

# FINANCING LONG TERM CARE: THE MASSHEALTH PROGRAM

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Long term care in a Massachusetts nursing home costs a private paying patient no less than \$130,000 annually and often costs a great deal more. The primary source of financing is MassHealth (Medicaid) which pays approximately sixty-five percent of the cost of such care in Massachusetts. Medicare, the Veteran's Administration, and long term care insurance also defray some of the cost.

Services required due to a chronic illness or condition lasting over a prolonged period of time are often thought to be provided only by nursing homes or chronic care facilities. However, there are a host of other providers of such services. These include:

- home health services which can be financed through MassHealth, Medicare, private health insurance, long term care insurance, the VA, and privately;
- adult day health programs which can be financed through the Massachusetts Home Care Programs, MassHealth and privately;
- homemaking, personal care, home delivered meals, and respite care services financed through Massachusetts Home Care Programs, MassHealth, or privately;
- rest homes which can be financed through Supplemental Security Income (SSI), Emergency Aid to Elderly, Disabled and Children (EAEDC) and privately;
- assisted living which is financed primarily through private funds but for which a small amount of assistance may be available from SSI, through MassHealth's Group Adult Foster Care Program, through VA Aid & Attendance benefits, through PACE programs, and through low-income set-aside programs financed primarily by the Massachusetts Housing Finance Agency; and
- continuing care retirement communities which are financed exclusively on a private basis.

There are also programs administered in several locations in the Commonwealth called PACE (Programs of All-Inclusive Care for the Elderly) for which Medicare (and, for eligible participants, MassHealth) finances extensive community-based services for persons who would otherwise require nursing home care. In Worcester County and portions of Middlesex, Hampden and Hampshire Counties, the PACE program is called Summit Elder Care and is administered by Fallon.

## WHAT IS MASSHEALTH?

MassHealth is a joint federal/state program which finances medical care for low-income aged, blind, or disabled persons. MassHealth is the name Massachusetts uses for its version of the federal Medicaid program. The basic architecture of the long term care MassHealth program and the over-age 64 community MassHealth program is a creation of the federal government.

The basic architecture of the community MassHealth program for people under 65 years of age is a state creation, Massachusetts having received a waiver from the federal government in 1997. The Affordable Care Act imposed further changes.

The administration of the MassHealth program in the Commonwealth is the responsibility of the Office of Medicaid (Medicaid), formerly known as the Division of Medical Assistance. Medicaid has four enrollment centers located in Chelsea, Tewksbury, Springfield and Taunton.

MassHealth pays for a variety of services including doctor visits, hospital care, home health care, adult day health, adult and group foster care, prescription drugs (for persons not covered by Medicare), personal care attendants, community choices and care in nursing facilities or chronic care hospitals. In some cases MassHealth even pays a person's Medicare premium. In response to the ever-increasing size of the Medicaid budget, the federal and state governments constantly change the rules or the interpretation thereof to impose not only more stringent financial eligibility requirements but also burdensome preconditions on eligibility for particular services.

This paper addresses, primarily, the rules governing MassHealth for persons requiring institutional long term care, or who would be requiring institutional long term care but for receipt of community-based services. It explains the rules of the long term care MassHealth program as of the date found on the cover page. It does not focus on the rules governing MassHealth for persons living in the community or in assisted living.

## WHAT ARE THE MASSHEALTH LONG TERM CARE ELIGIBILITY RULES?

There are two eligibility tests, an asset test and a medical test, that a person must satisfy in order to have MassHealth pay for long term care services. Further, the asset test depends upon a person's marital status. A person who has been found eligible for MassHealth for long term care is required to spend all but \$72.80 a month of his or her income (approximately \$160.00 per month in the case of some veterans) on medical expenses including the nursing home and, if relevant, private health insurance. MassHealth pays the balance of the nursing home bill. The \$72.80 a recipient is allowed to retain is called a "personal needs allowance". In some cases, the recipient is allowed to retain income to support his or her dependents. See *below, Married MassHealth Applicants and Recipients: Income of the Institutionalized MassHealth Recipient and Spouse.*

### A. What are the Clinical Requirements?

In order for MassHealth to pay for the nursing home expenses of a MassHealth recipient, the recipient must have been screened by Medicaid's agent (generally an Aging Services Access Point [ASAP] or a delegated hospital) and determined to be medically in need of long term nursing care services. A screening is generally initiated

by the nursing home. To be medically eligible an individual must require at least one skilled service daily or must require at least three of a less skilled group of services at least one of which must be a nursing service.

B. What are the Asset Rules?

1. *COUNTABLE AND NON-COUNTABLE ASSETS*

A person can qualify for MassHealth if he has \$2,000 or less of countable assets. The following assets are NOT countable:

- (1) life insurance (with a cash value) if the total face value of all policies (of each spouse) is \$1,500 or less;
- (2) a separately identifiable amount expressly set aside for burial and funeral expenses of \$1,500 or less plus accumulated interest;
- (3) prepaid irrevocable burial contract or irrevocable trust account for burial and funeral;
- (4) burial plot;
- (5) an annuity that cannot be converted to a lump sum provided that the Commonwealth is named as a beneficiary;
- (6) for all annuities other than retirement annuities
  - (a) the annuity is irrevocable and not assignable
  - (b) the total value of the projected payments will be received during the actuarial life expectancy of the "beneficiary"
  - (c) the terms of annuity cannot provide for unequal payments
  - (d) the annuity payments must be equal and cannot be deferred beyond 60 days;
- (7) inaccessible assets such as term life insurance, certain jointly held assets, assets held by the Court, and certain trusts;
- (8) a car of any value if it is for the use of the eligible individual or couple or a member of the household of the eligible individual or couple;

- (9) business or non-business property essential to self support (Medicaid will often treat income-producing property as non-countable under this category); and
- (10) a pension fund that is being set aside by an individual's current employer.

## 2. *THE HOME*

The home is not countable if:

- (1) it is inhabited by the MassHealth recipient, spouse, blind, under 21, or disabled child; or
- (2) the equity is \$878,000 or less and
  - (a) the individual intends to return home, or
  - (b) the home is inhabited by
    - i) a sibling with an equity interest who lived in the home for at least one year before the recipient's institutionalization; or
    - ii) a child who cared for a parent while residing in the parent's home for at least two years thereby keeping the parent out of the nursing home; or
    - iii) a dependent relative or a joint owner who will lose housing if the home is sold; or
  - (c) the individual has long term care insurance that meets State requirements as of the date of admission<sup>1</sup>

A home will be a countable asset unless the exceptions or conditions described above apply. The applicant or recipient will be required to agree to sell the home for fair market value to finance long term care. For a period of nine months (in some cases more), the person will qualify for MassHealth if he or she is making a "good faith effort" to sell the home. Once the home is sold, the proceeds will count and will, therefore, cause a MassHealth disqualification until the funds are spent. If a MassHealth recipient owns countable real estate, Medicaid has the right to record a lien against the property.

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<sup>1</sup> This exception applies only if the MassHealth application is properly completed.

3. *IF AN APPLICANT IS MARRIED, DO HIS SPOUSE'S ASSETS COUNT?*

Yes, assets of both members of a couple count in the eligibility determination. Once eligibility is established, MassHealth no longer has any interest in the assets of the healthy spouse.

4. *HOW ARE ASSETS HELD JOINTLY WITH ANYONE OTHER THAN A SPOUSE TREATED?*

Bank accounts (including, among others, certificates of deposit, bank money market accounts, and credit union accounts) which are held jointly by the applicant and another person are presumed to belong exclusively to the joint owner who is applying for MassHealth. This presumption may be overcome by proving that money in the account was contributed by the joint owner who is NOT a spouse and who is NOT applying for MassHealth. Other types of assets held jointly with an individual other than the spouse - such as real estate, stocks, bonds, mutual funds, etc. - are deemed to be owned equally by all joint owners. Thus the non-applicant joint owner's share of such an asset (with some advocacy) should not count.

5. *WHAT IS THE IMPACT OF A TRUST ON MASSHEALTH ELIGIBILITY?*

(1) *Trusts Funded with Assets of the Applicant or Spouse*

The use of a trust to preserve assets of the potential MassHealth applicant was long advocated as among the best devices for protecting the resources of the MassHealth applicant. After the enactment of the Omnibus Budget Reconciliation Act (OBRA) of 1993, the use of trusts for MassHealth planning diminished in part due to the hostility of the Courts to trusts in the MassHealth context and in part due to the lengthier (five-year) transfer of asset lookback period for trusts. Since DRA of 2005 extended the lookback period to five (5) years for all transfers, whether to trusts or otherwise, the use of trusts has become more widespread. However because MassHealth eligibility workers often send trust cases to the MassHealth legal department, who are instructed to scrutinize trusts closely to determine whether they can devise any circumstances under which a MassHealth applicant or spouse can access funds or property in the trust, applications which require the disclosure of trusts are often problematic. See the below Section 6 on how gifts affect eligibility.

(2) *Trusts Funded with Assets of Another*

If the MassHealth applicant is the beneficiary of a trust which was not created by him or his spouse (unless funded through the spouse's will) or funded with his or her assets, then the trust is considered an asset of the applicant only if it is revocable by the applicant or spouse, if the applicant or spouse has a right to receive mandatory distributions of principal, or if the applicant or spouse has actually received distributions (but only to the extent of those distributions).

6. *HOW DO GIFTS OF ASSETS AFFECT ELIGIBILITY?*

With certain exceptions, any MassHealth applicant or recipient (or spouse) who gives away countable assets or a home within five (5) years of applying for MassHealth (*the lookback period*) to pay for the cost of long term care will not qualify for MassHealth for a *disqualification period*. The lookback period is also five (5) years if the gift was to a trust.<sup>2</sup>

The length of the disqualification period is one day for each \$366.73 (as of January 1, 2019) given away commencing on the date when the individual transferring the assets requires long term care services and would otherwise be financially eligible for MassHealth coverage if an application were submitted. The \$366.73 figure is supposed to represent the average daily nursing home rate in the Commonwealth and is supposed to be adjusted annually.

If an applicant or recipient receives adequate compensation for the asset transferred, then the transfer is not disqualifying. If the transferor is paid the fair market value of the transferred asset, adequate compensation has been received. Asset transfers that should not be disqualifying include

- payments in exchange for the discharge of a legally enforceable debt
- compensation paid to someone other than a legally responsible person for care provided, so long as there was a mutual understanding that the services were being provided in exchange for compensation.

The purchase of an annuity that is actuarially equal in value to the purchase price is not considered a disqualifying transfer unless (1) the beneficiary of regular payments is not the MassHealth applicant or spouse or (2) the payments are expected to last beyond the life expectancy of the annuitant (as determined by actuarial tables). Unless the purchaser of the annuity is married

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<sup>2</sup>There is no transfer of asset disqualification for persons seeking MassHealth to pay for medical services in the community except for persons seeking eligibility through the home and community-based waiver program.

or has a minor or disabled child, the annuity must name the Commonwealth as a remainder beneficiary.

The purchase of a life estate in another individual's home will be considered a disqualifying transfer unless the purchaser resides in the property for at least one year after purchase.

A loan will be considered a disqualifying transfer unless the note's repayment terms are "actuarially sound" and the payments are made in equal amounts.

(1) *What Gifts Do Not Cause Penalties?*

There are certain transfers which do not cause a penalty. These exceptions are:

(a) - for a home, transfers to:

- i) a spouse;
- ii) the applicant's child who is blind, disabled or under 21;
- iii) a sibling who has an equity interest in the home and who resided in the home for at least a year before the individual's admission to a nursing home; or
- iv) a child who resided in the applicant's home for at least two years before the individual's admission to a nursing home who provided care which permitted the applicant to reside at home.

(b) - for anything other than a home, transfers:

- i) to the individual's spouse or to another for the sole benefit of the individual's spouse;
- ii) from the individual's spouse to another for the sole benefit of the individual's spouse;
- iii) to the applicant's blind or disabled child; or
- iv) transfers to the following types of trusts:
  - (a) trust established solely for the benefit of the individual's disabled child;



- (b) a trust established solely for the benefit of a disabled individual under 65 years of age;
- (c) certain pooled trusts established by non-profit corporations.

## 7. *SPECIAL CONSIDERATION FOR THE INCOMPETENT APPLICANT*

If an applicant is incompetent and, therefore, unable to gain access to his assets, the applicant's assets will be considered inaccessible and will not prevent him from qualifying for MassHealth for a period of six months following the application. During these six months, however, conservatorship must be pursued. At the end of that time period, the assets will be considered accessible to the recipient and, therefore, countable in determining eligibility for MassHealth.

### C. How does MassHealth evaluate the assets and income of a married applicant?

#### 1. *ASSETS*

The assets of both spouses count in determining MassHealth eligibility for long term MassHealth benefits. However, the healthy spouse is allowed to keep a portion (in some cases, all) of the couple's assets. That portion is referred to as the *community spouse resource allowance* (CSRA). The at-home (community) spouse is allowed to retain assets up to a value of \$126,420 (as of January 1, 2019). This figure changes annually. The Probate Court, or Medicaid under certain circumstances, may permit a higher resource allowance. This is of particular importance where the community spouse has a relatively low income.

The institutionalized spouse will be eligible for MassHealth once all of the assets in excess of the CSRA are reduced to \$2,000 or less.

#### 2. *INCOME*

The community spouse is not required to use any of her income for her institutionalized spouse's medical (including nursing home) expenses if he is receiving MassHealth. Further, if the community spouse's income is less than the spousal needs allowance established by MassHealth (called the *minimum monthly maintenance needs allowance* or MMMNA), then the institutionalized spouse is allowed to keep some of his income to support his community spouse. In some instances the institutionalized person may be allowed to keep income to support dependent children, parents or siblings.

The community spouse's income consists not only of regular Social Security and gross pension income, but also the income being generated by the resources the community spouse is allowed to keep (CSRA). The regulations mandate that the CSRA income be calculated as if the CSRA were generating income equal to the highest rate quoted in the current Bank Rate Monitor Index.

The minimum spousal needs allowance increases annually and is determined according to a formula which is based upon the poverty guidelines. That amount is currently \$2,057.50 (as of July 1, 2018) a month. The regulations provide an additional shelter allowance for those with shelter costs which exceed \$617.25 per month as of July 1, 2018. Almost everyone in Massachusetts who pays for his or her own heat will qualify for this extra shelter allowance.

The spousal needs allowance (including shelter allowance) cannot exceed \$3,160.50 per month except when (1) the community spouse proves, at an administrative hearing, that there are exceptional circumstances warranting a higher allowance or (2) there is a Court order for support that exceeds the spousal needs allowance. Medicaid's position is that neither a divorced spouse, nor children residing with a divorced spouse, are entitled to an income allowance of any amount.

3. *CAN THE ASSET ALLOWANCE FOR THE COMMUNITY SPOUSE BE INCREASED?*

If the community spouse's income, together with all but \$72.80 a month of her spouse's income (or approximately \$160 for some veterans), is not as high as the level of the community spouse's needs, she can ask for an increased CSRA (to generate more income for support). The procedure for achieving the increased CSRA requires the filing of a MassHealth application which will be denied because of excess resources. An appeal is then filed and, at an administrative fair hearing, the hearing officer should allow an increase in the resource allowance if the numbers justify that increase. The byzantine method for calculating that adjustment requires the hearing officer to determine the investment that would be needed to generate sufficient additional monthly income to raise the community spouse's income to the level of the spousal needs allowance.

**DOES THE COMMONWEALTH HAVE THE RIGHT TO REQUIRE REIMBURSEMENT FOR MASSHEALTH BENEFITS?**

In some circumstances the Commonwealth can require reimbursement for medical services provided to a MassHealth recipient. Medicaid's right to recover is secured by a lien recorded against the real estate of the MassHealth recipient. The lien can be placed on any real estate

owned by the MassHealth recipient, both the principal place of residence (depending upon who continues to reside therein and the existence of long term care insurance) and any other parcels of real estate in which the recipient has an interest. If the real estate is sold while the MassHealth recipient is living, the lien will insure reimbursement.

After the death of the MassHealth recipient, Medicaid has the right to reimbursement. That right can be asserted only against the probate estate of the MassHealth recipient and only if MassHealth files a timely claim against that estate.

#### WHAT IS THE MASSHEALTH APPLICATION PROCESS?

##### A. Where are MassHealth Applications Filed and Processed?

There is one central office in the Commonwealth where long term care MassHealth applications are filed. It is located at:

MassHealth Enrollment Center  
Central Processing Unit  
P. O. Box 290794  
Charlestown, MA 02129-0214

From this office, an application will be assigned to one of the four MassHealth Enrollment Centers (Chelsea, Springfield, Taunton or Tewksbury). Each of these offices will be responsible for processing a MassHealth application.

Estate recovery is handled through a central office located at:

Estate Recovery-TPL Unit  
PO Box 15205  
Worcester, MA 01615-9906

##### B. What is the date on which MassHealth will start to pay the nursing home?

The date that a signed, dated and "complete" MassHealth application is received by the MassHealth office is deemed to be the date of application. Eligibility for long term care coverage may be allowed retroactive to the first day of the third month before the month of initial application if the applicant would have been eligible for MassHealth during that time. Where the value of the assets on the date of application exceed the asset limits but the applicant has incurred medical bills which equal or exceed the excess assets, MassHealth eligibility will be allowed so long as the applicant reduces his assets to the allowable asset limit. Eligibility under these circumstances can also be granted for up to three calendar months prior to the month of application.

C. What documents must be provided in addition to the application itself?

The verification required of persons requesting MassHealth to pay for long term care is extensive. It can be agonizing to collect that verification because not only does it require proof of current facts but often also of all financial transactions for the previous five years. An applicant who has destroyed or misplaced bank records can download a form to get bank records at no cost from the MassHealth section of the Massachusetts Office of Health and Human Services website (find the section entitled Application and Member Forms).

Generally, the caseworker who screens the application requests additional verification following the initial submission. The applicant is generally given 25 to 30 days to respond to the request for further verification and Medicaid must make a decision within 45 calendar days of the application date. If an application is denied for failure to provide complete verification and within 30 days the applicant submits any of the missing verification, the date of receipt of one or more of additional verifications is considered the reapplication date. If the applicant fails to furnish all requested verification within the 30 day period following the reapplication date, the reapplication will be denied and a new one will have to be filed.

D. What happens if an application is denied?

If an applicant or recipient wishes to appeal a decision of the Office of Medicaid, a request for a hearing must be filed. The Board of Hearings must receive the request within 30 days of the date the applicant received the notice he is appealing. It is presumed that the applicant received the notice on the third day after mailing.

## CONCLUSION

The MassHealth program is one of the most widely utilized resources available to finance long term nursing home care for Massachusetts residents. The financial eligibility rules are complex and the application process often daunting. With proper planning and a well documented presentation of current and historic financial data, however, a Massachusetts nursing home patient can take advantage of this valuable benefit.