

Holding on to Home:

A Primer on MassHealth Estate Recovery and Options for Reducing its Impact on Members and Families

EXECUTIVE SUMMARY

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INTRODUCTION

MassHealth is Massachusetts' combined Medicaid program and Children's Health Insurance Program (CHIP), providing coverage to nearly one in three Massachusetts residents. Among the many services and benefits offered through MassHealth, it is a key source of coverage and the state's primary payer for long-term services and supports (LTSS) for older adults and individuals with disabilities. LTSS include nursing home stays, as well as services and supports provided in home- and community-based settings that enable members to remain living in their homes. (For more information about LTSS, see the box to the right.)

Under federal law, states are required to seek reimbursements from certain Medicaid members' estates (the money and property left after someone dies) if they received LTSS-related services at or after age 55. More specifically, states must pursue reimbursement for the amount of Medicaid dollars paid for a member's nursing facility services, home- and community-based services (HCBS),¹ and hospital and prescription drug services related to care in a nursing facility or through HCBS. States must also pursue reimbursement for LTSS-related benefits paid to Medicaid members at any age if they permanently reside in a long-term care setting, such as a nursing facility or other medical institution. While these are the minimum requirements set by federal law, states have the option to exceed these standards and can choose to recover the cost of *all* Medicaid-covered services provided,² not just LTSS. In states that select this option, more members over the

Long-Term Services and Supports (LTSS) encompass a variety of health, health-related, and social services that assist individuals with functional limitations due to physical, cognitive, or mental conditions or disabilities. LTSS include both nursing facility stays and home- and community-based services (e.g., home health services, personal care, adult day health care).

age of 55 are impacted by estate recovery, since it is not restricted to just those who use LTSS. In Massachusetts, MassHealth is required by state law to recover for the total cost of care for all services paid to members aged 55 and over; many other states also select this option to recover for more than just LTSS.

Estate recovery is an effort to recover the costs of certain expenses to help finance the Medicaid program so that services are available for other individuals in need. However, at least 50 percent of what the state recoups through estate recovery is returned to the federal government as reimbursement for the share of the services it initially funded.

Estate recovery in the Medicaid program has been controversial since its inception. Medicaid is primarily a program for low-income individuals and families, many of whom are disproportionately impacted by disparities in generational wealth and homeownership based on their race, ethnicity, and/or disability status. Opponents argue that estate recovery can reinforce cycles of poverty and bar families from creating generational wealth, since estate recovery often

¹ HCBS offer opportunities for Medicaid members to receive LTSS in their homes or communities, rather than in institutions and other restricted settings.

² This excludes Medicaid payments for Medicare cost sharing provided to individuals dually enrolled in Medicare and Medicaid.

requires the sale of the deceased member's home to pay off their Medicaid-related debt. Critics also point out that no other public benefits program requires the enrollee's estate to pay back the state and federal government for the services that were provided. Some theorize this policy may deter Medicaid enrollment and potentially prohibit individuals from accessing needed health care services.³

Prior to its 2021 reforms (described below), Massachusetts recovered more from member estates than any other state in the country, with few options for exemptions based on the size of the estate or the burden this policy places on low-income families. Recognizing the outsized impacts estate recovery was having on low-income members in comparison to other states, MassHealth initiated several major changes to their policies beginning in 2021. These reforms reduced the number of estates subject to recovery and created additional hardship waivers to exempt more families from this policy, ultimately cutting state revenue from the program nearly in half. The state's gross estate recovery collections are expected to be approximately \$23,500,000 annually when all 2021 reforms are fully implemented (about half of which will be returned to the federal government).⁴ Legislation that would further reform Massachusetts' estate recovery policy (S.726/H.1168, An Act Protecting the Homes of Seniors and Disabled People on MassHealth) has been introduced in the past two legislative sessions.

Despite the recent reforms, Massachusetts' state law still requires the MassHealth estate recovery program to exceed federal minimum requirements by seeking reimbursement for the total cost of care for *all* MassHealth services (not just LTSS) provided to members aged 55 and older. Also, there are additional exemptions and waivers that Massachusetts could make available to its members to further lessen the impact of the policy.

FINDINGS AND RECOMMENDATIONS

The goal of this research was to better understand Massachusetts' state law pertaining to estate recovery, how Massachusetts' policies and practices compare to those of other states, and how estate recovery affects marginalized communities. The Massachusetts Medicaid Policy Institute, a program of the Blue Cross Blue Shield of Massachusetts Foundation, enlisted Aurrera Health Group to interview

key Massachusetts stakeholders (including advocates for MassHealth members and MassHealth officials) and examine relevant literature and state policies across the country. State Medicaid officials from Illinois and Maine were also interviewed as both recently implemented policy changes that reduced the scope of their estate recovery programs.

Findings suggest there is opportunity for Massachusetts to make additional policy and programmatic changes to their estate recovery program to reduce the negative impacts on MassHealth members and families.

Profiles of Individuals in Massachusetts Impacted by Estate Recovery

The Foundation, in partnership with the Massachusetts Law Reform Institute, developed a series of profiles that tell the stories of how estate recovery has impacted four individuals in Massachusetts after the loss of a loved one. Read more about their stories [here](#).

Options for further reform of MassHealth's estate recovery program include:

1. **Prohibit estate recovery for nonmandatory services for individuals aged 55 and over.** This would mean the state would only pursue estates of deceased members for the cost of LTSS. This would limit the number of people subject to estate recovery, since it would only impact MassHealth members who use LTSS rather than *all* members aged 55 and over. This change would require legislative action.
2. **Establish additional hardship criteria.** Specifically, the state could create more relief for caregivers by exempting from estate recovery any asset that is the sole income-producing asset of a family and exempting homes of modest value from a member's estate.
3. **Waive the first \$25,000 in value of any estate subject to an estate recovery claim.**
4. **Offer information on MassHealth's estate recovery program in multiple languages** to enhance education and accessibility for different populations.

³ MACPAC (2015). Medicaid's New Adult Group and Estate Recovery. Available at <https://www.macpac.gov/wp-content/uploads/2015/11/Medicaid%E2%80%99s-New-Adult-Group-and-Estate-Recovery.pdf>.

⁴ This is the projected total gross amount once all open cases prior to the 2021 reforms are resolved. About half of the total amount recovered in Massachusetts goes to the federal government. Data provided by MassHealth, December 2023.

5. **Educate trusted advisors and assisters who help individuals enroll in MassHealth about estate recovery.** This would help them to answer member questions on estate recovery and hardship waiver options.

6. **Publish an annual report on the impacts of MassHealth's estate recovery program,** including data on hardship waivers.

These options would reduce the number of people impacted by estate recovery and lessen the burden of estate recovery on the families of members who may still be subject to the policy. The options outlined above would also help members and their families better understand and navigate this complicated process, and enable the state, advocates, and researchers to better recognize and track the impact of estate recovery on residents of the Commonwealth.

It is important to note that these options would have fiscal implications for the state, since many would reduce the revenue generated by the estate recovery program and most would increase the costs of administering the program.

CONCLUSION

While states have the responsibility to meet the minimum federal requirements of the estate recovery program, many have found ways to do so that limit the negative impacts on families of Medicaid members. The policy and programmatic options identified above would build on the reforms MassHealth has already made and offer additional relief for members and families, especially for individuals who are economically, racially, culturally, or socially marginalized.

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