

DEPARTMENT OF COMMUNITY HEALTH AND HUMAN SERVICES

~~MENTAL BEHAVIORAL HEALTH AND SUBSTANCE ABUSE
DEVELOPMENTAL DISABILITY ADMINISTRATION SERVICES~~

FINANCIAL LIABILITY FOR MENTAL HEALTH SERVICES

Filed with the secretary of state on

These rules ~~take effect~~ **become effective** 7 days ~~upon~~ **after** filing with the secretary of state. ~~Unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.~~

(By authority conferred on the department of ~~mental health and human services~~ by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of Act No. 258 of the Public Acts of 1974, as amended, being sections 19.141 to 19.144, 24.233, 330.1114, 330.1130, 330.1136, 330.1206, 330.1244, 330.1498n, 330.1498r, 330.1842, 330.1844, 330.1908, and 330.2002a of the Michigan Compiled **114, 818, and 842 of the mental health code, 1974 PA 258, MCL 330.1114, 330.1818, and 330.1842**)

R 330.8005, R 330.8239, R 330.8240, R 330.8242, and R 330.8279 of the Michigan Administrative Code are amended, as follows:

PART 8. FINANCIAL LIABILITY FOR ~~MENTAL~~BEHAVIORAL HEALTH SERVICES

SUBPART 1. DEPARTMENT OF ~~MENTAL~~HEALTH AND HUMAN SERVICES

R 330.8005 Definitions.

Rule 8005. As used in this part:

(a) "Assets" means real and personal property that is owned, in whole or in part, by the responsible party and that has cash value or equity value. ~~but does not include any of the following:~~

~~(i) A homestead and accumulated funds separately held to pay homestead taxes, assessments, and insurance.~~

~~(ii) The cash value of life insurance for the responsible party, his or her spouse, and immediate family members as allowed for eligibility under the medical assistance program or its successor.~~

~~(iii) A prepaid funeral contract or agreement that is allowed for eligibility under the medical assistance program or its successor and that has been certified by the department~~

~~or the medical assistance program or its successor as irrevocable or an out-of-state irrevocable contract that is allowed for eligibility under the medical assistance program or its successor.~~

~~(iv) Burial space, including any accumulated interest, as defined and allowed for eligibility under the medical assistance program or its successor.~~

~~(v) Burial funds, not including added interest or dividends, or both, as defined and allowed for eligibility under the medical assistance program or its successor.~~

~~(vi) Household goods customarily found in the home and intended for the maintenance, use, or occupancy of the home.~~

~~(vii) Personal goods that are incidental items for personal use.~~

~~(viii) Other personal property that is essential for health maintenance and mobility, such as a wheelchair or walker; continued enrollment in an educational or training program; employment, such as a mechanic's tools; or business, such as a business vehicle.~~

~~(ix) Pension, self-directed pension, deferred compensation, annuity, or similar funds that cannot be withdrawn or used as collateral for a loan.~~

~~(b) "Dependent" means a person who is allowed as an exemption under section 30 of Act No. 281 of the Public Acts of **the income tax act of 1967, 1967 PA 281**, as amended, being MCL §206.30. of the Michigan Compiled Laws.~~

~~(c) "Department" means the department of health and human services.~~

(d) "Excess medical expenses" means medical and dental expenses that exceed the threshold dictated by the Internal Revenue Service code, 26 USC 213, that would be allowed to be deducted on itemized tax returns, less expenses for medical health services for the individual paid to the department or community mental health services programs.

~~(e) "Expenses" means the reasonable unreimbursed expenditures of money, actual and estimated, during a financial year to maintain a standard of living essential for one's self and his or her dependents. All the following are considered necessities:~~

~~(i) Food, clothing, and personal necessities.~~

~~(ii) Shelter, including utilities and repairs for the upkeep of a homestead.~~

~~(iii) Employment or business expenses.~~

~~(iv) Medical services.~~

~~(v) Taxes.~~

~~(vi) Elementary, secondary, and postsecondary education.~~

~~(vii) Repayment of personal financial obligations contractually established before an application was made for services, including such outstanding debts as lease payments, credit card obligations, and other educational or training expenses.~~

~~(viii) Payments made under a divorce decree or court order.~~

~~(ix) Transportation to maintain employment and necessary family activities.~~

~~(d) "Homestead" means a current owned or rented dwelling for which a property tax credit is allowed under section 211.7a(c) of Act No. 206 of the Public Acts of 1893, as amended, being §211.7a(c) of the Michigan Compiled Laws.~~

~~(e) "Income" means earned and unearned funds.~~

(e) "Family of 1" means the individual who has no dependent.

(f) "Family of 2" means the individual and their spouse.

(g) “Family size” means a family unit consisting of the individual, spouse, and dependents, as defined in these rules.

(h) “Individual” means the individual, minor or adult, that receives services from the department or a community mental health services program or from a provider under contract with the department or a community mental health services program.

(i) “Liquid asset” means an asset that can be easily converted to cash. Examples of liquid assets include, but are not limited to, the following:

- (i) Checking and savings accounts.**
- (ii) Cash.**
- (iii) Certificates of deposit.**
- (iv) Treasury bills.**
- (v) Money market investments.**
- (vi) Bonds.**
- (vii) Marketable securities, including stocks and bonds.**
- (viii) Pensions.**
- (ix) Deferred compensation.**
- (x) Annuities.**
- (xi) Other funds that can be withdrawn or used as collateral for a loan.**

(j) “Poverty guidelines” means the version of the poverty threshold as issued annually by the United States Department of Human Services.

(fk) "Protected assets" means the portion of assets, as specified in these rules, that ~~shall~~ **must not be considered when the total financial circumstance is used to determine financial liability.**

(gl) "Protected income" means the portion of income, as specified in these rules, that ~~shall~~ **must not be considered when the total financial circumstance is used to determine financial liability.**

(m) “Qualifying income” means income from whatever source derived, regardless of whether the source is reported on federal or state returns. Qualifying income includes, but is not limited to, the following:

- (i) Earned and unearned income.**
- (ii) Government benefits.**
- (iii) Other entitlements.**

(n) “Responsible party” means a person who is financially liable for services furnished to an individual, including the individual, and, as applicable, the individual’s spouse and parent or parents of a minor.

(ho) "Spouse" means the legal marriage partner of the individual.

(ip) "Undue financial burden" means a determination of ability-to-pay that would materially decrease the standard of living of a responsible party or his or her dependents by decreasing the responsible party’s capacity to pay for expenses as defined in these rules: **unduly impact the health and well-being of the individual or dependents to their access the basic necessities of life, including food, housing, clothing, and health services.**

R 330.8239 Determination of ability-to-pay **for non-residential services; parents of an individual; member or non-member of the household.** ~~from ability-to-pay schedule.~~

Rule 8239. (1) ~~An adult~~ A responsible party's ability-to-pay for ~~adult inpatient psychiatric services of less than 61 days and crisis residential services of less than 61 days, adult nonresidential services, and all services to minors shall~~ **must** be the amount established by this rule's **non-residential ability-to-pay schedule table** based upon the responsible party's ~~state-taxable~~ **qualifying income and the most current federal poverty guidelines.** The responsible party's ability-to-pay ~~shall~~ **must** be established on a per-session, monthly, or annual basis, and the basis selected and methodology used ~~shall~~ **must** be identified and described in the department's and community mental health services program's written policies, ~~except as follows:~~

(a) ~~The ability to pay for adult inpatient psychiatric services of less than 61 days and adult residential crisis services of less than 61 days shall be determined on a monthly basis.~~

(2) **The ability-to-pay for a parent of an individual must be determined, as follows:**

(a) **If the parents of an individual, or the individual and spouse, are members of the same household, the department or community mental health services program shall use the combined qualifying income to determine the ability-to-pay.**

(b) **If the parents or the individual and spouse are not members of the same household, the ability-to-pay of each parent or of the individual and their spouse is determined separately.**

(c) **A parent shall not be determined to have an ability-to-pay for more than 1 individual at any 1 time, and a parent's total liability for 2 or more individuals shall not exceed 18 years.**

(d) **If either parent or either spouse has been made solely responsible for an individual's medical and hospital expenses by a court order, the other parent or spouse is determined to have no ability-to-pay.**

(e) **The ability-to-pay of the parent or spouse made solely responsible by court order must be determined in accordance with this section. The ability-to-pay of a parent made solely responsible by court order must be reduced by the amount of child support the parent pays for the individual.**

(f) **If an individual receives services for more than 1 year, the department or community mental health services program must annually redetermine the adult responsible parties' ability-to-pay.**

~~(b3) An ability-to-pay may be determined on a per-session basis for nonresidential services other than respite care services. During a calendar month, the per-session ability-to-pay shall must not be more than the monthly ability-to-pay amount determined from the non-residential ability-to-pay process and table schedule specified as follows: in this rule. The per-session ability to pay is applicable to each session of service provided to all persons for whom the responsible party has an obligation to pay under the act, but shall not be, in aggregate, more than the monthly ability to pay amount.~~

(a) **Determine the percent of poverty specified as the current federal minimum mandatory income level to qualify for medical assistance program or its successor, as specified in the Patient Protection and Affordable Care Act of 2010, PL 111-148, or its successor.**

(b) **Multiply 100% of federal poverty guideline income for family size by the**

percentage determined in subdivision (a) of this subrule. The result is the income level at which the responsible party will have zero ability-to-pay from this table a

(c) Determine qualifying income as specified in R 330.8005.

(d) Divide qualifying income by income calculated in subdivision (b) of this subrule and convert to a percentage.

(e) Match the percentage determined in subdivision (d) of this subrule to subrule (4) of the table in this rule to determine the percent of income to charge as the ability-to-pay.

(f) Multiply the percent determined in subdivision (e) of this subrule by the qualifying income determined in subdivision(c) of this subrule. The result is the annual ability-to-pay.

(4) The following income and ability-to-pay crosswalk table must be used in the determination of the percent income for subdivision (e) of this subrule.

Qualifying income as percent of applicable poverty guidelines charged as ability-to-pay	Percentage of Income
100%	0%
101 - 125%	3%
126 - 150%	4%
151 - 175%	5%
176 - 200%	6%
201 - 225%	7%
226 - 250%	8%
251 - 275%	9%
276 - 300%	10%
301 - 325%	11%
326 - 350%	12%
351 - 375%	13%
376 - 400%	14%
401 +	15%

The per-session ability-to-pay is applicable to each session of service provided to all ~~persons~~ **individuals** for whom the responsible party has an obligation to pay under **section 804 of the mental health code, MCL 330.1804** ~~act~~, but ~~shall~~ **may** not be, in aggregate, more than the monthly ability-to-pay amount.

(25) A responsible party who has been determined under the medical assistance program or its successor to be Medicaid eligible ~~shall be~~ **is deemed determined** to have a \$0.00 ability-to-pay **for all mental health services other than inpatient. The ability-to-pay for inpatient services must be the amount determined as the patient pay amount by the medical assistance program or its successor.** ~~from the schedule specified in this rule.~~

PUBLIC MENTAL HEALTH SYSTEM
ABILITY TO PAY SCHEDULE

STATE TAXABLE INCOME — ABILITY TO PAY

MONTHLY — ANNUAL

~~\$0.00 to: \$6,000.00 \$0.00 \$0.00 \$6,001.00 to: \$7,000.00 \$2.00 \$24.00 \$7,001.00 to:~~
~~\$8,000.00 \$4.00 \$48.00 \$8,001.00 to: \$9,000.00 \$6.00 \$72.00 \$9,001.00 to:~~
~~\$10,000.00 \$8.00 \$96.00 \$10,001.00 to: \$11,000.00 \$11.00 \$132.00 \$11,001.00 to:~~
~~\$12,000.00 \$14.00 \$168.00 \$12,001.00 to: \$13,000.00 \$18.00 \$216.00 \$13,001.00~~
~~to: \$14,000.00 \$22.00 \$264.00 \$14,001.00 to: \$15,000.00 \$27.00 \$324.00~~
~~\$15,001.00 to: \$16,000.00 \$32.00 \$384.00 \$16,001.00 to: \$17,000.00 \$38.00~~
~~\$456.00 \$17,001.00 to: \$18,000.00 \$45.00 \$540.00 \$18,001.00 to: \$19,000.00~~
~~\$53.00 \$636.00~~
~~\$19,001.00 to: \$20,000.00 \$62.00 \$744.00 \$20,001.00 to: \$21,000.00 \$72.00~~
~~\$864.00 \$21,001.00 to: \$22,000.00 \$83.00 \$996.00 \$22,001.00 to: \$23,000.00 \$95.00~~
~~\$1,140.00 \$23,001.00 to: \$24,000.00 \$108.00 \$1,296.00 \$24,001.00 to:~~
~~\$25,000.00 \$122.00 \$1,464.00 \$25,001.00 to: \$26,000.00 \$137.00 \$1,644.00~~
~~\$26,001.00 to: \$27,000.00 \$153.00 \$1,836.00 \$27,001.00 to: \$28,000.00 \$170.00~~
~~\$2,040.00 \$28,001.00 to: \$29,000.00 \$188.00 \$2,256.00 \$29,001.00 to: \$30,000.00~~
~~\$206.00 \$2,472.00 \$30,001.00 to: \$31,000.00 \$225.00 \$2,700.00 \$31,001.00 to:~~
~~\$32,000.00 \$244.00 \$2,928.00 \$32,001.00 to: \$33,000.00 \$264.00 \$3,168.00~~
~~\$33,001.00 to: \$34,000.00 \$284.00 \$3,408.00 \$34,001.00 to: \$35,000.00 \$304.00~~
~~\$3,648.00 \$35,001.00 to: \$36,000.00 \$324.00 \$3,888.00 \$36,001.00 to:~~
~~\$37,000.00 \$344.00 \$4,128.00 \$37,001.00 to: \$38,000.00 \$364.00 \$4,368.00~~
~~\$38,001.00 to: \$39,000.00 \$384.00 \$4,608.00 \$39,001.00 to: \$40,000.00 \$405.00~~
~~\$4,860.00 \$40,001.00 to: \$41,000.00 \$426.00 \$5,112.00 \$41,001.00 to: \$42,000.00~~
~~\$447.00 \$5,364.00 \$42,001.00 to: \$43,000.00 \$468.00 \$5,616.00 \$43,001.00 to:~~
~~\$44,000.00 \$489.00 \$5,868.00 \$44,001.00 to: \$45,000.00 \$510.00 \$6,120.00~~
~~\$45,001.00 to: \$46,000.00 \$531.00 \$6,372.00 \$46,001.00 to: \$47,000.00 \$552.00~~
~~\$6,624.00 \$47,001.00 to: \$48,000.00 \$573.00 \$6,876.00 \$48,001.00 to:~~
~~\$49,000.00 \$594.00 \$7,128.00 \$49,001.00 to: \$50,000.00 \$615.00 \$7,380.00~~

For state taxable income over \$50,000.00, ability to pay shall be 15% of that income.

(36) If the ability-to-pay for parents is assessed separately and their combined ability-to-pay is more than the cost of services, then the charges shall ~~must~~ be prorated **based on the ratio of each parent's income.**

(47) A responsible party may request a new determination, based on the party's total financial circumstances, within 30 days ~~from~~ **after** notification of the initial determination made from the ability-to-pay ~~schedule~~ **process and table** specified in **subrule (4)** of this rule.

(58) Parents of children receiving public mental health services under the home and community-based ~~children's~~ **waivers shall be deemed determined** to have a \$0.00 ability-to-pay for the services provided **as part of the community-based waivers for children. Parents shall independently arrange and pay for services that exceed or are not included in the services provided under the home and community-based**

waivers for children if the parent desires expanded services or those services are not included.

R 330.8240 Determination of fee for respite services.

Rule 8240. (1) The fee for respite services for a full day or any portion thereof ~~shall of~~ **the day must** be determined by dividing the monthly ability-to-pay amount determined from the ~~schedule~~ **non-residential table** specified in R 330.8239 by 30 and rounding up to the nearest dollar, but ~~shall~~ **must** not be more than the cost of services. A responsible party may request a new determination under R 330.8239(47).

(2) Respite fees charged during a calendar month ~~shall may~~ not be, in aggregate, more than the monthly ability-to-pay amount determined from the ~~schedule~~ **non-residential table**.

R 330.8242 Ability-to-pay determinations based on total financial circumstances.

Rule 8242. (1) If a responsible party's ability-to-pay is determined pursuant to section 819 ~~of the act of the mental health code, 1974 PA 258, MCL 330.1819,~~ **then** all of the following provisions apply:

(a) The financial determination based on the responsible party's total financial circumstances ~~shall must~~ consider all of the following as specified in these ~~rules~~ **process and table in subrule (2)(i) of this rule**:

- (i) **Qualifying income and protected income.**
- (ii) **Net liquid assets and protected assets.**
- (iii) **Unreimbursed expenses Applicable federal poverty guidelines for family size.**
- (iv) **Excess medical expenses.**
- (v) **Court-ordered payments, including those payments from a divorce decree.**
- (vi) **Student loan payments.**
- (vii) **Additional tax obligations assessed by municipal, county, state, or federal taxing authorities.**

(b) **If the responsible party is the individual and is a family of 1 who has no expenses other than room and board expenses in an inpatient, specialized residential, or supported independent housing, an alternate full financial determination under subrule (2) of this rule must be completed that does not take into consideration all the provisions specified in R 330.8242. This alternate full financial determination must only include the following:**

- (i) **Qualifying income and protected income.**
- (ii) **Net liquid assets and protected assets.**
- (iii) **The personal needs allowance under the medical assistance program or its successor.**
- (iv) **Expense deduction equal to the provider payment rate for appropriate living arrangements allowed under the medical assistance program or its successor.**

(bc) ~~When determining ability-to-pay for an individual, a portion of the individual's income shall be protected as follows:~~ **receiving inpatient services, one half of any compensation paid to the individual for performing labor under the mental health code, section 736 of 1974 PA 258, MCL 330.1736, must be protected.**

~~(i) If the individual is receiving residential services or inpatient services other than psychiatric inpatient services, then the following amounts are protected income:~~

~~(A) The personal needs allowance identified under title XIX of the social security act, 42 U.S.C. §1396a(q)(2), or the amount allowed under the medical assistance program or its successor, whichever is greater.~~

~~(B) The first monthly amount of earned income identified under title XVI of the social security act, 42 U.S.C. §1382a(b)(4), plus 1/2 of earned income that is greater than the first monthly amount.~~

~~(C) Up to the income disregard identified under title XVI of the social security act, 42 U.S.C. §1382a(b)(2).~~

~~(ii) If the individual is receiving inpatient psychiatric or crisis residential services, then protected income may be up to the personal needs allowance and the income disregard allowance described in paragraph (i)(A) and (B) of this subdivision as stated in the department's and community mental health services programs' written policies and procedures.~~

~~(ed) Protected assets shall~~ **must** be the same asset limit amounts allowed for the Medicaid group 2 category under the medical assistance program or its successor.

(e) The department shall develop policies, procedures, and other tools for use in calculating a responsible party's ability-to-pay under these rules.

~~(d) For adult inpatient psychiatric stays of not less than 61 days, the ability to pay shall be determined based on a full financial determination from the date of admission.~~

~~(e) A minor who has been determined under the medical assistance program or its successor to be Medicaid eligible shall be deemed to have a \$0.00 ability to pay for nonresidential services.~~

(2) The public mental health system full financial consideration ability-to-pay process and table is described as follows:

(a) Determine the percent of poverty specified as the current federal minimum mandatory income level to qualify for medical assistance programs or its successor as specified in the Patient Protection and Affordable Care Act of 2010, PL 111-148, or its successor.

(b) Determine net assets by subtracting all costs incurred to liquidate liquid assets, including protected assets, from liquid assets.

(c) Determine qualifying income as specified in R 330.8005.

(d) Deduct from qualifying income to determine total income available for cost of care for all the following:

(i) Protected income.

(ii) Poverty guideline for family size at percent or poverty determined in subdivision (a) of this subrule.

(iii) Excess medical expenses.

(iv) Court ordered payments, including a divorce decree.

(v) Student loan payments.

(vi) Additional tax obligations assessed by municipal, county, state, or federal taxing authority. The result is income available for cost of care.

(e) Divide qualifying income from subdivision (c) of this subrule by the poverty guidelines for family size at 100% of poverty and convert to a percentage.

(f) Match percentage determined in subdivision (e) of this subrule to the table in subrule (3) of this rule to determine the percent of income available for cost of care to charge as ability-to-pay.

(g) Multiply the percentage determined in subdivision (f) of this subrule by the income available for cost of care determined in subdivision (a) of this subrule. The result is the annual ability-to-pay from income.

(h) Add net assets from subdivision (b) of this subrule to the annual ability-to-pay from income determined from subdivision (g) of this subrule. The result is the annual ability-to-pay.

(3) The following income and ability-to-pay crosswalk table must be used in the determination of the percent income for subdivision (f) of this subrule.

Qualifying Income as a Percent of applicable poverty guidelines.	% Of Income charged as Ability- to-Pay
100%	0%
101 - 200%	10%
201 - 250%	15%
251 - 300%	20%
301 - 400%	25%
401+	30%

(3) The alternate calculation process for full financial consideration for ability-to-pay is as follows:

(a) Determine net assets by subtracting all costs incurred to liquidate liquid assets and protected assets from liquid assets.

(b) Determine qualifying income as specified in R 330.8005.

(c) Deduct from qualifying income, as applicable, all the following:

(i) Protected income.

(ii) Personal needs allocation.

(iii) Expense deduction equal to the provider payment rate for appropriate living arrangements as allowed under the medical assistance program or its successor. The result is the income available for the cost of care.

(d) Add net assets from subdivision (a) of this subrule to income available for cost of care from subdivision (c) of this subrule. The result is the annual ability-to-pay.

R 330.8279 Undue financial burden.

Rule 8279. A responsible party's ability-to-pay ~~shall~~ **must** not create an undue financial burden that does either of the following:

(a) ~~Deprives the party and his or her dependents of the necessities described in these rules.~~ **Unduly impacts the health and well-being of the individual or their dependents as determined by the ability to access the basic necessities of life, including, but not limited to, food, housing, clothing, and healthcare.**

(b) Deprives the party and his or her dependents of the financial means to maintain or reestablish the individual in a reasonable and appropriate community-based setting.