020 federal rules interpreting the COVID protection took effect and allowed state Medicaid agencies to make certain changes in the Medicaid benefits of people enrolled on March 18, 2020 or later so long as they change would still leave them with Medicaid benefits in the same “Tier” as their prior coverage.<sup>2</sup> On December 22, 2020 CMS issued guidance to states encouraging states to prepare for the eventual end of the PHE.<sup>3</sup>

In January 2021 the Biden administration notified the nation’s Governor’s that it intended to continue the declaration of the federal PHE until at least the end of 2021.<sup>4</sup> The federal PHE is different from Governor’s Baker declaration of a state emergency due to COVID. Governor

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<sup>1</sup> Section 6008 of Families First Coronavirus Response Act, (FFCRA), Pub.L. 116- 127, (Mar 18, 2020) <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

<sup>2</sup> 42 CFR 433.400 (eff Nov 2, 2000); CMS, FAQ (Jan 6, 2021) <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>

<sup>3</sup> State Health Official Letter, 20-004, RE: Planning for the Resumption of Normal State Medicaid, Children’s Health Insurance Program (CHIP), and Basic Health Program (BHP) Operations Upon Conclusion of the COVID-19 Public Health Emergency. <https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf>

<sup>4</sup>“To assure you of our commitment to the ongoing response, we have determined that the PHE will likely remain in place for the entirety of 2021, and when a decision is made to terminate the declaration or let it expire, HHS will provide states with 60 days’ notice prior to termination.” Jan 22, 2021 HHS Letter to Governors, <https://ccf.georgetown.edu/wp-content/uploads/2021/01/Public-Health-Emergency-Message-to-Governors.pdf>

Baker has announced that the state emergency period will end June 15, 2021.<sup>5</sup> However, the federal PHE will continue at least until the end of December 2021.

*The May 2021 changes in MassHealth policy on outstanding requests for information, annual renewals, the scope of COVID protections during the PHE and the Health Safety Net*

On May 4, 2021 MassHealth released written policy guidance stating that it would be resuming annual renewals, changing the scope of the COVID protection that has been in place since March 18, 2020, and changing Health Safety Net (HSN) coverage for people eligible for ConnectorCare.<sup>6</sup> This appears to be the timeline leading up to these changes:

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|-----------------|--|
| March 1, 2021   | MassHealth resumes 90 time-limited eligibility for full-scope HSN for individuals eligible for ConnectorCare, and schedules the end of the protection of full-scope HSN for individuals who had been determined eligible for ConnectorCare at any time from mid-December 2019 to March 1, 2021 by giving them one more 90 day period ending June 1, 2021 |
| March 18, 2021  | MassHealth begins to issue Requests for Information (RFIs) to an additional 53,900 MassHealth households with overdue RFIs and gives them an additional 30 days to respond   |
| March 22, 2021: | During the week of March 22-28, 2021, MassHealth implements a change in its COVID protections in its HIX eligibility system (under 65 MAGI population), and begins mailing out the first few thousand of an estimated 314,000 overdue annual renewals to people in both its HIX and MA-21 systems.   |
| April 7, 2021   | MassHealth agrees to pause these changes pending release of written guidance explaining the new policies.  |
| May 4, 2021     | MassHealth release written guidance explaining the changes and resumes implementation.   |
| May 21, 2021    | MassHealth begins to issue RFIs to an additional 65,000 MassHealth-ConnectorCare mixed households with overdue RFIs and gives them an additional 30 days to respond.   |

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<sup>5</sup> <https://www.mass.gov/doc/covid-19-order-69/download> ( Order of May 28, 2021); <https://www.mass.gov/info-details/covid-19-state-of-emergency>

<sup>6</sup> MassHealth EligibilityUpdate May 2021: Renewals/RFIs and Continuous Coverage During the Federal PHE <https://www.mass.gov/doc/masshealth-eligibility-update-may-2021-renewalsrfis-and-continuous-coverage-during-the-federal-public-health-emergency-0/download>

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Possible change in scope of COVID protection in MA-21 system for people age 65 and older.<sup>7</sup>

### **I. Permitting changes in coverage within the same “Tier”: Tier One**

MassHealth had implemented the COVID protection by blocking most coverage changes that its two eligibility systems would ordinarily make when a change is reported or a timeclock expires. One system, HIX, makes most determinations for people under age 65, and an older system, MA-21 makes most determinations for people age 65 or older or needing nursing home care. On May 4, 2021 MassHealth released written guidance stating that it would no longer prevent the HIX eligibility system from changing coverage from one type of MassHealth to another in certain limited circumstances where members-

1. No longer qualify for their current coverage,
2. Qualify for a different kind of MassHealth in the same “Tier” as their current coverage, and
3. If their current coverage is federally-reimbursed Medicaid, the new coverage for which they qualify is also federally-reimbursed Medicaid.<sup>8</sup>

Tier One Coverage includes the following MassHealth programs: MassHealth Standard, CarePlus, Family Assistance and CommonHealth. All these programs provide comprehensive coverage, but they don’t all offer the same long term services and supports that may be needed by people with certain disabilities. This [Table](#) compares the services covered in these four types of MassHealth.<sup>9</sup>

Permissible changes to less comprehensive coverage (downgrades) may be based on information reported by the member at any time, including in response to an RFI or annual renewal, or may be based on information that only came from an electronic data match if the member has not responded to the renewal form or RFI by the deadline. However, members will not lose coverage during the PHE just for failure to return a renewal form or requested proof by the deadline if no data source is available. People will not lose coverage if, based on a change in circumstances, such as an increase in income, they are no longer eligible for either their current MassHealth Medicaid coverage or another form of MassHealth Medicaid in the same Tier. Instead, they

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<sup>7</sup> Potential changes for Medicare recipients permitted by the Trump administration in its Nov 2020 final rule appear to be in violation of the federal statute and have not yet been implemented by MassHealth.

<sup>8</sup> There are no easy to understand sources identifying federal Medicaid reimbursed forms of MassHealth, but Table A in the 1115 Demonstration Special Terms and Conditions lists the funding streams for all MassHealth programs except those that are only state-funded.

<sup>9</sup> [https://www.masslegalservices.org/system/files/library/Benefits%20Included%20in%20MassHealth%20by%20Coverage%20Type%202021\\_0.pdf](https://www.masslegalservices.org/system/files/library/Benefits%20Included%20in%20MassHealth%20by%20Coverage%20Type%202021_0.pdf)

remain protected in their current coverage during the PHE, and now they will receive a notice informing them that they are being protected during the COVID emergency.

#### **A. Advocacy for people receiving the protection notice**

If people receive a protection notice it means that MassHealth eligibility systems do not show them to be eligible for their current coverage, and therefore they need to be protected in coverage during the PHE. If they are in fact eligible for their current coverage, or become eligible, they should supply any missing information needed to generate a favorable decision without the protection notice. This should avoid any trouble maintaining eligibility when the federal PHE ends. A copy of a sample protection notice is posted [here](#).<sup>10</sup>

#### **B. Permissible downgrades for adults on MassHealth in Tier One**

##### **1. Downgrades from MassHealth Standard to CarePlus are permitted when the member is no longer categorically eligible for Standard but is eligible for CarePlus.**

- The member is no longer “categorically eligible” for MassHealth Standard if -
  - Not a parent/caretaker relative living with a child under 19, or
  - Not pregnant or 60 days post-partum, or
  - Not a young adult (age 19 or 20) with income of 150% FPL or less, or
  - Not found disabled by the Social Security Administration (SSA) or Disability Evaluation Services at U. Mass. Medical (DES), or
  - Not HIV positive, or
  - Not in treatment for breast or cervical cancer, or
  - Not receiving SSI or TAFDC ( or in the 4 month extended eligibility period after loss of SSI/TAFDC), or
  - Not a former foster child under age 26, and
- Eligible for CarePlus because the member
  - Has income of 133% FPL or less,
  - Is aged 21-64, and
  - Is not enrolled in Medicare.
- **Advocacy notes**
  - Individuals who are now categorically eligible for Standard under a category not known to MassHealth will need to report the change to avoid a downgrade to CarePlus.
    1. Example: Youngest child turns 19; member is no longer categorically eligible as a parent but is now pregnant. Member needs to update status to remain in Standard as a pregnant person.

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<sup>10</sup> <https://www.masslegalservices.org/content/masshealth-renewalsrfis-and-continuous-coverage-during-federal-public-health-emergency>

2. Individuals who are disabled but do not have a disability determination will need to establish disability. Currently, individuals may self-attest to disability,<sup>11</sup> but this flexibility is expected to end Sept. 15, 2021. Disability Evaluation Services (DES) will process the disability self-attestations. Contact DES at (833) 517-0250, TTY: (866) 693-1390.
- Individuals with special health needs who have not yet been found disabled have two options to retain Standard:
  1. CarePlus members who are “medically frail” can upgrade to Standard without a disability determination by reporting a need for added services based on special health care needs. 130 CMR 505.008(F).
    - The CarePlus eligibility notice explain this option.
    - CarePlus is fine for most people. Use the medically frail option for individuals who need PCA, Adult Day Health or other long term services and supports not covered by CarePlus.<sup>12</sup>
  2. MassHealth Standard members erroneously terminated or downgraded can temporarily retain benefits pending appeal if they appeal within 10 days of the mailing date of the downgrade notice or before the date of the downgrade whichever is later.
    - Individuals who may be categorically eligible on the basis of disability should self-attest to disability and/or submit a disability supplement and obtain legal assistance if a hearing is scheduled before DES makes a decision that they are disabled.
    - Individuals who believe the downgrade is impermissible for other reasons that the MEC will not correct should also obtain legal assistance.

**2. Downgrades from Standard to CommonHealth are permitted for working disabled adults, certain HIV+ disabled adults and certain disabled children when the member-**

- Is no longer eligible for Standard, and
- Is eligible for CommonHealth without a spenddown because the individual-
  - Is under 65 and been found disabled by SSA or DES but has income over 133% FPL, and is working 40 hours or more per month, or
  - Is 65 or older and been found disabled by SSA or DES but has income over 100% FPL and/or assets over \$2000/\$3000 individual/couple, and is working 40 hours or more per month or

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<sup>11</sup> <https://www.masshealthmtf.org/news/masshealth-and-covid-19-update-masshealth-self-attestation-eligibility-factors-update>

<sup>12</sup> This Table shows which benefits are in MassHealth Standard and CarePlus.

<https://www.masslegalservices.org/content/benefits-included-masshealth-coverage-type-2021>

- Is a young adult (19-20) who has been found disabled by SSA or DES, has income over 150% FPL but not over 200% FPL and is HIV positive, or
- Is 21-64, has been found disabled by SSA or DES, has income over 133% FPL but not over 200% FPL and is HIV positive, or
- Is under age 21, has been found disabled by SSA or DES, and has income over 300% FPL.
- **Advocacy notes**
  - Disabled adults who are not working or HIV+ and who are no longer eligible for MassHealth Standard should remain protected in Standard during the PHE because they are not eligible for CommonHealth unless they meet the spenddown.
  - CommonHealth for disabled children and young adults with income of 300% FPL or less is funded under non-Medicaid CHIP and is not a permissible downgrade from MassHealth Standard during the PHE.
  - CommonHealth covers almost the same long term services and supports that Standard does and should meet the needs of disabled individuals except those needing long term nursing home care or Home and Community Based waiver services.
  - Disabled individuals downgraded from MassHealth to CommonHealth may receive a notice saying that there will be a monthly premium, but there will in fact be no premium bill or liability during the federal PHE. This is because the federal continuous coverage protection also protects people enrolled on March 18, 2020 or later from any increase in premiums during the emergency period.
  - For people under 65, the HIX computer eligibility system is not able to make a determination of CommonHealth eligibility for adults. We don't know exactly how the CommonHealth "workaround" will operate for people under 65 enrolled in Standard for whom the downgrade to CommonHealth is permissible. See the next section for an alert about HIV+ disabled adults erroneously downgraded from Standard to Family Assistance.
  - MassHealth Standard members erroneously terminated or downgraded can temporarily retain benefits pending appeal if they appeal within 10 days of the mailing date of the downgrade notice or before the date of the downgrade whichever is later.

**3. Downgrades from Standard to Family Assistance are permissible for certain HIV positive (nondisabled) adults when the member –**

- Is no longer eligible for Standard, and

- Is eligible for Family Assistance because the individual -
  - Is 19 -20 and has income over 150% FPL but not over 200% FPL, or
  - Is 21-64 and has Income over 133% FPL but not over 200% FPL,
  - Is HIV positive, and
  - Has NOT been found disabled by SSA or DES.
- **Advocacy notes**
  - Family Assistance for HIV positive individuals is one of the only types of Family Assistance for adults that are funded by federal Medicaid and therefore a permissible downgrade from Standard in Tier One.
  - Disabled HIV positive adults no longer financially eligible for Standard are eligible for CommonHealth and therefore should not be downgraded to Family Assistance. However, due to the HIX CommonHealth adult “workaround” we believe these erroneous downgrades may have occurred. If you see one of these erroneous Standard to Family Assistance downgrades please notify us. [vpulos@mlri.org](mailto:vpulos@mlri.org) and [ksymmonds@mlri.org](mailto:ksymmonds@mlri.org)
  - HIV + individuals who are disabled but have not been found disabled by SSA or DES may retain MassHealth Standard by appealing in time for aid pending appeal and submitting a disability supplement or so long as it is available, self-attesting to disability, or if they miss the appeal deadline, may be able to regain MassHealth Standard based on a disability finding or self-attestation. Disability Evaluation Services (DES) will process the disability self-attestations. Contact DES at (833) 517-0250, TTY: (866) 693-1390

### **C. Downgrades from non-Medicaid funded Tier One Coverage**

#### **1. Redeterminations for certain post-partum non-citizens from MassHealth Standard to MassHealth Limited and Health Safety Net or to Health Safety Net only**

- Undocumented people enrolled in MassHealth Standard while pregnant or 60 days post-partum are not receiving federal Medicaid and are not subject to the federal COVID protection.
- In the summer of 2000, MassHealth began redetermining these individuals after the 60 days postpartum period expired. Those with income of 133% FPL or less will be eligible for MassHealth Limited and HSN. Those with higher income may be eligible for HSN only.
- In light of the Medicaid agency’s proposed 1115 amendment to extend postpartum coverage for 12 months, MassHealth is reconsidering these downgrades, but we do not yet have the details on any further policy update. Please notify us if you have clients who have been downgraded and are experiencing hardship as a result. [ksymmonds@mlri.org](mailto:ksymmonds@mlri.org) [vpulos@mlri.org](mailto:vpulos@mlri.org).

## **2. Redeterminations for certain non-Medicaid CHIP-funded individuals on Family Assistance who turn 19**

- Individuals under 19 enrolled in Family Assistance with income over 150% FPL but not over 300% FPL are in non-Medicaid CHIP-funded coverage that is not protected by the federal continuous coverage protection.
- In the summer of 2000, MassHealth began redetermining these individuals into other coverage when they turned 19. Depending on the household tax filing status and MAGI income and access to other coverage, some 19 year olds may have qualified for CarePlus or ConnectorCare as single adults, or may have qualified for ConnectorCare as tax dependents if the tax filer was also eligible for premium tax credits, while others may have qualified for only HSN or no coverage at all.
- **Advocacy notes**  
The redeterminations are based on file information, if that information is out of date or incorrect, some 19 year olds may have ended up with less comprehensive or more costly coverage than they should have. Any such cases should be relatively easy to fix prospectively by supplying updated information. Coverage back to the date of the incorrect decision can be obtained through a timely appeal. Self-attestation should remain available until at least Sept. 15, 2021, and we expect the appeal period to remain 120 days throughout the federal PHE.

### **As far as we know, these are the only MassHealth downgrades in coverage permitted in Tier One.**<sup>13</sup>

#### **II. Downgrades in Tier Two affecting HSN coverage for ConnectorCare eligible individuals**

Tier Two consists of MassHealth Limited, Health Safety Net (HSN), and the Children's Medical Security Plan (CMSP). Only MassHealth Limited is federal Medicaid coverage. This means no one on MassHealth Limited can be terminated from MassHealth Limited and downgraded to only HSN or to only CMSP and HSN during the federal PHE.

HSN and CMSP are not subject to the federal continuous coverage protection, but MassHealth has been protecting people with HSN and CMSP in their current coverage during the PHE. As far as we know, the MassHealth agency will be continuing that protection with one exception affecting HSN coverage for people eligible for ConnectorCare described below.

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<sup>13</sup> CommonHealth and Family Assistance may be reimbursed under federal Medicaid, non-Medicaid CHIP or may be wholly state-funded depending on the circumstances of the member and these funding differences are not visible to members or their advocates. This summary may not fully reflect all the changes within Tier One given the complexity of the funding streams and how that affects permissible downgrades

**MassHealth will be letting full Health Safety Net coverage expire after June 1, 2021 for people who are enrolled in ConnectorCare and after July 1, 2021 for people who are eligible for ConnectorCare but unenrolled**

The Health Safety Net is not a federal Medicaid program and is not subject to the federal continuous coverage protection during COVID; however, MassHealth has varied some of the HSN eligibility rules during the pandemic. Pre-COVID, when an individual was not eligible for federal Medicaid (except for emergency Medicaid/MassHealth Limited) but was eligible for ConnectorCare, the MassHealth notice provided for time-limited Health Safety Net coverage. Time-limited HSN coverage began 10 days prior to the date of application and ended 90 days from the date of the favorable HSN eligibility decision.<sup>14</sup> After this time, the individual would only have HSN dental coverage. The HSN coverage would drop to dental-only whether the individual enrolled in ConnectorCare or not, and with no further notice to the individual.

On March 18, 2020 MassHealth initially stopped running the clock on temporary HSN and allowed it to continue for people who were eligible for ConnectorCare. On March 1, 2021 MassHealth reset the HSN time clock for ConnectorCare eligible individuals for 90 more days until June 1, 2021. No new notice went to people affected. Starting June 1, 2021 MassHealth will be using a batch process to limit HSN to dental-only coverage for people who enrolled in ConnectorCare. Starting July 1, 2021 MassHealth plans to limit HSN to dental-only for people who are eligible for ConnectorCare but unenrolled.

**Advocacy notes**

- MassHealth is not planning to notify those people whose HSN had been protected from expiring that the protection ended March 1, 2021 and their full-scope HSN is expiring on July 1, 2021. Most affected people will only discover that they no longer have full-scope HSN when they seek care from a hospital or community health center after July 1 and learn their HSN only covers dental services. Those who then take action to select a plan will be enrolled no sooner than August 1, 2021.
- In May, 2021, the Health Connector notified people eligible for ConnectorCare but not enrolled about enhanced premium tax credits under the American Rescue Plan Act and gave them 60 days or the end of Open Enrollment on July 23, 2021, whichever is later, to enroll in a health plan. If the Health Connector does not extend open enrollment or create a new special enrollment period for people losing HSN, individuals who don't enroll by July 23, 2021 may be uninsured and without HSN for the rest of 2021
- The only good news in this story is that due to system limitations, people on MassHealth Limited and HSN who are eligible for ConnectorCare will retain full-scope HSN.

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<sup>14</sup> <https://www.mass.gov/files/documents/2018/07/02/eom-18-02.pdf>

- Advocates associated with hospitals or health centers will be in the best position to identify affected people and help them to enroll in ConnectorCare. Meanwhile, we are trying to persuade MassHealth and the Health Connector to give people more time.

For questions, comments or corrections please write to [Vpulos@mlri.org](mailto:Vpulos@mlri.org)