

MEDICAID LIENS AND ESTATE RECOVERY IN MASSACHUSETTS

This policy brief is one of five commissioned by the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation on Medicaid eligibility policies for long-term care benefits. This brief describes the procedures used by the state of Massachusetts in the administration of its Medicaid Estate Recovery program, with a focus on the procedures used by the State in imposing Medicaid liens on real property. The remaining four briefs address: Medicaid Treatment of the Home; Spouses of Medicaid Long-Term Care Recipients; Medicaid Liens; and Medicaid Estate Recovery programs.

Introduction

Massachusetts, like many states, is contending with the dilemma of ever-increasing Medicaid costs in times of increased fiscal constraint. And like many states, Massachusetts is looking at a variety of cost-saving measures to contain the growth in Medicaid expenditures. Approximately one of every six people in Massachusetts is served by its Medicaid program, MassHealth,¹ and approximately 18% of the Medicaid budget (state and Federal) is spent on long-term care in nursing homes,² serving approximately 3% of MassHealth members.³ The significance of long-term care to the State's Medicaid and overall budget creates an inherent incentive to restrain spending on these services. Liens and estate recoveries are among the tools the State is using to achieve this goal.

¹ In 2002, the total Massachusetts Population was 6,379,620, while MassHealth members totaled 1,103,700 (See <http://statehealthfacts.kff.org>). The vast majority of this population was under 65, not institutionalized, and receiving benefits under expanded eligibility provisions authorized by an 1115 waiver.

² In 2002 the total (state and Federal) MassHealth spending was \$7,909,109,661 and the total (state and Federal) MassHealth spending on long-term care in nursing homes was \$1,415,305,950 (See <http://statehealthfacts.kff.org>).

³ According to the Information Systems Division at MassHealth, only 33,112 MassHealth members were in nursing facilities.



Contents of this brief:⁴

- How institutionalized persons apply for Medicaid (referred to in Massachusetts as MassHealth);
- How eligibility workers at MassHealth Enrollment Centers determine if a lien must be filed;
- How and where liens are filed;
- How, and under what circumstances, a lien is released while the property owner is alive; and
- How MassHealth costs are recovered from a member's probate estate.⁵

Background

Current Medicaid regulations in Massachusetts⁶ require recovery from the probate estates of MassHealth members who received Medicaid while age 55 or over and those who, regardless of age, received Medicaid while institutionalized. All MassHealth expenses incurred for such members, with certain exceptions⁷, are counted toward the total recovered amount. An exception from estate recovery is made in cases where recovery would cause hardship,⁸ and only partial recovery is required from the estate of members who had long-term care insurance policies that met the Massachusetts Division of Insurance requirements.⁹ Estate recovery is deferred while there is a surviving spouse or child who is blind, permanently and totally disabled, or under age 21.

Passage of the Tax Equity and Fiscal Responsibility Act (TEFRA 1982) gave states the option of placing a TEFRA or "pre-death" lien on the real property of permanently institutionalized Medicaid recipients to

⁴ Information regarding the procedures discussed in this brief was obtained from two operational divisions of MassHealth, the Taunton MassHealth Enrollment Center and the MassHealth Estate Recovery Unit. Additional supporting data and documentation were provided by administrative units within the Office of MassHealth – the Policy and Implementation Unit, Information Systems, Publications, and the Division of Specialty Programs.

⁵ Federal law on recoveries from liens and estate recovery, originally mandated in the Omnibus Reconciliation Act of 1993 (OBRA 93) is in Section 1917(b) at: http://www.ssa.gov/OP_Home/ssact/title19/1917.htm.

⁶ Massachusetts regulations for estate recovery are given in 130CMR 515.011 at: http://www.mass.gov/Eeohhs2/docs/masshealth/regs_member/regs_memb_515.pdf.

⁷ Currently, claims for the state pharmacy program and home health expenses are not counted towards the total claim amount. The home health exception is only for dual eligibles and only for dates of service through September 30, 2004 unless an extension for this demonstration is authorized by the Centers for Medicare and Medicaid Services (CMS).

⁸ Massachusetts regulations in 130CMR 515.011(D) waive estate recovery due to hardship for persons owning an interest in a property and residing in that property continuously for at least a year immediately before the now-deceased member became eligible for MassHealth. Such persons' income must be at or below 133% of the Federal-poverty-level (FPL). If persons meet *all* of these requirements for a 2-year period after the member's death, recovery is permanently waived.

⁹ The requirements are given in 211 CMR 65.09(1)(e)(2) of the Massachusetts Division of Insurance regulations at: http://www.mass.gov/doi/Legal_Hearings/211_65.PDF. The policy must pay a minimum of \$125 per day for at least 730 days in a nursing facility licensed by the Massachusetts Department of Public Health and may not have an elimination period (days before which payment is made) longer than 365 days.



prevent them from giving away a home in which they no longer reside before the equity in that home can be used to offset long-term care expenses paid on their behalf.¹⁰ In Massachusetts, TEFRA liens are referred to as “living liens” because they cannot be placed on the property of a MassHealth member once he or she has died. They give the State authority to recover Medicaid payments for a member’s long-term care expenses if his or her property is sold while the member is alive. Living liens are placed on any real property¹¹ that is located in Massachusetts in which an institutionalized member has a legal interest (i.e., the applicant is the sole owner of the property, he or she owns it jointly with another, or he or she holds a life estate¹² in the property), with certain exceptions (shown below).¹³

Living liens are not placed on the property of an institutionalized MassHealth member when:

- The property is occupied by certain protected relatives – a spouse, a child under the age of 21, a blind or permanently disabled child of any age, or a sibling with a legal interest in the property who has lived in the house for at least 1 year prior to the member’s admission to a medical institution; or
- The institutionalized member is expected to return home within 6 months.

The lien gives the State authority to recover Medicaid payments that have been made if the property is sold while the member is alive. Only partial recovery is required from property owners who have long-term care insurance policies that meet the Massachusetts Division of Insurance requirements. Further, recovery is deferred during the member’s lifetime if a sibling or adult caretaker child is living in the property¹⁴. The deferral lasts as long as these relatives live in the property and it ceases to apply once the member dies.

¹⁰ Federal law on the imposition of liens, originally enacted in TEFRA 1982, is in Section 1917(a) of the Social Act at: http://www.ssa.gov/OP_Home/ssact/title19/1917.htm. Federal administrative guidance to states is in the State Medicaid Manual, Chapter 3, section 3810 A. 1. and F. at: http://www.cms.hhs.gov/manuals/45_smm/sm_03_3_3800_to_3812.asp#_3810. Massachusetts regulations for real estate liens are given in 130 CMR 515.012 at: http://www.mass.gov/Eeohhs2/docs/masshealth/regs_member/regs_memb_515.pdf.

¹¹ Although state regulations allow liens to be placed on property not used as the home, it would be rare to establish Medicaid eligibility for such a person since that property would be considered a countable asset.

¹² Before placing a lien on a life estate, eligibility workers must first establish that its creation did not violate transfer of assets rules.

¹³ Massachusetts regulations on exceptions to placement of a living lien are given in 130CMR 515.012(A) at: http://www.mass.gov/Eeohhs2/docs/masshealth/regs_member/regs_memb_515.pdf.

¹⁴ The living lien deferral differs from the deferral for estate recovery. It applies to a sibling who does *not* have a legal interest in the property but lived in the property for at least 1 year prior to the member’s institutionalization or an adult child who lived in the property for at least 2 years prior to the member’s institutionalization and provided care allowing the member to live at home.



Role of the MassHealth Enrollment Center in the Living Lien Process

In Massachusetts, the living lien process is initiated at one of four regional MassHealth Enrollment Centers, which are responsible for Medicaid eligibility determinations. At these offices, workers who perform eligibility functions are assigned to teams, where they function as either “intake” or “ongoing” workers. Intake workers process applications for persons aged 65 or older and persons of any age needing long-term care.¹⁵ Ongoing workers perform periodic re-determinations and case maintenance activities for these populations and for MassHealth members who are under 65 and not institutionalized.

Most workers are college graduates who must pass a civil service examination as a condition of employment. They receive extensive on-the-job training in all facets of eligibility determination and the estate recovery/lien processes, as well as continuing education on new state regulations and procedures. Team managers evaluate the workers’ skills on an ongoing basis, and recommend remedial training whenever necessary.

Applicants for Medicaid services receive a package¹⁶ containing the MassHealth application, the Long-Term-Care Supplement, and a comprehensive informational booklet that explains MassHealth eligibility rules, income and asset standards,¹⁷ and lien and estate recovery requirements. The application (which is usually completed by a third party – typically an adult child or an attorney) is submitted, together with necessary verifications, to the enrollment center for processing.¹⁸

¹⁵ All Medicaid applications for the under 65, non-institutionalized population are processed by staff at a fifth office, the Central Processing Unit.

¹⁶ Massachusetts has two application packages. The first is used for non-institutionalized persons under age 65 whose eligibility is based on rules contained in an 1115 demonstration waiver. The second is for persons 65 and older who are living at home or persons of any age who need long-term care services. Both packages contain an application that must be completed by all applicants. In addition, each package contains supplements that may or may not have to be completed, depending on the applicant’s circumstances. Institutionalized persons and persons applying for home- and community-based waiver services must complete the *Long-Term-Care Supplement*. Applicants may call a centralized Customer Service Center to request an application package by mail. Packages are also available at hospitals and a number of community service sites, or may be downloaded from the MassHealth website. See *Application for Seniors and People Needing Long-Term-Care Services*, *MassHealth Long-Term-Care Supplement*, and *MassHealth and You: A guide for seniors and for persons of any age needing long-term-care services* at: [http://www.mass.gov/Eelders/docs/MHA-app\(04-03\).pdf](http://www.mass.gov/Eelders/docs/MHA-app(04-03).pdf), http://www.mass.gov/Eeohhs2/docs/masshealth/appforms/lc_supplement.pdf, and http://www.mass.gov/Eeohhs2/docs/masshealth/appforms/mh_you_guide.pdf, respectively.

¹⁷ There is no income cap in Massachusetts, and institutionalized persons are able to retain a \$60/month personal needs allowance in addition to other federally mandated allowances. The institutionalized person may retain \$2000 in countable assets and the at-home spouse may retain half of the couple’s countable assets up to the current Federal maximum of \$92,760. See Massachusetts regulations at 130CMR 520.016 for personal needs and other deductions and 130CMR 520.005(A) and 520.016(B)(2) for asset allowances at: http://www.mass.gov/Eeohhs2/docs/masshealth/regs_member/regs_memb_520.pdf.

¹⁸ Massachusetts does not have a face-to-face interview requirement, so the vast majority of applications are submitted by mail. Intake workers attribute this to one or both of the following: 1) the fact that there are only four regional Enrollment Centers in the State, which necessitates a lengthy commute for many, and 2) most applicants have already received information about Medicaid eligibility requirements and the MassHealth application process



Initiating the Lien

Intake workers are randomly assigned applications by a computerized program and are responsible for all activities associated with the application until they make a determination of eligibility. Upon receipt, they review the application to see if there is information requiring further verification. They also determine if the applicant owns any real property that may be considered a countable asset or on which the State may place a living lien at a later date.

If an applicant for Medicaid long-term care services owns real property, the intake worker must determine whether the property is the applicant's former home and, if that is the case, whether the spouse or another protected relative lives there. If a protected relative lives in the home, a lien may not be placed against the property. At this point, or at any time while the applicant/member is alive, the member's ownership interest in the property may be transferred to that relative without penalty (i.e., the transfer will not adversely affect the member's eligibility, and the State will be prevented from any future estate recovery on the property). There is, however, no formalized process to inform the member's relatives of regulations governing estate recoveries in these cases.¹⁹ If the home is not occupied by a protected relative, workers must then determine if the applicant intends to return home.²⁰

If the applicant indicates he or she does not intend to return home, no lien is placed against the property, which is then regarded as a countable asset for purposes of the Medicaid eligibility determination. However, its value is disregarded for up to 9 months, provided the applicant/member signs an agreement to sell the property²¹ for fair market value.

If the applicant/member indicates he or she intends to return home, and a protected relative does not live in the home, a form²² is mailed to the applicant's physician asking if there is a reasonable expectation that the applicant will return home within the following 6 months. If the physician answers affirmatively, no

from a hospital social worker, community advocate, Medicaid consultant, or attorney. This advice, along with the information contained in the MassHealth booklet and accessibility to intake workers by phone, gives the applicant sufficient information to apply for Medicaid by mail and eliminates the need to travel to an office to apply in person.

¹⁹ Anecdotal information from intake workers indicates that their perception of their job description is to determine an applicant's eligibility for MassHealth, not to advise applicants on how to circumvent estate recovery. They will, however, explain the transfer rules and regulations to persons who ask about them.

²⁰ The *Long-Term-Care Supplement* asks if the applicant intends to return home and explains that the home will be treated as a countable asset if he or she does not intend to return home. If the question is not answered, the applicant is asked to fill out a *Statement of Intent to Return Home* (Appendix), which again asks about the applicant's intent. According to eligibility workers, some applicants owning homes and not having at-home spouses indicate they have no intention of returning home and prefer to sell the home rather than retain and maintain it. This is attributed to the burden imposed on adult children who must use their own money for taxes, insurance, utilities, and home maintenance.

²¹ See the *Agreement to Sell Property* in the Appendix.

²² See the *Statement of Expectation to Return Home* in the Appendix.



further action is taken at application. However, an ongoing worker will review the member's status after 6 months and, if the member is still institutionalized, ask his or her physician to fill out another form that indicates if there is a reasonable expectation that the member will return home at that time.

If the physician's assessment is that the applicant is not expected to return home within 6 months, a notice²³ is mailed to the applicant that restates the Medicaid lien rules, regulations and exemptions, and informs him or her that a lien will be filed unless the determination is appealed.²⁴ Once all other conditions of eligibility have been met and the application for Medicaid is approved, the MassHealth Lien²⁵ and a copy of the deed are sent to the Lien Coordinator at the State's Estate Recovery Unit.

The Estate Recovery Unit

The Estate Recovery Unit (ERU) is staffed by the Center for Health Care Financing (CHCF), a unit within Commonwealth Medicine, a consulting division of the University of Massachusetts Medical School. CHCF works with state and local government agencies to identify ways to increase the value of healthcare expenditures while reducing the net cost of health care service delivery.

ERU staff are all professionals – attorneys or paralegals²⁶ – with backgrounds in real estate law, probate law, and/or Medicaid and estate planning. Staff regularly attend professional seminars and take courses to update their knowledge of current real estate and probate law.²⁷ In addition, the Estate Recovery Unit contributes to the training of enrollment center workers by periodically updating current information on the estate recovery process, while reinforcing workers' roles in this process.

²³ See the *Notice of Intent to Place a Lien* in the Appendix.

²⁴ Workers state that such appeals are infrequent and that the applicant's representative usually does not dispute that the member has no expectation to return home. Usually they are contending that a previously unreported relative (who would exempt the property from the lien) is living in that property.

²⁵ See *The MassHealth Lien* in the Appendix.

²⁶ The Estate Recovery Unit is currently staffed by 23 people, all of whom are public employees (i.e., not private contract staff). Three are managers, 12 are case specialists, and four are analysts. In addition, there is a lien coordinator, a finance administrator, an intake coordinator, and an administrative assistant. The case specialists are all attorneys or paralegals.

²⁷ In the past year, staff have attended seminars and taken courses offered by the Suffolk University Law School, Massachusetts Continuing Legal Education, and Professional Education Systems, Inc. In addition, they have attended seminars given by the National Academy of Elder Law Attorneys to become familiar with the advice currently being provided to the public by estate planning attorneys.



Primary functions of the Estate Recovery Unit:

1. Filing the living lien against the property of a permanently institutionalized MassHealth member with the appropriate Registry of Deeds;
2. Filing a Notice of Claim²⁸ against the probate estate of a deceased MassHealth member; and
3. Recovering all monies in compliance with state and Federal statutes.

It is important to note that, although Medicaid gives states authority to place post-death liens, in Massachusetts a lien is only filed while the member is still alive. A lien is never placed on any kind of property – real or personal – once the member has died. After the member's death, the Estate Recovery Unit will recover MassHealth costs from the member's probate estate. A probate estate includes property that a person possesses at the time of death and that descends to the heirs (with or without a will) subject to the payment of debts and claims. The probate estate may include real property on which a living lien was filed. However, the lien is no longer valid after the member's death and must be released upon the request of the administrator/executor.

Role of the Estate Recovery Unit Lien Coordinator

After intake workers at the enrollment center determine that an applicant/member owns property subject to placement of a living lien, they send the lien and the deed to the Lien Coordinator of the Estate Recovery Unit, who is responsible for filing all living liens at the appropriate Registry of Deeds.²⁹ The lien is recorded in the county and district where the real estate is located. In FY 2003 (July 1, 2002 to June 30, 2003), 665 living liens were filed.³⁰ During that same time period, applications for MassHealth were approved for approximately 6,500 institutionalized persons.³¹ If a deed is not attached to the MassHealth Lien,³² the Lien Coordinator will attempt to access the deed on the website of the Registry of Deeds and verify the accuracy of the information (spelling of name as recorded on the lien, address, deed book and page number, etc.). The Lien Coordinator then waits at least 30 days before taking further action to allow the member (or member's family) to appeal the intent to place a lien. If the action is appealed, the Lien Coordinator will wait until notified of the appeal decision by the Board of Hearings.

²⁸ See the Appendix.

²⁹ There are 21 Registries of Deeds in Massachusetts.

³⁰ Data provided by the MassHealth Estate Recovery Unit.

³¹ Data provided by the MassHealth Enrollment Centers.

³² See *MassHealth Lien* in the Appendix.



When the 30 days have passed, the Lien Coordinator will verify that the real estate has not been transferred³³ and the member has not died before recording the lien at the Registry of Deeds. Once the lien is filed, the Lien Coordinator enters the case on the ERU database with a status of “open lien inactive.” The Lien Coordinator also follows up with the Registry of Deeds on-line to ensure that the lien has been properly and accurately recorded (faulty recording can prevent recovery at a later date). Presence of the lien will prevent sale or transfer of the property until the Medicaid claim is either paid or the lien is released without payment. After the living lien is properly recorded, no further action is necessary until there is a need to release the lien. The release may or may not trigger recovery actions, depending on the circumstances.

Releasing the living lien without recovery

Although living liens may be released without recovering MassHealth costs paid on the member’s behalf, the number of actual releases has been negligible, with only 13 liens released in FY 2003.³⁴ There are four instances in which the living lien may be released. The reasons for release and number of occurrences in FY 2003 are as follows:

A living lien is released without recovery if:

- The MassHealth member returned to the home against which the lien had been filed – 2 occurrences;
- The property is permissibly transferred – 5 occurrences;³⁵
- The lien was placed in error – 6 occurrences; or
- New information is provided that an exempting relative resided in the property – 0 occurrences.

Massachusetts regulations require long-term care facilities to send a written notice³⁶ to the Enrollment Center when a member is discharged from the facility for any reason. If the center’s ongoing workers learn of any other changes in the circumstances of a member from his or her family that might impact an existing lien, they will request whatever supporting documentation is needed to confirm the changed

³³ If a transfer has taken place, the Lien Coordinator will contact staff at the enrollment center to determine if they were aware of the transaction and, if not, will provide them with whatever information is available. An ongoing worker at the enrollment center will then contact the member’s family for information and/or re-determine the member’s eligibility.

³⁴ Data provided by the MassHealth Estate Recovery Unit for liens released in FY 2003 (July 1, 2002 to June 30, 2003).

³⁵ The home may be transferred without penalty to a caretaker child who was living in the property for at least 2 years prior to the member’s institutionalization or to any relative who would have exempted the home from the living lien requirement described above.

³⁶ See *Status Change for a Member in a Long Term Care Facility or Rest Home* in the Appendix.



circumstances. Usually this consists of verifying the family relationship of an exempting relative or the duration of residence in the member's home.

Having received verification of the member's changed circumstances, the ongoing worker completes an Authorization to Release a MassHealth Lien³⁷ and sends the form and applicable verifications to the ERU Lien Coordinator. In the case of a permissible transfer of property, the ongoing worker will also send a doctor's note (if applicable), proof of residency, and a copy of the recorded transferred deed. The Lien Coordinator then releases the lien from the property at the Registry of Deeds and updates the ERU database to indicate that the lien has been released. A copy of the release is forwarded to the Enrollment Center. Although no recovery is made at this point, the estate may still be subject to recovery at the time of the member's death.

Releasing the Living Lien with Recovery during the Member's Lifetime

There are two circumstances under which a living lien is released following recovery of the Medicaid claim – when the property is sold or transferred, or the property is refinanced. Both of these occur while the member is still alive.

The Estate Recovery Unit is contacted, usually by an attorney, when a potential buyer or mortgagor discovers a Medicaid lien on a property during the title search. ERU staff then order a medical billing history report from the State's Medicaid Management Information System (MMIS). All MassHealth expenses incurred after April 1, 1995, with certain exceptions,³⁸ are counted toward the total claim. If the member has long-term care insurance, indicated by a code on the MMIS Third Party Liability screen, long-term care services are also subtracted when calculating the total claim amount. The attorney is asked to provide information on the current assessed value³⁹ of the property and is informed as to the amount of the claim.

At a real estate closing, the amount of the lien is indicated on the HUD Settlement Statement. It must be paid as a condition of sale or transfer. If the lien amount is greater than the sale amount, a reduced amount will be accepted to satisfy the lien. The order of payment of debt is established under Massachusetts General Laws.⁴⁰ Mortgages, taxes, amounts due to public utilities, and child support

³⁷ See the Appendix.

³⁸ Exceptions include claims for the state pharmacy program and home health expenses for dual eligibles for dates of service through September 30, 2004 (unless an extension of the demonstration allowing this exception is authorized by CMS).

³⁹ The assessed value must be verified by a current tax bill or the most recent tax assessment issued by the taxing jurisdiction.

⁴⁰ General Laws of Massachusetts, Real and Personal Property and Domestic Relations, Title II, Chapter 198: Section 1 Order of payment of debts at: <http://www.mass.gov/legis/laws/mgl/198-1.HTM>.



arrears are paid before the Commonwealth's lien and may further reduce the amount that is actually recovered.

Massachusetts uses the living lien to prevent MassHealth members from giving away the home in which they no longer reside before its equity can be used to offset long-term care expenses paid on their behalf. The number of liens released with recovery represents only a small amount of total dollars recovered and claims settled in FY 2003.

Recovery from Living Liens in FY 2003:⁴¹

- Recoveries from transfer or sale of property during members' lifetimes = \$2,900,000 (approximately 10% of total dollars recovered from both living liens and probate estates)
- Total number of liens on file with Registries of Deeds = 2338 (approximately 7% of the MassHealth Long-Term-Care population)
- Number of liens released with recovery = 80
- Average amount of recovery = \$32,500
- Claim values = \$340–\$140,983

The lien is released when the Estate Recovery Unit receives a settlement check. The Estate Recovery Unit then forwards a copy of the release, the check, and the HUD statement to the Enrollment Center, where the member's eligibility may be re-determined based on any net proceeds that may have been received from the sale of the property after satisfying all other claims.

Medicaid estate recovery

The Estate Recovery Unit may learn of a member's death informally – i.e., they may be contacted by the decedent's family, nursing home, or Enrollment Center. Formally, Massachusetts law⁴² requires that a copy of any petition for admission to probate of a decedent's will or for administration of a decedent's estate be provided to the Estate Recovery Unit, along with a copy of the death certificate, whether or not the decedent was a MassHealth member.

Upon notification of a person's death, the Estate Recovery Unit screens MMIS data to determine if the decedent was a MassHealth member. If so, a case is created in the ERU database and a claim will be made against the member's probate estate to recover the amount of payment for medical benefits correctly paid under the following conditions:

⁴¹ Data provided by the MassHealth Estate Recovery Unit.

⁴² See Section 32(a) of Chapter 118E of the Massachusetts General Laws at: <http://www.state.ma.us/legis/laws/mgl/118E-32.htm>.



The Estate Recovery Unit processes claims to recover for services provided:

- On or after the member's 65th birthday;
- On or after October 1, 1993 while the member was aged 55 or older; and
- If the member (regardless of age) was permanently institutionalized on or after March 22, 1991.

The Estate Recovery Unit files a Notice of Claim⁴³ with the Probate Court, and a copy of the claim is sent to the administrator or executor of the probate estate with a cover letter⁴⁴ that outlines the laws governing estate recovery and the exceptions to recovery. The Estate Recovery Unit is legally bound to communicate only with the administrator/executor or estate attorney unless given permission by them to communicate with someone else. The administrator/executor has 60 days from the date the notice of claim was filed in the probate court to object to the validity of the claim or request a waiver or deferral of the claim (as shown below).

During the 60-day period:

- The claim may be reduced or discharged entirely due to an objection to its validity.
- A deferral may be granted if there is a surviving spouse or dependent relative – i.e., a child who is blind, permanently and totally disabled, or under 21 years of age. (The estate is given the opportunity to settle when the deferral is granted, but is not in any way coerced to do so.) The deferral will last until the death of the spouse or loss of exempt status of the dependent relative.
- A waiver may be granted if hardship is established. Documentation must be provided to demonstrate that all of the hardship waiver requirements⁴⁵ have been met. If review by the Estate Recovery Unit indicates that these waiver requirements continue to be met during the following 2-year period, recovery is then permanently waived.

In FY 2003, approximately 10% of initiated claims were subsequently contested during the 60-day period. The actual numbers are as follows:

⁴³ See the Appendix.

⁴⁴ See *Notice of Claim Cover Letter* in the Appendix.

⁴⁵ See Massachusetts regulations for waiver of estate recovery due to hardship in 130CMR 515.011(D) at: http://www.mass.gov/Eeohhs2/docs/masshealth/regs_member/regs_memb_515.pdf.



Claims that were adjusted, waived or deferred in FY 2003:⁴⁶

- Number of claims initiated = 1703 (703 of which included real property)
- Number of claims contested = 170
- Number of claims reduced as a result of being contested = 30 (partial recovery only)
- Number of claims discharged in full as a result of being contested = 0
- Number of hardship waiver requests = 70
- Number of hardship waivers granted = 41
- Number of deferred claims = 20

If the validity of the claim is contested or there is a request for a waiver or deferral and satisfactory documentation is not provided to enable MassHealth to resolve the issue during that timeframe, the case is referred to the MassHealth Legal Division for resolution and, if necessary, court action to protect the claim.

If the claim is not contested during the 60-day period (i.e., the claim is valid and no request is made to object to the validity of the claim, waive or defer recovery), the actual collection process is initiated, and payment is expected in full. If appropriate documentation is provided to prove that the estate contains insufficient assets to pay the claim in full, the Estate Recovery Unit will accept less than the full claim amount. In such cases the Estate Recovery Unit will request asset information to determine the value of all the assets owned by the decedent.

There are two types of property in probate estates – real property and personal property, the value of which is found on the Probate Inventory filed at the court. If the estate includes real property, the fair market value of the property must be established. The estate administrator/executor may do so by submitting copies of the current tax bill or most recent tax assessment showing the assessed value of the property and a written appraisal of the fair market value of the value from a knowledgeable source, such as a real estate broker, certified appraiser, or official from a bank or savings and loan association.

Once the total value of the real estate and other property has been established, all allowable expenses are deducted from that amount and the remainder must be paid to the Commonwealth. In FY 2003,

⁴⁶ Data provided by the MassHealth Estate Recovery Unit.



\$25,937,456 was recovered from the probate estates of MassHealth members. As in the case of living liens, the order of payment of debt is established under Massachusetts General Laws.⁴⁷

Upon payment, both the claim and any living lien that had been placed on the member's real property are released. If there was a living lien on the member's real property, the Estate Recovery Unit must release it after they have received notification of the member's death and a copy of the death certificate⁴⁸. Generally the lien and the Notice of Claim are released at the same time. If an attorney representing the member's estate requests release of the lien prior to settlement of the estate, the Estate Recovery Unit releases it, since a living lien is no longer valid when the member is deceased. However, in the absence of such a request, the lien is not released until the Estate Recovery Unit determines whether the member's estate will be probated. If the estate is not probated within 1 year after the member's death, the Estate Recovery Unit will forward a request to probate the estate to the Public Administrator in the county where the deceased member lived.

Interest on the claim begins to accrue 6 months after the appointment of the estate administrator/executor at a rate of 12% per annum. On rare occasions, if the estate administrator/executor still refuses to settle the claim, the Estate Recovery Unit may file a motion in court to compel payment.

Claims Proceeds and Collections

Having adopted a Medicaid estate recovery program in 1969, Massachusetts has had ample opportunity to refine and streamline its decision-making and administrative processes. All recoveries are treated equally, and priority is not established based on the size of the claim. Up to \$70 million in combined proceeds from estate recovery, casualty recovery, provider recovery, and drug rebate programs is deposited in the State's retained revenue account and is used to offset Medicaid costs. Proceeds in excess of the \$70 million are deposited in the State's General Fund and are not designated specifically to offset Medicaid costs.

Massachusetts estate recovery amounts have increased every year since 1999, and have ranged from \$22,910,573 million in FY 1999 to \$28,837,456 in FY 2003.⁴⁹ These amounts represent total claims from both estate recoveries and living liens. In FY 2003, Massachusetts was only surpassed in total collection

⁴⁷ General Laws of Massachusetts, Real and Personal Property and Domestic Relations, Title II, Chapter 198: Section 1. Order of payment of debts at: <http://www.mass.gov/legis/laws/mgl/198-1.HTM>. Generally mortgages, taxes, amounts due public utilities and child support arrears are paid before the Commonwealth's claim.

⁴⁸ The living lien must be released upon request of the estate whether or not it is probated.

⁴⁹ Prior year amounts for the 50 states may be found at: <http://www.cms.hhs.gov/medicaid/tpl/tplparta.pdf>.



amounts by the demographically larger states of California and Ohio.⁵⁰ While impressive, this figure is modest when compared to the total MassHealth nursing home expenditures during the same year – \$1,415,305,950 (Federal and state dollars).⁵¹

Of the \$28.8 million collected in 2003, \$26 million (over 90%) was recovered from real property, although only about 41% of the total number of probate claims processed included real property.⁵² This supports the contention that the home represents a Medicaid recipient's most significant remaining asset.

Proposed Changes to Massachusetts law

Since July 2003 Massachusetts has debated proposed changes to its Medicaid estate recovery laws and eligibility rules for institutionalized persons. The first change would allow recovery from both probate and non-probate estates of MassHealth members. The second would allow implementation of an 1115 waiver proposal that would make it more difficult for individuals to qualify for Medicaid after transferring assets.⁵³ Both proposals have been endorsed by the State's Republican Governor, Mitt Romney, who views them as a way to recover Medicaid dollars spent on behalf of MassHealth members at a time when the State's rising Medicaid costs dictate the need for cutbacks in existing programs. However, the proposals have met opposition from the largely Democratic legislature,⁵⁴ whose members have been deluged with the concerns of their constituents.

Expanded Estate Recovery

In July 2003, the state adopted legislation⁵⁵ that expanded its estate recovery program to recover not only from assets that pass through a member's probate estate, but also from a member's interest, immediately prior to death, in assets that pass outside of his or her probate estate.⁵⁶

MassHealth officials explained that this change would level the playing field for all members, regardless of whether or not they had taken steps to circumvent estate recovery by changing or modifying the

⁵⁰ In FY 2003, California recovered \$39,335,161 and Ohio recovered \$38,454,457. See the FY 2003 state-by-state summary of estate recoveries at: <http://www.cms.hhs.gov/medicaid/tpl/tplpart1.pdf>.

⁵¹ See <http://www.statehealthfacts.kff.org>.

⁵² Data provided by the MassHealth Estate Recovery Unit.

⁵³ Transfer of assets provisions may be found in section 1917(c) of the Social Security Act at: http://www.ssa.gov/OP_Home/ssact/title19/1917.htm.

⁵⁴ The Massachusetts House of Representatives currently has 137 Democrats, 22 Republicans, and one Independent. The Senate currently has 32 Democrats and eight Republicans.

⁵⁵ See the General Laws of Massachusetts, Part 1, Title XVII, Chapter 118E – as amended by 2003, 26, Sec. 330 effective July 1, 2003 applicable to individuals dying on or after July 1, 2003 at: <http://www.mass.gov/legis/laws/mgl/118e-32.htm>.

⁵⁶ Non-probate assets include real and personal property that would pass to a survivor, heir or assignee through joint tenancy, tenancy by the entirety, life estate, living trust, right of survivorship, or beneficiary designation.



ownership of their property. Advocates countered that the change might cause financial devastation of surviving spouses by preventing them from acquiring a loan to pay for necessary repairs to their home and/or making future sale of the property difficult. In response to these concerns, the Estate Recovery Unit has reiterated its policy not to attempt recovery from any portion of a member's estate owned by a surviving spouse or impede refinancing of the member's real property during the lifetime of a surviving spouse.⁵⁷

New estate recovery regulations were promulgated in November 2003, and the State initiated recoveries from non-probate estates under the new rules until March 2004, at which time the legislature voted to delay enactment of the controversial law until July 1, 2004. In response to the March vote, the Estate Recovery Unit was forced to notify representatives for affected estates of the change, and to refund any monies collected from non-probate estates.

Legislation subsequently submitted to repeal the expanded estate recovery provision was vetoed by the governor. On July 23, 2004, the legislature overrode the governor's veto and amended Massachusetts General Laws⁵⁸ to restore the original prohibition against recovery outside of probate. Unless the political makeup of the legislature is substantially changed and the concerns of advocates are alleviated, it is unlikely that Massachusetts will succeed in expanding its estate recovery program to include recovery from non-probate estates.

Massachusetts Section 1115 Demonstration Waiver

Current Federal and state eligibility regulations impose a penalty on persons applying for long-term care services if they transferred assets for less than fair market value within a specified "look-back period." In August 2003, MassHealth submitted a section 1115 waiver proposal⁵⁹ to the Secretary of Health and Human Services to change Medicaid eligibility rules for institutionalized persons by extending the look-back period for homes and trusts and changing the penalty period start date.⁶⁰

⁵⁷ Massachusetts law prohibits placing a lien or any kind of attachment on the property of a MassHealth member while the spouse is still alive. The spouse is then free to sell the property, transfer its title, or amend the ownership in any way, including refinancing, except in rare circumstances where the property was owned solely by the deceased member and passed through probate in whole or in part to person(s) other than the spouse.

⁵⁸ Outside sections 167 and 168 of the FY2005 budget amend the Massachusetts General Laws to restrict recovery to probate estates only. The amendments may be found at: http://www.mass.gov/legis/05budget/outside_sections.htm.

⁵⁹ Section 1115 of the Social Security Act allows the Secretary of Health and Human Services to authorize state demonstration projects that change the Medicaid rules under which eligibility is established. A description of the waiver process and intent may be found at the Center for Medicare and Medicaid Services (CMS) website at: <http://www.cms.hhs.gov/medicaid/waivers/default.asp>.

⁶⁰ See the full text of the waiver proposal at: <http://www.cms.hhs.gov/medicaid/1115/matoawp.pdf>.



Legislation has been adopted to allow MassHealth to submit the waiver proposal which, as of this writing, is still pending with Health and Human Services. However, as in the case of the estate recovery legislation, it can still be amended or rejected by the legislature in response to constituents' concerns.

Conclusion

The Massachusetts lien and estate recovery processes are sophisticated ones that are implemented by a staff of legal professionals. They are supported by state laws and regulations that delineate in detail both the rights and responsibilities of MassHealth and those MassHealth members whose real property is subject to a living lien and/or a claim in their estate. State law requires that MassHealth be notified of all petitions for admission to probate. However, MassHealth must send written notice to survivors of their rights to dispute a Medicaid claim or request that recovery be waived or deferred. MassHealth must also send written notification to members whenever the living lien process is initiated. Protections are afforded MassHealth by the order of payment of debt, ensuring its rights to recover from members who sell their property and from the probate estate of deceased members. This same hierarchy of payment likewise protects members and estates by ensuring that other debts, such as mortgages, are paid before MassHealth may collect on its claim. This protection is also given to living members whose homes have been liened

Despite their long history in the Massachusetts Medicaid program and protections afforded to MassHealth members by state regulations, liens and estate recovery remain controversial. They go to the heart of the fundamental and much debated question of how much should individuals be expected to pay for their own long-term care and how much should be financed by the taxpaying public.

This policy brief was prepared under contract #HHS-100-03-0022 between the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-Term Care Policy (DALTCP) and Thomson/MEDSTAT, Inc. For additional information on this subject, or to view the other briefs in this series, you can visit the ASPE home page at <http://aspe.hhs.gov> or contact the ASPE Project Officer, Hunter McKay, at HHS/ASPE/DALTCP, Room 424E, H.H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, Hunter.McKay@hhs.gov.



Appendix

Forms/Notices Used in the MassHealth Eligibility Process, the Lien Process, and the Estate Recovery Process In Massachusetts

Contents

Statement of Intent to Return Home – sent by enrollment center workers to determine if the institutionalized applicant intends to return home. The form explains that the home will be considered a countable asset if they do not intend to return there.

Agreement to Sell Property - sent by enrollment center workers to applicants who have indicated they have no intent of returning home. As a condition of MassHealth eligibility, they must sign this form, agreeing to sell their property in the following nine months.

Statement of Expectation to Return Home – completed by the applicant's physician who must indicate if there is a reasonable expectation that the applicant will return home in six months. If the answer is no, a lien will be placed on the applicant's home.

Notice of Intent to Place a Lien – sent to applicants by enrollment center workers when their physician has indicated they are not expected to return home in six months. The notice reiterates exemption rules for dependent relatives living in the home and also summarizes repayment/recovery rules.

The MassHealth Lien - completed by the enrollment worker and sent to the lien coordinator once the MassHealth application is approved.

Status Change for a Member in a Long Term Care Facility or Rest Home - completed by the Long Term Care provider and sent to the appropriate MassHealth Enrollment Center whenever a MassHealth applicant or member is admitted or discharged.

Authorization to Release a MassHealth Lien - completed by enrollment workers and sent to the lien coordinator when a filed lien needs to be released because the spouse or other dependent relatives live in the property or the property was permissibly transferred.

Release of MassHealth Lien - completed by Estate Recovery Unit staff who effect the release of the lien without recovery after having received the Authorization to Release form from the enrollment center worker. This form is also used to release the lien after claims have been settled either during the member's lifetime or during the probate process.

Notice of Claim - completed by Estate Recovery Unit staff and filed in Probate Court. The Notice of Claim indicates the amount that will be claimed from the estate based on MassHealth payments made on behalf of the decedent.

Notice of Claim Cover Letter - sent by Estate Recovery Unit staff to the administrator/executor of the estate along with a copy of the Notice of Claim. The cover letter explains the process that must be followed if the estate wishes to dispute the validity of the claim or request a deferral or waiver of repayment.

MassHealth

Division of Medical Assistance

Statement of Intent to Return Home

MassHealth Enrollment Center

Address: _____

City/Town/Zip: _____

Date: _____

Name: _____

Address: _____

City/Town/Zip: _____

SSN: _____

The Commonwealth of Massachusetts Division of Medical Assistance will determine if your home is a countable asset pursuant to regulations at 130 CMR 520.007(G). Your home is a countable asset if you do not intend to return there. Your home is not a countable asset if you do intend to return there. It may, however, be subject to a real estate lien pursuant to regulations at 130 CMR 515.012(A).

Please complete this form and return it within 10 days to the MassHealth Enrollment Center at the above address.

When did you leave your home? _____

Why did you leave your home? _____

Do you intend to return home? Yes No

If you do **not** intend to return home, when did you make that decision? _____

Signature of Applicant/Member

Date

If you are completing this form for the applicant/member, please complete the following.

I certify under the pains and penalty of perjury that I have answered the above questions (please check one of the following):

___ based on the intentions expressed to me by: _____
Name of Applicant/Member

___ on behalf of: _____ who is incapable of expressing his/her intentions.
Name of Applicant/Member

Signature of Authorized Representative

Title/Relationship

Telephone Number

Date

MassHealth

Division of Medical Assistance

Agreement to Sell Property

MassHealth Enrollment Center

Address: _____

City/Town/Zip: _____

Date: _____

Name: _____

Address: _____

City/Town/Zip: _____

SSN: _____

The Commonwealth of Massachusetts Division of Medical Assistance has determined that pursuant to regulations at 130 CMR 520.007(G), the equity value of your real estate at _____ is a countable asset in determining your eligibility for MassHealth.

We will exempt this property for a nine-month period if you agree to:

- take action to sell the property for no less than fair-market value or otherwise liquidate the equity value in the property to pay for your medical care;
- provide evidence, upon request from the Division, that you are trying to sell at no less than fair-market value, or liquidate the equity in the property to pay for your medical care;
- provide to the Division, on request, information on any offer you have received, including the date of the offer, the amount of the offer, and the identity of any real-estate agent conveying the offer;
- accept any offer of at least fair-market value; and
- notify the Division, within 10 days, of any sale or refinancing of the property.

To qualify for this exemption, you must sign and return this form to the MassHealth Enrollment Center listed above within 30 days. If you have any questions, call your eligibility worker.

The Division may extend the nine-month exemption period if, at the end of the nine-month period, you:

- provide evidence that you have been unable to sell the property at fair-market value;
- provide information on each offer you have received and the reason for not accepting it; and
- continue to make good-faith efforts to sell the property in accordance with 130 CMR 520.007(G)(4).

Eligibility Worker

Telephone Number

Signature of Applicant or Authorized Representative

I hereby agree to dispose of real estate owned by me in accordance with the terms described above. I understand that my eligibility for MassHealth will terminate when one of the following occurs:

- I sell the property for less than fair-market value;
- I reject an offer of at least fair-market value; or
- after nine months, I reject a reasonable offer that is equal to at least two-thirds of the fair-market value.

Signature of Applicant *Date*

Signature of Authorized Representative *Date*

MassHealth

Division of Medical Assistance

Statement of Expectation to Return Home

MassHealth Enrollment Center

Address: _____

City/Town/Zip: _____

Date: _____

Name: _____

Address: _____

City/Town/Zip: _____

SSN: _____

This form must be completed by a licensed physician and returned within 10 days to the MassHealth Enrollment Center at the above address.

Patient's Name: _____ SSN: _____

Address of Nursing Facility: _____

Address of Former Home: _____

Diagnosis: _____

Is it reasonable to expect this patient to return home within six month? Yes No

Physician's Signature

Date

Physician's Name (*please print*)

Address

Telephone Number

MassHealth

Division of Medical Assistance

Notice of Intent to Place a Lien

MassHealth Enrollment Center

Address: _____

City/Town/Zip: _____

Date: _____

Name: _____

Address: _____

City/Town/Zip SSN: _____

The Commonwealth of Massachusetts Division of Medical Assistance, pursuant to regulations at 130 CMR 515.012(A), intends to place a lien against your property at the following address(es):

Division of Medical Assistance regulations authorize the lien placement because:

- the Division has determined that you cannot reasonably be expected to be discharged from the nursing facility or other medical institution to your home; and
- none of the following relatives reside in the property:
 - a. a spouse;
 - b. a child under the age of 21, or a blind or permanently and totally disabled child; or
 - c. a sibling who has an equity interest in the property and has been living in the house for at least one year prior to your admission to the nursing facility or other medical institution.

If you are discharged from the nursing facility or other medical institution and return home after the lien is placed, the Division will release the lien. If the property is sold during your lifetime, you must repay the Division from your share of the proceeds for the cost of all medical services provided on or after April 1, 1995. Any remaining proceeds will be used in determining your continued eligibility. Repayment of the cost of medical services may be deferred while any of the following relatives are still lawfully residing in the property:

- a sibling who has been residing in the property for at least one year immediately prior to your admission to the nursing facility or other medical institution; or
- a son or daughter who:
 - a. has been residing in the property for at least two years immediately prior to your being admitted to the nursing facility or other medical institution;
 - b. establishes to the satisfaction of the Division that he or she provided care that permitted you to reside at home during the two-year period prior to institutionalization; and
 - c. has resided lawfully in the property on a continual basis while you have been in the nursing facility or other medical institution.

Whether or not a lien is placed, the Division may have the right to recover the amount of payment for medical benefits from your probate estate after your death. Recovery is limited to payment for all services that were provided:

- on or after March 22, 1991, regardless of your age, if you were institutionalized and the Division determined that you could not reasonably be expected to return home;
- on or after October 1, 1993, if you were aged 55 through 64; or
- while you were aged 65 or older.

If you disagree with the Division's intention to place a lien, you have the right to a fair hearing. For information about appeal rights, see the other side of this form.

MassHealth Eligibility Worker

Telephone Number

Commonwealth of Massachusetts
Division of Medical Assistance
www.mass.gov/dma

MassHealth Lien

The Commonwealth of Massachusetts Division of Medical Assistance, pursuant to M.G.L. c. 118E, § 34 and regulations at 130 CMR 515.012(A), hereby asserts a lien for the cost of medical assistance paid or to be paid against all property and rights to all property in _____ County, including the property more fully described below.

Ownership

Member's Last Name _____ First Name _____ MI _____

SSN: _____

Location

Street Address _____ City/Town _____ Zip Code _____

County _____ District _____

Registration/Recording Information

Book _____ Page **OR** Certificate Number/Document Number _____

Return to:

Commonwealth of Massachusetts
Division of Medical Assistance
Lien Coordinator
Estate Recovery Unit
P.O. Box 15205
Worcester, MA 01615-0205

Signature

Printed name

MassHealth Enrollment Center (City/Town only)

Date

MassHealth

Commonwealth of Massachusetts
EOHHS

Status Change for a Member in a Long Term Care Facility or Rest Home (Admission or Discharge of MassHealth Member or SSI Recipient)

1. Date	REG	MEC	Coverage type	Member's last name	First name	MI
2. Name of facility submitting this notification				Address		Telephone
3. Provider number		4. Admit date		5. MassHealth request date		
6. __A--Admit __D--Discharge __R--Both admit and discharge				7. Member's ID/SSN		
FOR MASSHEALTH USE ONLY						
8. PPA Amount		Effective Date (MM/YY)		Retro PPA ____		
PPA Amount		Effective Date (MM/YY)		Retro PPA ____		
9. Level of Care			10. MassHealth Start Date			
11. Discharge Reason			12. Worker CAN			
13. Discharge Date	14. Date of Death	15. Comments				
Check all appropriate boxes: 16. A. Short term (6 months or less) ____ D. Medicare upon admission ____ B. Long term (more than 6 months) ____ E. SCO (NF screening-notification form not needed) ____ C. Short-term-care stay terminated; now long-term-care ____						
17. Admitted from			18. Discharged to			
Complete items 19 and 20 only if member's expected stay is six months or less.						
19. I certify that the above-named member's expected length of stay is						
20. Physician's signature			Date			
21. Signature of authorized representative completing this form			Date			
NOTE: Nursing-facility screening-notification form or admission-determination letter must be attached.						

SEE REVERSE SIDE FOR INSTRUCTIONS FOR COMPLETING THIS FORM.

Instructions to Long Term Care Providers

The following instructions correspond to numbered items on the reverse side. Please Note: For SSI recipients, a copy of the SC-1 must be sent to the appropriate Social Security District Office.

1. Enter today's date, the member's region, MassHealth Enrollment Center, MassHealth coverage type, and name (please print).
2. Enter the name, address, and telephone number of the facility submitting this form.
3. Enter the seven-digit provider number.
4. Enter the date of admission.
5. Enter the date from which MassHealth payment is requested.
6. Enter the appropriate code: A for admitted, D for discharged, or R for both admitted and discharged.
7. Enter the member's 10-digit MassHealth identification number, if known.

ITEMS 8 THROUGH 12 ARE FOR INTERNAL MASSHEALTH USE ONLY.

13. Enter the discharge date for the current discharge and if both admitting and discharging.
14. Enter the date of death, if applicable.
15. Use this space to enter any comments.
16. Check box 16A to indicate a short-term stay (six months or less), 16B to indicate a long-term stay, or 16C to indicate that the short-term stay is terminated and is now long term. Check 16D if the member is Medicare eligible upon admission. Check 16E if the member is admitted to nursing facility under SCO
17. (nursing-facility screening-notification form not needed).
18. Enter where member is admitted from (i.e., home, name of acute or chronic hospital).
19. Enter where member is discharged to (i.e., home, name and address of acute or chronic hospital).
20. Enter the expected length of stay only if the expected stay is six months or less.
21. The physician must sign and date only if the expected stay is six months or less. For a long-term stay, no signature is required.
22. An authorized representative of the facility must sign and date this form.

MassHealth Enrollment Center Authorization To Release a MassHealth Lien

The MassHealth Enrollment Center (MEC) at _____, MA authorizes the release of the attached MassHealth lien for the following MassHealth member:

Member name (first, last)

Member SSN

A MassHealth Lien Release is requested for the following reason:

Relative Lives in the Property In accordance with MassHealth regulations at 130 CMR 515.012, one of the following relatives lives in the property:

- A spouse.
- A child under the age of 21, or a blind or permanently and totally disabled child.
- A sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution.

Permissible Transfer In accordance with MassHealth regulations at 130 CMR 520.019(D)(6), the nursing-facility resident transferred the home he or she used as the principal residence at the time of the transfer, and the title to the home to one of the following persons.

- The spouse.
- The nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled.
- The nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility.
- The nursing-facility resident's child [other than the child described in 130 CMR 520.019(D)(6)(b)] who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by MassHealth, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.
- Other: _____

I, hereby acknowledge that I have received all supporting documentation to substantiate the release of this MassHealth lien.

Signature of MEC representative

Date

Lien released by:

Signature of Estate Recovery Unit Lien Coordinator

Date

MassHealth

Division of Medical Assistance

Release of MassHealth Lien

The Commonwealth of Massachusetts Division of Medical Assistance hereby releases a lien, dated _____, that it had asserted (or that had been asserted by the former Department of Public Welfare, now known as the Department of Transitional Assistance) pursuant to M.G.L. c. 118E § 34 and regulations at 130 CMR 515.012(A) for the cost of medical assistance paid or to be paid against all property and rights to all property described below.

Ownership

Member's Last Name _____ First Name _____ MI _____

SSN: _____

Location

Street Address _____ City/Town _____ Zip Code _____

County _____ District _____

Registration

Deed Book _____ Page _____ **OR** Certificate Number _____

Lien Book _____ Page _____ **OR** Document Number _____

Case Specialist

Estate Recovery Unit
P.O. Box 15205
Worcester, MA 01615-0205

Date

NOTICE OF CLAIM
COMMONWEALTH OF MASSACHUSETTS
ESTATE RECOVERY UNIT

PROBATE COURT
No.

To the Register of Probate for the County of _____:

Please file the following Notice of Claim for the estate of MEMBER NAME, late of CITY/TOWN in said county.

To FIDUCIARY of _____ in the County of _____, Co-Administrator of the estate of NAME OF MEMBER,

To FIDUCIARY of _____ in the County of _____, Co-Administrator of the estate of NAME OF MEMBER,

To _____ of _____ in the County of _____, Co-Administrator of the estate of _____,

This notice is given to you as required under the General Laws of Massachusetts, including but not limited to:

Section 20 of Chapter 202 of the General Laws

Section 32 of Chapter 118E of the General Laws

Section 9 of Chapter 197 of the General Laws

The estate of said NAME OF MEMBER is indebted to the Commonwealth of Massachusetts, MassHealth for the sum of \$_____ dollars under Section 31 of Chapter 118E of the General Laws for medical assistance (Medicaid) provided for the decedent.

COMMONWEALTH OF MASSACHUSETTS

By: ERUADMIN ERUADMIN, Administrator

Estate Recovery Program
P. O. Box 15205
Worcester, Massachusetts 01615-0205

Dated:



Date:

To:

Re: Estate of

Dear Attorney :

Enclosed please find a copy of the Notice of Claim that MassHealth has filed with the Probate Court. Please note that payment of this claim is due four months plus sixty days from the date the executor or administrator was appointed. Interest will then begin to accrue. Payment should be made by check payable to the “Commonwealth of Massachusetts, Estate Recovery Unit.” If there are not sufficient assets in the estate to satisfy the claim in full, MassHealth will accept what remains after payment of any funeral expenses and reasonable and necessary costs of administration.

If you believe that the claim is not valid, you have sixty days to send written notice by certified mail to MassHealth. If MassHealth disagrees, it will file suit against the executor or administrator within sixty days after it receives your notice, and a Court will determine the validity of MassHealth's claim.

Pursuant to 130 CMR 501.013(B) and 130 CMR 515.011(C), if the member was survived by a spouse, a blind or permanently and totally disabled child, or a child under 21 years of age, MassHealth will permit the estate to **defer** repaying this claim during the lifetime of the spouse, the blind or permanently and totally disabled child, or until the minor child reaches 21 years of age.

MassHealth will waive its claim if it determines that **all of the following conditions** exist as stated in 130 CMR 501.013 (C) and 130 CMR 515.011(D):

- (1) a sale of real property would be required to satisfy a claim against the estate; and,
- (2) a person who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:
 - (a) the person lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for Mass Health or other assistance from MassHealth and continues to live in the property at the time MassHealth first presented its claim for recovery against the deceased member's estate;

- (b) the person was left an interest in the property under the deceased member's will, inherited the property from the deceased recipient under the laws of intestacy;
- (c) the person is not being forced to sell the property by other devisees or heirs at law; and
- (d) at the time MassHealth first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.

If all of the above conditions are met a waiver will be granted on a conditional basis for two years from the date that MassHealth mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for MassHealth to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), or the property is sold or transferred, or the person does not use the property as their primary residence, MassHealth will be notified and its claim will become due and payable in full.

MassHealth will request an annual review to ensure that the conditions set forth in 130 CMR 501.013 and 130 CMR 515.011 continue to exist. The individual requesting the waiver must furnish the required information and documentation for the periodic review. Failure to do so will result in the revocation of the conditional waiver and MassHealth's claim will become due and payable in full

If you wish to deny MassHealth's claim, or believe that recovery should be waived, or repayment deferred, you are required to notify MassHealth in writing by **certified mail** within **sixty days**. If you are asking MassHealth to waive its claim under 130 CMR 501.013(C) and 130 CMR 515.011(D) or to defer repayment, you must state the specific circumstances and conditions, which exist and provide supporting documentation satisfactory to MassHealth. If MassHealth disagrees with your denial of its claim or denies your request for deferral or waiver, it will file suit within sixty days of receipt of your request, and a Court will determine the validity of the MassHealth's claim.

Please address any notice to this office at the following address:

Estate Recovery Program
P.O. Box 15205
Worcester, Massachusetts 01615-9906

Thank you for your cooperation

Sincerely,

Enclosure

Telephone: 1-800-754-1864 508-856-6381

Fax: 508-856-7803

Policy Briefs on Medicaid Eligibility Policies for Long-Term Care Benefits

A total of six Policy Briefs are available from the Office of Disability, Aging and Long-Term Care on this subject:

-  **Medicaid Estate Recovery**
[\[http://aspe.hhs.gov/daltcp/reports/estaterec.htm\]](http://aspe.hhs.gov/daltcp/reports/estaterec.htm) Posted May 2005
-  **Medicaid Estate Recovery Collections**
[\[http://aspe.hhs.gov/daltcp/reports/estrecoll.htm\]](http://aspe.hhs.gov/daltcp/reports/estrecoll.htm) Posted February 2006
-  **Medicaid Liens**
[\[http://aspe.hhs.gov/daltcp/reports/liens.htm\]](http://aspe.hhs.gov/daltcp/reports/liens.htm) Posted May 2005
-  **Medicaid Liens and Estate Recovery in Massachusetts**
[\[http://aspe.hhs.gov/daltcp/reports/MALiens.htm\]](http://aspe.hhs.gov/daltcp/reports/MALiens.htm) Posted May 2005
-  **Medicaid Treatment of the Home: Determining Eligibility and Repayment for Long-Term Care**
[\[http://aspe.hhs.gov/daltcp/reports/hometreat.htm\]](http://aspe.hhs.gov/daltcp/reports/hometreat.htm) Posted May 2005
-  **Spouses of Medicaid Long-Term Care Recipients**
[\[http://aspe.hhs.gov/daltcp/reports/spouses.htm\]](http://aspe.hhs.gov/daltcp/reports/spouses.htm) Posted May 2005