

## **Understanding the Affordable Care Act**

### **What Massachusetts Family Law Practitioners Should Know about the ACA**

**November 2014**

Family law cases routinely involve decisions regarding custody, health care coverage, tax dependency exemptions, whether to file joint tax returns and what tax filing status might be most beneficial to the parties. Practitioners who represent lower income clients should be aware that under the Affordable Care Act (ACA) some of these decisions may affect eligibility for MassHealth and other low cost health insurance. This paper provides family law practitioners with information to help families make the most of affordable health care coverage in the context of a divorce, custody or support case.

Starting in 2014, the Affordable Care Act (ACA) requires people to either obtain health insurance or qualify for an exemption in order to avoid federal tax penalties.<sup>1</sup> At the same time, it increases coverage options for children and adults to qualify for Medicaid, and creates a new kind of subsidized private insurance for individuals who do not qualify for Medicaid.<sup>2</sup> MassHealth is the state's Medicaid program for low-income people. Under the ACA, the Health Insurance Connector Authority is the state-based Marketplace or Exchange where people without access to affordable insurance from an employer, Medicaid, or other government programs can purchase private insurance that qualifies for public funding through premium tax credits and subsidies.

When an individual applies for help paying for insurance, the Connector estimates the amount of the premium tax credit for which an applicant will qualify when he or she files taxes for the benefit year. The individual can choose to take the estimated tax credit in advance in monthly installments paid directly to an insurance carrier to reduce monthly premium costs. Or, the individual can pay the full premium now and collect the full credit the following year when he or she files taxes. Additional subsidies are available to reduce deductibles, copayments and other cost-sharing. An individual eligible for low cost insurance from the Connector must later file a federal tax return for the benefit year in which the client received an advance credit or desires to obtain a credit.<sup>3</sup>

Clients must meet certain financial eligibility guidelines in order to qualify for benefits under either MassHealth or help purchasing low cost insurance from the Connector. Both programs use a common application form for most people under age 65 and have very specific methods of determining what income is "counted" to determine whether or not a person can qualify for benefits.<sup>4</sup>

Under a new income methodology based on federal income tax rules called Modified Adjusted Gross Income (MAGI), financial eligibility for MassHealth (for individuals under age 65) or premium tax credits and related subsidies under the ACA may be affected by:

- whether or not someone will file taxes for the year in which they are seeking benefits,

- the tax filing status they expect to use,
- the exemptions they expect to claim,
- whether someone is claimed as a dependent, and by whom
- with whom someone lives,
- whether payments are alimony or child support, and
- other tax rules for determining Adjusted Gross Income.<sup>5</sup>

**Listed below are important ways in which the new methods of counting income can affect eligibility for MassHealth and Connector benefits.**

**If your client will still be married on Dec. 31 of the year in which s/he is seeking health benefits, whether to file taxes jointly or not for that year may affect your client's eligibility for MassHealth or low cost insurance.**

- **MassHealth** will count the income of both spouses who expect to file jointly whether they are living together or not.<sup>6</sup> If your client says s/he plans to file jointly with a spouse for the year in which s/he is seeking benefits, s/he will need to supply information about the spouse's current income on the application.
  - Example: Maria and John are married but live apart. They have no children. Maria has income of \$1200 per month. John has income of \$2000 per month. Neither is offered insurance through work. The MassHealth upper income limit for one adult is \$1343 per month; for two it is \$1810 per month.<sup>7</sup>
    - If Maria and John plan to file a joint tax return neither will qualify for MassHealth. Their combined income is too high.
    - If Maria and John plan to file as married filing separately, Maria will qualify for MassHealth but John's separate income will still be too high for him to qualify for MassHealth.
- **Low cost insurance through the Connector** will count the income of both spouses who file jointly. Neither spouse in a couple who are married on Dec. 31 and do *not* file jointly for that year will be eligible for premium tax credits or other help unless:
  - 1). The spouse who is applying for benefits will file taxes as a head of household,
  - or
  - 2). The spouse who is applying for benefits will file taxes as married filing separately but has been abused or abandoned by the other spouse.<sup>8</sup>
  - Example: Same facts for Maria and John as in the MassHealth example.
    - If Maria and John plan to file a joint return and apply for health benefits together, they will qualify for a low cost ConnectorCare plan at a monthly premium of \$78 each.

- If Maria and John plan to file as married filing separately, Maria will qualify for MassHealth as explained above. John is financially eligible for low cost insurance through the Connector but he will not qualify for benefits because he is not filing jointly and does not meet the abuse/abandonment exception.

**Which parent claims the child as a dependent on his/her taxes will affect the *parent's* eligibility for MassHealth or low cost insurance**

- **MassHealth and the Connector** will include a child claimed as a tax dependent in the household size of the parent who will claim the child.<sup>9</sup> A child (or any other person) who qualifies as a dependent under tax rules will be included in the parent's household even if the child is over 19 or not living with the parent. Being in the parent's household affects the parent's eligibility for health benefits in two ways: A larger household size raises the applicable income ceiling, and the income of the child will be included in the parent's household income, but only if the child's income is so high that the dependent is required to file a separate tax return.<sup>10</sup>
- In **MassHealth**, people do not have to be tax filers to qualify. A parent who does not file taxes will have a MassHealth household made up of the people with whom s/he is living who are either a spouse, or his/her children under 19 (including step children and in the case of a pregnant woman including the expected child).<sup>11</sup> This is true even if a noncustodial parent claims the child and *also* has the child included in his/her MassHealth household.
  - Example. Mary and Tomas are divorced and have a 7 year old child Juana who lives with Tomas. Mary's income is \$1500 per month, Tomas receives \$1500 in social security disability benefits but does not yet have Medicare and Juana receives a social security dependents' benefit of \$600 per month. There are no other family members.
    - If Mary claims Juana as her dependent, her household size is two, even though Juana does not live with her. Mary's countable income is \$1500 because Juana's social security dependents benefits are not high enough to require Juana to file a separate return, and therefore are not added to Mary's income.<sup>12</sup> Mary is eligible for MassHealth.
    - Tomas does not need to file a tax return. Under the non-filer rules that apply to him in MassHealth, Juana is included in his household because she lives with him even though Mary claims Juana as a dependent. His household size is two and his countable income is \$1500. Tomas is eligible for MassHealth.

## **Which parent claims the child as a dependent will not govern the *child's* eligibility for MassHealth but will affect the child's eligibility for the Connector**

In **MassHealth**, there are three exceptions to the general rule that a person claimed as a dependent is in the same household as that of the tax filer. A child claimed as a dependent is subject to the non-filer rules if 1. claimed by someone other than the parent or a spouse, 2. claimed by a noncustodial parent, or 3. living with both parents who do not file jointly and claimed as a dependent by one parent.<sup>13</sup> Under the non-filer rules, the child's household consists of the parent or parents and siblings under 19 with whom the child is living, and any spouse or child living with the child. A noncustodial parent who claims the child as a dependent cannot apply for MassHealth for the child because the custodial parent must be included in the child's household.<sup>14</sup>

- Example, Keisha and Kevin are divorced and have one 10 year old child Lily. Lily lives with Keisha. Both parents have income of \$1500 per month from work. Kevin pays \$600 per month in child support.
  - If Keisha claims Lily as her dependent. Lily's MassHealth household consists of herself and her mother. Child support is not taxable income and is not counted. Lily's income is \$1500 for a household of two consisting of herself and her mother. Lily is eligible for MassHealth.
  - If Kevin claims Lily as his dependent. Kevin is not in Lily's MassHealth household even though she is his tax dependent because the noncustodial parent exception applies. Lily's MassHealth household still consists of herself and her mother, the custodial parent. Lily's income is \$1500 for a household of two consisting of herself and her mother. Lily is eligible for MassHealth.

In the **Connector**, the tax filer and tax dependents will always be in the same household. Only the parent (or other tax filer) who claims the child as a dependent can purchase low cost insurance through the Connector for the child.<sup>15</sup> In the example above, if Lily were not eligible for MassHealth based on Keisha's application for her, Kevin could apply for low cost insurance for Lily and qualify. Lily will be in Kevin's Connector household because she is his dependent.

## **MassHealth and the Connector will count child support and alimony payments the same way they are treated for federal income tax purposes**

- Child support is not deducted from the income of the payer and is not added to the income of the payee<sup>16</sup>
- Alimony is deducted from the income of the payer and added to the income of the payee<sup>17</sup>

- Characterizing a payment as alimony or child support will determine not just which person pays taxes on this income but which person has this income counted in his or her household income for purposes of qualifying for MassHealth or low cost insurance through the Connector.

For more information on modified adjusted gross income, see Understanding the Affordable Care Act: How MassHealth Will Count Income in 2014 (March 2014), [www.masslegalservices.org](http://www.masslegalservices.org).

**The person who claims the child as a dependent is also the person who may be subject to a federal tax penalty if the child was not insured.**

- The parent ordered to provide insurance for the child under a domestic relations order is not responsible for the child's insurance for purposes of the federal tax penalty unless that parent also claims the child as a tax dependent.<sup>18</sup>
- However, if a custodial parent claims her child as a dependent, the child is not eligible for MassHealth, and the noncustodial parent has been ordered to provide insurance for the child, the custodial parent will qualify for a hardship exemption from the tax penalty if the child remains uninsured.<sup>19</sup>

**The availability of low cost insurance through the Connector may affect both cash child support and medical support for the child**

- In some circumstances, the availability of low cost insurance through the Connector may present a new option for providing **medical support** for a child. Currently, the Child Support Guidelines direct the court to order the payer of child support to also purchase insurance for the child if it is available at a reasonable cost.<sup>20</sup> Prior to the ACA, the cost of non-group coverage may have been considered prohibitive, but with premium tax credits it may now be an affordable option. Also, in the Connector, the parent can purchase a child-only policy. However, a parent can only qualify for tax credits to purchase insurance for a child if the child is not eligible for MassHealth and the parent is not offered employer-sponsored insurance that meets minimum standards.<sup>21</sup>
  - The Child Support Guidelines state that any offer of employer-sponsored insurance is deemed to be available at reasonable cost. However, under the ACA, employer-sponsored coverage that exceeds 9.5% of income for self-only coverage does not meet the ACA's minimum standards of affordability. A person offered unaffordable insurance may qualify for low cost insurance from the Connector, but a person who is actually enrolled in unaffordable employer coverage does not qualify. Thus, a domestic relations order requiring the parent to take an offer of employer insurance that is not affordable under the ACA will result in the parent forfeiting eligibility for low cost insurance through the Connector for both the parent and the child.<sup>22</sup>

- It is not clear how the costs of low cost insurance purchased through the Connector will be accounted for in determining the amount of **child support**. Under the Guidelines, the costs of health insurance are deducted from “available income” prior to applying the support percentage to calculate the amount of child support. The Child Support Guidelines says the parents may deduct amounts “actually paid” for health insurance. A premium tax credit to reduce the costs of insurance may be taken in advance to reduce the amount the individual pays for insurance in the current year, or the individual may pay the full premium amount in the current year and apply for the tax credit when s/he files taxes prior to April 15 of the following year.
  - The Child Support Guidelines do not address premium tax credits, but in situations where either parent is deducting the costs of purchasing non-group insurance purchased through the Connector on the child support worksheet, practitioners should inquire whether the amount deducted from health insurance is net of any available tax credit. If a tax credit is taken in advance, the amount the parent “actually pays” for insurance in the current year will be less than the full premium. It is not clear how the worksheet should address the situation of a parent who pays the full amount for insurance purchased through the Connector in the current year but will be eligible for a premium tax credit for that year when he or she files taxes. If monthly premium costs are not reduced to reflect the credit, another way to account for a premium tax credit may be to include it in income.

## **Appendix 1**

### **Children and adults have new options to qualify for MassHealth or low cost insurance**

- Adults under age 65 with income up to 133% of the federal poverty level (FPL) may be eligible for MassHealth.<sup>23</sup> (There is a standard deduction of 5% of the poverty level effectively raising the upper income limit to 138% FPL).
- Children in families with income up to 300% FPL may be eligible for MassHealth.<sup>24</sup>
- Uninsured individuals who are not eligible for MassHealth or other affordable coverage and with income up to 400% FPL may be eligible for premium tax credits to reduce the costs of health insurance purchased through the Connector.<sup>25</sup>
  - Premium tax credits can be taken in advance to lower monthly premium costs in the current year or the credit can be taken at the time of filing taxes in the following year.
  - Cost sharing reduction subsidies and added state subsidies are also available for individuals up to 300% FPL.<sup>26</sup> (The program of combined state and federal subsidies and federal tax credits is called ConnectorCare).
  - Premium tax credits and subsidies are only available for qualified health plans purchased through the Connector, not for employer-sponsored insurance.

- A Table showing annual and monthly income at various percentages of the federal poverty level by family size is posted on the health section of [www.masslegalservices.org](http://www.masslegalservices.org)
- Many low income adult immigrants will only have coverage options through the Connector not MassHealth.<sup>27</sup> This is because “lawfully present” immigrants are eligible for low cost insurance through the Connector (and lawfully present immigrant children are eligible for MassHealth), but MassHealth has more restrictive immigrant eligibility rules than the lawfully present standard for most adults.<sup>28</sup> For more information, see Understanding the Affordable Care Act in Massachusetts: Eligibility of Non-Citizens for MassHealth and Other Subsidized Health Programs (June 2014) at [www.masslegalservices.org](http://www.masslegalservices.org).

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<sup>1</sup> 26 USC § 36B and 26 CFR § 1.36B.

<sup>2</sup> See Appendix 1 for an outline of current eligibility criteria for MassHealth and for publicly funded coverage under the ACA.

<sup>3</sup> At tax filing the actual amount of the tax credit will be determined and reconciled with any amount taken in advance. 26 CFR § 1.36B-4; IRS Form 8962, Premium Tax Credit, DRAFT 2014.

<sup>4</sup> Commonwealth of Massachusetts, EOHHS, “Massachusetts Application for Health and Dental Coverage and Help Paying Costs,” ACA-3 (Rev. 10/14) available on [mass.gov/masshealth](http://mass.gov/masshealth) and [mahealthconnector.org](http://mahealthconnector.org).

<sup>5</sup> In ConnectorCare: 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1, 45 CFR 155.305(f), 956 CMR 12.09, and in MassHealth: 42 CFR § 435.603, 130 CMR § 501.001 (definition of MAGI) and § 506.007.

<sup>6</sup> 130 CMR § 506.002(B)(1). MassHealth will also count the income of both spouses who are living together whether they file taxes together or not.

<sup>7</sup> A Table showing annual and monthly income at various percentages of the federal poverty level by family size is posted on the health section of [www.masslegalservices.org](http://www.masslegalservices.org)

<sup>8</sup> 26 CFR § 1.36B-2T(a)(2) (final and temporary regulations 79 Fed. Reg. 43622, July 28, 2014).

<sup>9</sup> 130 CMR § 506.002(B)(1).

<sup>10</sup> 130 CMR §§ 506.004(K) and 506.007.

<sup>11</sup> 130 CMR § 506.002(B)(3).

<sup>12</sup> In 2013, an unmarried child claimed as a dependent was not required to file a return unless the child’s gross taxable earned income was at least \$6,100 or gross taxable unearned income was at least \$1,000 or the sum of both earned and unearned income was at least the larger of \$1000 or the amount of earned income (up to \$5750) plus \$350. (Gross taxable income excludes child support and nontaxable Social Security benefits). IRS Publication 501, Exemptions, Standard Deduction and Filing Information, Table 2, 2013 Filing Requirements for Dependents, available on [irs.gov](http://irs.gov).

<sup>13</sup> 42 CFR § 435.603; 130 CMR § 506.002(B)(2) (dependent) and § 506.002(B)(3) (not a filer or dependent).

<sup>14</sup> MassHealth rules determine who is the custodial parent based on a court order awarding physical custody, or, absent a court order, with whom the child spends the most nights. 130 CMR § 506.001 (definition of custodial parent); § 506.002(B)(2)(b)(iii) (treatment of child claimed by noncustodial parent); § 505.002(C) (eligibility as a parent).

<sup>15</sup> 45 CFR § 155.305(f)

<sup>16</sup> IRS publication 525, Taxable and Nontaxable Income (2013) and IRS publication 504, Divorced or Separated Individuals (2013), pp. 12-17, available on [irs.gov](http://irs.gov)

<sup>17</sup> See note above.

<sup>18</sup> 26 CFR § 1.5000A-1(c)(2)

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<sup>19</sup> Memo from Gary Cohen, Director, Center for Consumer Information and Insurance Oversight, Guidance on Hardship Exemption Criteria and Special Enrollment Periods (June 26, 2013) and “Application for Exemption from the Shared Responsibility Payment for Individuals who Experience Hardships,” (Hardship No. 10), form available on [www.healthcare.gov](http://www.healthcare.gov)

<sup>20</sup> Commonwealth of Massachusetts, Child Support Guidelines, (August 1, 2013), § II, (G).

<sup>21</sup> 45 CFR 155.305(f)

<sup>22</sup> An uninsured individual who is offered employer-sponsored insurance is eligible to purchase low cost insurance through the Connector if the cost of self-only employer-sponsored insurance exceeds 9.5% of household income or the coverage fails to meet another minimum standard. 26 CFR 1.36B-2(c)(3).

<sup>23</sup> 130 CMR § 505.002 (Standard) and § 505.008 (CarePlus). Higher income limits apply to adults with certain medical conditions such as pregnancy, HIV, or breast or cervical cancer and to certain people with disabilities.

<sup>24</sup> 130 CMR § 505.002 (Standard) and § 505.005 (Family Assistance).

<sup>25</sup> 26 CFR § 1.36B-1 (advance premium tax credit) and 45 CFR § 155.305(f) (tax credit and federal cost-sharing reduction subsidy).

<sup>26</sup> 956 CMR § 12.05 (eligibility for ConnectorCare program combining state subsidies with federal tax credits and subsidies).

<sup>27</sup> See, 45 CFR § 155.305(f)(2).

<sup>28</sup> 45 CFR § 155.305(a)(1) (Exchanges); 130 CMR § 504.003 (MassHealth).