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MTF Bulletin

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MTF Summary of S.726

An Act protecting the homes of seniors and disabled people on MassHealth

On October 30, 2023, [Senate Bill 726](#), *An Act protecting the homes of seniors and disabled people on MassHealth* was reported favorably from the Joint Committee on Health Care Financing and referred to the Senate Committee on Ways and Means (SWM), where it remains.

The bill reported from Health Care Financing:

- Reduces the financial liability of estate recovery on affected families by aligning the state program with federally required minimum standards and codifying several recent reforms implemented by MassHealth.
- Improves information sharing between MassHealth and individuals impacted by estate recovery and streamlines the appeals process for estate recovery waivers.
- Expands hardship waivers to reduce the impact of estate recovery on lower income families.
- Limits MassHealth services subject to estate recovery by implementing exemptions for certain programs like PCAs and CommonHealth members.

What is Estate Recovery?

Estate recovery is a process by which the state seeks reimbursement from the estates of MassHealth members after they die for the total cost of care provided to members aged 55 or older and any member (regardless of age) who permanently resided in a long-term care or other medical facility. According to a February 2024 Blue Cross Blue Shield of Massachusetts Foundation report, prior to any reforms, net revenue from estate recovery to MassHealth was about \$24 million annually. After MassHealth implemented reforms limiting the scope of recovery, MassHealth revenue decreased by around 33 percent to \$16 million net in FY 2022.¹

This bill, in part, seeks to change existing statutory requirements that make the Massachusetts estate recovery program more expansive than is federally required. The federal government only requires states to seek estate recovery on care related to long-term services and supports (LTSS). In Massachusetts, estate recovery applies to the total cost of care for individuals aged 55+ and any member (regardless of age) who permanently resided in a long-term care facility. LTSS are very expensive and MassHealth provides 100 percent coverage to qualifying members, many of whom spend down liquid assets to qualify. To help the state recoup a portion of these costs, it claims estate assets after the death of the member. However, the state's program of applying estate recovery to the total cost of care provided has raised equity concerns for low income members, members with disabilities, and BIPOC members by potentially exacerbating disparities in wealth and economic resources for surviving families who do not have the financial means to protect their assets.

¹ Mahalingham, M., Stein, E. & Vardaman, K. (2024). Holding on to home: A primer on MassHealth estate recovery and options for reducing its impact on members and families. Blue Cross Blue Shield Foundation.
https://www.bluecrossmafoundation.org/sites/g/files/cspkhw2101/files/2024-02/Estate%20Recovery%20Issues%20Brief_FINAL_2.6.24.pdf

MTF has prepared a comprehensive and accessible summary of S.726, which includes:

- A high level overview of the bill, including its recent legislative history and a breakdown of the notable updates to estate recovery regulations; and
- A detailed section-by-section summary of the legislation.

These two materials offer a comprehensive review of S.726's provisions, purpose, and impact.

Legislative History

During the 2021 – 2022 legislative session, a version of this bill titled *An Act protecting the homes of seniors and disabled people on MassHealth (S.749)* was filed by Senator Joanne Comerford (D-Hampshire, Franklin, and Worcester). After being referred to the Joint Committee on Health Care Financing, the bill received a hearing on September 28, 2021. No further action was taken on the bill before the end of the session.

This session, *An Act protecting the homes of seniors and disabled people on MassHealth (S.726)* was filed again by Senator Comerford. The bill was referred to Health Care Financing and it received a hearing on June 13, 2023. The bill was then reported favorably by the committee and referred to SWM on October 30, 2023. The bill currently remains in SWM.

This session's bill is nearly identical to the bill filed in 2021, including several provisions limiting what medical services are eligible for estate recoveries, improving information sharing between MassHealth and impacted members, and minimizing the financial burden of estate recovery on low income families. New language added to the bill filed this session would exempt personal care attendant (PCA) service payments from estate recovery.

Bill Summary

Major topics of the bill include:

- **Limiting the Financial Impact of Estate Recoveries** – The bill includes provisions to limit what medical services are eligible for recovery and includes new language outlining the circumstances under which recovery may be waived or deferred by MassHealth. For example, estate recovery may be waived if it would present an undue financial hardship to the surviving family. The bill limits the impact of recoveries in two ways:
 - **Aligning the State Program with Federal Requirements** – Historically, state law has required MassHealth to collect estate recovery on more programs and services than the federally required minimum of just LTSS. For example, estate recovery in Massachusetts can apply to normal preventative care costs provided to members or for the treatment of a chronic condition like diabetes. This bill includes new language to better align MassHealth's estate recovery with the federal minimums for services eligible for recovery.
 - **Codifying Recent MassHealth Reforms** – In 2021, MassHealth implemented several reforms to increase protections for low-income individuals and families by significantly reducing the number of estates subject to estate recovery, including no longer pursuing estate recovery if the value of the member's estate is \$25,000 or less. MassHealth also expanded its criteria for undue hardship and proposed a new Care Provided Hardship Waiver and Income-Based Hardship Waiver. The bill includes provisions to codify and build upon these recent reforms. More information on these waivers can be found in the section below.

- **Improving MassHealth Information Sharing** – The bill includes new requirements that MassHealth must follow when communicating with members or personal estate representatives. These provisions include new information that MassHealth must provide to families potentially subject to recovery, and improvements to the process of requesting an administrative hearing over waiver disagreements.

A major theme of the bill is making the estate recovery process more efficient and equitable. Since the majority of MassHealth members have incomes below the FPL, for MassHealth members with homes subject to estate recovery, it is often the most valuable asset for that member². Thus, surviving family or heirs tend to sell the home to satisfy an estate recovery claim against the member’s estate, limiting their opportunity for economic advancement and serving as a barrier to homeownership to surviving families. Similarly, due to the immense financial burden of LTSS, people with disabilities who rely on those services, which can cost upwards of \$156,000 annually, have no choice but to seek coverage through MassHealth. By including new language to limit estate recoveries and allowing for recovery to be waived in some circumstances, the bill improves the current system for surviving families of Medicaid recipients who are financially disadvantaged.

The bill also proposes the exemption of MassHealth CommonHealth members from estate recovery. These are members with disabilities and incomes greater than 133 percent of the FPL. The bill does not create an estate recovery exemption for disabled members on MassHealth Standard, where an individual’s household income is generally at or below 133 percent of the FPL. The bill also includes changes to the appeals process if a hardship waiver is denied, allowing a personal representative of the estate to request an administrative hearing. Currently, requesting an appeal for a denied hardship waiver is a complicated legal process and these changes would remove barriers and allow more families to appeal.

In the following tables, this brief highlights some of the notable changes to estate recoveries proposed in this bill with implications to the state, Medicaid recipients and their families.

Limiting the Financial Impact of Estate Recoveries

Bill Section	MGL Citation	Description	State Fiscal Impact?
1	c. 118E, §31 (c)	Aligns MassHealth with federally required standards: For individuals who died after April 1, 1995, are 55 and over, and received medical assistance after October 1, 1993; this bill would limit estate recovery to medical assistance for nursing facility services, home and community based services, and related hospital/drug services. These limitations are in line with the minimum federal requirements.	Reduces revenue collections
1	c. 118E, §31 (c)	Codifies MassHealth regulations: Requires MassHealth to waive estate recovery if it is not cost effective, including for estates with total assets less than \$25K. Directs MassHealth to waive recovery if it would create an undue hardship, and to promulgate regulations defining “undue hardship,” which may include:	Reduces revenue collections

² Homes valued at \$25,000 or less are exempt from the estate recovery process, eliminating approximately 50% of cases currently subject to recovery.

		<ul style="list-style-type: none"> • Paying the claim would require the sale of a home occupied by a surviving spouse or child meeting certain criteria; • Paying the claim would require the sale of a home that has been occupied for 1 year prior to the death of the decedent; provided that the occupant had an income of 400% FPL or less at the time of the decedent's death. • Paying the claim would require the sale of a home that has been occupied by an individual for 2 years prior to the decedent becoming institutionalized or dying; provided that the individual provided care to the decedent during that time which prevented the decedent from being admitted to a nursing home. (AKA: Care Provided Waiver) • The gross income of an heir was less than 400% FPL or less during the 2 years prior to MassHealth's estate recovery claim; in which case MassHealth may waive the recovery up to \$50K for an individual and up to \$100K for multiple individuals (AKA: Income-Based Hardship Waiver) • Paying the claim would require the sale of a homestead of modest value. 	
1	c. 118E, §31 (g)	Directs MassHealth to exempt medical assistance received through the CommonHealth program for disabled adults, as well as the Personal Care Attendant (PCA) program from estate recovery.	Reduces revenue collections

Improving Communication Between MassHealth and Their Members

Bill Section	MGL Citation	Description	State Fiscal Impact?
2	c. 118E, §32 (c)	<p>When presenting its claim, MassHealth must also notify the personal representative of:</p> <ol style="list-style-type: none"> 1. When recovery can be deferred, 2. When recovery can be waived due to its regulations on undue hardship, 3. How to get a detailed accounting of the claim, 4. Limitations on estate recovery related to the decedent having a long term care policy, 5. Limitations, like the property being that of certain "American Indians", the medical assistance received was through the CommonHealth program for disabled adults, or payment of personal care attendants, and 6. The personal representative's obligation to mail a copy of MassHealth's written statement to all individuals who may be entitled to an estate recovery deferment or waiver, and of the personal representative's obligation to give MassHealth notice of any circumstances for deferment or waiver that may exist. MassHealth will give a form to be used to notify MassHealth of such circumstances. <p>*Items 3-6 are new language added by the bill.</p>	Potential administrative costs
2	c. 118E, §32 (d)	If MassHealth denies a claim for deferral or waiver of payment (after a personal representative of the estate provided the necessary documentation that the circumstances for deferral or waiver exist), it must provide written notice and explain why the claim was denied.	Potential administrative costs

		MassHealth must also provide the opportunity for an administrative hearing or additional reviews.	
3	c. 118E, §34A (a)	<p>MassHealth must give notice of the conditions under which they may seek estate recovery, including:</p> <ul style="list-style-type: none"> • An explanation of what constitutes an estate, • What services and expenses are subject to estate recovery, • What Medicaid spending or property is exempt from estate recovery, • The relationship between a life-time lien and estate recovery and provisions for deferral or waiver of estate recovery. <p>The notice is required to be clear and in non-technical language with citations to any applicable laws. It must explain to the member how they may obtain an accounting of the current amount of MassHealth spending that may be subject to recovery, and it must be provided to members at least annually.</p>	Potential administrative costs
3	c. 118E, §34 (b)	<p>MassHealth must also give an additional notice to individuals who are required to or given the option to enroll in any:</p> <ul style="list-style-type: none"> • Medicaid managed care organization, • Accountable care organization, • Senior care options plan, • Integrated care organization, • Prepaid health plan or any other delivery system in which Medicaid spending is via a fixed monthly premium or other form of capitated amount that may be subject to estate recovery. <p>These additional notices will be prior to enrollment in managed care and will explain how the amount of MassHealth spending subject to estate recovery is determined when MassHealth spending is a fixed monthly payment or capitated amount, and how the individual may obtain the amount of payments or capitated amount subject to estate recovery.</p>	Potential administration costs