

MassHealth Estate Recovery Rules & Updates

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What is estate recovery?

When a MassHealth member dies, MassHealth can recoup assets from the member's probate estate to reimburse benefits paid for the member.

Estate Recovery criteria:

- MassHealth member over age 55
- MassHealth member of any age in nursing home care
- Probate assets exceeding \$25,000

What is probate?

- Probate is a legal process used to settle ownership of real property and other assets after someone has died.
- MassHealth must be notified of all probates that are filed in Massachusetts
- Probate is not always necessary.

What are probate assets?

- Real estate owned in the member's name individually, without a joint - owner. (If tenancy-in-common, the member's percentage interest **is** a probate asset)
- Financial assets (bank accounts, stocks & bonds, retirement assets, life insurance) held in member's name individually **and** that do not designate a beneficiary
- Having a will does **not** avoid probate

What assets avoid probate?

- Jointly-owned assets
 - Real estate owned as tenants by the entirety (with spouse) or joint tenants with rights of survivorship
 - Bank account jointly-owned with someone else (NB: Power of Attorney authority does not avoid probate)
- Beneficiary designations
 - Transfer on Death/Payable on Death beneficiaries
 - Designate beneficiaries directly on retirement assets, life insurance

What assets avoid probate?

- Generally, assets held in trust
 - For a house, deed lists owner of property as a trust.
 - Consult with legal counsel to understand the type of trust and confirm probate avoidance
 - Trust must be funded while the person is living
- Life estate deed
 - Deed gives an owner the right to live in and use the property during her life, and on her death the property automatically passes to others named on the deed (“remainder persons”).

****Always advise members to consult with an attorney before transferring assets to a trust or creating a life estate deed. May impact eligibility for long-term care benefits.****

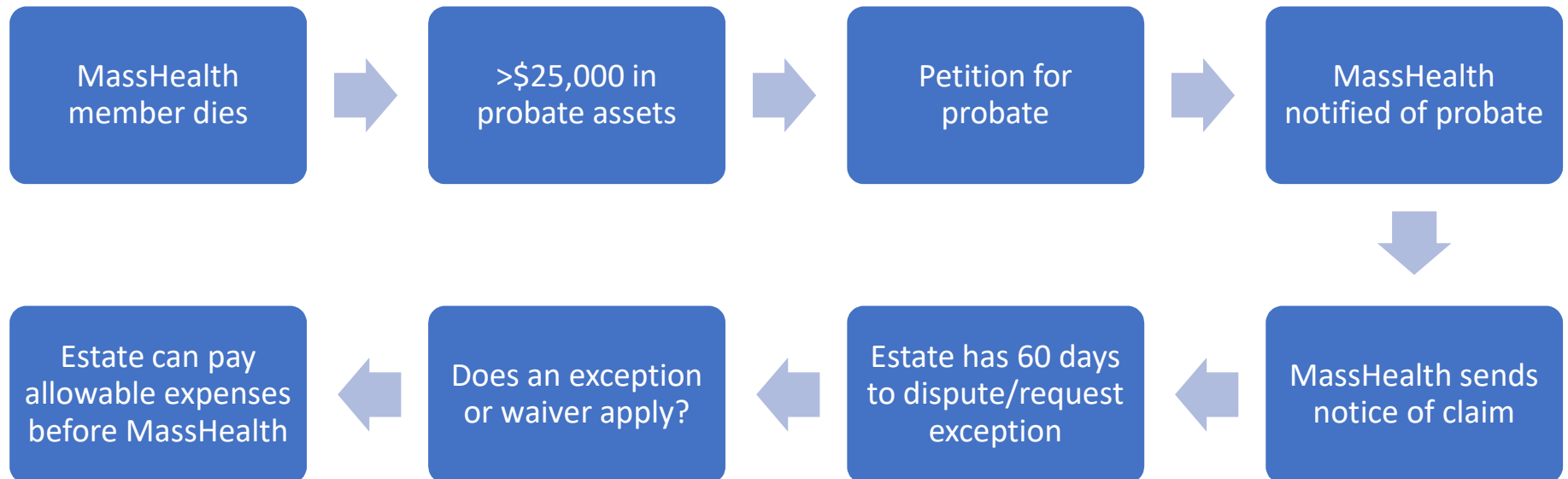
What if there are probate assets?

- What is the value of the probate estate?
 - If less than \$25,000 total value, no estate recovery.
 - Voluntary administration: no real estate, total value less than \$25,000 (one car not counted)
 - Other probate administration: total value more than \$25,000
 - Total value means without considering lien or mortgage on property
- Estate recovery deferral
 - Surviving spouse, child under age 21, or disabled child
 - Delays estate recovery until death of surviving spouse/disabled child, or until child turns 21.
- Time limit on estate recovery
 - If probate is not filed within 3 years from the person's death, MassHealth cannot make a claim.
 - MassHealth can file a probate itself.

Supplemental needs trusts

- Some supplemental needs trusts are also subject to estate recovery
- SNTs that are funded with a member's own money, known as "self-settled" trusts, have provision requiring that MassHealth be reimbursed.
- If a member has a supplemental needs trust, they should consult with their trustee or an attorney to understand if estate recovery applies

Estate recovery process



Exceptions

Long-term Care Insurance Exception

Nursing home residents with certain long-term care insurance are exempt from estate recovery.

MassHealth regulations have specific criteria for the type of policy that qualifies.

Members should get legal or professional advise to ensure their policy qualifies.

Exceptions

Caregiver Waiver

- If family member lived in property with the deceased member for at least 2 years and provided care, may be eligible for waiver.

Residence & Financial Hardship

- If family member lived in property for at least 2 years and has less than 133% FPL, may be eligible for waiver

Exceptions

Income-based Waiver (new)

- “Qualifying heir” = heir or devisee with household income of <400% FPL
- MassHealth will waive up to \$50,000 in recovery for each qualifying heir, up to maximum of \$100,000

Allowable estate expenses

If exception does not apply, estate can still pay certain allowable expenses before satisfying a MassHealth claim

- Outstanding mortgage
- Estate administration costs
- Legal fees
- Funeral expenses
- Outstanding taxes
- Family allowance (\$10,000)

What can assisters do?

- Point people to information that answers their Qs such as FAQ on MassHealth Estate Recovery page
- Suggest people make an inventory of what they own
 - Not all property goes into a “probate estate” after death
 - MassHealth will not pursue recovery if “total value” of probate estate is \$25,000 or less
- Explain how people can find out how much MassHealth has spent including amount of managed care premium
- Refer individuals who need advice on estate planning/how to avoid probate e.g. individuals who own house in their name alone or as a co-tenant
- Warn not to change title without understanding risks
- Remind people of value of coverage!

Online Materials

- Massachusetts Medicaid Estate Recovery
<https://www.mass.gov/info-details/massachusetts-medicaid-estate-recovery>
- Massachusetts Courts Self-Help Center on Probate of Wills & Estates
<https://www.mass.gov/probate-of-wills-and-estates>



Making an inventory

- Recommend MH members worried about estate recovery 1st make an inventory of what they own –not everything will be in “probate estate”
 - Gather copies of deed to real estate & certificate of title for car or other property of value showing title (who owns it & how they own it)
 - Check bank accounts, investments, retirement funds, life insurance etc. to see if members have identified “transfer on death” beneficiaries

How much has MassHealth spent?

- Members have the right to get a copy of their claims report
 - It will show how much MassHealth has paid for services & managed care premiums to date
 - Make a personal record request to the MassHealth privacy office

<https://www.mass.gov/service-details/masshealth-personal-records-request>





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June 7, 2021



Re: MassHealth claims report

Dear 

I am writing in response to your request dated May 24, 2021. Please find attached MassHealth claims report responsive to your request.

If you are requesting a claims report for estate recovery accounting purposes, such information is not available until after the death of the member. Claims reports issued by the MassHealth Privacy Office only provide a full accounting of all MassHealth services and should not be relied upon for estate recovery purposes. The individual's estate will be provided with a Notice of Claim of the amount paid by MassHealth for services that are subject to estate recovery after the MassHealth Estate Recovery Unit receives a copy of the estate's probate petition and death certificate. For more information on the estate recovery process, including the contact information for the MassHealth Estate Recovery Unit, please refer to the following webpage: www.mass.gov/estaterecovery

Contact me if you have any questions regarding this letter. Questions regarding eligibility should be directed to the MassHealth Customer Service Line by calling 1-800-841-2900.

Sincerely,

/s/ *Martha Young*

Martha Young
MassHealth Privacy Office
Privacy.Officer@Mass.Gov

Not everything MassHealth spends is subject to recovery

- Federal law prohibits estate recovery for Medicare Savings Programs (QMB/SLMB/QI also known as the Buy-In or Senior Buy-In)
 - No recovery of amounts MassHealth pays for Medicare premiums
 - No recovery of amounts MassHealth pays for Medicare deductibles, cost-sharing, copays

Estate recovery for managed care premiums

- MassHealth seeks recovery of the full premium
- Premiums are based on rating categories (RC) not the member's actual use of services
- Example of premium variation in SCO(2019)
 - Dual eligible in community who is
 - “Nursing home certifiable” RC24 e.g. enrolled in frail elder waiver –monthly premium \$2,371.40
 - Community “well” RC20–monthly premium \$328.36

Estate recovery as a factor in choosing managed care

- Choice of managed care or fee for service
 - Seniors with or without Medicare have choice of SCO or Fee for Service
 - Dually eligible under 65 have choice of One Care or Fee for Service
- Choices if managed care is required (under 65 & MassHealth is primary)
 - HMO type: ACO Partnership Plan or MCO, or
 - Non-HMO type: Primary Care ACO or PCC Plan

ConnectorCare

- Medicaid estate recovery does not apply to ConnectorCare
- During COVID est. 50,000 adults who would have moved from MassHealth to ConnectorCare have been protected in MassHealth instead
 - Some people 55 and over may not want this protection
 - They can choose to give up the protection & enroll in ConnectorCare if they are still eligible for it

Referral resources for in-person assistance

- Mass Chapter of National Academy of Elder Law Attorneys <https://massnaela.com/>
- Free or low cost legal assistance. Mass. Legal Resource Finder <https://masslrf.org/en/home>



Online webinars

- MassNAELA Informational Webinar for the public on July 28, 2021 at 10 a.m. Including Remarks by State Sen. Comerford and State Rep. Barber.
<https://massnaela.com/wp-content/uploads/2021/07/Press-Release-MassNAELA-Estate-Recovery-Notice-7-7-2021-FINAL-V.2-1.pdf>
- Margolis Bloom June 8, 2021 webinar: What is probate and how to avoid it.
<https://www.margolisbloom.com/events-blog/upcoming-webinar-what-is-probate-and-how-to-avoid-it>

Estate recovery reform

- MassHealth amended its rules May 14, 2021 but can't change state statute that requires federally optional estate recovery
- Pending bills to amend state statute [H1246/S749](#) (lead sponsors Sen Comerford & Rep Barber)
 - Limits estate recovery to federally mandated spending on costs of nursing homes, HCBS & related hospital & pharmacy costs (plus makes other reforms)
 - Eliminates threat of estate recovery for est. 350,000 members age 55 or older not in a nursing home or receiving HCBS
 - Public hearing probably in Sept 2021
- Fact sheet & summary posted here:
<https://www.masslegalservices.org/content/pending-bills-reform-masshealth-estate-recovery>

Questions

