

MassHealth Estate Recovery Reform Talking Points for Written Testimony

[H.1246](#) An Act protecting the homes of seniors and disabled people on MassHealth [Christine P. Barber](#)

[S.749](#) An Act protecting the homes of seniors and disabled people on MassHealth [Joanne M. Comerford](#)

WRITTEN TESTIMONY: Written testimony may be submitted to the Joint Committee on Health Care Financing via E-mail to the House and Senate Chairs at John.Lawn@mahouse.gov and Cindy.Friedman@masenate.gov as well as the Committee Director at timothy.oneill@mahouse.gov.

What the bill does & why it's needed:

- 1. The bill will change Massachusetts Medicaid estate recovery from recovering the maximum amount allowed under federal law to the minimum amount required by federal law.**

- Federal maximum: All Medicaid spending for individuals age 55 or older
- Federal minimum: Medicaid spending for costs of nursing homes, home & community-based services & related costs for individuals age 55 or older

Why make this change?

- **Most families have no idea that in Massachusetts, after age 55 MassHealth is a loan and estate recovery is a possibility for people who were never nursing home residents**
- Low-income families who do learn of MassHealth estate recovery—even those with no estates to lose—are becoming afraid to enroll.
- Most of the money MassHealth collects in estate recovery comes from sale of the family home. The families harmed are those who never needed estate planning to qualify for MassHealth because their only asset of value was their home. Medicaid like SSI, SNAP and other federal benefit programs never counts the home in which you live as an asset when deciding if you qualify for benefits. But Medicaid alone recoups benefits through estate recovery from sale of the family home.
- Estate recovery is unfair. Massachusetts requires all adults to be insured and helps with costs for people up to 300% of the poverty level in ConnectorCare. But Estate Recovery singles out people with income under 100% of the poverty level to repay subsidized health coverage.
- **Estate recovery perpetuates intergenerational poverty and wealth inequality.**

- At least 50% of the amount recovered returns to federal government and for those age 55-64 in CarePlus 90% of the amount recovered returns to federal government.
- Of the 38 states that expanded coverage after the ACA, Massachusetts is among only 20 that pursue all optional spending for people age 55 or over.

2. The bill will make the process of applying for a hardship waiver fairer and more protective of the family home.

- **Fairer and more protective standards.** Federal law requires that states waive estate recovery in cases of undue hardship to the family (the heirs). It leaves the definition of hardship to the states but gives examples of situations warranting a waiver including when recovery requires selling a home of “modest value” (defined as a house worth less than 50% of the average cost of homes in the county). The current state statute leaves the definition of hardship to the MassHealth agency, and until May 2021, MassHealth had one of the most restrictive hardship standards in the US. The MassHealth agency’s May 2021 rule changes were a significant improvement in the hardship standard. However, the MassHealth agency standards still do not protect homes of modest value, and still use the 133% FPL income standard for one of the two waivers available to protect the family home. The bill expands the hardship standard in keeping with federal guidance.
- **A fairer process.** Current state law creates short time frames for hardship requests to be submitted, doesn’t require that the agency provide a detailed reason for denying a request, and does not allow for denials to be appealed to an administrative hearing. Disputes all go to court. **The bill allows more time to gather information to make the request, requires an explanation of a denial, and allows the personal representative the option of an administrative appeal to try to resolve disputes sooner and with less expense than first going to court.**

3. The bill will provide better notice and a fairer process to recover for managed care premiums

- For MassHealth members age 55 or older who were enrolled in managed care, MassHealth seeks to recover the full amount of the monthly managed care premium. A person buying insurance would know the cost before he or she buys, and private insurance companies aren’t allowed to charge a higher rate based on a person’s health status. But when MassHealth members are choosing whether or not to enroll in managed care, MassHealth doesn’t notify them about the amount of the premium it pays every month regardless of how few services they use or that MassHealth is paying a higher premium based on their health status and their

estates may have to repay these premiums even if the individual didn't use any health services at all. The bill requires notice at the time of managed care enrollment and limits recovery to the amount of services used up to the monthly premium.

4. **The bill will waive estate recovery in MassHealth's unique work incentive program for people with disabilities.** CommonHealth is a MassHealth program that enables people with disabilities who need supports not typically offered by private insurance to work to qualify for MassHealth at higher income levels and to build assets in return for member paid premiums charged on a sliding scale basis. The bill provides that this unique work incentive program for people with disabilities should be exempt from estate recovery.