



Bill Order	Bill Section	MGL Chapter	MGL Section	Subsection	2024 Senate Bill Section Summary	State Fiscal Impact?	vs. last version
1	1	118E	31	(a)	<p>This subsection makes technical adjustments to existing state law describing the circumstances in which estate recovery is allowed for individuals dying prior to April 1, 1995. Medical assistance recoveries can be made from the estates of:</p> <ul style="list-style-type: none"> Individuals, regardless of age, who resided in an inpatient nursing facility or medical institution at the time the medical assistance was received; but recovery is limited to assistance provided on or after March 22, 1991. Individuals who were 65 or over when they received assistance. Recoveries can only be made after the death of a surviving spouse, and if the individual has no surviving children who are under the 21, blind, or permanently disabled. MassHealth may waive the recovery if it will result in undue hardship. 	No	Same
2	1	118E	31	(b)	<p>This subsection outlines the circumstances in which estate recovery is allowed for individuals dying on or after April 1, 1995 and for whom probate proceedings have begun. Medical assistance recoveries can be made from the estates of:</p> <ul style="list-style-type: none"> Individuals, regardless of age, who resided in an inpatient nursing facility or medical institution at the time of assistance, but recovery is limited to assistance provided on or after March 22, 1991. Individuals 65 years of age or older when they received assistance. Individuals 55 years of age or older for services provided on or after October 1, 1993. Any recovery under this subsection can only be made after the death of the surviving spouse, and if the individual has no surviving children who are under 21, blind, or permanently disabled. MassHealth can waive the recovery if it will result in undue hardship. 	No	Updated
3	1	118E	31	(c) new	<p>This new subsection also applies to individuals who died on or after April 1, 1995, and for whom a petition for probate has been filed. Medical assistance recoveries can be made from the estates of:</p> <ul style="list-style-type: none"> Individuals, regardless of age, who resided in an inpatient nursing facility or medical institution when the individual received assistance; but recovery is limited to assistance provided on or after March 22, 1991. Individuals who were 55 years of age or older when they received assistance for Medicaid services provided on or after October 1, 1993; but recovery is limited to nursing facility services, home and community-based services and related hospital and prescription drug services. <p>Any recoveries under this subsection can only be made after the death of the surviving spouse and if the individual has no surviving children who are under 21, blind, or permanently disabled. New language dictates that MassHealth cannot recover capitated payments to Managed Care Organizations (MCOs) that exceed the actual cost of medical services received by the individual.</p> <p>This subsection also states that MassHealth must waive estate recovery if:</p> <ul style="list-style-type: none"> It is not cost effective for the state, for example when the total gross assets of the probate estate are \$25,000 or less. The recovery would create an undue hardship. <p>MassHealth is directed to promulgate regulations defining “undue hardship,” which may include the following circumstances:</p>	Yes, lost revenue to the state	New

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3	1	118E	31	(c) new	<ul style="list-style-type: none"> ○ Paying the claim would require the sale of property currently occupied by a surviving spouse, child under age 21, child of any age who is blind or disabled, surviving sibling with a legal interest in the property, or a child to whom the member who passed away could have transferred the home during their lifetime without penalty. ○ Paying the claim would require the sale of property occupied by an individual who has lived in it for at least 1 year prior to the death of the decedent. If the decedent died while in a nursing facility, the individual must have lived in the home for at least 1 year before the decedent’s nursing facility admission, received a legal or understood interest in the property, and had an income of 400% of the Federal Poverty Level (FPL) or less at the time of the decedent’s death. ○ Paying the recovery would require the sale of a property that is occupied by an individual who has lived there for at least 2 consecutive years prior to the decedent becoming institutionalized or dying, and during that time the individual provided care that kept the member from being admitted to a nursing home, they inherited a legal or understood interest in the property, and they are not being forced to sell by other heirs. ○ The gross income of an heir was 400% of the FPL or less during the 2 years prior to MassHealth’s recovery claim, in which case MassHealth will waive the recovery in an amount equal to value of the heir’s interest in the estate up to \$50,000 for an individual and \$100,000 for multiple qualifying individuals. ○ The sale of a homestead of modest value, as defined by MassHealth, would be needed to pay the claim. <p>Any other compelling circumstances that recovery would create a financial hardship on one or more heirs whose income is 400% of the FPL or less.</p>	Yes, lost revenue to the state	New
4	1	118E	31	(d)	The subsection defines “estate” to mean all real and personal property, and other assets included in the decedent’s probate estate. New language is added to existing state law excluding certain property of “American Indians” from MassHealth estate recoveries.	No	Updated
5	1	118E	31	(e)	There will be no recovery made from the estate of an individual who received medical assistance under the CommonHealth program for disabled adults, or for payment of personal care attendant services.	Yes, lost revenue to the state	Updated
6	1	118E	31	(f)	For the purposes of section 31, medical assistance does not include medical assistance for Medicare cost-sharing or for benefits that are exempt from Medicaid estate recovery under federal law.	Yes, lost revenue to the state	
4	1	118E	31	(g)	<p>This subject permits MassHealth to recover all assistance correctly provided on or after April 1, 1995, during an individual’s lifetime, if the property that MassHealth has a lien on under section 34 of the MGL is sold.</p> <p>Repayment of a recovery claim will not be required under this subsection while any of the following relatives lawfully reside in the property:</p> <ol style="list-style-type: none"> 1. A sibling who has been residing in the property for at least 1 year immediately prior to the individual being admitted to a nursing facility or other medical institution, or 2. A child who: <ol style="list-style-type: none"> a. Had been residing in the property for at least 2 years immediately prior to the parent being admitted to a nursing facility or other medical facility, 	No	Updated

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					b. Establishes to the satisfaction of MassHealth that the child provided care which permitted the parent to reside at home during that 2 year period rather than in an institution, and		
4	1	118E	31	(g)	<p>c. Has lawfully resided in the property on a continuous basis while the parent has been in the medical institution.</p> <p>If repayment is not yet required because one of the relatives listed above still lawfully resides in the property, and that individual wishes to sell the property, the purchaser shall take possession subject to the lien (the required recovery to MassHealth must still be fulfilled) or MassHealth will remove the recovery if the individual agrees to:</p> <ol style="list-style-type: none"> 1. Pay the recovery, or borrow money to repay the recovery or 2. Repay MassHealth as soon as the specified relative no longer resides in the property. <p>MassHealth and the parties involved in the sale may choose to enter an alternative resolution of MassHealth's lien and this subsection will not limit MassHealth's ability to recover from the individual's estate. MassHealth will remove its claim on the estate within 60 days of receiving notice of a change in circumstances resulting in repayments no longer being required.</p>	No	Updated
5	2	118E	32	(a)	<p>Regardless of any laws to the contrary, a petition to admit a decedent's will to probate or for administration of a decedent's estate shall include a sworn statement that copies of the petition for probate and death certificate have been sent to MassHealth via certified mail. Within 30 days of a request by MassHealth, a personal representative must complete and send MassHealth any forms or further information required by MassHealth.</p> <p>If a petitioner fails to send copies of the probate petition and death certificate to MassHealth and the decedent received medical assistance that can be recovered, any person receiving assets from the decedent's estate will be liable to MassHealth.</p>	No	Same
6	2	118E	32	(b)	<p>MassHealth may present a claim against a decedent's estate under the following two circumstances: (1) within 4 months after the approval of the estate's representative, MassHealth may file a written statement of the amount claimed with the registry of probate where the probate petition was filed and deliver or mail a copy to the personal representative; or (2) within 1 year after the death of the decedent.</p>	No	Same

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7	2	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 bill.</p>	No	Updated
8	2	118E	32	(d)	<p>If MassHealth presents a claim against the decedent’s estate, the personal representative shall send a copy of the written statement via certified mail to individuals who may be entitled to deferral or waiver of estate recovery and shall give MassHealth notice of any circumstances for deferral or waiver of recovery that may exist.</p> <p>The personal representative will have 60 days from the date of presentment, or 30 days from the date the agency responds to a request for detailed accounting (whichever happens last), to mail notice to MassHealth by certified mail of one or more of the following findings:</p> <ol style="list-style-type: none"> 1. The claim is either in whole or part disallowed, 2. Circumstances exist that require MassHealth to defer recovery exist 3. Circumstances exist that request MassHealth to waive recovery due to undue hardship. <p>If clause (2) or (3) exist, the representative must state the specific circumstances, and MassHealth shall notify the representative of what supporting documentation that it requires. MassHealth must send a written notice to the representative establishing whether or not the circumstances exist, and if MassHealth denies that the circumstances exist, its notice will explain the reasons for denial and present the opportunity for an administrative hearing before the MassHealth Board of Hearings or a hearing in an action if no administrative hearing is requested.</p> <p>Any party in disagreement with a decision made by the MassHealth Board of Hearings may seek a new review. Any failure to mail a notice under clauses (1), (2), or (3) within the allotted time will be deemed an allowance of the claim to move forward.</p>	No	Updated
9	2	118E	32	(e)	<p>If MassHealth amends the amount due at any point during the time period allowed for presenting a claim, the personal representative will have an additional 60 days to mail notice to MassHealth.</p>	No	Same
10	2	118E	32	(f)	<p>If MassHealth receives a disallowance for the claim, they can enforce their claim in court within 60 days of receiving the disallowance notice.</p>	No	Updated

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					<p>If MassHealth receives a notice that a claim may either be deferred or waived that they disagree with, MassHealth can begin an action in court within 60 days after receiving the notice, or within 30 days of a final decision of the MassHealth Board of Hearings that they disagree with, whichever happens later.</p> <p>If MassHealth begins an action to enforce its claim, all costs and fees incurred by the personal representative in defense of the claim will be recognized as costs incurred in the administration of the estate and those expenses will be given priority to be paid. If MassHealth fails to start an action after receiving a notice that a claim shall be deferred, MassHealth shall defer recovery while the circumstances in the notice continue to exist. If MassHealth fails to start an action after receiving a notice that a claim shall be waived, MassHealth will waive recovery for undue hardship.</p>		
11	2	118E	32	(g)	Unless otherwise stated in any judgment, claims allowed under this section shall be subject to interest, which shall be calculated in accordance with a rate determined by the Secretary of Administration and Finance under MGL. Interest shall be applied to the claim beginning 4 months plus 60 days after approval of the estate's personal representative.	No	Updated
11	2	118E	32	(g)	<p>If MassHealth fails to take action after receipt of a notice that a recovery claim shall be deferred, interest shall not be applied to the claim until the circumstances described in the notice cease to exist. The personal representative of the estate shall notify MassHealth within 30 days of any changes in circumstance.</p> <p>If MassHealth's claim has been allowed and no circumstances exist to require recovery deferral, it may petition the probate court for an order directing the personal representative to pay the claim to the extent that funds are available.</p>	No	Updated
12	2	118E	32	(h)	MassHealth shall be notified of any petition to sell real estate in any estate where: (1) MassHealth has filed a claim with the registry of probate; or (2) MassHealth has filed with the registry of probate a notice that an action has been commenced.	No	Same
13	2	118E	32	(i)	<p>In all cases where:</p> <ol style="list-style-type: none"> 1. MassHealth determines it may have a claim against a decedent's estate; 2. A petition for administration of the decedent's estate or for admission to probate of the decedent's will has not been filed; and 3. More than a year has passed from the decedent's date of death, MassHealth is authorized to designate a public administrator for the estate. The designation by MassHealth should include a statement of the amount being claimed. This provision shall apply to all estates where no petition for administration of the decedent's estate or of admission to probate of the decedent's will has been filed, regardless of the decedent's date of death. The public administrator has the same rights and duties as the personal representative and the same 60 day opportunity to send notice to MassHealth that: <ol style="list-style-type: none"> a. That the claim is disallowed in whole or part; b. Circumstances exist that require MassHealth to defer recovery under section 31; or c. Circumstances exist that require MassHealth to waive recovery for undue hardship. 	No	Updated

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14	2	118E	32	(j)	If the personal representative wants to sell or transfer any property that MassHealth has a lien on or a claim to that is not yet enforceable because of existing circumstances specified in section 31, MassHealth may release the lien or claim if the personal representative agrees to (1) either pay or borrow the money needed to satisfy the claim and (2) repay MassHealth as soon as the circumstance making the claim not enforceable no longer exist. Despite any previous provision or laws to the contrary, MassHealth and parties to the sale may come to an agreement an alternative resolution to MassHealth’s claim. This is the same language as in Section 31.	No	Same
15	3	118E	34A new	(a)	MassHealth must give notice of the conditions under which they may seek estate recovery, including: <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. 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.	No	Same
16	3	118E	34A new	(b)	MassHealth must also give an additional notice to individuals who are required to or given the option to enroll in any: <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. 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.	No	Same
17	4	-	-	-	The Executive Office of Health and Human Services may be required to file a state plan amendment or waiver application with CMS to implement the provisions in the bill.	No	Same