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State/Territory Name: Massachusetts

State Plan Amendment (SPA) #: 21-0017

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS-179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

August 13, 2021

MaryLou Sudders, Secretary
The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place, Room 1109
Boston, MA 02108

Re: Massachusetts State Plan Amendment (SPA) 21-0017

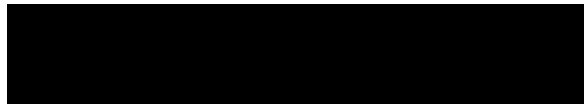
Dear Secretary Sudders:

We reviewed your proposed Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 21-0017. This amendment proposes to update the definition of undue hardship for estate recovery; update the state's determination of cost effectiveness for estate recovery; clarify the process for exempting certain assets from estate recovery for American Indians and Alaska Natives; and update the limitations to estate recovery for any premiums paid on behalf of the member.


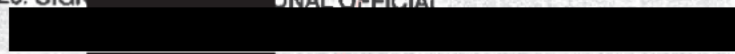
We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations 42 CFR 433.36. This letter is to inform you that Massachusetts Medicaid SPA Transmittal Number 21-0017 is approved effective May 14, 2021.

If you have any questions, please contact Marie DiMartino at 978-330-8063 or via email at Marie.DiMartino@cms.hhs.gov.

Sincerely,



James G Scott, Director
Division of Program Operations

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER <u>21-017</u>	2. STATE MA
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE 05/14/2021	
5. TYPE OF PLAN MATERIAL (Check One) <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT		
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)		
6. FEDERAL STATUTE/REGULATION CITATION 42 USC 1396a(a)(18) 42 CFR 433.36	7. FEDERAL BUDGET IMPACT a. FFY21 \$ 0 b. FFY22 \$ 0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 4.17-A pp. 2, 2a, 2b, 3, 3a and Section 4, p. 53c	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Attachment 4.17-A, pp.2, 3 and Section 4, p. 53c	
10. SUBJECT OF AMENDMENT An amendment regarding updates to the hardship policy for estate recovery		
11. GOVERNOR'S REVIEW (Check One) <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL Not required under 42 CFR 430.12(b)(2)(i)		
12. SIGNATURE OF STATE AGENCY OFFICIAL 	16. RETURN TO The Commonwealth of Massachusetts Executive Office of Health and Human Services Office of Medicaid One Ashburton Place, Room 1109 Boston, MA 02108	
13. TYPED NAME Marylou Sudders		
14. TITLE Secretary		
15. DATE SUBMITTED 06/30/21		
FOR REGIONAL OFFICE USE ONLY		
17. DATE RECEIVED 06/30/2021	18. DATE APPROVED 08/13/2021	
PLAN APPROVED - ONE COPY ATTACHED		
19. EFFECTIVE DATE OF APPROVED MATERIAL 05/14/21	20. SIGNATURE OF REGIONAL OFFICIAL 	
21. TYPED NAME James G. Scott	22. TITLE Director Division of Program Operations	
23. REMARKS		

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Liens and Adjustments or Recoveries (cont.)

4. For claims presented on or after November 15, 2003, but before May 14, 2021, the state defines undue hardship as follows:
 - a. If the sale of real property would be required to satisfy a claim, repayment is waived if an individual who was using the property as a principal place of residence on the date of the recipient's death meets all of the following conditions: (1) the individual lived in the property on a continual basis for at least a year immediately prior to the recipient becoming eligible and continues to live in the property at the time the Commonwealth first presented its claim for recovery against the recipient's estate; (2) the individual was left an interest in the property under the deceased recipient's will, inherited the property under the laws of intestacy, or the recipient's legal title or interest otherwise passes to the individual by operation of law; (3) the individual is not being forced to sell the property by other devisees or heirs; and (4) at the time the state first presented its claim, the annual gross income of the individual's family group was less than or equal to 133% of the applicable poverty level income standard.
 - b. The waiver will be conditional for a period of two years from the date that the state or a court of competent jurisdiction determines that the waiver conditions have been met. If, at the end of that period, all circumstances and conditions that must exist for the state to waive recovery still exist 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 that must exist for the state to waive recovery no longer exist, the state will be notified and the state's claim will be payable in full.

Any waivers arising out of notice of claims presented before May 14, 2021, which did not become permanent and binding pursuant to the two-year conditional requirements, and which had not been satisfied and were still subject to the two-year conditional requirements became permanent and binding as of May 14, 2021.

5. For claims presented before November 15, 2003, that are still outstanding:
 - a. For claims presented between April 1, 1995 and November 15, 2003, that are still outstanding, recovery will be waived if all requirements under the then-existing regulations were met.
 - b. For claims presented before April 1, 1995, a waiver for hardship did not exist.
6. For claims presented on or after May 14, 2021, the state defines undue hardship as follows:
 - a. Waiver of Estate Recovery Due to Residence and Financial Hardship. Recovery will be waived if MassHealth determines all of the following conditions have been met:
 - 1) if the sale of real property would be required to satisfy a claim; and
 - 2) an individual 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:

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- (a) the individual lived in the property on a continual basis for at least two years prior to the member's admission to an institution or death and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate;
 - (b) the individual has inherited or received an interest in the property from the deceased member's estate;
 - (c) the individual is not being forced to sell the property by other devisees or heirs at law; and
 - (d) at the time the MassHealth agency first presented its claim for recovery against the deceased member's estate, the annual gross income of the individual's family group was less than or equal to 133% of the applicable poverty level income standard for the appropriate family size.
- b. Waiver of Estate Recovery Based on Care Provided. For an heir or devisee inheriting a legal interest in the deceased member's home, MassHealth will waive estate recovery if MassHealth determines to its satisfaction all of the following conditions have been met:
- 1) the heir or devisee resided in the member's home on a continual basis for two years prior to the member's admission to an institution or death;
 - 2) during that time, the member needed and the heir or devisee provided a level of care that avoided the member's admission to a facility;
 - 3) the heir or devisee continues to live in the property at the time the notice of claim is filed;
 - 4) the heir or devisee was left an interest in the home under the member's will, or inherited the property under the laws of intestacy;
 - 5) the heir is not being forced to sell the property by other devisees or heirs; and
 - 6) the property would have to be sold to satisfy the claim.
- c. Waiver of Estate Recovery Due to Financial Hardship Based on Income.
- 1) The personal representative or public administrator of a member's estate may apply for a waiver of estate recovery due to financial hardship based on the income of an heir or heirs or devisee or devisees. If there are multiple heirs or devisees, the personal representative or public administrator must apply for an Income-based waiver separately on behalf of each individual. To be considered a qualifying heir or devisee, the personal representative or public administrator of the estate must establish:
 - (a) The qualifying heir or devisee is inheriting an interest in the member's estate under the member's probate estate; and
 - (b) The family group of a qualifying heir or devisee has a Gross Income below 400% of the federal poverty level for the two year period prior to the date the notice of claim is filed.If MassHealth determines that both conditions have been met, the heir is considered a qualifying heir.
 - 2) MassHealth will waive recovery in an amount equal to the value of the qualifying heir's or devisee's interest in the estate up to a maximum of \$50,000 per qualifying heir or devisee. If there is more than one qualifying heir or devisee in an estate, the total amount

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- 3) of the agency's estate recovery claim waived for qualifying heirs or devisees shall be limited to a total of \$100,000.
- 4) An estate with qualifying heirs or devisees, regardless of whether or not there are non-qualifying heirs, will be subject to estate recovery based on the lesser of:
(a) the value of the estate remaining after deducting the amount waived from the total value of the estate for qualifying heirs and devisees; or
(b) the amount of the MassHealth claim remaining after deducting the amount waived from the total value of the MassHealth claim.
- 5) Example 1. The value of the estate is \$400,000 and the MassHealth claim is \$60,000. There are two heirs who qualify for the waiver, each with an interest in the estate of \$50,000 or greater. There are also two heirs who do not qualify. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$300,000 left in the estate, but after deducting the \$100,000 waived amount from the \$60,000 MassHealth claim there is nothing left in the MassHealth claim. The result is no estate recovery.
- 6) Example 2. The value of the estate is \$350,000 and the MassHealth claim is \$500,000. There are two qualifying heirs, each with an interest in the estate of \$50,000 or greater. There are also two non-qualifying heirs. In this example, the waived amount is \$100,000 (50,000 + 50,000). After deducting the \$100,000 waived amount from the estate there is \$250,000 left in the estate, and after deducting the \$100,000 waived amount from the \$500,000 MassHealth claim there is \$400,000 remaining in the MassHealth claim. In this example, MassHealth would recover \$250,000, since it is less than \$400,000.

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Liens and Adjustments or Recoveries (cont.)

7. The following standards and procedures are used by the state for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective: When the state presents its claim, it notifies the estate of the requirements for undue hardship and requests that the estate within 60 days submit verification and documentation that the individual meets the requirements set forth in #6 above. If the state disagrees with the estate's contention that the requirements for undue hardship have been met, it files suit to enforce its claim and a Court makes the determination as to the state's rights. Criteria for determining cost-effectiveness are set forth below and are considered on a case-by-case basis.

8. The state defines cost-effective as follows (include methodology/thresholds used to determine cost-effective): In determining cost-effectiveness, the state considers the costs and availability of resources, the amount of its claim, the assets in the estate, and the likelihood of actual recovery.

Effective for dates of death on or after May 14, 2021, in probate estates of members where the probate petition certifies under the penalties of perjury that the total assets in a member's estate are valued at \$25,000 or less, MassHealth has determined that it is not cost effective to pursue recovery. In Massachusetts, estates valued at \$25,000 or less may be eligible for voluntary administration. After considering the likelihood of actual recovery, amount of recovery, staff time and cost incurred to pursue estate recovery in voluntary probate estates valued at \$25,000 or less, MassHealth has determined that it is not cost effective to file a claim in such cases. MassHealth reserves the right to file a claim and recover in such estates if probate filings do not sufficiently identify the value of the estate or if later probate filings or proceedings or investigation identify or establish that the total assets in the estate exceed \$25,000.

9. The state uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved): with respect to claims filed against the recipient's probate estate, the state may present its claim by filing notice with the Probate Court within four months of the executor or administrator being appointed or by filing a civil suit within one year of date of death; with respect to claims filed against any real and personal property and other assets not includable in the recipient's probate estate, but in which the recipient immediately prior to death had any legal title or interest, the state may within one year of date of death or within four months of receipt of a complete estate asset form, give notice to the person or entity to whom the recipient's legal title or interest passed, and in the case of real property, file a written notice of claim with the registry of deeds where the property lies. The state notifies the estate when it presents its claim of the requirements for undue hardship. (See #7 above.) If the estate disallows the state's claim either because it does not believe the claim to be valid or because of hardship, the state has 60 days to file suit and a Court makes the determination of the state's rights.

10. The state uses the following procedure to exempt certain assets from estate recovery for American Indians and Alaska Natives: Upon application for exemption of certain assets from estate recovery by the personal representative or public administrator of the member's estate, recovery from American Indian and Alaska Natives income, resources, and property will be waived:

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- a. certain income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;
- b. ownership interest in trust and non-trust property, including real property and improvements: Waiver of Estate Recovery Due to Residence and Financial Hardship. Recovery will be waived if MassHealth determines all of the following conditions have been met:
 - 1) located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or
 - 2) for any federally recognized tribe not described in 130 CMR 501.013(G)(1)(b)1., located within the most recent boundaries of a prior federal reservation;
- c. income left as a remainder in an estate derived from property protected in 130 CMR 501.013(G)(1)(b), that was either collected by an Indian or by a tribe or tribal organization and distributed to Indians, as long as the individual can clearly trace it as coming from protected property;
- d. ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, or fish products, resulting from the exercise of federally protected rights and income either collected by an Indian or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; or
- e. ownership interests in or usage rights to items not covered by 130 CMR 501.013(G)(1)(a) through (d) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

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Citation

4.17 Lien and Recoveries (cont.)

(c) Adjustments or Recoveries: Limitations

The state complies with the requirements of section 1917 (b) (2) of the Act and regulations at 42 CFR §433.36 (h)-(i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the state determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the state will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the state that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.
- (4) With respect to dates of death on or after December 31, 2016, MassHealth will offset the estate recovery claim by the total of any premiums paid to the MassHealth agency on behalf of the member when the member was 55 years of age or older.