DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITY ADMINISTRATION

FINANCIAL LIABILITY FOR MENTAL HEALTH SERVICES

Filed with the secretary of state on September 20, 2022

These rules become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of health and human services by sections 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 BEHAVIORIAL HEALTH SERVICES

SUBPART 1. DEPARTMENT OF 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.

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

(c) "Dependent" means an individual who is allowed as an exemption under section 30 of the income tax act of 1967, 1967 PA 281, MCL206.30.

(d) “Excess medical expenses” means medical and dental expenses that exceed the threshold dictated by section 16 of the internal revenue code of 1986, 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) “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.

(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(xi) Other funds that can be withdrawn or used as collateral for a loan.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.

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

(l) "Protected income" means the portion of income, as specified in these rules, that 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.

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

(p) "Undue financial burden" means a determination of ability-to-pay that would unduly impact the health and well-being of the individual or dependents to access the basic necessities of life, including, but not limited to, food, housing, clothing, and healthcare.

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

Rule 8239. (1) A responsible party’s ability-to-pay for nonresidential services must be the amount established by this rule’s non-residential ability-to-pay table based upon the responsible party’s qualifying income and the most current poverty guidelines. The responsible party’s ability-to-pay must be established on a per-session, monthly, or annual basis, and the basis selected, and methodology used must be identified and described in the department’s and community mental health services program’s written policies.

(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 of an individual, 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.

(3) 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 must not be more than the monthly ability-to-pay amount determined from the non-residential ability-to-pay process and table specified as follows:

(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, Public Law 111-148, or its successor.

(b) Multiply 100% of 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.

(c) Determine qualifying income.

(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 the table in subrule (4) of this rule to determine the percent of income to charge as the ability-to-pay.

(f) Deduct from qualifying income the poverty guideline income for family size determined in subrule (b) of this rule, at which the responsible party will have zero ability-to-pay. The result is income available for cost of care.

(g) Multiply the percentage determined in subrule (e) of this rule by income available for cost of care determined in subrule (f) of this rule. 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 subrule (3)(e) of this rule.

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%

(5) The per-session ability-to-pay is applicable to each session of service provided to all individuals for whom the responsible party has an obligation to pay under section 804 of the mental health code, 1974 PA 258, MCL 330.1804, but may not be, in aggregate, more than the monthly ability-to-pay amount.

(6) A responsible party who has been determined under the medical assistance program or its successor to be Medicaid eligible is 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.

(7) 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 must be prorated based on the ratio of each parent's income.

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

(9) Parents of children receiving public mental health services under the home and community-based waivers are 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 of the day must be determined by dividing the monthly ability-to-pay amount determined from the non-residential table specified in R 330.8239 by 30 and rounding up to the nearest dollar but must not be more than the cost of services. A responsible party may request a new determination under R 330.8239(8).

(2) Respite fees charged during a calendar month may not be, in aggregate, more than the monthly ability-to-pay amount determined from the 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 mental health code, 1974 PA 258, MCL 330.1819, all the following provisions apply:

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

(i) Qualifying income and protected income.

(ii) Net liquid assets and protected assets.

(iii) Applicable 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.

(c) When determining ability-to-pay for an individual receiving inpatient services, one half of any compensation paid to the individual for performing labor under section 736 of the mental health code, 1974 PA 258, MCL 330.1736, must be protected.

(d) Protected assets 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.

(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, Public Law 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.

(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 subrule (2)(f) of this rule.

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%

(4) 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.

(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 must not create an undue financial burden that does either of the following:

(a) 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.