



**Eligibility Operations Memo 21-08**  
**May 14, 2021**

TO: MassHealth Eligibility Operations Staff

FROM: Heather Rossi, Deputy Policy Director for Eligibility

RE: **Updates to the MassHealth Estate Recovery Policy**

**Background**

Federal and state Medicaid law requires MassHealth to have an estate recovery program. The estate recovery program requires MassHealth to recover from the assets of the estates of certain MassHealth members after their death, unless exceptions apply.

MassHealth has updated the requirements of MassHealth’s estate recovery program in 130 CMR 501.000 and 130 CMR 515.000. Effective May 14, 2021, MassHealth expanded estate recovery hardship requirements to increase protections for low and middle-income families by reducing the number of estates subject to recovery and limiting the amount recovered in certain circumstances.

**Estate Recovery Exceptions**

MassHealth added to and clarified rules about exceptions to estate recovery requirements.

<b>Estate Recovery Exception</b>	<b>Prior to 05/14/2021</b>	<b>Effective 05/14/2021</b>
Long-Term Care Insurance	Recovery for nursing facility or other long-term care services will not be made if <ol style="list-style-type: none"> <li>1) the member was institutionalized; and</li> <li>2) the member notified the MassHealth agency that they had no intent of returning home; and</li> <li>3) on the date of admission to the long-term care institution, the member had long-term care insurance that, when purchased, met the long-term care insurance minimum coverage requirements.</li> </ol>	This exception now applies if at the time of purchase, or at any time thereafter, the member had long term care insurance that met minimum coverage requirements.

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<b>Estate Recovery Exception</b>	<b>Prior to 05/14/2021</b>	<b>Effective 05/14/2021</b>
Cost Effectiveness	During the COVID-19 Public Health Emergency, MassHealth will not file estate recovery claims on estates valued at \$25,000 or less.	MassHealth will not file estate recovery claims on estates valued at \$25,000 or less.
Certain Assets for American Indians and Alaska Natives (AI/AN)	No recovery for certain income, resources, and property if the resources are considered exempt under Section 5006 of the American Recovery and Reinvestment Act (ARRA).	Updates to this existing exception require heirs to submit a MassHealth Estate Recovery Application form for Exemption of Certain Assets for American Indians and Alaska Natives if this exception applies.

**Estate Recovery Deferrals**

No changes were made to the deferral of estate recovery. MassHealth will continue to defer estate recovery for surviving spouses, children under the age of 21, and children of any age who are blind or permanently and totally disabled.

**Estate Recovery Waivers for Undue Hardship**

Revisions to estate recovery requirements expanded MassHealth's existing estate recovery hardship requirement for financial hardship and established two new hardship waivers for heirs with income under 400% FPL for a certain period of time, and for heirs who lived in the decedent's home and provided care, along with other requirements.

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<b>Waivers of Estate Recovery due to Undue Hardship</b>	<b>Description as of 05/14/2021</b>	<b>Change following regulation update effective 05/14/2021</b>
Residence and Financial Hardship	<p>Recovery will be waived if MassHealth determines all of the following conditions have been met:</p> <ol style="list-style-type: none"><li>1) Sale of property would be required to satisfy a claim against the member's probate estate;</li><li>2) Heir lived on the property as a principle place of residence on the date of the member's death and did so for at least two years before the MassHealth member was admitted to an institution or the member's death;</li><li>3) Individual continues to live on property;</li><li>4) Individual received interest in property from decedent;</li><li>5) Heir's income is <math>\leq</math> 133% FPL; and</li><li>6) All other devisees or heirs at law are not forcing a sale of the real estate.</li></ol>	<p>This was the only hardship waiver that existed before the regulations were updated.</p> <p>The update eliminates the two-year conditional period from this waiver requirement and waives recovery upon initial determination that the criteria and circumstances for the waiver are met. Prior to the update, this waiver required that the heir continue to meet the criteria for this waiver for a two-year conditional period after the initial determination before the waiver became permanent.</p> <p>The residency requirement has been updated so that the heir must have lived on the property as their principle place of residence on a continual basis for two years <i>prior to the member's admission to an institution or death.</i></p>

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<b>Waivers of Estate Recovery due to Undue Hardship</b>	<b>Description as of 05/14/2021</b>	<b>Change following regulation update effective 05/14/2021</b>
Care Provided Waiver	<p>Recovery will be waived if MassHealth determines that all conditions have been met:</p> <ol style="list-style-type: none"><li>1) The heir resided in decedent's home continuously for two years prior to the member permanently entering an institution (e.g. nursing home), or death;</li><li>2) During that time, the heir provided care that avoided member's admission to a long-term care facility;</li><li>3) The heir continues to live on the property;</li><li>4) The heir inherited property or was left an interest in the home;</li><li>5) The heir is not being forced to sell the property by other heirs; and</li><li>6) The property would have to be sold to satisfy the claim.</li></ol>	This is a new waiver.
Income Based Waiver	<p>Qualifying heirs with income under 400% of the FPL will have up to \$50,000 excluded from estate recovery (if multiple heirs qualify for the waiver, the amount excluded will be capped at \$100,000).</p> <p>To be considered a qualifying heir, individuals must show that they are:</p> <ol style="list-style-type: none"><li>1) inheriting an interest in the member's probate estate; and</li><li>2) the individual's family group income is currently, and was for the two-year period prior to the date the MassHealth Notice of Claim is filed, under 400% of the FPL.</li></ol>	This is a new waiver.

## **New Estate Recovery Hardship Waiver Request Forms**

Two new forms have been created to request an estate recovery hardship waiver and/or federal exemption for certain assets of American Indians and Alaska Natives.

**MassHealth Estate Recovery Hardship Waiver Request Form (ERWA 05/21).** To request consideration for one of the three waivers listed under the hardship waivers section, this form must be completed no more than 60 days after the MassHealth notice of claim is filed in probate court.

**MassHealth Estate Recovery Application Form for Exemption of Certain Assets for American Indians and Alaska Natives (ERNA 05/21).** To determine if certain income, assets, or property of American Indians or Alaska Natives are exempt from estate recovery, this form must be completed no more than 60 days after the MassHealth notice of claim is filed in probate court.

In order to determine if one of the hardship waivers or AI/AN exemption applies, the relevant form(s) and all required documentation must be sent **by certified mail** as soon as possible, but no more than 60 days after the MassHealth notice of claim is filed in probate court, to:

MassHealth Estate Recovery Unit  
PO Box 15205  
Worcester, MA 01615

## **More Information**

For more information about estate recovery, see 130 CMR 501.000 and 515.000, and visit [www.mass.gov/estater recovery](http://www.mass.gov/estater recovery). The new hardship waiver request forms can be found on this page, as well as a new Frequently Asked Questions document about estate recovery.

## **Questions**

If you have any questions about this memo, please have your MEC designee contact the Policy Hotline.