



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Division of Medical Assistance**  
600 Washington Street  
Boston, MA 02111

MassHealth  
Eligibility Letter 110  
October 15, 2003

**TO:** Division Staff  
**FROM:** Beth Waldman, Acting Commissioner *Beth Waldman*  
**RE:** **Appeal Rights for Members**

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This eligibility letter transmits revisions to the Division's General Policies and Fair Hearing Rules. These revisions allow members to appeal the Division's decision to recover payment for medical benefits to which the member was not entitled at the time the benefit was received.

These regulation changes are effective on October 15, 2003.

**MANUAL UPKEEP**

<b><u>Insert</u></b>	<b><u>Remove</u></b>	<b><u>Trans. By</u></b>
501.010	501.010	E.L. 105
515.009	515.009	E.L. 95
610.001	610.001	E.L. 95
610.011	610.011	E.L. 64
610.031	610.031	E.L. 95
610.033	610.033	E.L. 102

Trans. by E.L. 110

MASSHEALTH  
GENERAL POLICIES

Chapter 501  
Page 501.010

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Rev. 10/15/03

501.010: Responsibilities of Applicants and Members

(A) Responsibility to Cooperate. The applicant or member must cooperate with the Division in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining available health insurance.

(B) Responsibility to Report Changes. The applicant or member must report to the Division, within 10 days or as soon as possible, changes that may affect eligibility. Such changes include, but are not limited to, income, the availability of health insurance, and third-party liability.

(C) Cooperation with Quality Control. The Quality Control Division will periodically conduct an independent review of eligibility factors in a sampling of case files. When a case file is selected for review, the member must cooperate with the representative of Quality Control. Cooperation includes, but is not limited to, a personal interview and the furnishing of requested information. If the member does not cooperate, MassHealth benefits may be terminated for the family group.

501.011: Referrals to Investigative Units

Intentional false statements or fraudulent acts made in connection with obtaining medical benefits or payments under MassHealth are punishable under Massachusetts General Laws (M.G.L.) c. 118E § 39 by fines, imprisonment, or both. In all cases of suspected fraud, Division staff will make a referral to the Bureau of Special Investigations, or other appropriate agencies.

501.012: Recovery of Overpayment of Benefits

The Division has the right to recover payment for benefits to which the member was not entitled at the time the benefit was received, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 501.012 will limit the Division's right to recover overpayments.

501.013: Estate Recovery

(A) Introduction.

(1) The Division will recover the amount of payment for medical benefits correctly paid from the estate of a deceased member. Recovery is limited to payment for all services provided while the member was aged 55 or older.

(2) The estate includes all real and personal property and other assets in the member's probate estate.

(B) Deferral of Estate Recovery. Recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is under 21 years of age, or a child of any age who is blind or permanently and totally disabled.

Trans. By E.L. 110

**MASSHEALTH  
GENERAL POLICIES**

**Chapter 515  
Page 515.009**

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515.009: Referrals to Investigative Units

Intentional false statements or fraudulent acts made in connection with obtaining medical benefits or payments under MassHealth are punishable under M.G.L. c. 118E § 39 by fines, imprisonment, or both. In all cases of suspected fraud, Division staff will make a referral to the Bureau of Special Investigations, or other appropriate agencies.

515.010: Recovery of Overpayment of Benefits

The Division has the right to recover payment of benefits to which the member was not entitled at the time the benefit was received, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 515.011 will limit the Division's right to recover overpayments.

Trans. by E.L. 110

**MASSHEALTH  
FAIR HEARING RULES**

**Chapter 610  
Page 610.001**

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Rev. 10/15/03

610.001: Purpose

The purpose of 130 CMR 610.000 is to set forth procedures that govern the conduct of adjudicatory proceedings whereby dissatisfied applicants, members, and employers seek administrative review of certain actions or inactions on the part of the Division of Medical Assistance. 130 CMR 610.000 also contains provisions under which nursing facility residents may seek review of discharges and transfers by a nursing facility.

610.002: Authority

The authority for the regulations set forth in 130 CMR 610.000 is 42 CFR 431.200 et seq., M.G.L. c. 30A, c. 118E, §§ 12, 20, 47, and 48, and 801 CMR 1.03(7). Pursuant to M.G.L. c. 118E, § 48, the Board of Hearings has exclusive jurisdiction to hear appeals relating to the programs administered by the Division of Medical Assistance.

610.003: Scope

130 CMR 610.000 sets forth the exclusive procedures governing adjudicatory proceedings initiated by applicants, members (or their appeal representatives), and employers under programs administered by the Division. Appeals pursuant to the Executive Office of Elder Affairs Supplementary Rules to the Adjudicatory Rules of Practice and Procedures, 651 CMR 1.00 et seq., are governed by the procedures set forth in 130 CMR 610.000. Appeals by residents of a nursing facility who are to be discharged or transferred at the initiation of the nursing facility are governed by 130 CMR 610.000. Adjudicatory proceedings initiated by medical assistance providers are governed by 130 CMR 450.241 through 450.248 or, with regard to appeals of erroneously denied claims, by 130 CMR 450.323.

610.004: Definitions

For purposes of 130 CMR 610.000, the following terms have the meanings given below unless the context clearly indicates otherwise.

Adequate Notice – a notice concerning an intended appealable action that conforms to the requirements of 130 CMR 610.026.

Appealable Action – certain actions by the Division to deny, reduce, suspend, terminate, recover, or restrict assistance to:

- (1) an individual receiving or seeking assistance from the Division; or
- (2) an employer receiving or seeking payments through the Insurance Partnership.

No action by a provider will constitute an appealable action, except as otherwise provided herein with regard to a transfer or discharge by a nursing facility.

Trans. by E.L. 110

**MASSHEALTH  
FAIR HEARING RULES**

**Chapter 610  
Page 610.011**

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Rev. 10/15/03

610.011: The Board of Hearings

The Board of Hearings (BOH) is responsible for administering the fair hearing process in accordance with 130 CMR 610.000, holding hearings, and rendering decisions. At the Division's discretion, BOH also will conduct adjudicatory proceedings governing providers pursuant to 130 CMR 450.241 through 450.248, and 130 CMR 450.323. BOH is administered by a Director who is appointed by the Commissioner, and who is responsible for ensuring that the fair hearing process and decisions comply with the requirements of 130 CMR 610.000.

610.012: General Description of the Fair Hearing Process

(A) The fair hearing process is an administrative, adjudicatory proceeding whereby dissatisfied applicants, members, residents, and employers can, upon written request, obtain an administrative determination of the appropriateness of:

- (1) certain actions or inactions on the part of the Division;
- (2) actions to recover payment for benefits to which the member was not entitled at the time the benefit was received;
- (3) alleged coercive or otherwise improper conduct by a Division employee;
- (4) the denial or termination of an employer from the Insurance Partnership;
- (5) the amount of an Insurance Partnership payment; or
- (6) a decision by a nursing facility to discharge or transfer a resident.

(B) The process is designed to secure and protect the interests of both the appellant and appropriate Division personnel and to ensure equitable treatment for all involved.

(C) A hearing is conducted by an impartial hearing officer of BOH.

- (1) The decision of the hearing officer is based only on those matters that are presented at the hearing.
- (2) The hearing officer examines the facts, the applicable law, the Division's rules, regulations, and Policy Memoranda, and the other circumstances of the case presented by the parties to determine the legality and appropriateness of the Division's or Division employee's action.
- (3) The hearing officer is impartial in that he or she:
  - (a) attempts to secure equitable treatment for all parties;
  - (b) must have no prior involvement in any matter over which he or she conducts a hearing, except in a capacity as a hearing officer; and
  - (c) must have no direct or indirect financial interest, personal involvement, or bias pertaining to such matter.

610.031: Notification of the Right to Request a Hearing

- (A) Upon being notified of any appealable action, the applicant or member will be informed in writing of his or her right to a hearing, of the method by which a hearing may be requested, and of the right to use an appeal representative (see 130 CMR 610.016).
- (B) If an applicant or member indicates disagreement with an appealable action, the Division will provide the applicant or member with an appeal form and, if requested, help complete the form. The Division may not restrict the applicant's or member's freedom to request a fair hearing.
- (C) If there is an individual or organization that provides free legal representation, the person requesting a hearing will be informed of the availability of that service.
- (D) At the time that a nursing facility notifies a resident that he or she is to be discharged or transferred, the nursing facility must inform the resident that he or she has the right to request a hearing before the Division.
- (E) At the time the Division or its agent notifies an employer in writing that it is being denied or terminated from the Insurance Partnership, or there has been a written reconciliation about the amount of the Insurance Partnership payment, the employer will be informed of its right to a hearing before the Division.

610.032: Grounds for Appeal

- (A) Applicants and members have a right to request a fair hearing for any of the following reasons:
- (1) denial of an application or request for assistance, or the right to apply or reapply for such assistance;
  - (2) the failure of the Division to give timely notice of action on an application for assistance in accordance with the requirements of M.G.L. c. 118E, § 21;
  - (3) any Division action to suspend, reduce, terminate, or restrict a member's assistance;
  - (4) Division actions to recover payments for benefits to which the member was not entitled at the time the benefit was received;
  - (5) individual Division determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations);
  - (6) coercive or otherwise improper conduct as defined in 130 CMR 610.033 on the part of any Division employee directly involved in the applicant's or member's case;
  - (7) any condition of eligibility imposed by the Division for assistance or receipt of assistance that is not authorized by federal or state law or regulations;

- (8) the failure of the Division to act upon a request for assistance within the time limits required by Division regulations;
- (9) the Division's determination that the member is subject to the provisions of 130 CMR 508.000;
- (10) the Division's denial of an out-of-area provider under 130 CMR 508.002(F);
- (11) the Division's disenrollment of a member from a managed-care provider under 130 CMR 508.002(G);
- (12) a determination by the Division's behavioral health contractor, under 130 CMR 508.003(A), or by one of the Division's managed-care organization (MCO) contractors, under 130 CMR 508.001(B)(2)(b), to deny, reduce, modify, or terminate a covered service, if the member has exhausted all remedies available through the contractor's internal appeals process; and
- (13) the Division's determination to enroll a member in the Controlled Substance Management Program under the provisions of 130 CMR 406.442.

(B) Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge.

(C) Determinations of temporary eligibility for presumptive coverage or prenatal coverage are not appealable. See 130 CMR 502.008(C).

(D) Employers have the right to request an appeal of any denial or termination from the Insurance Partnership, or to appeal the amount of the Insurance Partnership payment they receive.

610.033: Coercive or Otherwise Improper Conduct

(A) Definitions.

- (1) Coercive conduct means knowingly compelling an applicant, member, or former member by force, threat, intimidation, or other abuse of position to take action that is injurious to his or her best interest and that he or she would not otherwise have done.
- (2) Improper conduct means reckless and unreasonable abuse of authority that interferes with the applicant's, member's, or former member's exercise of rights under MassHealth.

(B) Remedies. When a hearing officer has found coercive or otherwise improper conduct on the part of any Division employee directly involved in the applicant's, member's, or former member's case at a fair hearing, the enrollment center director will:

- (1) assign a different worker; and
- (2) initiate appropriate personnel action including the insertion of a written reprimand and a copy of the written findings, if any, in the worker's personnel file.