

Understanding the Affordable Care Act

What Massachusetts Family Law Practitioners Should Know about the ACA

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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) required people to either obtain health insurance or qualify for an exemption in order to avoid federal tax penalties.¹ At the same time, it increased coverage options for children and adults to qualify for Medicaid, and created a new kind of subsidized private insurance for individuals who do not qualify for Medicaid. See Appendix 1 for an outline of current eligibility criteria for MassHealth and for publicly funded coverage under the ACA. The Tax Cuts and Jobs Act of 2017 (TCJA), reduced the federal tax penalty to \$0 effective with tax year 2019, but the ACA's changes to Medicaid and subsidized private insurance remain in place.

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 advanceable, refundable premium tax credits and additional subsidies. In Massachusetts, this program of tax credits and subsidies is called ConnectorCare.² An individual eligible for a premium tax credit 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.³

Clients must meet certain financial eligibility guidelines in order to qualify for benefits under either MassHealth or ConnectorCare. 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.⁴

The ACA introduced a new income methodology based on federal income tax rules called Modified Adjusted Gross Income (MAGI). Both financial eligibility for MassHealth (for individuals under age 65) and premium tax credits and related subsidies under the ACA use the MAGI methodology.⁵ Thus eligibility for MassHealth or ConnectorCare 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.

Described below are important ways in which decisions related to tax filing and the MAGI rules for 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 for that year.

- **MassHealth and ConnectorCare will count the income of both spouses who expect to file jointly whether they are living together or not.**⁶ 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: Keisha and John are married but live apart. They have no children. Keisha has income of \$1200 per month. John has income of \$2000 per month. Neither is offered insurance through work. In 2018, the MassHealth upper income limit for a person in a household of one is \$1397 per month, and for a person in a household of two it is \$1894 per month.
 - If Keisha and John plan to file a joint tax return neither will qualify for MassHealth. Their combined income is too high.
 - If Keisha 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.
- **With limited exceptions, a person who plans to file as married filing separately is not eligible for ConnectorCare.** 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 unless:
 - 1). The spouse who is applying for benefits will qualify to file taxes as a head of household,⁷ or
 - 2). The spouse who is applying for benefits is unable to file jointly because he or she has been abused or abandoned by the other spouse.⁸
 - Example: Same facts for Keisha and John as in the MassHealth example.
 - If Keisha and John plan to file a joint return and apply for health benefits together, each will qualify for a low cost ConnectorCare plan

at a minimum monthly premium of \$84 per person or \$168 for a couple.

- If Keisha and John plan to file as married filing separately, Keisha will qualify for MassHealth but John's income is too high for MassHealth. John is financially eligible for ConnectorCare but he will not qualify for benefits because of his tax filing status. He is married filing separately and does not meet the abuse/abandonment exception.
- **WARNING:** The current version of the MassHealth-Connector application form (ACA-3, rev. 3/2018) asks if you are "legally married." It directs a spouse who qualifies for the abuse/abandonment exception to answer No to this question. It also refers to an IRS publication that explains that a spouse who is eligible to file taxes as a head of household is not "deemed married" under IRS filing rules. However, the application does not clearly explain that a spouse who eligible to file as a head of household must also answer No to the question "are you legally married."

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

- **MassHealth and ConnectorCare will include a child claimed as a tax dependent in the household size of the parent who will claim the child.**⁹ A child (or any other person) who qualifies as a dependent under tax rules will be included in the household of the parent claiming the dependent exemption even if the child is age 19 or older 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.¹⁰
 - For the tax year starting Jan. 1, 2018, the dependency exemption deduction is reduced to \$0, but there is no change in who is entitled to the deduction. In other words, tax dependents still exist, and will be used in the MAGI household composition rules the same way they were in 2017 as well as for other tax-related purposes.¹¹
- **In MassHealth, people do not have to be tax filers. A non-filing custodial parent will be able to include a child who lives with that parent but is claimed as a tax dependent by someone else.** MassHealth does not use the tax filing rules to determine who is in the household of someone who neither plans to file taxes or be claimed as a dependent. 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).¹² This is true even if a noncustodial parent claims the child and *also* has the child included in his/her MassHealth household.

- Example. Maria and Tomás are divorced and have a 7 year old child Juana who lives with Maria. They both work. Tomás earns substantially more than Maria and pays child support. Maria earns \$1600 per month. There are no other family members. Under the divorce decree, they take turns claiming Juana as a dependent. The MassHealth upper income limit in 2018 for an individual with a household size of one is \$1397 per month; for a household size of two it is \$1894 per month.
 - Years 1 and 3. Maria will claim Juana as her dependent. Maria applies for MassHealth; her household will include Juana. Child support is not included in the payee's Adjusted Gross Income (AGI) and therefore will not count as part of Maria's MassHealth MAGI. Maria's income is under the income ceiling for a household of two, and she qualifies for MassHealth.
 - Year 2. Maria will file taxes but will not claim Juana as her dependent. Maria notifies MassHealth. Juana will not be included in Maria's household. Maria's income is over the income ceiling for a household of one. She will lose her MassHealth benefits, but if her employer does not offer insurance, she should qualify for ConnectorCare with a minimum premium of \$44 per month.
 - Year 4. Maria becomes ill and cannot work. Her only income for the year will be child support. She will not file taxes in Year 4. She notifies MassHealth. She will now fall under the non-filer rules. Her household will include her child because Juana lives with her even though Juana is claimed as a dependent by someone else.
- WARNING. The current version of the MassHealth-Connector application form (ACA-3, rev. 3/2018) asks if anyone applying will be claimed as a dependent. If the answer is Yes, the application will require information about the income of the tax filer claiming the dependent. The instructions on the application are to answer NO to this question if the person claimed as a dependent is a child claimed by a non-custodial parent.

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.¹³ A person claimed as a dependent is subject to the non-filer rules: 1. If claimed by someone other than the parent or a spouse, 2. If a child under 19 is claimed by a noncustodial parent, or 3. If a child under 19 living with both parents who do not file jointly is claimed as a dependent by one parent.¹⁴ 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.¹⁵

- Example. Same facts as above for Maria and Tomás, but now consider how the facts affect Juana's eligibility for MassHealth.
 - Year 1 and 3. Maria will claim Juana as her dependent.
 - Juana is claimed as a dependent by her custodial parent. Her household includes her mother Maria and herself, and her income is the same as Maria's. Juana is eligible for MassHealth.
 - Year 2. Maria will file taxes but will not claim Juana as her dependent.
 - Juana is claimed as a dependent by her noncustodial parent. This is an exception to the tax filing household rules, and requires that Juana's eligibility be decided under the non-filer rules. Under the non-filer rules, Juana's household includes only the parent who is living with her. Only Maria's income is considered in determining Juana's financial eligibility. Juana is still eligible for MassHealth.
 - Year 4. Maria becomes ill and cannot work. Her only income for the year will be child support. She will not file taxes in Year 4.
 - Juana's MassHealth MAGI household is governed by the same exception to the tax filer household rule as in Year 2.

In the **Connector**, the tax filer and tax dependents will always be in the same household. If a child is not eligible for MassHealth, only the person who claims the child as a dependent can obtain a premium tax credit for the child's coverage.¹⁶

In general, MassHealth and the Connector will count income, including alimony and child support, the same way income is treated for federal income tax purposes

- MassHealth is based on current monthly income. ConnectorCare is based on expected annual income. Under MAGI, both programs count income if it is the kind of income that would be included in Adjusted Gross Income (line 37 on Form 1040). Adjusted Gross Income is modified by adding three kinds of nontaxable income: nontaxable social security (line 20a less line 20b), tax exempt interest income (line 8b), and tax exempt foreign income (Form 2555). Deductions *from* Adjusted Gross Income (AGI) such as the standard deduction or itemized deductions that do not affect the amount of AGI, do not affect MAGI. Only "above the line" deductions that are used in calculating AGI affect MAGI (lines 23-35 on Form 1040).
- Child support is not included in the AGI of the payee, therefore it is not in MAGI.¹⁷
- Currently, alimony is deductible by the payer (line 31a) and added to the AGI of the payee (line 11). Under the TCJA, alimony payments in divorce instruments executed after 12/31/18 will no longer be deductible by the payer or added to the income of the

payee.¹⁸ Therefore, whether alimony is included in the income of the payee for purposes of MAGI will depend on the date of the underlying order.

- Under the MAGI rules, the income of a tax dependent is used in calculating the income of a household that includes the tax dependent only if the dependent will be required to file a return. The IRS rules require dependents to file a return if their earned and/or unearned income exceeds certain thresholds. (Note that in determining whether a child's unearned income meets the applicable threshold, child support and non-taxable social security income are not counted). TCJA's increase in the standard deduction amount changes these thresholds for Tax Year 2018.¹⁹

For more information on modified adjusted gross income, see MLRI, Understanding the Affordable Care Act: How MassHealth Will Count Income after January 2014

<https://www.masslegalservices.org/content/understanding-affordable-care-act-how-masshealth-counts-income-after-jan-1-2014>

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 in 2018.

- The TCJA reduces the federal tax penalty for being uninsured to \$0 starting with calendar year 2019, but the penalty remains in effect for 2018. In Massachusetts, the state tax penalty for being uninsured will remain in effect, but it does not apply to children.
- For purposes of the federal tax penalty in 2018, the parent who claims the child as a tax dependent is the one subject to the tax penalty if the child is uninsured.²⁰
- However, if a custodial parent claims her child as a dependent, he or she will qualify for a hardship exemption from the tax penalty if the child is uninsured but the child is not eligible for MassHealth, and the noncustodial parent has been ordered to provide insurance for the child and failed to do so.²¹

The availability of low cost public coverage through MassHealth and the Connector may affect both medical support and cash child support for the child

- The Child Support Guidelines require an order of health care coverage for the child along with a child support order.²² Significantly, the Guidelines now use the phrase "health care coverage" instead of "health care insurance" acknowledging that the parents can provide for the child's health care needs through private or public health coverage. This is new.²³ The revised guidelines also now direct the court to consider whether the cost of coverage creates an undue hardship prior to entering a medical support order for employer sponsored coverage. In determining whether there is undue hardship, the Court may consider whether the added cost would prevent payment of some or all of the child support order, whether the coverage will meet the child's health needs, and whether the payor's gross income is less than 300% of the poverty level along with any other relevant factor. The Guidelines also eliminate the requirement of "if and when" orders which

ordered coverage “if and when” employer coverage became available with no opportunity for a prior inquiry into the cost or scope of coverage.

- In calculating the amount of child support, each parent may deduct from gross income the reasonable cost of individual or family coverage actually paid by the parent. However, the guidelines worksheet makes an adjustment so that the parents share the cost proportionately. The revised Guidelines now cap an adjustment for the costs of child care and health care coverage at 15% of the child support order “up or down.”²⁴

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.²⁵ (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.²⁶
- 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.²⁷
 - For qualified health plans purchased through the Connector, premium tax credits can be taken in advance and paid directly to the insurance company 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.²⁸ This program of combined state and federal subsidies and federal tax credits is called ConnectorCare. For a 2-page overview of ConnectorCare eligibility, benefits, and costs in 2018, see https://www.mahealthconnector.org/wp-content/uploads/ConnectorCare_Overview-2018.pdf
 - Premium tax credits and subsidies are only available for qualified health plans purchased through the Connector, not for employer-sponsored insurance or insurance purchased directly from a carrier.
- A Table showing annual and monthly income at various percentages of the federal poverty level by family size for 2018 is posted here: <https://www.masslegalservices.org/content/masshealth-income-guidelines-effective-march-1-2018>
- More information on MAGI is also available in The Health Care Assister’s Guide to Tax Rules from the Center on Budget & Policy Priorities. <http://www.healthreformbeyondthebasics.org/wp-content/uploads/2014/07/The-Health-Care-Assister-Guide-to-Tax-Rules.pdf>

- Many low income adult immigrants will only have coverage options through the Connector not MassHealth.²⁹ This is because for adults, the Connector has less restrictive immigrant eligibility rules than MassHealth.³⁰ For a summary of immigration eligibility rules: <https://www.masslegalservices.org/content/understanding-immigrants-eligibility-masshealth-other-subsidized-coverage-2018>
- A Table comparing the benefits among the four main types of MassHealth, Standard, CarePlus, CommonHealth and Family Assistance is available here: <https://www.masslegalservices.org/content/benefits-included-masshealth-coverage-type>

For questions or comments about this paper, please communicate with Vicky Pulos, vpulos@mlri.org

¹ 26 USC § 36B and 26 CFR § 1.36B.

² ConnectorCare uses not only federal premium tax credits but also additional state and federal subsidies to make the program more affordable for those with income of 300% FPL or less. Only the federal premium tax credits are available for those with income over 300% but not over 400% FPL and this is referred to as a Qualified Health Plan (QHP) with premium tax credits. This paper focuses on ConnectorCare, but the same MAGI and tax filing rules apply to QHPs with premium tax credits.

³ 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.

⁴ Commonwealth of Massachusetts, EOHHS, “Massachusetts Application for Health and Dental Coverage and Help Paying Costs,” ACA-3 available on mass.gov/masshealth and mahealthconnector.org.

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

⁶ 130 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.

⁷ To qualify for head of household status, you must be either unmarried or considered unmarried on the last day of the year. To be considered unmarried you must meet the following tests: You file a return other than a joint return; You paid more than half the cost of keeping up your home for the tax year; Your spouse didn't live in your home during the last 6 months of the tax year; Your home was the main home of your child for more than half the year; You must be able to claim an exemption for the child. See IRS Publication 501 for a more detailed account.

⁸ 26 CFR § 1.36B-2T(a)(2) (final and temporary regulations 79 Fed. Reg. 43622 (July 28, 2014)). The spouse falling under this exception must check the box at the top of Form 8962 when filing taxes for the year.

⁹ 130 CMR § 506.002(B)(1).

¹⁰ 130 CMR §§ 506.004(K) and 506.007.

¹¹ Pub. L. 115-97, (Dec. 22, 2017), § 11041 amending IRC 151(d)(5).

¹² 130 CMR § 506.002(B)(3).

¹³ There is also another exception to the tax household rules, unique to Massachusetts, for disabled adult children. 130 CMR 506.002(A)(2) and (C).

¹⁴ 42 CFR § 435.603; 130 CMR § 506.002(B)(2) (dependent) and § 506.002(B)(3) (not a filer or dependent).

¹⁵ 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).

¹⁶ 45 CFR § 155.305(f)

¹⁷ IRS publication 525, Taxable and Nontaxable Income and IRS publication 504, Divorced or Separated Individuals available on irs.gov

¹⁸ Pub. L. 115-97 (Dec. 22, 2017) § 11051. TCJA also limited the moving expense deduction to active service members. TCJA did not reinstate the tuition and fees deduction for 2018, but Congress reinstated this deduction retroactively for 2017, and possibly would do so again. The student loan deduction is unchanged.

¹⁹ Pub.L.115-97, §11041(e) amending IRC § 6012(f), Persons Required To Make Returns of Income. In 2018, children will be required to file a return if they have unearned income more than \$1050 (not counting nontaxable social security) or earned income more than \$12,000 or gross income that exceeds the greater of \$1050 or earned income up to \$11650 plus \$350. See, estimated tax form for Tax Year 2018, <https://www.irs.gov/pub/irs-pdf/f1040es.pdf>

²⁰ 26 CFR § 1.5000A-1(c)(2)

²¹ “Application for Exemption from the Shared Responsibility Payment for Individuals who Experience Hardships,” form available on www.healthcare.gov

²² Commonwealth of Massachusetts, Child Support Guidelines, (Sept. 15, 2017 as amended June 15, 2018), § II, H. Health Care Coverage (pp. 11-12) and Commentary (pp. 16-17) (hereafter CSG and Commentary). CSG H. 2.

²³ CSG Commentary.

²⁴ Child Support Guidelines, II. H. 1. and Commentary.

²⁵ 130 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.

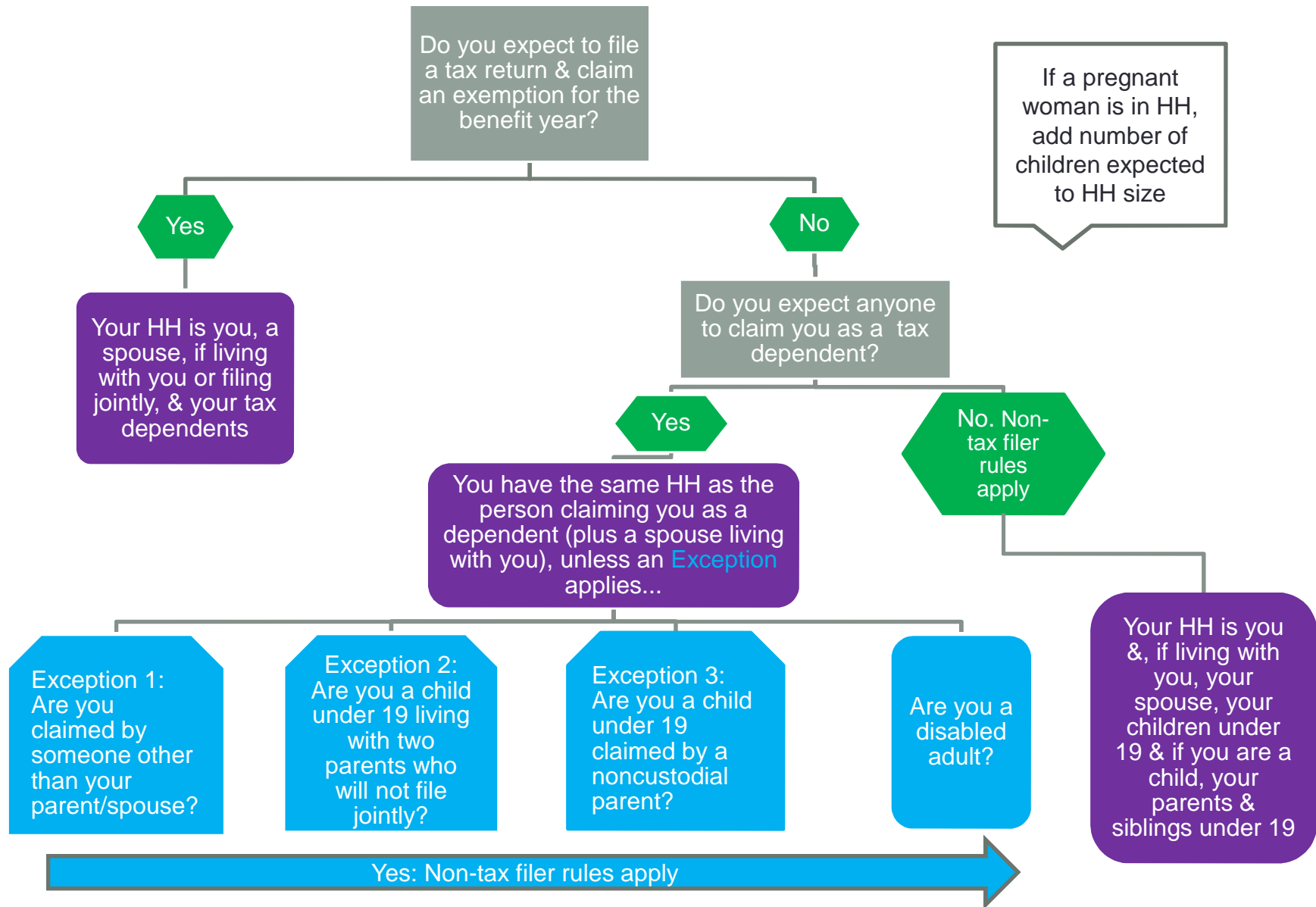
²⁶ 130 CMR § 505.002 (Standard) and § 505.005 (Family Assistance).

²⁷ 26 CFR § 1.36B-2 (advance premium tax credit) and 45 CFR § 155.305(f) (tax credit and federal cost-sharing reduction subsidy).

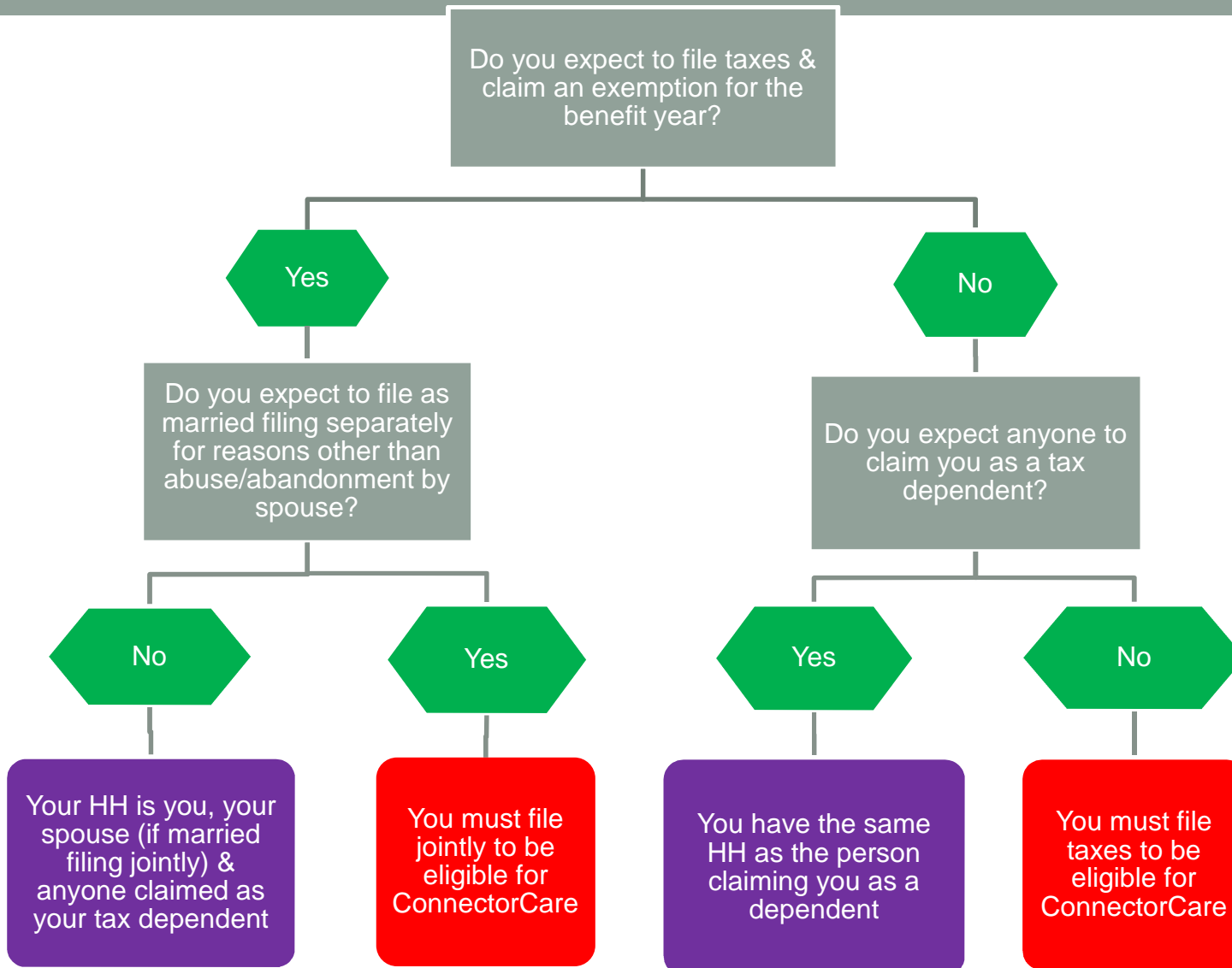
²⁸ 956 CMR § 12.05 (eligibility for ConnectorCare).

²⁹ See, 45 CFR § 155.305(f)(2).

³⁰ 45 CFR § 155.305(a)(1) (Exchanges); 130 CMR § 504.003 (MassHealth).



MASSHEALTH MAGI Household (HH)



Connector MAGI Household (HH)