

MassHealth coverage of nursing home care

Introduction

Whether it is for your parent, spouse, sibling or friend, arranging for nursing home care is a stressful process. The need can come on suddenly and without warning. This memo provides some basic information and education on who qualifies for Medicaid (which, in Massachusetts, is called “MassHealth”) which is the single largest payer of nursing home care costs in the state.

The information below provides guidance on:

- The cost of nursing home care
- Who qualifies for MassHealth coverage
- The MassHealth asset transfer penalties
- Basic planning steps you might consider
- How lawyers can help in the MassHealth application process
- The cost for services my office provides

As we mention at the end of this document, please seek professional advice before making any decisions based on the information presented in this memo.

The problem: covering the cost of nursing home care

Many people are unaware that traditional health insurance and Medicare provide limited or no coverage for nursing home care. In the case of Medicare, if you have been in a hospital for at least three days, Medicare should pay for your care while you recover in a certified skilled nursing facility. It will only pay, however, for up to 100 days (per lifetime) of nursing home care (and a co-pay of up to \$124 per day is required between the 21st and the 100th day depending on whether you have Medigap supplemental insurance). After 100 days of coverage, regardless of whether you have a supplemental Medicare plan, the individual is responsible for paying for his or her care.

In the absence of either long-term care or other insurance, there are really only two options to pay for nursing home stays beyond 100 days: (i) paying for care privately or (ii) qualifying for coverage under MassHealth. A recent survey by MetLife estimated the average cost of nursing home care in the Boston area at \$254/day for semi-private room and \$280 for a private room (or between \$92,000 and \$102,000 per year). If private resources are not sufficient to cover the costs, that leaves MassHealth.

Based on data collected by the Kaiser Family Foundation, there are approximately 413 nursing homes in Massachusetts providing care to 42,000 residents. The payment for the nursing home care for these individuals came from the following sources: 66% were covered by MassHealth; 14% were covered by Medicare and 20% were covered by private pay or other sources such as private insurance.

MassHealth: who qualifies for nursing home care?

The qualification rules for MassHealth coverage of nursing home care are complex and depending on your particular circumstances, there may be exceptions that apply.

MassHealth Asset and Income Qualification Levels

	Married Couple		Single Individual
	Community Spouse	Nursing Home Spouse	
Countable Asset Limit <i>(not counting home, see below)</i>	\$101,640	\$2,000	\$2,000
Home	Personal Residence (unlimited value)		Limited to \$750,000 in equity value
Monthly Income	Community spouse keeps 100% of income	Income above \$60/month goes first to at-home spouse to bring him or her up to minimum level (between \$1600 and \$2,500/month) then to nursing home care	\$60

Note: the term "community spouse" is what we call the spouse that is not in the nursing home; they may be at home or in an assisted living facility or other retirement community.

What is included in the countable assets? In calculating the assets limits listed above, MassHealth looks at the value of bank accounts, certificates of deposit, mutual funds, stocks bonds, IRA accounts, vacation homes or other real estate (other than your primary home).

What is not included in the asset test? The following is a partial list of assets that are not included as part of the MassHealth asset test: household belongings, furniture and appliances, personal belongings (jewelry, clothing & toys), business and non-business property that is essential to self-support, burial plots, prepaid burial contracts, a separate bank account holding up to \$1,500 for funeral expenses, a single automobile (if it is to be used by the applicant, spouse or household member) and certain pension plans. Note that there is a level of reasonableness applied here; a diamond jewelry collection with substantial value will draw scrutiny.

Special rules for the home. MassHealth has special rules for treating your home. In general, for married couples, as long as the community spouse is living in the home it does not count towards the asset limits. For everyone else, the equity value (tax assessed value less the value of any mortgage amounts) is capped at \$750,000 as long as there is an intent to return home (whether or not that intent is realistic or not).

MassHealth recovery of assets after death. Through a process called "estate recovery" MassHealth is entitled to recover the cost of nursing home care it paid on behalf of an individual from that individual's estate when they die. This means that, although single individuals can keep their home and still qualify for MassHealth benefits, after that individual dies the state is entitled to recover amounts it paid for nursing home care from the sale of that house. Typically a lien on the applicant's house is recorded with the registry of deeds shortly

after MassHealth benefits are approved to preserve that right. Note that estate recovery is possible not just against the home, but also against any other assets that are part of the MassHealth recipient's estate at death.

Penalty: what happens if assets are improperly transferred?

Given the assets rules, people often ask:

“Can I just give away my assets and qualify for MassHealth?”

The short answer is: no you can not. To prevent abuse of the asset qualification rules and as part of the MassHealth application process, the agency reviews any gifts or other transfers of assets for less than fair market value which were made in the last five years (this is called the “look-back period”). The rules are actually in transition at the moment, so transfers made before February 8, 2006 are treated differently than transfers made after that date; explaining the different treatment is beyond the scope of this memo. Keep in mind that transfers may include adding someone to the deed on your home or vacation home or paying for a grandchild's expenses. As part of the process of applying for MassHealth benefits, applicants should be prepared to explain any significant expenses or withdrawals (typically, \$500 or more) in the 3 to 5 years prior to application.

If you do give away any of your assets, MassHealth imposes a penalty period on the applicant by withholding coverage. In general, if you make a gift MassHealth will divide the value of that gift by \$246 (the state's estimate of the average cost of nursing home care) to obtain the penalty period in number of days. The penalty period starts when the individual is in the nursing home and has qualified for MassHealth coverage (but for the transfers/gifts made).

Example: On January 1, 2007, an elderly father makes a gift of \$12,000 to his son to help pay for the cost of a down payment on a home. On June 1, 2009, the elderly father is in a nursing home and has been approved for MassHealth coverage. MassHealth will assess a penalty of 49 days ($49 = \$12,000/\246) of ineligibility before they will pay for coverage. This means that the elderly father will need to find some way to pay for that care during his first two months after he satisfies the MassHealth eligibility standards. This often means asking for assets back from the person who received them or asking other family members to help out. Obviously, this has the potential to create a stressful family situation that can be difficult to resolve particularly if the gift has been spent or is no longer available.

One additional note, gifts and transfers between spouses do not trigger a disqualification penalty, however, the community spouse will still be subject to the asset limit (currently \$101,640).

Planning: what steps should I consider?

Because every situation is different, a detailed discussion of various planning techniques or other action you may consider as part applying for MassHealth is beyond the scope of this memo. What we can do is highlight some of the areas you should consider if you are considering applying for MassHealth coverage or anticipate the need for longer term care.

- **Update estate plan.** It is critical that you make sure the applicant's estate plan is up to date which means that couples and individuals should, at a minimum, have executed a (i) durable power of attorney; (ii) health care proxy; and (iii) will. If you do not have these documents in place or it has been several years since they were reviewed, now is the time to make any updates. If your durable power of attorney is several years old, some financial institutions will be reluctant to honor them so you may consider signing a new power of attorney.
- **Review beneficiaries in wills or trusts.** Typically, spouses have wills that leave their estates to each other. If one spouse is ill or institutionalized, you should consider changing the will so that it directs the assets away from the spouse because any inheritance received by an institutional spouse will create period of disqualification for MassHealth benefits or be subject to estate recovery. There are estate planning tools that can be used to put the assets in a trust for the benefit of the spouse without causing a disqualification period.
- **Review beneficiary designations of forms.** In addition to your review of wills, you should also review the beneficiary designations under life insurance policies, retirement accounts or other accounts or trusts. If you do not know who is listed as the beneficiary of these forms, now is the time to contact the relevant institutions and ask them to send you copies of the beneficiary designation forms.
- **Funeral and burial expenses.** MassHealth rules permit the pre-payment of burial and funeral expenses. Contact your funeral home about paying for a pre-paid funeral contract. In addition, you may deposit an additional \$1,500 in a specially designated burial account to cover other funeral expenses.
- **Spend down assets.** To the extent you have liquid assets above the MassHealth limits, it may make sense to spend those assets in ways that do not trigger a penalty. For example, if the individual or couple does not own a home it may be permissible to use assets to purchase a house or condominium. It may also be permissible to spend down assets for repairs to an existing home. In addition, paying off a mortgage, auto loan or other debt is a permissible way to use assets.
- **Personal care contracts.** If a friend or family member is providing care to an elderly person, it is acceptable for that care giver to receive payment. For example, a mother can pay her daughter for any care received and this will not be considered a gift to that daughter. That said, the rate of pay must be appropriate, a written personal care contract should be put in place to document the relationship and the daughter must pay income taxes on any amounts paid to her.

- *Permissible transfer of assets.* Because spouses can transfer assets between each other, it often makes sense to transfer a home to the name of a community spouse or certain other permitted individuals such as a child that was living in the home and caring for their elderly parent.
- *Convert assets to income.* If the community spouse has more than the permitted \$101,000 in assets, there may be opportunities to convert some of the excess assets into income through the purchase of annuities, however, the rules are complex and the annuity must satisfy certain regulatory requirements.
- *Institutional care is more than five years away.* If you do not expect to apply for MassHealth coverage for five or more years (i.e. you will either not need nursing home care or you can privately pay for five years), you may be able to transfer assets and wait the five years before applying for MassHealth. Because life is unpredictable, I caution clients to think carefully before pursuing this strategy. Once transferred, these assets are no longer available. Often it may make sense to set up an irrevocable trust and then transfer a home or vacation property to that trust so that some restrictions and control remain in place.
- *Careful timing of a MassHealth application.* In some cases, if assets were transferred as gifts or for less than fair market value it may make sense to avoid applying for MassHealth benefits until the look-back period has expired (this may not be practical in all cases but should be looked at closely).
- *Do any exceptions apply?* The MassHealth regulations contain a number of exceptions to the restrictions on transfer of assets. Some of the exceptions may be applicable to families or households with individuals who are disabled or who have special needs, siblings who live in the applicant's home, children who are living at home and caring for their parents or situations where the community spouse has limited income.

The MassHealth rules are complex and how they are applied depends on the facts and circumstances of the individual applicant.

Is MassHealth planning something everyone should consider?

No. If you have substantial assets, qualification for MassHealth benefits is not appropriate. I do not advise wealthy clients to give away their assets or try to shield substantial assets through the creation of irrevocable trusts or other means. For the vast majority of middle class families, however, there may be appropriate planning steps that you can take to preserve your home or other assets for a community spouse or other family members.

How do lawyers assist in the MassHealth application process?

Lawyers help their clients navigate the complex eligibility rules for qualifying for long term care coverage under MassHealth and applying those rules to the particular facts of their clients. This includes reviewing bank account statements, tax records, deeds on real estate, estate planning documents and other paperwork. During the application process, we try and anticipate any issues or questions the MassHealth case workers will have in reviewing your application so that there are no delays in approval.

What is the cost?

I typically perform work related to MassHealth planning and applications on a fixed or flat fee basis. Because every situation is different, that flat fee varies depending on the nature of the work to be performed. For an initial consultation (which typically takes 2 hours) I charge \$200 which is credited towards any future work. During that consultation, we define your goals and objectives, walk through your assets and income and review your existing estate planning documents. I then will follow-up that meeting with a letter making recommendation on options or strategies you may consider and associated costs. These recommendations can include estate planning work, real estate transfers and preparing and filing the MassHealth application. That recommendation letter will also serve as a formal engagement if you would like to proceed with additional work including the preparation and filing of a MassHealth application.

To give you an estimate of the cost to prepare and file a MassHealth application, for single individuals with little or no assets, the cost is approximately \$1,000. For married couples or individuals with more complicated applications the cost can be between \$2,500 to \$4,000. Any estate planning work would be an additional charge and is also billed on a flat fee basis. Filing fees and other expenses are billed as an additional charge.

How do I engage your office?

Please contact me if you have any further questions or would like to arrange an initial conference at (617) 965-9100. After an appointment has been scheduled, I will send out a questionnaire asking for information needed for our initial consultation. I also schedule appointments at the homes of my clients and will travel up to a forty-five minute drive from the Belmont, MA area.

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