

CHAPTER 26

Nursing Home MassHealth Eligibility

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Scope Note

This chapter provides guidance on how to assist clients to preserve their financial security in the context of qualifying for MassHealth. Basic eligibility rules, protections against spousal impoverishment, and rules, penalties, and exceptions regarding the transfer of assets are among the topics covered.

§ 26.1 INTRODUCTION

The Deficit Reduction Act of 2005 (the DRA), signed into law on February 8, 2006, imposed draconian eligibility restrictions on Medicaid applicants and their families. Pub. L. No. 109-171. The most dramatic changes affected the consequences of asset transfers and the treatment of the primary residence. Although many ambiguities remain in the statute and accompanying regulations, MassHealth caseworkers and the Board of Hearings have taken increasingly aggressive positions on applications and appeals. Thus elder law attorneys now face new challenges in finding effective strategies to assist clients to preserve their financial security in the face of oppressive long-term care costs.

§ 26.2 FEDERAL/STATE FRAMEWORK

The MassHealth system can only be understood in the context of the relationship between federal and Massachusetts Medicaid statutes. Enacted in 1965 as Title XIX of the Social Security Act, Medicaid is a joint federal/state program whose

* This chapter was updated for the 2018 Supplement by MCLE.

purpose is to pay for the medical care of American citizens and permanent residents who are poor and who are aged, blind or disabled, or members of families with dependent children. If the state's program complies with Title XIX, then the state will be reimbursed for part of its expenditures. Massachusetts is reimbursed for about 50 percent of its expenditures.

From the point of view of the applicant and recipient, Medicaid is a state program because it is administered by a state agency—the Massachusetts Office of Medicaid. The practitioner must refer to the state statute and regulations to review the rules implemented by the Office of Medicaid to govern Medicaid eligibility in Massachusetts. The relevant statute is G.L. c. 118E and the pertinent regulations are found at 130 C.M.R. § 501.00 et seq. However, the practitioner must be aware of the federal statutory framework in order to know when the MassHealth regulations and practices are inconsistent with federal law.

The federal agency that oversees the Medicaid program is now known as the Centers for Medicare and Medicaid Services (CMS). CMS issues subregulatory interpretations of federal law in the form of directives to the state Medicaid offices.

Much of the MassHealth program is administered at a subregulatory level. The Office of Medicaid issues internal memoranda interpreting its own regulations on important matters. These memoranda are issued without the benefit of comment or hearings and are made public in a haphazard and reluctant fashion. This practice, along with varying interpretations by local offices, creates additional challenges for those practicing in the field and unfair obstacles to eligibility for applicants who do not have the benefit of counsel.

Attorneys planning to work extensively in this field should obtain all pertinent materials of this kind, including a current set of MassHealth regulations and updates as they are issued and CMS policy transmittals. All regulations, proposed regulations, provider manuals, and eligibility operations manuals can be found at the Office of Medicaid Web site at <http://www.mass.gov/eohhs/gov/departments/masshealth> using the links “Regulations” and “Other Resources and Publications.” Subscriptions to updates to each of the manuals and to proposed regulations can be accomplished directly from the Web site.

§ 26.3 BASIC ELIGIBILITY RULES

§ 26.3.1 Categorical Eligibility

Individuals who are blind, disabled, age sixty-five or older, or members of families with dependent children may receive cash assistance under Supplemental

Security Income (SSI), Emergency Aid to Elders, Disabled and Children (EAEDC), or Transitional Aid to Families with Dependent Children (TAFDC) from the Department of Transitional Assistance (DTA) if they meet financial eligibility requirements. Beneficiaries of SSI, EAEDC, and TAFDC are also automatically eligible for MassHealth. In addition, aged, blind, or disabled individuals who choose not to apply for SSI or who are financially ineligible may be eligible for MassHealth as “SSI-related medically needy” individuals if they meet the MassHealth eligibility requirements described below. Any person requiring long-term care is likely to be aged, blind, or disabled.

In some instances, especially with respect to deeming of trust assets (see § 26.3.3, Asset Limitation, below) and penalties for transfers of assets, the SSI, EAEDC, and TAFDC rules are more lenient than the MassHealth rules. This is of more importance to clients who are living at home because institutionalized individuals must qualify for MassHealth independent of SSI.

§ 26.3.2 Income

(a) *Institutionalized Applicants*

Anyone whose income is less than the monthly cost of his or her nursing home may be eligible for MassHealth. All of the nursing home resident’s income, less certain deductions, must be paid to the nursing home, as the so-called Patient Paid Amount (PPA). See 130 C.M.R. § 520.026. These deductions include the following:

- ÿ a \$72.80 “personal needs allowance,” which the MassHealth recipient may use for personal expenses each month, see 130 C.M.R. § 520.025;
- ÿ anything else spent on health care, such as Medex insurance premiums (i.e., for Medigap insurance);
- ÿ guardianship fees and expenses;
- ÿ income payable to the “community” spouse (the term used to describe the at-home spouse of a nursing home resident);
- ÿ support for a minor child;
- ÿ support for children, parents, or siblings who are dependent on the applicant;

- Y maintenance of a former home where the member can establish with a letter from his or her physician that the member is likely to return home within the six months following admission to a nursing facility (this income deduction lasts for only six months regardless of the member's prognosis); and
- Y necessary medical and remedial care expenses not provided through MassHealth (most commonly the Medicare Part B and Medigap insurance premiums but potentially including other supplemental medical and remedial care expenses as well).

The support allowance for family members is calculated by taking one-third of the difference between the Federal Standard Maintenance Allowance (currently \$2,030) and the monthly gross income of the family member.

As a result of a 1999 Supreme Judicial Court ruling, the Office of Medicaid has promulgated regulations allowing certain guardianship fees and expenses to be deducted from the applicant's income. Guardians are entitled to receive compensation for up to twenty-four hours per year at \$50 an hour if the guardian's services include attending care meetings and if the guardian submits an annual affidavit to Medicaid describing the services. 130 C.M.R. § 520.026(E)(3)(d)(2). The regulations allow for the deductions when a guardian is necessary to complete a MassHealth application or to secure medical treatment for the applicant.

MassHealth also allows the deduction of \$72.80 for personal needs, \$90 from a VA pension, and, in their entirety, any income from German Reparations, Japanese and Aleutian Restitution Payments, Netherlands Reparation Payments, payments from Agent Orange product liability litigation, or Radiation Exposure Compensation. All remaining income must be paid to the nursing home. This payment, known as the "patient-paid amount," is applied to the cost of care.

Practice Note

It is possible in certain situations to obtain eligibility even when the applicant's income exceeds the MassHealth reimbursement rate to the nursing home. These so-called over-under cases allow the applicant to pay the overage of income to the nursing home on an annual or semiannual basis.

§ 26.3.3 Asset Limitation

The asset limitation for MassHealth eligibility for long-term care services is \$2,000 for an individual and \$3,000 for a couple if both are in a nursing home and reside in the same room. If the couple resides in separate rooms in the nursing

home, the asset limit is \$2,000 for each spouse. 130 C.M.R. § 520.003(A). Everything owned by the applicant is counted except for certain “noncountable” and “inaccessible” assets, which are described in § 26.3.4, below. If the asset is held jointly, the ownership interest deemed to the applicant by MassHealth depends on the type of asset. All assets held in jointly titled bank accounts are presumed to belong totally to the applicant for MassHealth. Jointly held property other than bank accounts (e.g., stocks, mutual funds, bonds, and real estate) is deemed to belong to the applicant in proportion to the number of owners. For instance, a \$50,000 bank account owned jointly by a MassHealth applicant and his daughter would be deemed to belong entirely to the MassHealth applicant, while only \$25,000 of a \$50,000 brokerage account owned by a MassHealth applicant and his daughter would be deemed to belong to the applicant. These deeming rules are presumptions and may be rebutted by the applicant (but not by MassHealth) with evidence of different ownership interest or contribution. 130 C.M.R. § 520.005.

The joint-ownership-deeming rules are largely irrelevant where there is joint ownership by a husband and wife because all assets of both spouses are counted in determining either spouse’s eligibility. The healthy spouse is allowed to keep a resource allowance, which is discussed under § 26.4, Protections Against Spousal Impoverishment, below.

Practice Note

The joint ownership rules may not be used to circumvent transfer penalties. For example, if an applicant transfers funds from a joint bank account to a joint brokerage account, and asserts that a portion of the joint account is owned by the other titleholder, MassHealth will impose a transfer penalty.

Eligibility is achieved as of the date the applicant’s assets are either reduced to the program limit, or the date the assets would have been reduced to the limit had the medical bills incurred during the three months prior to the date for which MassHealth eligibility is sought been paid, provided that within thirty days of the notification of excess assets, those excess assets are spent.

In several jurisdictions, Medicaid recipients who have unpaid nursing home bills have been allowed a monthly deduction from their PPA to pay the debt to the nursing home over time. The experience of these authors has been that the Office of Medicaid has ignored this provision and refused such a deduction in Massachusetts.

Practice Note

An entrance fee paid to a continuing care retirement community (CCRC) is a countable asset if the CCRC contract states that the entrance fee is available to pay for care and the fee is refundable at

death. However, the entrance fee is noncountable when there is a community spouse residing in the facility.

§ 26.3.4 Noncountable Assets

All assets are counted against the \$2,000 or \$3,000 limit except for those that are specifically listed as noncountable or that are inaccessible. A list of countable and noncountable assets can be found at 130 C.M.R. §§ 520.007 and 520.008 respectively. They include the following:

- ÿ the applicant's principal place of residence and land appertaining to the residence, if the applicant's equity interest does not exceed \$828,000 and if the property is in Massachusetts;
- ÿ household belongings such as furniture and appliances;
- ÿ personal belongings such as jewelry, clothing, and toys;
- ÿ business and nonbusiness property essential to self-support;
- ÿ a burial plot for the applicant and family members;
- ÿ a separate bank account holding up to \$1,500 for each individual expressly reserved for funeral and burial expenses or life insurance with face value of \$1,500 or less designated exclusively for burial or funeral expenses;
- ÿ the cash surrender value of burial insurance or a prepaid irrevocable funeral and burial contract;
- ÿ one car of any value if the applicant or spouse or a member of their household can establish a need to own the vehicle;
- ÿ the assets of an SSI recipient;
- ÿ proceeds from the sale of a home (provided that a new primary residence is purchased within three months);
- ÿ loans and grants;
- ÿ Keogh plans unless established solely for the applicant or spouse;
- ÿ pension funds established by an individual's current employer;

- Y irrevocable, immediate annuities where the beneficiary is the applicant or family member, expected payments from the annuity during the lifetime of the applicant or spouse exceed the purchase price, and payments begin within sixty days of the purchase. If the applicant is single, the Commonwealth must be named as the beneficiary; and
- Y life insurance policies held by the applicant or family member with a combined face value of less than \$1,500 per insured.

Practice Note

If the applicant makes burial arrangements as described above within sixty days of receiving notice of his or her right to do so, the Office of Medicaid will consider the arrangements to have been made retroactively for spend down purposes. See 130 C.M.R. § 520.008(F)(3). In addition, although a working spouse's pension is a noncountable asset, an IRA is always treated as a countable asset. 130 C.M.R. § 520.007(C)(1), (3).

(a) *Principal Place of Residence*

Prior to the DRA, an individual's principal place of residence was considered to be a noncountable asset regardless of value, if the property was located in Massachusetts and if he or she stated an intent to return there to live. As a result of the provisions of the DRA, the residence is countable if the applicant's equity in the residence exceeds \$840,000 (adjusted annually). 130 C.M.R. § 520.007(G)(3). The question of whether the applicant intends to return home is a subjective test and it does not matter whether this intent to return home is realistic in light of the resident's physical or mental capacities: his or her wishes are all that is important. Unless the principal residence is in Massachusetts, Medicaid will generally consider it a countable asset. Further, if the nursing-home resident states an intent not to return home, the residence will be considered countable. *But see Chludzinski v. DPW*, Essex Super. Ct. No. 93-1146-B (Dec. 22, 1993).

Practice Note

It is the apparent policy of the Office of Medicaid to treat the out-of-state primary residence of the community spouse as a noncountable asset despite there being no specific exemption in 130 C.M.R. § 520.007 on this point.

The home will still be noncountable regardless of value and intent to return home, if any of the following relatives resides at the property:

- ÿ the applicant's spouse;
- ÿ the applicant's child under age twenty-one or a blind or permanently disabled child;
- ÿ a sibling of the applicant who already has an ownership interest in the house and has lived there since at least a year before the MassHealth applicant's move to a nursing home;
- ÿ a caretaker child—i.e., a son or daughter of the applicant—who lived in the house for at least two years before the MassHealth applicant moved to a nursing home, and who provided care that enabled the applicant to live at home rather than move to a nursing home; or
- ÿ any other relative who is dependent on the applicant.

130 C.M.R. § 520.007(G)(8).

If the equity in the home exceeding \$840,000 is spent down, the residence will then be considered noncountable. MassHealth provides for a hardship waiver in certain circumstances when an application would otherwise be denied because the residence exceeds the \$840,000 limit. To obtain a waiver, the applicant must establish that denial of services will endanger his or her health, the nursing home will discharge the resident for nonpayment, and there is no less costly alternative available to meet their care needs. 130 C.M.R. § 520.007(G)(13).

Practice Note

MassHealth uses property-tax assessments as evidence of fair market value. However, if fair market value is less than the tax assessment, an appraisal can be used to establish value.

Practitioners should note that a residence held in a revocable or nominee realty trust (regardless of the date the trust was funded) is considered to be a countable asset for MassHealth purposes. 130 C.M.R. § 520.023(B)(4). This characterization can be resolved by transferring the home out of the trust and back to the applicant.

§ 26.3.5 Inaccessible Assets

In addition to countable and noncountable assets, some assets are treated as “inaccessible.” These are assets “to which the applicant or member has no legal access,” and are not counted in determining MassHealth eligibility. 130 C.M.R. § 520.006(A). Inaccessible assets include the following:

- ÿ property subject to legal proceedings, such as divorce or probate;
- ÿ cash surrender value of life insurance policies when the policy has been assigned to the issuing company; and
- ÿ property that the applicant cannot sell because there is no market.

Assets to which the applicant cannot gain access due to incapacity will be considered to be inaccessible for a period of six months after application or acquisition if, and only if, the personal representative of the MassHealth applicant is making a good-faith effort to secure appointment of a guardian or conservator. 130 C.M.R. § 520.006(C)(2)(a). It is not clear what happens if there is no personal representative or if the person preparing the application for MassHealth is an employee of a medical institution.

Practice Note

Historically, practitioners have been successful in making the case that real estate (other than the primary residence) was inaccessible and, consequently, noncountable where there were multiple owners if any of the owners submitted affidavits that they were unwilling to sell the property. Although MassHealth may still accept this characterization, MassHealth may require the applicant to file a petition to partition so as to make the property accessible. Whether MassHealth will require the applicant to pursue the petition aggressively is not clear.

If a practitioner is presented with a client who has jointly held property, he or she may argue that the property is inaccessible. However, it may not be prudent to rely on creating a joint ownership as a planning strategy.

§ 26.3.6 Real Estate Other Than the Residence

Real estate that does not qualify for the exemption as a principal place of residence or as a business or nonbusiness property essential to self-support as described in 130 C.M.R. § 520.008(D) is a countable asset. MassHealth, however, will deem the property noncountable for nine months if the applicant signs an agreement stating that he or she will make a good-faith effort to sell the property. 130 C.M.R. § 520.007(G)(2). This regulation also applies to a former residence that does not come under any of the exceptions listed above. The nine-month period can be extended as long as the applicant or recipient continues to make a good-faith effort to sell the property. However, if after nine months the applicant rejects an offer of at least two-thirds of the property's fair market value, he or she will be deemed to have rejected a reasonable offer and will no longer

be considered to be making a good-faith effort to sell it. As a result, eligibility will terminate immediately. As soon as the property is sold, the net proceeds become a countable asset. 130 C.M.R. § 520.007(G)(5). In the case of a former home, MassHealth regulations permit the “liquidation” of its equity value as an alternative to a sale for up to nine months. 130 C.M.R. § 520.007(G)(10). It is not clear what this means, but this regulation may permit a reverse mortgage or some other borrowing against the equity of the house. It is unclear whether this provision applies when the house is countable because the equity exceeds the \$840,000 limit.

Practice Note

Practitioners should note that a rental property may be considered noncountable as a business property. However, it is important to analyze whether the property produces a profit, as the property will be noncountable only if it is “essential to self-support.”

§ 26.3.7 Trusts

The generous treatment of trusts created for an applicant by the will of the applicant’s spouse was not affected by the implementation in Massachusetts of OBRA ’93. Historically, MassHealth applied this treatment not only to testamentary trusts but also to freestanding trusts to which a will poured over assets, i.e., to trusts funded “through a will.” Though OBRA ’93 only exempts testamentary trusts, 42 U.S.C. § 1396p(d)(2), this was also true of the federal law that preceded OBRA ’93. The post-OBRA ’93 regulations refer to trusts “established or funded other than by will,” which appeared to exempt pour-over arrangements. 130 C.M.R. § 520.021. However, the Appeals Court in the *Victor* decision construed the statute more narrowly, upholding MassHealth’s denial of a pour-over trust. See *Victor v. Massachusetts Executive Office of Health & Human Servs.*, 77 Mass. App. Ct. 1111 (2010). Although the *Victor* case could possibly be distinguished as the court focused on the hearing officer’s finding that the trust was at least partially funded during lifetime and thus did satisfy the requirement that the trust be funded by will, the best practice is to avoid pour-over trusts and only use testamentary trusts.

(a) Pre-OBRA ’93 Trust Rules

For trusts created and funded on or before August 10, 1993, the regulations are relatively clear. In general, if the applicant for MassHealth is a beneficiary of a trust created by a third party (someone other than the applicant or his or her spouse), the trust assets or income will be considered available to the applicant to the extent that he or she has the right to withdraw such funds, or the trustee

has an obligation to distribute them to or for the benefit of the applicant. In other words, if the trust is a “discretionary” trust, meaning the trustee decides whether to make distributions, the trust funds will not be counted. If, on the other hand, the trust is a “support” trust, meaning that the trustee has an obligation to pay for the beneficiary’s basic needs as necessary, the trust funds will be counted.

Deeming rules are broader when the trust in question is created by the applicant or by his or her spouse (but not a trust created or funded by a spouse’s will). For such trusts, the trust principal and income is deemed available to the applicant for MassHealth to the extent that the trustee has discretion to pay the applicant such trust funds. 130 C.M.R. § 520.022(C)(1). Where the trustee has discretion to make a distribution of income or principal to an applicant or his or her spouse, it is called a Medicaid qualifying trust (MQT). An MQT is a misnomer, as it *disqualifies* applicants.

In the past, some practitioners attempted to maximize the flexibility of irrevocable trusts by allowing for some trustee discretion in making distributions of principal to the grantor or the grantor’s spouse. Limits were usually placed on a trustee’s discretion to distribute principal for the following reasons:

- ÿ the beneficiary’s potential eligibility for MassHealth benefits;
- ÿ the beneficiary’s circumstances; or
- ÿ until the passage of a certain period of time.

Some trusts allowed for distribution of principal to the grantor unless payments of principal would cause the beneficiary to lose his or her eligibility for any public assistance. Other trusts allowed for distributions of principal until the beneficiary entered a nursing home. The Office of Medicaid characterized assets in these trusts as countable and labeled such language limiting trustee discretion “exculpatory clauses.”

In *Cohen v. Commissioner of the Division of Medical Assistance*, 423 Mass. 399 (1996), the Supreme Judicial Court held that trust assets are deemed “available” even where the trust includes language permitting the trustee to spend trust funds only in ways that will not interfere with MassHealth eligibility. The court stated that the trust is available to the extent that the trustee has any discretion under any circumstances to pay out those assets.

It is unclear whether trustee discretion that once existed but was subsequently cut off will render those trust assets available under a “once available, always available” theory. At least one fair hearing officer has interpreted the *Cohen* case more reasonably, holding that *Cohen* does not apply to trusts in which the trustee’s

discretion has been cut off completely and permanently. However, given the court's decision in *Cohen*, the practitioner should explicitly state in the trust instrument that no distribution of principal may be made to the grantor or his or her spouse. If a trustee has any authority to distribute principal, this could potentially affect the beneficiary's future eligibility.

(b) OBRA '93 Trust Rules

The OBRA '93 trust rules are quite complex and ambiguous. Regulations issued by the Office of Medicaid clarify some parts of OBRA '93. The HCFA (now CMS) issued a thirty-eight-page transmittal explaining what the few pages of OBRA '93 mean. HCFA Transmittal No. 64, November 1994. Although it is a helpful reference for practitioners, this transmittal is not binding on the Office of Medicaid.

The rules pertain to all trusts created by

- ÿ an applicant for MassHealth;
- ÿ the applicant's spouse;
- ÿ someone else, if he or she creates the trust with the applicant or applicant's spouse's funds; or
- ÿ a court acting on behalf of the applicant or his or her spouse.

The generous treatment of trusts created for an applicant by the will of the applicant's spouse was not affected by the implementation in Massachusetts of OBRA '93. Historically, MassHealth applied this treatment not only to testamentary trusts but also to freestanding trusts to which a will poured over assets, i.e., to trusts funded "through a will." Though OBRA '93 only exempts testamentary trusts, 42 U.S.C. § 1396p(d)(2), this was also true of the federal law that preceded OBRA '93, and Massachusetts has continued to exempt these pour-over arrangements. The post-OBRA '93 regulations refer to trusts "established or funded other than by will," which appears to exempt pour-over arrangements. 130 C.M.R. § 520.021.

OBRA '93 defines four types of trusts:

- ÿ revocable trusts,
- ÿ irrevocable retained-interest trusts,
- ÿ irrevocable nonretained-interest trusts, and

• disability trusts.

Each interacts with the OBRA '93 transfer regulations in its own way.

Revocable Trusts

The rules for revocable trusts are relatively straightforward. The assets of a revocable trust will be considered to belong to the applicant for MassHealth. Distributions to third parties will be deemed to have been made by the grantor of the trust. 42 U.S.C. § 1396p(d)(3)(A); 130 C.M.R. § 520.023(B)(3). While MassHealth applicants will not be penalized for transferring funds to revocable trusts, transfers to third parties from such trusts are subject to a five-year look-back period. 130 C.M.R. § 520.023(A).

Nominee Realty Trusts

Prior to G.L. c. 184, § 35, which allows the use of trustee certificates, nominee realty trusts were commonly used to hold real estate to avoid the necessity of recording the underlying trusts.

Where an applicant for MassHealth or his or her spouse is the trustee of a nominee realty trust, the Office of Medicaid claims it examines the instrument to determine whether it in fact creates an agency agreement. In practice, the Office of Medicaid considers all property held in such nominee trusts to be countable assets.

For instance, in *Fishman v. Commissioner of the Division of Medical Assistance*, Civil Action No. 99-0900-D (2000), Annie Fishman placed her home in a nominee type trust, the 13 Plum Street Trust. The trust named her and her two sons as trustees. The Office of Medicaid denied her application, focusing on language of the trust that allowed any trustee to become a beneficiary of the trust. While she was not a beneficiary of the trust at the time of her application, the Office of Medicaid concluded that she could become one-third beneficiary of the trust at any time, and thus denied her application. The Superior Court affirmed.

Similarly, in *Leger v. Division of Medical Assistance*, Civil Action No. 98-0768 (1998), the Office of Medicaid denied an application because it found that the realty trust (a “typical nominee trust”) created by Marie and Gerald Leger was essentially a revocable trust. The Office of Medicaid felt that since the schedule of beneficiaries could be amended at any time, the Legers could become beneficiaries of the trust. As beneficiaries, the principal and income could be paid to them. Additionally, as beneficiaries, the Legers could terminate the trust at any time, thus allowing the property to revert back to them. For those reasons, the Office of Medicaid declined to approve the application.

The Superior Court, however, held that the trustee of the realty trust had no power to distribute income. Mr. and Mrs. Leger, the trustees of the GHL and MSL Trust, the beneficiaries of the realty trust, could not act in derogation of the interests of the residual beneficiaries of the trust. By dissipating the trust's interest in the realty trust through a reconveyance, they would violate their fiduciary obligation to the trust. If they did so, the titleholders would become constructive trustees for the residual beneficiaries of the GHL Trust and MSL Trust. Accordingly, the court reversed the Office of Medicaid's denial of the application.

The best practice is to avoid using a nominee trust if an individual with a beneficial interest in the property may require MassHealth. If a property is already in a nominee trust, the attorney should make certain that the applicant and his or her spouse are not trustees of the trust.

Irrevocable Retained-Interest Trusts

The retained-interest trust is one in which payments may be made to the applicant for MassHealth. 42 U.S.C. § 1396p(d)(3)(B)(i). Plainly, if the trustee has the power to distribute principal to the applicant, then the principal will count as an available asset. The regulations are ambiguous as to what counts in the context of an "income-only" trust, in which the trustee has the discretion to make distributions of income, but is barred from distributing principal to the applicant. 130 C.M.R. §§ 520.023(C)(1), (2). However, all commentators to date, including Sally Richardson (the former director of HCFA's Medicaid Bureau) and Robert Streimer (the former director of the Disabled and Elderly Health Programs Group at CMS), as reflected in their informal letters of opinion, take the view that the principal of an income-only trust is not countable. This issue is addressed in greater detail in *Estate Planning for the Aging or Incapacitated Client in Massachusetts* ch. 34, "MassHealth and Resource Planning" (MCLE, Inc. 4th ed. 2012 & Supp. 2015).

Practitioners should also keep in mind that MassHealth has taken an aggressive position in attacking irrevocable, income-only trusts. This aggressive position was bolstered by the Appeals Court in *Doherty v. Dir. of the Office of Medicaid*, 74 Mass. App. Ct. 439 (2009). In *Doherty*, the court held that an irrevocable income-only trust was countable despite trust language explicitly precluding the trustees from distributing trust principal to Mrs. Doherty. The authors believe that *Doherty* is an example of bad facts making bad law. The trust in question may have been drafted using several forms without a complete understanding of the trust terms. The court seemed to focus on the retained powers the grantor had over the trust, including an inter vivos power of appointment and the power to veto a sale of the property. While irrevocable, income-only trusts are still a

viable planning tool; the best approach when drafting is to keep it simple and be careful not to give the grantor too many powers over the trust.

Irrevocable Nonretained-Interest Trusts

The third OBRA '93 trust is one in which the trust income and corpus may not be paid to the grantor or to his or her spouse. 42 U.S.C. § 1396p(d)(3)(B)(ii). The funds held by such a nonretained-interest trust will not be counted. However, as is discussed in § 26.5, Transfer of Asset Rules, Penalties, and Exceptions, below, transfers from such a trust to third parties may be deemed to the grantor, perhaps even many years after the grantor originally funded the trust.

As stated above, practitioners should be wary when using nominee realty trusts as instruments holding property for irrevocable nonretained-interest trusts.

Disability Trusts

The fourth type of trust is a safe harbor, certain exempt trusts created for permanently disabled applicants for MassHealth. Transfers to these trusts do not affect the disabled person's eligibility for benefits regardless of whether the disabled person is the grantor or beneficiary of the trust. Three types of disability trusts are exempt, one of which applies only to applicants in "income cap" states; as Massachusetts is not one of these states, this rule has no applicability here. The two OBRA '93 disability trusts that do apply in Massachusetts are individual disability trusts and pooled disability trusts.

Individual

The first type of disability trust is for disabled applicants who were under sixty-five when the trust was created and funded. Such a trust is often referred to as a "(d)(4)(A)" trust, referring to the statutory provision creating this safe harbor. The trusts are also known as "payback" trusts, referring to one of its most salient features—that when the beneficiary dies, the trust funds must be used to reimburse the state for all MassHealth benefits paid on the decedent's behalf. These trusts must be created and funded with the applicant's own funds by the applicant's parent, grandparent, guardian, or a court, and the trust must provide that at the death of the disabled beneficiary, the Commonwealth will be reimbursed for whatever it has paid for the beneficiary's care. If the trust meets these requirements, the trust property will not be counted. 42 U.S.C. § 1396p(d)(4)(A). In past years, the Office of Medicaid had taken the position that the (d)(4)(A) exemption only applies to trusts created by guardians and not to those created by a conservator. In at least one case, the Office of Medicaid denied eligibility to a disabled individual under sixty-five whose trust was funded by a conservator

rather than a guardian. Subsequent to the implementation of Article V of the Massachusetts Uniform Probate Code, which designates a conservator as the fiduciary overseeing financial matters, the Office of Medicaid has revised its position to accept trusts created by a conservator. Unfortunately, this new policy is not in writing and may not be consistently applied among the enrollment offices. This is a significant benefit for younger applicants for MassHealth payment of long-term institutional care, enabling them to set aside their own funds to pay for their supplemental needs that MassHealth and other public programs will not cover. A (d)(4)(A) trust may also be used to shelter personal injury settlements for severely disabled plaintiffs for lifetime supplemental use. The CMS has clarified the question of what happens to such trusts when the beneficiary turns sixty-five: the trust funds will continue to be noncountable, but no new funds may be added to the trust.

Pooled

The second disability trust safe harbor that is relevant in Massachusetts is similar to the first, but with some significant differences. OBRA '93 provides for pooled trusts that can be managed by nonprofit associations for the benefit of disabled individuals. Despite some ambiguities in OBRA '93, some states, including Massachusetts, have interpreted the federal law to allow pooled trusts to be funded by individuals sixty-five and over. In addition, beneficiaries of pooled trusts may fund the trust themselves without the intervention of a parent, grandparent, guardian, or court. The federal law provides an alternative to reimbursing the state at the death of the beneficiary—the funds may instead stay in the trust for the benefit of other beneficiaries of the pooled trust. 42 U.S.C. § 1396p(d)(4)(C). The Office of Medicaid regulations arguably go beyond the federal statute by requiring that a percentage of the remaining funds be used to reimburse the Commonwealth for benefits provided. This is not required under the federal statute.

Practice Note

As planning options have dwindled since passage of the DRA, increasing numbers of MassHealth applicants sixty-five and older have transferred assets into pooled disability trusts in the months prior to their filing an application. CMS, in a memo dated April 14, 2008, has taken the position that individuals sixty-five or over who fund a pooled disability trust may be subject to a transfer penalty. Attorney Susan Levin, in a June 2008 letter to the CMS Region I office in Boston, articulated why the change in policy regarding pooled disability trusts violates federal law and is bad public policy. See Susan Levin, "CMS Threatening Transfers Into Pooled Trusts By Those 65+," *Elder Law Report* Vol. XX, No. 2 (Sept. 2008). As of May 2011,

MassHealth continues to allow applicants under age sixty-five to fund pooled disability trusts. However, practitioners should monitor the situation closely.

(c) *ABLE Accounts*

In 2014, Section 529 of the IRC was amended to include so-called ABLE accounts, so named for the “Achieving a Better Life Experience” Act of 2013. To be eligible for this type of account, a beneficiary must have been disabled before age twenty-six, though it can be funded at any age. The first \$100,000 is not counted for eligibility purposes for SSI or Medicaid.

§ 26.4 PROTECTIONS AGAINST SPOUSAL IMPOVERISHMENT

Through the Medicare Catastrophic Coverage Act of 1988 (MCCA), Congress acted to protect the healthy spouses of nursing home residents from total impoverishment. The law set up special rules for counting the assets and income of nursing home and community spouses. This statute did not affect the rules for counting assets and income where both husband and wife reside in the community.

§ 26.4.1 “Snapshot” of Assets at Institutionalization

The asset calculations under the spousal impoverishment rules derive from the holdings of the husband and wife on the day of the most recent continuous period of institutionalization. In effect, a “snapshot” of their countable assets is taken on that date. Institutionalization is judged to occur on the first day of a stay in a long-term care facility (or a preceding hospital stay) that lasts for at least thirty consecutive days. 130 C.M.R. § 520.016(B)(1).

(a) *Community Spouse Resource Allowance*

For the spouse residing in the community, the Office of Medicaid calculates a community spouse resource allowance that is based on the couple’s combined countable assets held on the snapshot date. The community spouse resource allowance is \$120,900 (in 2017). 130 C.M.R. § 520.016(B)(2)(a)(1). The maximum spousal allowance is set by the federal government in January. It is adjusted each year based on the consumer price index.

The spousal resource allowance may be increased by a court order or through an appeal to a fair hearing.

(b) Example of Calculation

The following example illustrates how this calculation works.

Total Assets	Community Spouse Resource Allowance	Assets Institutionalized Spouse May Keep	Assets to Be Spent Down
\$ 30,000	\$ 30,000	\$ 2,000	\$ 0
150,000	120,900	2,000	27,100
200,000	120,900	2,000	77,100

The institutionalized spouse becomes eligible for MassHealth when the combined assets of both husband and wife equal the community spouse resource allowance plus the \$2,000 the institutionalized spouse is allowed to keep. Thus, in the example above, where the couple had total countable assets of \$150,000, the institutionalized spouse will be eligible for MassHealth when the couple's joint assets are spent down by \$27,100 to \$122,900.

The couple can spend these excess assets by disposing of them in any way that does not run afoul of transfer limitations, e.g., prepaying medical expenses, prepaying both of their funerals, paying off a mortgage or other debts, or making necessary repairs to their home.

The law provides a ninety-day grace period after the Office of Medicaid makes a determination of eligibility for transfers between spouses needed to accomplish the necessary redistribution of assets. 130 C.M.R. § 520.016(3), (4). In other words, it does not matter in which spouse's name the assets are held until after eligibility for MassHealth has been approved for the nursing home spouse.

Practice Note

Follow up with clients to ensure that all assets are transferred out of the institutionalized spouse's name. A forgotten insurance policy or bank account left in the name of a nursing home spouse can result in the termination of benefits.

(c) Interim Period Between Institutionalization and Eligibility Determination

Events that occur between the date of the "snapshot" and the date of the MassHealth eligibility determination can make planning very complicated. While the eligibility determination is based on the couple's assets as of the date for which

eligibility is sought, the community spouse resource allowance is based on their assets as of the initial institutionalization. Therefore, any income and assets received by either spouse after institutionalization but before MassHealth eligibility must be exhausted to ensure that the couple remains below the spousal limit until the application is approved.

The following simplified example illustrates how the receipt of interim income or assets must be handled. If Mr. and Mrs. Wilson have combined countable assets of \$150,000 on the date Mr. Wilson enters a nursing home, Mr. Wilson will be eligible when their combined countable assets total \$122,900 (the \$120,900 community spouse resource allowance plus the \$2,000 allowed Mr. Wilson). If, before their assets drop to that level, Mrs. Wilson inherits \$25,000, that inheritance will have to be spent before Mr. Wilson will be eligible for MassHealth. The same rule applies to any savings Mrs. Wilson might accumulate from her employment during the interim period.

After Mr. Wilson qualifies for MassHealth, Mrs. Wilson's assets are no longer counted in determining Mr. Wilson's continued eligibility. Thus, if Mrs. Wilson were to inherit \$25,000 after Mr. Wilson's MassHealth eligibility date, Mrs. Wilson then would be able to keep her inheritance regardless of her assets exceeding the MassHealth limit.

Such timing considerations can also be important if Mrs. Wilson were considering selling her house after Mr. Wilson moved to the nursing home. In this case, it would be crucial that the closing be held after Mr. Wilson became eligible for MassHealth.

§ 26.4.2 Spousal Income Maintenance Needs Allowance

The community spouse has a right to share the institutionalized spouse's income to the extent necessary to raise his or her total income up to the level the state determines is minimally sufficient to meet his or her basic expenses. This minimum threshold is called the community spouse's "minimum monthly maintenance needs allowance" (MMMNA). 130 C.M.R. § 520.017(B). This is calculated separately for each client and, as of July 1, 2017, is not less than \$2,030.00 and ordinarily not more than \$3,022.50 per month (revised annually in July to reflect the change in the federal poverty level).

The MMMNA of \$2,030 can be increased by an excess shelter allowance, which is equal to the actual monthly cost of housing, including rent, mortgage payments, property taxes, and cost of utilities, less \$609 (30 percent of the base figure). The cost of utilities is determined by referring to the food stamp standard utility allowance. The allowance for a person who pays for his or her own heat is

currently \$636. The allowance for a person who does not pay for heat is \$392. 130 C.M.R. § 520.026(B). All of these figures are updated annually to adjust for the cost of living. There is also a provision for increasing the shelter allowance if there are dependents living in the home, or if there are any other special circumstances.

To show how this works, take the example of the Navarros, assuming that Mrs. Navarro has income of \$500 per month from Social Security and Mr. Navarro has income of \$2,500, also from Social Security. Mrs. Navarro pays \$480 a month rent, \$20 a month for tenant's insurance, pays for her own heat, and owns no income-generating assets. Because she pays for her own heat, she receives a utility allowance of \$636. Thus, her excess shelter allowance is \$527 (\$480 plus \$20 plus \$636, minus \$609) and her MMMNA is \$2,557 (\$2,030* plus \$527). She is entitled to \$1,987.37 of her husband's income each month (\$2,487.37 less \$500, which is her income). Mr. Navarro could keep his Personal Needs Allowance (PNA) of \$72.80. The balance of his income (less health insurance premiums and any health costs not paid by MassHealth) would have to be paid to the nursing home. This is referred to as the Patient Pay Amount (PPA). In this example, Mr. Navarro's PPA would be \$397.20 (\$2,500.00 minus the \$2,030.00 community spouse income allowance minus the \$72.80 PNA).

*The minimum MMMNA as determined by CMS is \$2,030 effective July 1, 2017, according to the Medicaid Web site at <https://www.medicaid.gov/medicaid/eligibility/downloads/spousal-impoverishment/2017-ssi-and-spousal-impoverishment-standards.pdf>.

Practice Note

The MassHealth regulations are not always up to date and do not always reflect the most recent figures relating to the spousal asset allowance and income calculations. These figures can change once or twice a year and are controlled by federal rules. It is best to always check beyond the MassHealth regulations to confirm the most recent figures. The authors obtained the information above from a link to a CMS site that may be found at <https://www.medicaid.gov/medicaid/eligibility/spousal-impoverishment/index.html>.

§ 26.4.3 Exceptions and Appeals

There is room in the rules for adjustment of the total countable assets, community spouse resource allowance, and the maintenance needs allowance. Either spouse may appeal the determination of an MMMNA to a fair hearing. An increase will be granted if that spouse can show that, due to exceptional circumstances, the community spouse is suffering significant financial duress. 130 C.M.R. § 520.017(D). Exceptional circumstances are limited to necessities relating to

“medical condition, frailty, or . . . special needs of the community spouse.” Often a community spouse residing in an assisted living facility asserts that he or she has exceptional circumstances justifying a higher MMMNA. At the fair hearing, where this argument is presented, the hearing officers review the assisted living facility’s housing agreement, service plan, fee schedule, and other pertinent documents to determine if exceptional circumstances exist. *See* 130 C.M.R. § 520.017(D)(1)(b). It is essential to present medical evidence, such as a letter from a physician, verifying the medical need for assisted living. In addition, if the institutionalized spouse is under a court order to pay spousal support that is greater than his or her share of the MMMNA, the court-ordered amount of support must be used as the spousal-maintenance needs deduction. 130 C.M.R. § 520.026(B)(3).

Federal law permits either spouse to appeal the determination of the community spouse resource allowance. The community spouse can retain assets in excess of the calculated allowance if he or she can show that the couple’s combined income and the interest generated by the initially calculated resources allowance is less than the MMMNA. 130 C.M.R. § 520.017(A). This redetermination of the allowance is beyond the authority of the intake worker. If this approach is utilized, the Office of Medicaid will deny eligibility based on excess assets, the applicant will appeal and request a hearing, and the hearing officer will determine the appropriateness of a higher community spouse resource allowance (CSRA) by applying the required methodology, preferably and ordinarily on the basis of agreed facts. The methodology is set out at 130 C.M.R. § 520.017(C). The hearing officer first determines whether the community spouse’s income and the interest generated by the spousal resource allowance is less than the MMMNA (adjusted as described above based on “exceptional circumstances”). The Office of Medicaid imputes interest to the spousal resource allowance on the first \$10,000 of assets based on the current money-market rate and on the remainder of the assets based on the highest rate (for a two-and-one-half-year CD) quoted in the “Bank Rate Monitor Index” as of the hearing date. If the income available to the community spouse is less than his or her MMMNA, the hearing officer then applies the institutionalized spouse’s income to eliminate the shortfall. If the couple’s combined incomes and interest on the spousal asset allowance still fall short of the MMMNA, then the hearing officer will increase the asset allowance to an amount sufficient to generate interest income, to eliminate the shortfall.

The lower the applicable interest rate, the more assets are needed to make up the shortfall between the community spouse’s income and his or her MMMNA. In cases where the combination of community spouse income and expenses are such that there is a shortfall between income and MMMNA, this approach has permitted community spouses to retain marital assets sometimes far in excess of

the standard resource allowance. In addition to retaining additional assets, the community spouse is also entitled to retain all of the institutionalized spouse's income. This is advantageous to the community spouse, particularly after the death of the institutionalized spouse, when he or she would otherwise be dependent solely on his or her own income and the limited assets he or she would have been allowed to retain under the standard community spouse resource allowance.

§ 26.5 TRANSFER OF ASSET RULES, PENALTIES, AND EXCEPTIONS

To discourage applicants and their spouses from transferring resources to achieve MassHealth eligibility for nursing home services, the law imposes a period of ineligibility for transfers of the principal place of residence and of countable assets. By "transfer," the law refers not only to gifts, but to changes in ownership, paying the debts of others, transferring a stream of income, not accepting an asset, and other transactions benefiting people other than the applicant.

The period of ineligibility is one day of ineligibility for every \$354 (in 2017) of value transferred. The ineligibility period does not begin until "the first day of the month in which the resources were transferred for less than fair market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term care services, whichever is later." 130 C.M.R. § 520.019(G).

The Office of Medicaid has interpreted "otherwise eligible" to mean that all of the following conditions must be met in order to begin the ineligibility period:

- Y the applicant is in a nursing facility and is clinically eligible for MassHealth coverage;
- Y the applicant is below the asset limit;
- Y the nursing home has not been paid in full; and
- Y the applicant's income is below the MassHealth reimbursement rate.

For example: a single client transfers property with a fair market value of \$42,480 in March 2017 while living in the community. He enters a nursing home in March 2018 and pays \$61,720 of his \$63,720 of countable assets to the nursing home. The payments cover his care from March 2018 through August 2018. He will be ineligible for four months from September 2018 through December 2018 ($\$42,480 \div \$10,620 = 4.0$). (The four months do not begin until September 1,

2018, which was the first date that he was in a nursing home, that his assets were below \$2,000, and that the nursing home had not been paid in full.)

The Office of Medicaid has taken some liberties with the language of the DRA and CMS guidelines, notably inserting the phrase “payment of”—“on the date on which the individual is otherwise eligible for *payment of* long term care services”—as well as requiring that the applicant be in a nursing facility in order to begin the ineligibility period.

Practice Note

Once the penalty period is imposed, it should not be tolled. Meaning, if the applicant meets all the requirements stated above and has been determined to start the ineligibility period, the period should continue to run even if the applicant leaves the nursing facility for a period of time.

§ 26.5.1 Transfer Penalty Exceptions

There are important exceptions to the transfer rules where no ineligibility is imposed. No penalty will be imposed when assets (including the home) are transferred

- ÿ to a spouse or another for the sole benefit of the spouse,
- ÿ either directly or into a trust for the sole benefit of a child who is blind or permanently and totally disabled,
- ÿ to a trust established solely for the benefit of an individual who is under sixty-five and disabled,
- ÿ to a pooled trust solely for the benefit of a permanently disabled individual, or
- ÿ to a separately identified burial account or burial arrangement pursuant to 130 C.M.R. § 520.008(F).

In addition to the exceptions above, a home may be transferred without penalty to

- ÿ the spouse;
- ÿ a child who is under age twenty-one, or who is blind or permanently and totally disabled;

- ÿ a sibling who has an equity interest in the home and who was residing in the home for the year immediately prior to nursing home admission of the institutionalized sibling; and
- ÿ a child who was residing in the home for at least two years prior to the parent's nursing home admission and who provided care for the parent that enabled the parent to remain at home.

See 130 C.M.R. § 520.019(D).

Note that these exceptions include some, but not all, of those people who may continue to reside in the house after the owner moves to a nursing home and qualifies for MassHealth.

In addition to permitted transfers described above, no penalty applies where the applicant can demonstrate that he or she intended to dispose of the resources at fair market value or for adequate consideration or that "the assets were transferred exclusively for a purpose other than to qualify for" MassHealth. 130 C.M.R. § 520.019(F)(1).

The Office of Medicaid has taken the position that sole benefit trusts for the benefit of a permanently disabled individual are only permitted if the trust is "actuarially sound." This means that the trust must require distributions based on the beneficiary's life expectancy. This in effect may defeat the trust purpose if the beneficiary is receiving public benefits.

Practice Note

The Office of Medicaid typically ignores the intent behind a transfer in determining whether to impose an ineligibility period. As an example of a transfer made for purposes other than to qualify for MassHealth, consider an applicant who has a history of making annual gifts each December for estate tax purposes or who has paid for his or her grandchildren's education over the years. A pattern of prior gifts accompanied by an unanticipated illness could be sufficient evidence to establish that the gifts were made for purposes other than to qualify for MassHealth, thereby eliminating any ineligibility period and avoiding the need for a cure.

§ 26.5.2 Waiver of Ineligibility Period

In limited circumstances, the Office of Medicaid will waive the ineligibility period based on hardship if the applicant can establish that the denial will deprive

the applicant of care and that his or her life or health would be endangered or at risk of serious deprivation. 130 C.M.R. § 520.019(L).

The procedural requirements for waiver are exacting and difficult. In addition to the above, the applicant must make all appropriate attempts to retrieve the transferred assets and establish that the recipient of the transfer is unable or unwilling to return the assets. The institution must notify the Office of Medicaid of its intent to discharge the resident. Finally, the nursing facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within fifteen days after the date on the notice. The Office of Medicaid may waive a portion or the entire ineligibility period.

§ 26.5.3 Determination of Ineligibility Period in Special Circumstances

(a) *Multiple Transfers*

The value of multiple asset transfers during the look-back period will be combined and divided by the average monthly cost of a nursing home. 130 C.M.R. § 520.019(G)(2)(i). This is true regardless of whether the related ineligibility periods overlap.

(b) *Transfers of Income*

If income is transferred as a lump sum, the ineligibility period is calculated based on the value of the lump sum. When the rights to a future stream of income have been transferred, the ineligibility period is calculated based on the life expectancy of the resident according to the CMS life expectancy tables.

(c) *Transfer of Property Subject to a Retained Life Estate*

A transfer of property for less than fair market value with the retention of a life estate is considered a transfer of an asset. The ineligibility period is calculated based on the value of the remainder interest listed in the CMS life expectancy tables. The regulations state that if the life tenant retains the power to unilaterally sell the property, the creation of the life estate will be treated as a trust. 130 C.M.R. § 520.019(I)(1). Presumably, this means a revocable trust and practitioners should assume that this type of life estate would be considered fully countable by the Office of Medicaid.

§ 26.6 “CURING” TRANSFERS

Since the enactment of OBRA '93, Massachusetts has permitted “cures.” The Office of Medicaid will rescind the ineligibility period if all assets are returned. More importantly, the Office of Medicaid will allow partial cures as a means of shortening an applicant’s ineligibility period. 130 C.M.R. § 520.019(K). However, it is difficult for the client to benefit from a partial cure, as doing so may delay the start of the ineligibility period. Also, if the applicant proves within sixty days after receiving the notice of the ineligibility period that the transfer has been totally or partially cured, the Office of Medicaid will use the original application date in determining the date of eligibility. If, however, the cure is not made within sixty days of the notice of the ineligibility period, a new application must be filed and upon reapplication, MassHealth will determine a new (later) start date of the ineligibility period. In other words, the original date the applicant was deemed “otherwise eligible” will be disregarded. *See Burt v. Dir. of the Office of Medicaid*, No. 13P-1853 (Mass. App. Ct. May 29, 2015) (Rule 1:28).

§ 26.6.1 Trust Revision

The Office of Medicaid also permits nursing facility residents to avoid the imposition of an ineligibility period by revising a trust so that it complies with the special needs or pooled trust rules. *See* 130 C.M.R. § 520.019(K). The Office of Medicaid will use the original application date if the trust is revised within sixty days after the date of the ineligibility notice. This can be extended to 120 days if court action is required to revise the trust and if the court action is commenced within the sixty-day period.

§ 26.7 APPLICATION, ASSISTANCE, AND APPEAL ISSUES

The MassHealth application process can be quite onerous and can last three to six months. See **Exhibits 26B** and **26C** for a sample cover letter and MassHealth Senior Medical Benefit Request. Every application statement and fact must be verified by documentation. The applicant must provide information about any assets transferred and must continually update application information. It is not unusual for applicants to receive a “potential eligibility notice” stating that the client has excess assets. The client may then show that he or she has spent down those assets within thirty days and is therefore eligible without having to file a new application. In addition, the applicant may become retroactively eligible for MassHealth despite his or her excess assets if he or she spends the assets on existing medical bills or prepaid funeral expenses that exceed the level of the

excess assets. In those instances, the date of eligibility for MassHealth will be the date on which the value of the medical bills or funeral expenses equals the amount of excess assets. The applicant has thirty days to provide evidence of the medical bills or funeral expenses and to show that his or her assets have been spent down to the resource limit. The funds may, but do not have to, be spent on the medical bills or funeral expenses. 130 C.M.R. § 520.004. However, MassHealth will not reimburse payments made to meet the spend down.

MassHealth must make a determination of eligibility within ninety days of an application on the basis of disability and within forty-five days of an application not on the basis of a disability. *See* 130 C.M.R. § 516.004.

§ 26.7.1 Liability Issues/Criminalization

While honestly advising clients about the MassHealth rules should not be a crime, trying to defraud the state and federal governments is (and should be) a crime. Anyone assisting others in applying for MassHealth should read the Medicaid False Claim Act (G.L. c. 118E, § 40) very carefully. It states in part that anyone who “knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit” under MassHealth may face imprisonment of up to two and one-half years and a fine of up to \$10,000.

The Office of Medicaid verifies information through banks, the IRS, and the Social Security Administration, among other institutions. 130 C.M.R. § 516.003. These checks may come several years after the application is made, so a client who has achieved eligibility through false information may not necessarily rest easy.

Also note that assisting a client to make false statements in an application can invite discipline from the Board of Bar Overseers. A report of a private reprimand in this regard, reprinted in its entirety, follows:

Respondent, first as legal representative and then as guardian, signed a Medicaid application and redetermination forms on behalf of an incapacitated individual who was in a nursing home. Due to his misunderstanding of the law and limited knowledge of Medicaid procedures, Respondent omitted to include information concerning an irrevocable trust as to which ward was the grantor and Respondent was the trustee and beneficiary.

When the Commonwealth brought these omissions to the Respondent's attention, repayment was made promptly. Nonetheless, and although he maintained the omissions were not willful, Respondent failed to do the preparation necessary to complete the forms properly. Also, his judgment as to whether that trust assets should be listed on the Medicaid application was clouded by his own financial interest in having the ward qualify for Medicaid. Respondent accordingly received a private reprimand for violations of Disciplinary Rules 5-101(A) (conflict of interest) and 6-101(A)(1),(2) (incompetence and inadequate preparation).

§ 26.7.2 Right to Appeal

Any person receiving an adverse decision regarding MassHealth eligibility may appeal for a fair hearing with the Office of Medicaid within thirty days of receiving notice. The hearing will be held by a hearing officer in most instances within ninety days of filing the appeal (although this time span has been longer in many instances). G.L. c. 118E, § 47. Hearing officers often exercise more discretion than Office of Medicaid intake workers in determining eligibility. An adverse fair hearing decision may be appealed to Superior Court under the Administrative Procedures Act. G.L. c. 30A. In addition, the applicant may request a rehearing provided that within fourteen calendar days of the hearing officer's decision, the medical director receives the appellant's rehearing request. 130 C.M.R. § 610.091.

It is worth noting that the commissioner of the Office of Medicaid may, for good cause shown, also request a rehearing of the appeal. 130 C.M.R. § 610.091. It is not clear what amounts to "good cause" or whether this section merely allows the Office of Medicaid a second "bite at the apple."

The substantive and procedural requirements applicable to the hearing process are detailed and complex. Reference should be made to 130 C.M.R. § 610.001 et seq. in anticipation of any adverse MassHealth decision.

§ 26.8 ADDITIONAL RESOURCES

There are several resources of great value to the attorney practicing in this field in addition to the statutes and regulations cited above. The most important ones are as follows:

- ÿ Massachusetts NAELA (MANAELA) a chapter of the National Academy of Elder Law Attorneys, has monthly dinner meetings with speakers and provides mailings of legal and regulatory developments to its members. For more information on MANAELA, please visit <http://www.massnaela.com>.
- ÿ *Medicare and Medicaid Guide*, published by Commerce Clearing House, 4025 West Peterson Avenue, Chicago, IL 60646. This is a multivolume reporter containing all federal (and some state) laws, regulations, and cases pertaining to Medicaid and Medicare. Subscribers receive biweekly updates on new decisions, laws, and regulations. Although it is expensive, this guide is available at most law libraries.
- ÿ *The ElderLaw Report*, Aspen Publishers, Inc., 7201 McKinney Circle, Frederick, MD 21704, (800) 638-8437. This eight-page monthly report, which costs \$365 annually, provides practical information for private practitioners representing elder clients.
- ÿ The Elder Law Committees of the Massachusetts Bar Association and Boston Bar Association provide information on recent developments at monthly meetings, and minutes of these meetings are mailed to all committee members.

In addition, the following Office of Medicaid publications are available.

§ 26.8.1 Manuals

Recipient Eligibility Policy Manual contains Medical Assistance Program regulations governing recipient eligibility requirements (130 C.M.R. §§ 501–522 and 610), including fair hearing regulations.

Provider Regulations govern provider participation in the Medical Assistance Program (130 C.M.R. §§ 400–485).

§ 26.8.2 Updates

The office of MassHealth sends individual updates to affected recipients and regular bulletins to providers. All updates can also be found at <http://www.mass.gov/eohhs/gov/departments/masshealth/>.

§ 26.8.3 Other Publications

Provider Bulletins are free-standing publications that issue nonregulatory information. They are grouped into six basic categories of providers (the same as for transmittal letters, above).

Eligibility Operations Memos issue instructions to medical assistance workers in the MassHealth Enrollment Centers.

§ 26.8.4 Contact Information

Centers for Medicare & Medicaid Services
Region I
JFK Federal Building
Suite 2325
Boston, MA 02203
617-565-1188
<http://www.cms.gov>

MassHealth Enrollment Center—Chelsea
45–47 Spruce Street
Chelsea, MA 02150
1-888-665-9993
Fax: 781-485-3400

MassHealth Enrollment Center—Springfield
88 Industry Avenue, Suite D
Springfield, MA 01104
413-785-4100
Fax: 413-731-3357

MassHealth Enrollment Center—Taunton
21 Spring Street
Suite 4
PO Box 711
Taunton, MA 02780
508-828-4600
Fax: 508-828-4611

MassHealth Enrollment Center—Tewksbury
367 East Street
Tewksbury, MA 08167
978-262-9100
Fax: 978-863-9300

Office of Medicaid
1 Ashburton Place
11th Floor
Boston, MA 02108
617-573-1770
<http://www.mass.gov/eohhs/gov/departments/masshealth>

Board of Hearings
100 Hancock Street
6th Floor
Quincy, MA 02171
617-847-1200
Fax: 617-847-1204

MCLE and the authors would like to thank Harry S. Margolis, Esq., for his previous contribution to this chapter.

EXHIBIT 26A—HCFA Streimer Letter

HCFA CLARIFIES TREATMENT OF TRUSTS

The rules relating to the lookback periods and penalties involving trusts have been a source of uncertainty for elder law attorneys. Dana Rozansky, an attorney in the law office of Thomas D. Begley, Jr. (Begley, Begley &

Fendrick, Moorestown, New Jersey), recently contacted the Health Care Financing Administration (HCFA) for clarification of HCFA's position. Following is the agency's response.

Department of Health & Human Services
Health Care Financing Administration
7500 Security Boulevard
Baltimore MD 21244-1850

25 February 1998

Dana E. Rozansky
Begley, Begley & Fendrick
40 East Main Street, P.O. Box 827
Moorestown, New Jersey 08057

Dear Ms. Rozansky:

I am responding to your letter requesting confirmation of your understanding of certain aspects concerning treatment of trusts under Medicaid. The specific items you mentioned, with our comments, are as follows.

1. Assets in a revocable trust are considered available as if no transfer of assets has taken place.
This is correct. Assets placed in a revocable trust are not treated as a transfer of assets for less than fair market value, but rather are considered available resources.
2. Transfers from a revocable trust to individuals other than the trust beneficiary are considered to be transfers to a trust subject to a 5-year lookback period.
Transfers from a revocable trust to or for the benefit of someone other than the trust beneficiary is [sic] subject to a 5-year lookback period. However, such transfers are not a transfer to a trust unless the funds are actually transferred to another trust. Any transfer to another individual that does not involve placing the funds in another trust is simply a transfer of assets for less than fair market value.
3. Transfers to an irrevocable trust have a 5-year lookback.
This is not correct. Transfers to an irrevocable trust can be subject to a 5-year lookback period, but only to the extent that after transfer to the trust some portion, or all, of the funds cannot, in any way, be made available to the trust beneficiary. Only the portion of the funds which cannot be made available to the beneficiary is subject to the 5-year lookback. Any portion of funds placed in an irrevocable trust that can be made available to the beneficiary is treated as countable income or resources, as appropriate. Any portion of those funds transferred from the trust to or for the benefit of someone other than the beneficiary is treated as a transfer of assets subject to a standard 3-year lookback period.
4. Transfers from an irrevocable trust to individuals other than the beneficiary incurs [sic] no additional penalties. (No double jeopardy.)
This is only partially correct. As explained in 3. above, a transfer to or for the benefit of someone other than the beneficiary from a portion of an irrevocable trust which can be made available to the beneficiary is subject to a 3-year lookback period, and thus a transfer penalty. This is not "double jeopardy" because no transfer penalty was imposed on the funds when they were placed in the trust. However, where assets in a trust cannot be made available to the beneficiary, transfer of those assets to or for the benefit of someone other than the beneficiary does not incur a separate transfer penalty. Any penalty would have been assessed when the funds were placed in the trust.
5. Transfers to an irrevocable trust with a retained income only interests [sic] are considered available only to the extent of the income earned. Otherwise, the assets are considered to have been transferred with a 5-year lookback period.
This is correct.
6. Where assets in an irrevocable trust can be distributed to the beneficiary but are transferred to someone else, the lookback for the transfer is 36 months.
This is correct.

I hope this information is useful to you. If you have any questions, please contact Roy Trudel of my staff at 410-786-3417.

Sincerely,

Robert A. Streimer
Director, Disabled and Elderly Health Programs Group
Center for Medicaid and State Operations

EXHIBIT 26B—Sample Cover Letter for Medical Assistance Application

August 31, 2017

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MassHealth Enrollment Center—Chelsea
45–47 Spruce Street
Chelsea, MA 02150

Re: Medical Assistance Application for John Doe
S.S. No. 000-00-0000

Dear Sir/Madam:

Enclosed please find the Medical Assistance Application for John Doe, with accompanying verifications as listed below. Mr. Doe has Alzheimer’s disease and has resided at the Boston Convalescent Home since April 1, 2017. During the past year Mrs. Doe has paid over \$110,000 for Mr. Doe’s care at the nursing home.

When Mrs. Doe first came to my office in May 2017, I assisted her in compiling a list of the couple’s available assets as of April 1, 2017, the date of Mr. Doe’s admission to the Boston Convalescent Home. At that time I also assisted Mrs. Doe in the conveyance of their residence at 123 Clover Circle from joint names to her name only. A copy of the deed is enclosed, and is listed as Item 18 below.

On my recommendation, Mrs. Doe made several transactions as part of their spend down process. Firstly, she purchased pre-paid funeral contracts for both her and her husband. She also created funeral accounts for herself and Mr. Doe with balances of \$1,500 each at the Massachusetts Savings Bank.

Secondly, Mrs. Doe then had some repair work done at her house including new roof and outdoor paint. She then pre-paid her real estate taxes, homeowner’s insurance and life insurance policies for the upcoming year.

Lastly, the remainder of the spend down was paid to the nursing home.

As of July 1, 2017, Mrs. Doe’s assets were \$87,000 and Mr. Doe’s were \$2,000, for a total of \$89,000. Enclosed you will find copies of all paid bills and canceled checks showing the spend down during the past six months.

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Enclosed for filing are the following:

1. Medical Assistance Application for John Doe.
2. Authorized Representative Designation Form
3. Permission to Share Information
4. Durable Power of Attorney of John Doe
5. Copy of Birth Certificate.
6. Copy of Marriage Certificate.
7. Copies of all paid nursing home bills with canceled checks.
8. Copies of all health insurance cards and verification of payment of premiums, if applicable.
9. Copy of Social Security card.
10. Copies of BankBoston Checking statements for the past 60 months.
11. History of Boston Savings Bank Certificate of Deposit for the past 60 months.
12. Statement of Massachusetts Savings Bank Funeral Accounts passbooks to verify opening of account.
13. Statement for both accounts held at Town Savings Bank for the past 60 months.
14. Verification as to cash surrender value for the John Hancock life insurance policy.
15. Copy of Mr. Doe's Personal Needs Account statement.
16. Copies of all checks over \$1,000.
17. Copies of income tax returns for the past 2 years.
18. Copy of deed for house at 123 Clover Circle, Boston, Massachusetts.
19. Copies of all paid bills and canceled checks from April 2016 through July 2017 which relate to the spend down process.
20. Copies of Mr. and Mrs. Doe's Social Security checks.

NURSING HOME MASSHEALTH ELIGIBILITY

If you have any questions, please do not hesitate to contact our office. Thank you for your assistance in this matter.

Sincerely,

Jessica Q. Attorney

Enclosure

cc: Jane Doe

EXHIBIT 26C—MassHealth Senior Medical Benefit Request*

The MassHealth application can be found online at:

<http://www.mass.gov/eohhs/docs/masshealth/membappforms/saca-2-english.pdf>



Application for Health Coverage for Seniors and
People Needing Long-Term-Care Services Instructions



Commonwealth of Massachusetts | EOHHS

Please read these instructions before you fill out the application.

Please read the attached Senior Guide carefully before you fill out the application. Keep the guide. It may answer questions you have later.

These instructions are in two parts.

- Part One is for information about applying for MassHealth and the Health Safety Net (HSN).
- Part Two is for information about applying for health coverage through the Massachusetts Health Connector.

Please make sure you identify, on page 1 of the application, which program each household member is applying for.

Part One—Applying for MassHealth and the Health Safety Net

This is your application for health coverage if you live in Massachusetts and are:

- aged 65 or older and living at home;
- any age and need long-term-care services in a medical institution or nursing facility;
- eligible under certain programs to get long-term-care services to live at home; or
- a member of a married couple living with your spouse, and
 - both you and your spouse are applying for health coverage;
 - there are no children under age 19 living with you; and
 - one spouse is 65 years of age or older and the other spouse is under 65 years of age. (Please see Part 7 of the application.)
- You will also need to fill out Supplement D: Long-Term-Care Questions if you are:
 - in an institution, like a nursing home, chronic hospital, or other medical institution (You may have to pay a monthly payment, called a patient-paid amount, to the long-term-care facility. For more information, see page 20 in the Senior Guide.);
 - in an acute hospital waiting for placement in a long-term-care facility; or
 - living in your home and applying for or getting long-term-care services under a Home- and Community-Based Services Waiver.

There is a different application for you, called the Application for Health Coverage and Help Paying Costs (ACA-2), if you are:

- any age and both disabled and working 40 or more hours a month or you are currently working and have worked at least 240 hours in the six months before the date of application, and not living with your spouse aged 65 years or older;
- under age 65 and not in a medical institution, and you do

not need long-term-care services; or

- aged 65 or older and a parent or caretaker relative of children under age 19.

To get the ACA-2, call MassHealth Customer Service at 1-800-811-2900 (TTY: 1-800-197-1648 for people who are deaf, hard of hearing, or speech disabled).

Part Two—Applying for Massachusetts Health Connector Plans

This is your application for health coverage if you live in Massachusetts, your income is at or below 400% of the federal poverty level, and you:

- are aged 65 or older and living at home;
- are not otherwise eligible for MassHealth;
- are not getting Medicare;
- do not have access to an affordable health plan that meets the minimum value requirement*¹; and
- file federal income taxes.

*Minimum value requirement means that the health insurance plan pays at least 60% of the total health insurance costs of the average enrollee.

The Health Connector uses Modified Adjusted Gross Income (MAGI) rules to determine eligibility. See the Senior Guide for more information.

Part Three—Other Information

After your application is filled out and reviewed, we will give you the most complete health coverage that you qualify for.

After you fill out the Senior Application and any supplements that apply, the following **must be sent with the application**.

- Proof of all current income before deductions, like copies of pension check stubs. (You do not have to send proof of social security or SSI income, but you must fill out the social security and SSI income information, if applicable.)
- Proof of all assets, like bank accounts and life insurance policies.

Please go to the next page. ►

Ⓢ SACA-2 (01/14)

The Senior Medical Benefit Request is frequently updated. The most recent version is available to print (but not complete and submit) online at <http://www.mass.gov/eohhs/docs/masshealth/membappforms/saca-2-english.pdf>.

NURSING HOME MASSHEALTH ELIGIBILITY

- Proof of U.S. citizenship/national status and proof of identity, like U.S. passports or U.S. naturalization papers. You can also prove U.S. citizenship with a U.S. public birth certificate. You can also prove identity with a driver's license or some other form of government-issued card. We may be able to prove your identity through the Massachusetts Registry of Motor Vehicles records if you have a Massachusetts driver's license or a Massachusetts ID card. Once you give MassHealth proof of your U.S. citizenship/national status and identity, you will not have to give us this proof again. You must give proof of identity for all household members who are applying. **Seniors and disabled persons who get or can get Medicare or Supplemental Security Income (SSI), or disabled persons who get Social Security Disability (SSDI), do not have to give proof of their U.S. citizenship/national status and identity.** (See pages 48-51 in the Senior Guide for complete information about acceptable proofs.)
- A copy of both sides of all immigration cards (or other documents that show immigration status) for you or your spouse if you or your spouse are not U.S. citizens/nationals and are applying for MassHealth (except for MassHealth Limited), the Health Safety Net, or the Health Connector plans.
- Copies of your current health insurance premium bills (like Medex) if you are applying for long-term-care services in a medical facility. (You do not have to send copies of your Medicare cards.)

Generally, you do not need to give us the citizenship or immigration statuses, or the social security numbers (SSNs) of household members who are not applying.* However, you must give us an SSN or proof that one has been applied for for every household member who is applying, unless one of the following exceptions applies.

- You or any household member has a religious exemption as described in federal law.
- You or any household member is eligible only for a nonwork SSN.
- You or any household member is not eligible for an SSN.

Unless an exception applies, we need SSNs for all persons applying for health coverage. An SSN is optional for persons not applying for health coverage, but giving us an SSN can speed up the application process. We use SSNs to check income and other information to see who is eligible for help with health coverage costs. If someone does not have an SSN or needs help getting one, call the Social Security Administration at 1-800-772-1213 (TTY: 1-800-325-0778 for

people who are deaf, hard of hearing, or speech disabled), or go to socialsecurity.gov. Please see the Senior Guide for more information.

*Note: For long-term-care applications, MassHealth needs SSNs from the applicant's spouse, even if the spouse is not applying.

We keep the information provided to us private, and only use and disclose it in accordance with applicable law.

Please remember:

- Sign and date all the forms after you finish filling them out. If you are married, your spouse must also sign.
- Submit a filled-out Authorized Representative Designation Form, if you are filling out this application as an authorized representative or if you want someone to act on your behalf.

Submit your application as follows:

- **Send** your filled-out Senior Application to:
MassHealth Enrollment Center
Central Processing Unit
P.O. Box 290794
Charlestown, MA 02129-0214;

or

- **Hand deliver** it to:
MassHealth Enrollment Center
Central Processing Unit
The Schrafft Center
529 Main Street, Suite 1M
Charlestown, MA 02129.

If you need more information about how to apply, or if you need another copy of the Personal Care Attendant Supplement for your spouse who is also applying, call MassHealth Customer Service at 1-800-841-2900 (TTY: 1-800-497-4618 for people who are deaf, hard of hearing, or speech disabled).

If you have any questions about any form or the information you need to send, please call a MassHealth Enrollment Center at 1-888-665-9993 (TTY: 1-888-665-9997 for people who are deaf, hard of hearing, or speech disabled).

When we get your filled-out, signed, and dated application, we will review it. If more information is needed, we will write or call you. Once we get all needed information, we will make a decision about your eligibility. We will send you a written notice about this decision. If you are determined eligible for MassHealth, show this notice right away to any health care provider if you already paid for medical services that would be covered by MassHealth during your eligibility period. If the health care provider determines that MassHealth will pay for these services, the provider will refund what you paid.

Go to page 1 of the application. ►

ESTATE PLANNING FOR THE AGING OR INCAPACITATED



Application for Health Coverage for Seniors and People Needing Long-Term-Care Services



Commonwealth of Massachusetts | EO-HHS

Please print clearly. Be sure to answer all questions. Fill out all parts of the application and all supplements that apply. If you need more space, attach a separate piece of paper to the application. Put Person 1's name and social security number at the top of any attached paper.

We need one adult in your household to be the contact person for your application.

For each member in your household please put the name(s) of the individual(s) under the program or programs he or she wants to apply for. Please see the Senior Guide to learn more about coverage under these programs:

1. MassHealth or the Health Safety Net

(If living at home, or in a rest home, an assisted living facility, a continuing care retirement community, or life care community, fill out this application and any supplements that apply to you or any household member.) MassHealth will check if anyone applying for health coverage on this application is eligible for MassHealth or the Health Safety Net. Please list the names of everyone who is applying for health coverage on this application.

Name(s): _____

2. Long-Term Care

(If applying for or getting long-term-care services at home under a Home- and Community-Based Services Waiver, or in a nursing home or chronic hospital, fill out this application and any supplements that apply to you or any household member, including all or part of Supplement D: Long-Term-Care Questions.) Name(s): _____

3. Health Connector Programs

Health coverage through the Massachusetts Health Connector is not MassHealth. If you have Medicare and apply for a plan through the Health Connector, you will not be eligible for any cost sharing or tax credits. You will be responsible for the full price of the plan.)

Name(s): _____

Part 1 Tell us about you (Person 1)—Fill out this part for yourself.

1. First name Middle initial Last name		Suffix (ex., Jr.)	Relationship to you SELF
2. Home street address		Apt. #	Is this a hospital, nursing facility, or other institution? <input type="checkbox"/> Yes <input type="checkbox"/> No
City	State	Zip code	
3. Are you homeless? <input type="checkbox"/> Yes <input type="checkbox"/> No	4. Mailing address (if different from home address)		
City	State	Zip code	
5. Telephone number	Other telephone number:	6. Email address	
7. Date of birth (mm/dd/yyyy)	8. Gender <input type="checkbox"/> M <input type="checkbox"/> F	9. Written language choice	10. Spoken language choice

We need a social security number for every person applying for health coverage who has one. An SSN is optional for persons not applying for health coverage, but giving us an SSN can speed up the application process. We use SSNs to check income and other information to see who is eligible for help with health coverage costs. If someone needs help getting an SSN, call the Social Security Administration at 1-800-772-1213 (TTY: 1-800-325-0778 for people who are deaf, hard of hearing, or speech disabled), or go to socialsecurity.gov. Please see the application instructions or the Senior Guide for more information.

11. Do you have a social security number (SSN)? Yes No
If yes, give us the number: _____ - _____ - _____ (Optional, if not applying)

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If **no**, check one of the reasons below.

- Applied, but have not received SSN
 Religious exemption
 Only eligible for nonwork SSN
 Not eligible to get SSN
 Eligible for SSN, but have not applied

12. Will you file a federal income tax return next year? Yes No (To get a tax credit, you must file taxes for the year you are requesting benefits. You can still apply for health coverage even if you do not file a federal income tax return.)

If **yes**, answer 12.a., 12.b., and 12.c. If **no**, answer 12.c.

12.a. Will you file jointly with a spouse? Yes No If **yes**, name of spouse: _____
 (If married, you must file federal taxes jointly for the year you are requesting benefits.)

12.b. Will you claim any dependents on your income tax return? Yes No

If **yes**, list name(s) of dependents: _____

12.c. Will someone else claim you as a dependent on his or her tax return? Yes No

If **yes**, name of tax filer: _____ How are you related to the tax filer? _____

13. Are you applying for health coverage for yourself? Yes No

If **no**, go to **Part 2: Tell us about other people in this household** on page 3. If **yes**, answer all questions below for Person 1 (yourself).

14. Are you living in Massachusetts and planning to stay? Yes No

15. Are you in jail or prison? Yes No

If **no**, go to the next question.

15.a. If **yes**, are you (Check one.):

Convicted? What is your expected release date? (mm/dd/yyyy) _____ Not convicted? (For example: confined only)

16. Are you a U.S. citizen, national, or naturalized U.S. citizen? Yes No

If **yes**, go to Question 17.

16.a. If **no**, do you have an eligible immigration status? (See the Senior Guide for more information.) Yes No No response

If **no** or **no response**, you may get only one or more of the following: MassHealth Limited or the Health Safety Net (HSN). Go to Question 17.

16.b. If **yes**, do you have an immigration document? Yes No

We will try to prove your immigration status. Please list all the immigration statuses and/or conditions that have applied to you since you entered the U.S. (See the Senior Guide for more information about immigration statuses and documents.)

Immigration status

Status award date* (mm/dd/yyyy)	Immigration document type	Document ID number
*For battered persons, status award date is date petition was approved as properly filed.		

16.c. Did you come to live in the U.S. before August 22, 1996? Yes No

16.d. Did you use a different name to get your immigration status? Yes No If **yes**, what is it? _____

First name	Middle name	Last name	Suffix (ex., Jr.)

16.e. Are you an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

16.f. Are you a spouse or unremarried surviving spouse of an immigrant who is an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

16.g. Are you an unmarried dependent child of an immigrant who is an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

17. Do you need reasonable accommodation(s) because of a disability or injury? Yes No

If **no**, go to the next question. If **yes**, fill out **Part B of Supplement A: Illness, Disability, or Accommodation** on page 19.

18. Are you applying because of an accident or injury that someone else might be responsible for? Yes No

If **no**, go to the next question. If **yes**, fill out **Part C of Supplement A: Illness, Disability, or Accommodation** on page 19.

19. Did you ever get Supplemental Security Income (SSI)? Yes No

If **no**, go to question 20. If **yes**, answer questions 19.a. and 19.b.

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19 a. When did you last get SSI? (mm/yyyy) _____

19 b. Do you (Please check one.): live alone? live with a spouse? live in a rest home?

live and share expenses with another or others (not a spouse)? live in an assisted living facility? live in someone else's home?

20. Check the box below that best describes you. (Optional)

- American Indian/Alaska Native (Mashpee Wampanoag) American Indian/Alaska Native (Wampanoag Tribe of Gay Head (Aquinnah))
 American Indian/Alaska Native (Other Tribal Nation) Asian Black or African American Hispanic/Latino/Black
 Hispanic/Latino/White Hispanic/Latino/Other Native Hawaiian or other Pacific Islander White Other

21. If you are an American Indian or Alaska Native, fill out **Supplement B: American Indian (AI)/Alaska Native (AN)** on page 21. American Indians and Alaska Natives may not have to pay premiums or copayments, and may get special monthly enrollment periods.

Go to **Part 2** to add other household members, if needed, or go to **Part 3: Current Job and Income Information** on page 5.

PART 2 Tell us about other people in this household

Fill out this part for your spouse who lives with you and/or anyone included on your federal income tax return, if you file one. See the application instructions for more information about who to include. If you do not file an income tax return, remember to add other persons who live with you.

If you have more than one person to add, make a copy of Person 2's blank information pages (pages 3-4) before you fill them out, or go to **Part 3: Current Job and Income Information** on page 5.

Person 2

1. First name Middle initial Last name			Suffix (ex., Jr.)	Relationship to Person 1	
2. Home street address			Apt. #	Is this a hospital, nursing facility, or other institution? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City		State	Zip code		
3. Is Person 2 homeless? <input type="checkbox"/> Yes <input type="checkbox"/> No	4. Mailing address (if different from home address)				
City	State	Zip code			
5. Telephone number		Other telephone number		6. Email address	
7. Date of birth (mm/dd/yyyy)		8. Gender	9. Written language choice		10. Spoken language choice

We need a social security number for every person applying for health coverage who has one. Please see the application instructions or the Senior Guide for more information.

11. Does Person 2 have a social security number (SSN)? Yes No

If **yes**, give us the number: _____ - _____ - _____ (Optional, if **not** applying)

If **no**, check one of the reasons below.

- Applied, but have not received SSN Religious exemption Only eligible for nonwork SSN
 Not eligible to get SSN Eligible for SSN, but have not applied

12. Will Person 2 file a federal income tax return next year? Yes No (To get a tax credit, Person 2 must file taxes for the year he or she is requesting benefits. Person 2 can still apply for health coverage even if he or she does not file a federal income tax return.)

If **yes**, answer 12.a., 12.b., and 12.c. If **no**, answer 12.c.

12.a. Will Person 2 file jointly with a spouse? Yes No If **yes**, name of spouse: _____
 (If married, Person 2 must file federal taxes jointly for the year he or she is requesting benefits.)

12.b. Will Person 2 claim any dependents on his or her income tax return? Yes No

If **yes**, list name(s) of dependents: _____

12.c. Will someone else claim Person 2 as a dependent on his or her tax return? Yes No

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If **yes**, name of tax filer: _____ How is Person 2 related to the tax filer? _____

13. Is Person 2 applying for health coverage? Yes No

If **no**, go to **Part 3: Current Job and Income Information** on page 5. If **yes**, answer all questions below for Person 2.

14. Is Person 2 living in Massachusetts and planning to stay? Yes No

15. Is Person 2 in jail or prison? Yes No

If **no**, go to the next question.

15.a. If **yes**, is Person 2 (Check one):

Convicted? What is his or her expected release date? (mm/dd/yyyy) _____ Not convicted? (For example: confined only)

16. Is Person 2 a U.S. citizen, national, or naturalized U.S. citizen? Yes No

If **yes**, go to Question 17.

16.a. If **no**, does Person 2 have an eligible immigration status? (See the Senior Guide for more information.) Yes No No response

If **no** or **no response**, Person 2 may get only one or more of the following: MassHealth Limited or the Health Safety Net (HSN). Go to Question 17.

16.b. If **yes**, does Person 2 have an immigration document? Yes No

We will try to prove Person 2's immigration status. Please list all the immigration statuses and/or conditions that have applied to Person 2 since he or she entered the U.S. (See the Senior Guide for more information about immigration statuses and documents.)

Immigration status

Status award date* (mm/dd/yyyy)	Immigration document type	Document ID number
*For battered persons, status award date is date petition was approved as properly filed.		

*For battered persons, status award date is date petition was approved as properly filed.

16.c. Did Person 2 come to live in the U.S. before August 22, 1996? Yes No

16.d. Did Person 2 use a different name to get his or her immigration status? Yes No If **yes**, what is it? _____

First name	Middle name	Last name	Suffix (ex... Jr.)

16.e. Is Person 2 an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

16.f. Is Person 2 a spouse or unmarried surviving spouse of an immigrant who is an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

16.g. Is Person 2 an unmarried dependent child of an immigrant who is an honorably discharged veteran or an active-duty member of the U.S. military? Yes No

17. Does Person 2 need reasonable accommodation(s) because of a disability or injury? Yes No

If **no**, go to the next question. If **yes**, fill out **Part B of Supplement A: Illness, Disability, or Accommodation** on page 19.

18. Is Person 2 applying because of an accident or injury that someone else might be responsible for? Yes No

If **no**, go to the next question. If **yes**, fill out **Part C of Supplement A: Illness, Disability, or Accommodation** on page 19.

19. Did Person 2 ever get Supplemental Security Income (SSI)? Yes No

If **no**, go to question 20. If **yes**, answer questions 19.a. and 19.b.

19.a. When did Person 2 last get SSI? (mm/yyyy) _____

19.b. Does Person 2 (Please check one): live alone? live with a spouse? live in a rest home?

live and share expenses with another or others (not a spouse)? live in an assisted living facility? live in someone else's home?

20. Check the box below that best describes Person 2. (Optional)

American Indian/Alaska Native (Mashpee Wampanoag) American Indian/Alaska Native (Wampanoag Tribe of Gay Head (Aquinnah))
 American Indian/Alaska Native (Other Tribal Nation) Asian Black or African American Hispanic/Latino/Black
 Hispanic/Latino/White Hispanic/Latino/Other Native Hawaiian or other Pacific Islander White Other

21. If Person 2 is an American Indian or Alaska Native, fill out **Supplement B: American Indian (AI)/Alaska Native (AN)** on page 21. American Indians and Alaska Natives may not have to pay premiums or copayments, and may get special monthly enrollment periods.

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PART 3 Current Job and Income Information

We use your income to see if you are eligible for health coverage. See the Senior Guide. If you are self-employed, and pay yourself wages, fill out both the Current Job and Self-employed income sections.

About You (Person 1)

1. (Check all that apply.)

Employed (Go to **Current Job 1**.) Self-employed (Go to **Self-employed income**.) Not employed (Go to **Money from other sources** section.)

Current Job 1

2. Employer name _____

Employer address _____	City _____	State _____	Zip code _____
Employer telephone _____	Employer Identification Number (EIN—if you know) _____		

3. Does this job offer health insurance? Yes No

If **yes**, check one.

This job offers health insurance now.

This job will offer health insurance, starting _____ (mm/dd/yyyy).

3.a. If this job offers health insurance now or will at a later date, can the health plan cover an employee's spouse or dependent(s)?

Yes List the name(s): _____ No

• How much will the employee pay for the lowest-cost individual health plan? \$ _____

How often? (Check one.) Weekly Monthly Twice a month Yearly

• If an employee joins a program to stop smoking or using tobacco, how much money could he or she save on the monthly premium? \$ _____

• Does the health insurance plan(s) offered by the employer meet the "minimum value" standard? Yes No

Minimum value means that the health insurance plan pays at least 60% of the total health insurance costs of the average enrollee. (The employer or insurance company will know this information.)

3.b. What health insurance changes will this job make for the next year? (if you know)

This job will stop offering health insurance.

This job will start offering health insurance to employees or change the premium for the lowest-cost available plan.

• How much will the employee's premiums be (for an individual plan)? \$ _____

How often? (Check one.) Weekly Monthly Twice a month Yearly

• Date of change: _____ (mm/dd/yyyy)

3.c. No health insurance plans offered by the employer will meet the "minimum value" standard.

Minimum value means that the health insurance plan pays at least 60% of the total health insurance costs of the average enrollee. (The employer or insurance company will know this information.)

4. Does this employer have 50 or fewer full-time employees? Yes No (If you do not know, answer **no** to this question.)

If **yes**, we may be able to help you pay for your coverage.

5. Is this job a sheltered workshop? Yes No

6. How much do you currently earn in gross wages, less pre-tax deductions? \$ _____

6.a. How often are you paid? (Check one.) Weekly Every 2 weeks Twice a month Monthly Yearly

6.b. About how many hours do you work each WEEK? _____

6.c. When did you begin getting this income? _____ (mm/dd/yyyy)

7. If your income from this job changes during the year (such as seasonal or contract employment), check the months you have worked or expect to work.

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

NURSING HOME MASSHEALTH ELIGIBILITY

Self-employed Income

8. (Check one.) Partnership S-Corporation Self-employed

8.a. Business name: _____

8.b. What is your expected yearly income from this source, less any business expenses? (Do not include your wages and tips.) \$ _____

8.c. Date you began getting this income _____ (mm/dd/yyyy)

Money from other sources

9. Do you get money from other sources? Yes No

Check all of the sources, give the amount, and how often you get it.

(You do not need to tell us about child support, nontaxable veterans' payments, or Supplemental Security Income (SSI).)

Unemployment \$ _____ How often? _____ Ordinary or qualified dividend \$ _____ How often? _____

Pension \$ _____ How often? _____ Interest \$ _____ How often? _____

Annuity \$ _____ How often? _____ Net farming/fishing \$ _____ How often? _____

Social Security \$ _____ How often? _____ Royalty \$ _____ How often? _____

Capital gains \$ _____ How often? _____ Alimony received \$ _____ How often? _____

Gambling proceeds \$ _____ How often? _____ Tax-excluded foreign income \$ _____ How often? _____

Taxable veterans' money \$ _____ How often? _____ Trusts \$ _____ How often? _____

Taxable military retirement pay (not paid through the Veterans' Administration) \$ _____ How often? _____

Tax refund, credit, or offset of state or local income taxes \$ _____ How often? _____

Other income (Specify): _____ \$ _____ How often? _____

Rental Income

10. Do you get rental income? (You must answer this question.) Yes No

Send proof of current rental income, like a written statement from each tenant or a copy of the lease, or a current federal tax return.

Send proof of all of the following expenses, if applicable, for the last 12 months:

• mortgage • taxes • utilities (gas/electric) • heat • water/sewer • insurance • condo or co-op fee • repairs and maintenance

10.a. What type of real estate do you own? one-family two-family three-family other (describe): _____

10.b. How much monthly rental income do you get from each rental unit from the real estate indicated above? (List each rental unit and address separately.)

Address _____	Unit # _____	Amount \$ _____	Owner-Occupied? <input type="checkbox"/> Yes <input type="checkbox"/> No
Address _____	Unit # _____	Amount \$ _____	Owner-Occupied? <input type="checkbox"/> Yes <input type="checkbox"/> No

10.c. Do you pay for heat and/or utilities for your tenant? Yes No

Deductions allowed on federal tax return

All or part of certain expenses can be deducted from income so that you do not pay taxes on them. These amounts are not counted in your income, and may lower the cost of your health coverage.

11. Do you have any of the deductible expenses below? Yes No

If yes, please check all of the types you have, fill in the deductible amount, and how often you have this expense.

Do not include an expense that you already claimed under self-employment income above.

Alimony paid \$ _____ How often? _____

Student loan interest \$ _____ How often? _____

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

- Other tax deductions (such as business expenses, IRA contributions, contributions to taxable retirement income, deductible part of self-employment tax, educator expenses, health savings account contributions (deduction), moving expenses, penalty on early withdrawal of savings, self-employment health insurance, self-employment retirement plan, and tuition and other school-related costs)
- Type: _____ \$ _____ How often? _____
- Type: _____ \$ _____ How often? _____
- Type: _____ \$ _____ How often? _____

Total income (Person 1)

12. Do you expect your total income (including earned income and money from other sources) to be the same next year? Yes No
(If you are not sure, answer **no** to this question.)

If **no**, what do you expect your total income to be next year? \$ _____ (Estimate)

Person 2

(If you have income to report for more than two persons, make a copy of pages 7-9 before you fill them out.)

Name: _____

1. (Check all that apply)

- Employed (Go to **Current Job 1**) Self-employed (Go to **Self-employed income**) Not employed (Go to **Money from other sources** section.)

Current Job 1

2. Employer name _____

Employer address	City	State	Zip code
Employer telephone	Employer Identification Number (EIN—if you know)		

3. Does this job offer health insurance? Yes No

If **yes**, check one.

- This job offers health insurance now.
 This job will offer health insurance, starting _____ (mm/dd/yyyy).

3.a. If this job offers health insurance now or will at a later date, can the health plan cover an employee's spouse or dependent(s)?

- Yes List the name(s): _____ No

- How much will the employee pay for the lowest-cost individual health plan? \$ _____
How often? (Check one.) Weekly Monthly twice a month Yearly
- If an employee joins a program to stop smoking or using tobacco, how much money could he or she save on the monthly premium? \$ _____
- Does the health insurance plan(s) offered by the employer meet the "minimum value" standard? Yes No

Minimum value means that the health insurance plan pays at least 60% of the total health insurance costs of the average enrollee. (The employer or insurance company will know this information.)

3.b. What health insurance changes will this job make for the next year? (if you know)

- This job will stop offering health insurance.
 This job will start offering health insurance to employees or change the premium for the lowest-cost available plan.
- How much will the employee's premiums be (for an individual plan)? \$ _____
How often? (Check one.) Weekly Monthly twice a month Yearly
 - Date of change: _____ (mm/dd/yyyy)

3.c. No health insurance plans offered by the employer will meet the "minimum value" standard.

Minimum value means that the health insurance plan pays at least 60% of the total health insurance costs of the average enrollee. (The employer or insurance company will know this information.)

NURSING HOME MASSHEALTH ELIGIBILITY

4. Does this employer have 50 or fewer full-time employees? Yes No (If you do not know, answer **no** to this question.)
If **yes**, we may be able to help pay for this coverage.
5. Is this job a sheltered workshop? Yes No
6. How much does this person currently earn in gross wages, less pre-tax deductions? \$ _____
- 6.a. How often is this person paid? (Check one.) Weekly Every 2 weeks Twice a month Monthly Yearly
- 6.b. About how many hours does this person work each WEEK? _____
- 6.c. When did this person begin getting this income? _____ (mm/dd/yyyy)
7. If this person's income changes during the year (such as seasonal or contract employment), check the months this person has worked or expects to work.
 Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

Self-employed Income

8. (Check one.) Partnership S-Corporation Self-employed
- 8.a. Business name: _____
- 8.b. What is this person's expected yearly income from this source, less any business expenses?
(Do not include his or her wages and tips.) \$ _____
- 8.c. Date this person began getting this income _____ (mm/dd/yyyy)

Money from other sources

9. Does this person get money from other sources? Yes No
- Check all of the sources, give the amount, and how often this person gets it.
(You do not need to tell us about child support, nontaxable veterans' payments, or Supplemental Security Income (SSI).)
- | | | | | | |
|--|----------|------------------|---|----------|------------------|
| <input type="checkbox"/> Unemployment | \$ _____ | How often? _____ | <input type="checkbox"/> Ordinary or qualified dividend | \$ _____ | How often? _____ |
| <input type="checkbox"/> Pension | \$ _____ | How often? _____ | <input type="checkbox"/> Interest | \$ _____ | How often? _____ |
| <input type="checkbox"/> Annuity | \$ _____ | How often? _____ | <input type="checkbox"/> Net farming/fishing | \$ _____ | How often? _____ |
| <input type="checkbox"/> Social Security | \$ _____ | How often? _____ | <input type="checkbox"/> Royalty | \$ _____ | How often? _____ |
| <input type="checkbox"/> Capital gains | \$ _____ | How often? _____ | <input type="checkbox"/> Alimony received | \$ _____ | How often? _____ |
| <input type="checkbox"/> Gambling proceeds | \$ _____ | How often? _____ | <input type="checkbox"/> Tax-excluded foreign income | \$ _____ | How often? _____ |
| <input type="checkbox"/> Taxable veterans' money | \$ _____ | How often? _____ | <input type="checkbox"/> Trusts | \$ _____ | How often? _____ |
| <input type="checkbox"/> Taxable military retirement pay (not paid through the Veterans' Administration) | \$ _____ | How often? _____ | | | |
| <input type="checkbox"/> Tax refund, credit, or offset of state or local income taxes | \$ _____ | How often? _____ | | | |
| <input type="checkbox"/> Other income (Specify: _____) | \$ _____ | How often? _____ | | | |

Rental Income

10. Does Person 2 get rental income? (You must answer this question.) Yes No
- Send proof** of current rental income, like a written statement from each tenant or a copy of the lease, or a current federal tax return.
- Send proof** of all of the following expenses, if applicable, for the last 12 months:
• mortgage • taxes • utilities (gas/electric) • heat • water/sewer • insurance • condo or co-op fee • repairs and maintenance
- 10.a. What type of real estate does this person own? one-family two-family three-family other (describe): _____
- 10.b. How much monthly rental income does this person get from each rental unit from the real estate indicated above? (List each rental unit and address separately.)
- | | | | |
|---------|--------|-----------|--|
| Address | Unit # | Amount \$ | Owner-Occupied? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Address | Unit # | Amount \$ | Owner-Occupied? <input type="checkbox"/> Yes <input type="checkbox"/> No |
- 10.c. Does this person pay for heat and or/utilities for his or her tenant? Yes No

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

Deductions allowed on federal tax return

All or part of certain expenses can be deducted from income so that this person does not pay taxes on them. These amounts are not counted in this person's income, and may lower the cost of his or her health coverage.

11. Does this person have any of the deductible expenses below? Yes No

If **yes**, please check all of the types he or she has, fill in the deductible amount, and how often this person has this expense.

Do not include an expense that he or she already claimed under self-employment income above.

Alimony paid \$ _____ How often? _____

Student loan interest \$ _____ How often? _____

Other tax deductions (such as business expenses, IRA contributions, contributions to taxable retirement income, deductible part of self-employment tax, educator expenses, health savings account contributions (deduction), moving expenses, penalty on early withdrawal of savings, self-employment health insurance, self-employment retirement plan, and tuition and other school-related costs)

Type: _____ \$ _____ How often? _____

Type: _____ \$ _____ How often? _____

Type: _____ \$ _____ How often? _____

Total Income (Person 2)

12. Do you expect Person 2's total income (including earned income and money from other sources) to be the same next year? Yes No
(If you are not sure, answer **no** to this question.)

If **no**, what do you expect Person 2's total income to be next year? \$ _____ (Estimate)

PART 4 Previous Medical Bills

1. Do you or your spouse have bills for medical services you got in the three months before the month we got your application? Yes No

If **yes**, fill out the rest of this section. We may be able to pay for these bills. If **no**, go to **Part 5: Health Insurance You Have Now**.

1.a. Do you or your spouse want to apply for MassHealth for that time period? Yes No

If **yes**, what is the earliest date for which you need MassHealth? (mm/dd/yyyy)

(You must give us proof of all income and assets owned during that time period.)

PART 5 Health Insurance You Have Now

Please answer the questions below about **health insurance**, and follow the instructions. If someone has enrolled in one of the health insurance plans below, but the benefits have not yet started, check **yes** to the question. MassHealth may be able to help pay premiums.

1. Do you or any household member have Medicare? Yes No

If **yes**, fill out **Part A of Supplement C: Health Insurance** on page 23.

2. Do you or any household member have federal health insurance provided by the U.S. military (Veterans' Affairs or TRICARE) or other federal coverage? Yes No

If **yes**, fill out **Part B of Supplement C: Health Insurance** on page 23.

3. Do you or any household member currently have any other type of health insurance? (This includes insurance through an employer, union, college or university, former employer (COBRA), and coverage bought by you or any household member who is not living in the household.) Yes No

If **yes**, fill out **Part C of Supplement C: Health Insurance** on page 23.

NURSING HOME MASSHEALTH ELIGIBILITY

PART 6 Assets

You must fill out all blocks for each asset you and/or your spouse own.

If you live in the community and you want help with medical bills up to three months before the month you apply, you must tell us about any open and closed accounts for that period.

If you are applying for long-term care, you must also give us information about all assets you or your spouse owned in the past 60 months. If you have a spouse at home, you also need to fill out the shaded blocks.

Bank Accounts

1. Do you or your spouse have any bank accounts or certificates of deposit, including checking, savings, credit union, NOW, money-market, and personal needs allowance (PNA) accounts? Yes No

1.a. Do you or your spouse have any retirement accounts, including individual retirement accounts (IRAs), Keogh, or pension funds? Yes No

1.b. Have you or your spouse or a joint owner closed any accounts in the past 60 months, including any accounts you had owned jointly with anyone else? Yes No

If you answered **yes** to any of these questions, fill out this section.

If you answered **no** to all of these questions, go to the next section (Life Insurance).

Send a copy of your passbooks updated within 45 days and/or a copy of your current account statements. Please see the Senior Guide for information about financial institutions charging for copies of statements.

Name on account		Name of bank/institution	
Account number	Account type	Current balance \$	Balance on admission date* \$
<input type="checkbox"/> Account open <input type="checkbox"/> Account closed	Date account closed (mm/dd/yyyy)	Amount on the date account closed \$	
Name on account		Name of bank/institution	
Account number	Account type	Current balance \$	Balance on admission date* \$
<input type="checkbox"/> Account open <input type="checkbox"/> Account closed	Date account closed (mm/dd/yyyy)	Amount on the date account closed \$	
Name on account		Name of bank/institution	
Account number	Account type	Current balance \$	Balance on admission date* \$
<input type="checkbox"/> Account open <input type="checkbox"/> Account closed	Date account closed (mm/dd/yyyy)	Amount on the date account closed \$	

* Enter the account balance on the date of admission to medical institution.

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

Life Insurance

2. Do you or your spouse **own** any life insurance? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Securities (Stocks/Bonds/Other)).

Send a copy of the first page of all life insurance policies. If total face value of all policies exceeds \$1,500 per person, also send a letter from the insurance company showing the current cash-surrender value (for all policies except term policies).

Name(s) of owner(s)	Insurance company
---------------------	-------------------

Policy number	Face value \$	Insurance type
---------------	------------------	----------------

Name(s) of owner(s)	Insurance company
---------------------	-------------------

Policy number	Face value \$	Insurance type
---------------	------------------	----------------

Securities (Stocks/Bonds/Other)

3. Do you or your spouse own any stocks, bonds, savings bonds, mutual funds, securities, assets held in safe-deposit boxes, cash not in the bank, options, or future contracts? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Annuities).

Send proof of current value (except cash).

	Owner(s) name(s)	Company name	Account number	Current value	Value on admission date*	Joint asset?
Cash				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Stocks				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Bonds				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Savings bonds				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Mutual funds				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Options				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Future contracts				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other				\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

* Enter the account balance on the date of admission to medical institution

NURSING HOME MASSHEALTH ELIGIBILITY

Annuities

4. Did you or your spouse or someone on your or your spouse's behalf purchase or in any way change an annuity? Yes No

If **yes**, fill out this section. To be eligible, you may be required to name the Commonwealth as a remainder beneficiary.
(See the Senior Guide for more information.)

If **no**, go to the next section (Assisted Living/Other).

Send a copy of the contract. For each annuity owned, **give us proof** from the annuity company of the full value of the annuity less any penalties and fees if it can be cashed in.

Name(s) of owner(s)

Name of institution issuing the annuity

Contract number

Date purchased (mm/dd/yyyy)

Name(s) of owner(s)

Name of institution issuing the annuity

Contract number

Date purchased (mm/dd/yyyy)

Assisted Living/Other

5. Have you, your spouse, or someone acting on your behalf given a deposit to any health-care or residential facility, like an assisted-living facility, a continuing-care retirement community, or life-care community? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Real Estate).

Send a copy of the contract you signed with the facility and any documents about this deposit.

Name of facility

Address of facility

Amount of deposit
\$

Date deposit given to facility (mm/dd/yyyy)

Real Estate

6. Do you or your spouse own or have a legal interest in your primary residence? You Yes No Your spouse Yes No

6.a. Do you or your spouse own or have a legal interest in any real estate **other than** your primary residence? You Yes No

Your spouse Yes No

If you answered **yes** to any of these questions, fill out this section.

If **no**, go to the next section (Vehicles/Mobile Homes).

Send a copy of the deed(s), current tax bill(s), and proof of amount owed on all property owned.

Address	Type of property	Current value \$
Address	Type of property	Current value \$

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

Vehicles/Mobile Homes

7. Do you or your spouse own any vehicles, like cars, vans, trucks, recreational vehicles, mobile homes, or boats? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Prepaid Burial Plans/Trusts).

Send a copy of the registration for each vehicle, and proof of the outstanding loan balance. For mobile homes, send a copy of the bill of sale.

If you have a spouse at home, send proof of the fair market value of each vehicle as of the date of admission to the medical institution.

You			
Type of vehicle	Year/make/model	Fair-market value \$	Amount owed \$
Your spouse			
Type of vehicle	Year/make/model	Fair-market value \$	Amount owed \$

Prepaid Burial Plans/Trusts

8. Do you or your spouse have any prepaid burial contracts or trusts, life insurance set up for funeral and burial expenses, or bank accounts set aside for funeral expenses? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Trusts).

Send a copy of the trust contract, trust instrument, insurance policy, or burial-only account.

You			
Burial contract <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No	Burial trust <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No	Burial plot <input type="checkbox"/> Yes <input type="checkbox"/> No	
Life insurance for burial <input type="checkbox"/> Yes (total face value \$) <input type="checkbox"/> No	Burial-only account <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No		
Insurance Company	Policy number	Bank name	Account number
Your spouse			
Burial contract <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No	Burial trust <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No	Burial plot <input type="checkbox"/> Yes <input type="checkbox"/> No	
Life insurance for burial <input type="checkbox"/> Yes (total face value \$) <input type="checkbox"/> No	Burial-only account <input type="checkbox"/> Yes (amount \$) <input type="checkbox"/> No		
Insurance Company	Policy number	Bank name	Account number

Trusts

9. Are you or your spouse the grantor/donor, trustee, or beneficiary of any trusts? Yes No

9.a. Have you, your spouse, or someone else on your behalf, including a court or administrative body, contributed income or assets owned by you or your spouse to a trust? Yes No

If you answered **yes** to any of these questions, fill out this section.

If you answered **no** to these questions, go to **Part 7: Fill out this section ONLY...**

Send a copy of the trust document(s), any amendments, documents showing financial activity, and the schedule of beneficiaries.

Trust name	Revocable? <input type="checkbox"/> Yes <input type="checkbox"/> No	Current trust principal \$	Trust principal on admission date* \$
Trustee(s)	Grantor(s)/Donor(s)	Beneficiaries	
Trust name	Revocable? <input type="checkbox"/> Yes <input type="checkbox"/> No	Current trust principal \$	Trust principal on admission date* \$
Trustee(s)	Grantor(s)/Donor(s)	Beneficiaries	

* Enter the trust principal on the date of admission to medical institution.

NURSING HOME MASSHEALTH ELIGIBILITY

PART 7 Fill out this section **ONLY** if you are a member of a married couple living with your spouse and one spouse is under age 65 and applying and no children under age 19 are living with you.

If this section applies to you and you want more information about income standards and other information that may apply, call MassHealth Customer Service at 1-800-841-2900 (TTY: 1-800-497-4648 for people who are deaf, hard of hearing, or speech disabled) to get a Member Booklet. If this section does not apply, go to **Part 8: Personal-Care-Attendant Services**.

Breast or Cervical Cancer (optional) (only for persons under 65 years of age)

1. Do you have breast or cervical cancer? Yes No

MassHealth has special coverage rules for people who need treatment for breast or cervical cancer.

If yes, we will send you a certificate to be filled out by your doctor to prove your breast or cervical cancer diagnosis. Then MassHealth can see if your MassHealth benefits give you the most coverage possible.

Name: _____

HIV Information (optional) (only for persons under 65 years of age)

2. Are you HIV positive? Yes No

If you are HIV positive, you may be eligible for additional coverage or benefits.

If yes, you will need to give us proof of your HIV-positive status. Then MassHealth can see if your MassHealth benefits give you the most coverage possible.

Name: _____

Disability (only for persons under 65 years of age)

3. Do you have a disability (including a disabling mental health condition) that has lasted or is expected to last for at least 12 months?

(If legally blind, answer yes.) Yes No

Name: _____

PART 8 Personal-Care-Attendant Services (for people aged 65 or older who are not going into a long-term-care facility)

To get more information about personal-care-attendant (PCA) services, and how filling out this PCA section could affect the way we decide if you can get MassHealth if you do need PCA services, read the PCA section in the Senior Guide that is enclosed.

1. Do you or your spouse need the services of a personal-care attendant? Yes No

If yes, fill out this section and answer all questions. If no, go to **Part 9: Rights and Responsibilities and Signature Page**.

2. Have you or your spouse had the services of a personal-care attendant paid for by MassHealth within the last six months? Yes No

If yes, go to **Part 9**. If no, answer the following questions in this section.

3. Do you or your spouse have a permanent or long-lasting disability? You Yes No Your spouse Yes No

3.a. If yes, does your (or your spouse's) disability keep you (or your spouse) from being able to do your (or your spouse's) daily living activities, like bathing, eating, toileting, dressing, etc., unless someone physically helps you (or your spouse)? You Yes No Your spouse Yes No

3.b. If yes, do you (or your spouse) plan to contact a MassHealth personal-care-management (PCM) agency to ask for personal-care-attendant services? You Yes No Your spouse Yes No

Note: You must contact the PCM agency within 90 days of the date that MassHealth decides you are eligible for MassHealth or you will not be able to benefit from the special PCA rules.

MassHealth may not pay certain members of your family to be your personal-care attendant.

Each spouse who answered yes to all parts of Question 3 above must fill out his or her own Personal-Care-Attendant Supplement (Supplement E).

One copy is enclosed. If you need a second copy, call MassHealth Customer Service at 1-800-841-2900 to ask for one. If you (or your spouse) do not send us your filled-out PCA supplement(s), we will determine your MassHealth eligibility as if you do not need PCA services.

PART 9 Rights and Responsibilities and Signature Page

On behalf of myself and all persons listed on this application, I understand, represent, and agree as follows.

1. MassHealth may require eligible persons to enroll in available employer-sponsored health insurance if that insurance meets the criteria for MassHealth payment of premium assistance.
2. Employers of eligible persons may be notified and billed in accordance with state regulations for any services that hospitals or community health centers provide to these persons that are paid for by the Health Safety Net.
3. Health coverage premiums must be paid for all persons listed on this application who are applying. Failure to pay any premium due may result in the State deducting the amount owed from the tax refunds of responsible persons. If any person applying is a certain American Indian or Alaska Native, MassHealth premiums may not have to be paid.
4. MassHealth has the right to pursue and get money from third parties who may be obligated to pay for health services provided to eligible persons enrolled in MassHealth programs. These third parties may include other health insurers, spouses, or parents obligated to pay for medical support, or individuals obligated to pay under accident settlements. Eligible persons must cooperate with MassHealth in establishing third-party support and obtaining third-party payments for themselves and anyone whose rights they can legally assign. Eligible persons may be exempted from this obligation if they believe and tell MassHealth that cooperation could result in harm to them or anyone whose rights they can legally assign.
5. A parent and/or guardian of minor children must agree to cooperate with state efforts to collect medical support from a noncustodial parent unless they believe and tell MassHealth that cooperation will harm the children or the parent or guardian.
6. Eligible persons who are injured in an accident, or in some other way, and get money from a third party because of that accident or injury must use that money to repay MassHealth or the Health Safety Net for certain services provided.
7. Eligible persons must tell MassHealth or the Health Safety Net, in writing, within 10 calendar days, or as soon as possible, about any insurance claims or lawsuits filed because of an accident or injury.
8. The status of this application may be shared with a hospital, community health center, other medical provider, or federal or state agencies when necessary for treatment, payment, operations, or the administration of the programs listed above.
9. To the extent permitted by law, MassHealth may place a lien against any real estate owned by eligible persons or in which eligible persons have a legal interest. If property is sold, money from the sale of that property may be required to be used to repay MassHealth for medical services provided.
10. To the extent permitted by law, for any eligible person aged 55 or older, or for any eligible person for whom MassHealth helps pay for care in a nursing home, MassHealth may seek money from the eligible person's estate after death.
11. I understand that annuity transactions, including purchases and selecting or changing payment plans, entered into on or after February 8, 2006, require that certain conditions are met and that I may not be eligible for payment of long-term care services unless I provide proof that those conditions have been met. I also understand that the Commonwealth of Massachusetts may be required to be named as a remainder beneficiary of annuities for the total amount of medical assistance paid for the institutionalized individual. I further understand that the Commonwealth may not be removed as the beneficiary, and that eligibility may be ended and benefits recovered if the Commonwealth's position as a remainder beneficiary is not maintained.
12. Eligible persons must tell the health care program(s) in which they enroll about any changes in their or their household's assets, income, or employment, household size, health insurance coverage, health insurance premiums, and immigration status, or about changes in any other information on this application and any supplements to it within 10 calendar days of learning of the change. Eligible persons can make changes by calling 1-888-665-9993 (TTY: 1-888-665-9997 for people who are deaf, hard of hearing, or speech disabled). A change in information could affect eligibility for these persons or for persons in their household.*
13. MassHealth, the Massachusetts Health Connector, and the Health Safety Net will obtain from eligible persons' current and former employers and health insurers all information about health insurance coverage for these persons. This includes, but is not limited to, information about policies, premiums, coinsurance, deductibles, and covered benefits that are, may be, or should have been available to these persons or members of their household.
14. MassHealth, the Massachusetts Health Connector, and the Health Safety Net may get any records or data about persons listed on this application to document medical services claimed or provided to them. We will keep such information private, and only use and disclose it in accordance with applicable law.

NURSING HOME MASSHEALTH ELIGIBILITY

15. MassHealth, the Massachusetts Health Connector, and the Health Safety Net may get records or data from federal and state data sources and programs, such as the Social Security Administration, the Internal Revenue Service, the Department of Homeland Security, the Department of Revenue, and the Registry of Motor Vehicles, to prove any information given on this application and any supplements, or other information once an individual becomes a member, and to support continued eligibility. We will keep all records and data provided to us private, and only use and disclose it in accordance with applicable law.

(For renewal of coverage in future years)

16. MassHealth, the Massachusetts Health Connector, and the Health Safety Net will use income data, including information from federal tax returns, to determine eligibility. To make it easier to check income at renewal time, I may authorize MassHealth, the Massachusetts Health Connector, and the Health Safety Net to use data from federal tax returns to redetermine eligibility in future years. MassHealth, the Massachusetts Health Connector, and the Health Safety Net will use this data to the extent I authorize, and will send me a notice, let me make any changes, and allow me to opt out at any time.

On behalf of all persons applying for health coverage, I: (Check one.)

permit use of the data for the next five years; or

permit use of the data for: (Check one.)

one year, two years, three years, four years

do not permit the use of federal tax data to renew eligibility for help paying for health coverage.

17. MassHealth, the Health Connector, and the Health Safety Net may send notices and share information pertaining to the eligibility, renewal of eligibility or enrollment of persons listed on this application to me and to the other persons listed on this application.
18. If I am acting on behalf of someone in filling out this application and any supplements, I have filled out and sent the enclosed Authorized Representative Designation Form with this application or have such form on record. I understand that my signature on this application and any supplements as an authorized representative certifies that the information on this application and any supplements, including those submitted with this application as well as any other forms or documents that may be submitted to or required by MassHealth, the Health Connector, the Children's Medical Security Plan, or the Health Safety Net, is correct and complete to the best of my knowledge.
19. If I think that MassHealth or the Health Connector has made a mistake in eligibility for me and/or other applicants, I have the right to appeal or file a grievance. If I disagree with the action taken by MassHealth or the Health Connector, I have the right to appeal and ask for a hearing before an impartial hearing officer. I can also ask for a hearing if I did not receive a notice telling me about the action that was taken. To find out how to appeal, please call 1-888-665-9993 (TTY: 1-888-665-9997 for people who are deaf, hard of hearing, or speech disabled). I understand that I may be eligible to continue getting benefits while my appeal is being decided. I may have a lawyer or other person represent me, but I may also represent myself. MassHealth or the Health Connector will not pay for anyone to represent me. Additional information about appeals will be provided with any notices I receive, as well as during the appeal process.
20. Under federal law, discrimination is not permitted on the basis of race, color, national origin, sex, age, sexual orientation, gender identity, or disability. I can file a complaint of discrimination by going to www.hhs.gov/ocr/office/file.

* You can also report changes in any of the following ways.

- Sign on to your account at www.MAhealthconnector.org. You can create an online account if you do not already have one.
- Send the change information to: Health Insurance Processing Center
P.O. Box 4405
Taunton, MA 02780.
- Fax the change information to: 617-887-8770.

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I certify under the penalties of perjury that:

- I have read or have had read to me the information on this application, including any supplements and instruction pages, and understand that the Senior Guide contains important information;
- I have permission to submit this application for and receive eligibility and enrollment information about all persons listed on this application and as may be allowed by any legal documents I have submitted with this application;
- I understand my rights and responsibilities and the rights and responsibilities of all persons for whom I am submitting this application, as explained in the rights and responsibilities before this signature page;
- I have told or will tell all persons for whom I am submitting this application about these rights and responsibilities so they also understand their rights and responsibilities;
- I understand and agree that MassHealth and the Health Connector will treat electronic, faxed, telephonic, or copies of signatures with the same force and effect as an original signature(s);
- The information I have supplied is correct and complete to the best of my knowledge about myself and other persons for whom I am submitting this application; and
- I may be subject to penalties under federal law if I intentionally provide false or untrue information.

X

Signature of Person 1 or authorized representative

Print name

Date

Important: If you are submitting this application as an authorized representative, you must submit an **Authorized Representative Designation Form** to us for us to process this application.

For certified application counselors, navigators, agents, and brokers only.

Fill out this section if you are a certified application counselor, navigator, agent, or broker filling out this application for someone else.

First name, middle initial, last name, suffix

Organization name

Send the filled-out application to:

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

Hand deliver it to:

	MassHealth Enrollment Center Central Processing Unit The Schrafft Center 529 Main Street, Suite 1M Charlestown, MA 02129
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NURSING HOME MASSHEALTH ELIGIBILITY



SUPPLEMENT D Long-Term-Care Questions

- Do you need long-term-care services in a nursing home type facility? Yes No
If **yes**, you must answer all questions and fill out all sections of this supplement.
- Are you applying for or getting long-term-care services at home under a Home- and Community-Based Services Waiver? Yes No
If **yes**, you only need to fill out the "Resource Transfers" section on pages 27-28.

Please print clearly. Answer all questions and fill out all sections. If you need more space to finish any section, please use a separate sheet of paper (include your name and social security number), and attach it to this supplement.

Applicant Information

Last name	First name	MI	Social security number
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Name and address of hospital, nursing facility, or other institution

Date of admission (mm/dd/yyyy)	Were you placed here by another state? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes , what state?
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1. Do you have to pay guardianship expenses for a court-appointed guardian? Yes No

Living expenses of the spouse and family members living at home

Your spouse living at home may be able to keep some of your income. Fill out the following information about your spouse's current living expenses. If you do not have a spouse, go to the next section (Long-Term-Care Insurance).

Send proof of your spouse's current living expenses.

2. How much does your spouse pay each month for:

Rent? \$	Mortgage (principal and interest)? \$	Homeowner's/tenant's insurance? \$	Real estate taxes? \$
Required maintenance charge for a condo or co-op? \$		Room and board for assisted living? \$	

3. Does your spouse pay for heat? Yes No
 4. Does your spouse pay for utilities? Yes No
 5. Is a child, parent, brother, and/or sister living with your spouse? Yes No

If **yes**, fill out this section.
If **no**, go to the next section (Long-Term-Care Insurance).

Send proof of their monthly income before deductions.

A deduction may be allowed for their maintenance needs. These persons must be related to you or your spouse, and one of you must claim them as dependents on your federal income tax return.

Name	Social security number	
Relationship	Date of birth (mm/dd/yyyy)	Monthly income before deductions \$
Name	Social security number	
Relationship	Date of birth (mm/dd/yyyy)	Monthly income before deductions \$

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

Long-Term-Care Insurance INT

6. Do you or your spouse have long-term-care insurance? Yes No

If **yes**, fill out this section.

If **no**, go to the next section (Real Estate).

Send a copy of the policy.

Company name/Policy number	Policyholder name
----------------------------	-------------------

Effective date (mm/dd/yyyy)	Premium amount \$
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Company name/Policy number	Policyholder name
----------------------------	-------------------

Effective date (mm/dd/yyyy)	Premium amount \$
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Real Estate LIT

The answers to the following questions will be used to decide if: (1) your real estate will be counted as an asset; or (2) a lien will be placed against your real estate.

Note: If the equity interest in your principal place of residence is over a certain limit, you may be ineligible for payment of long-term-care services, unless certain conditions are met.

7. Do you or your spouse own or have a legal interest in your home, including a life estate? Yes No

If **yes**, fill out the following information and answer questions 8 through 15.

If **no**, answer question 15 only.

Name and address of person(s) on ownership papers

Description and address of property location

Type of ownership (Check one.) Individual Tenancy in common Joint tenancy Life estate Fair-market value \$

Name and address of person(s) on ownership papers

Description and address of property location

Type of ownership (Check one.) Individual Tenancy in common Joint tenancy Life estate Fair-market value \$

8. Do you have a spouse? Yes No

If **yes**, fill out this section.

Name	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
------	--

9. Do you have a permanently and totally disabled or blind child? Yes No

If **yes**, fill out this section.

Name	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
------	--

10. Do you have a child under 21 years of age? Yes No

If **yes**, fill out this section.

Name	Date of birth: (mm/dd/yyyy)	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
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NURSING HOME MASSHEALTH ELIGIBILITY

11. Do you have a brother or sister with a legal interest in the home who was living in the home for at least one year immediately before your admission to the medical institution? Yes No

If **yes**, fill out this section.

Name	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
------	--

12. Do you have a son or daughter who has lived in the home for at least the last two years before your admission to the medical institution and has provided care to you that allowed you to live in the home? Yes No

If **yes**, fill out this section.

Name	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
------	--

13. Do you have a dependent relative? Yes No

If **yes**, fill out this section.

Name	Is this person living in your home? <input type="checkbox"/> Yes <input type="checkbox"/> No
------	--

Describe the relationship and the nature of the dependency:

14. Do you intend to return to your home? Yes No

15. Do you or your spouse own or have a legal interest in other real estate not listed in #7 above? Yes No

If **yes**, please describe the property and list its address below.

.....

.....

.....

If you need more space, please use a separate sheet of paper.

Tax Returns

16. Did you or your spouse file U.S. income tax returns in the last two years? (Check one.)

Yes, both years Yes, one of these years No, neither year

If **yes**, you must **send copies** of these returns. If you did not keep copies of one or more of these returns, **you must send in a filled-out and signed Form 4506**. Form 4506 is included as part of the Long-Term Care Supplement if you need to use it.

Resource Transfers (resources include both income and assets)

17. Have you, your spouse, or someone acting on your behalf given a deposit to any health care or residential facility, like an assisted living facility, a continuing care retirement community, or life care community? Yes No

If **yes**, give us the name and address of the facility, the amount of the deposit, answer the following questions, and **send us a copy** of the contract you signed with the facility and any documents about this deposit.

Name of facility

Address of facility	Amount \$
---------------------	--------------

- 17.a. Does the facility still have the deposit? Yes No

- 17.b. Did the facility return the deposit? Yes No

If **yes**, give us the name and address of the person who got the deposit from the facility.

Name of person

Address

ESTATE PLANNING FOR THE AGING OR INCAPACITATED

18. In the past 60 months:

- 18.a. Did you, your spouse, or someone on your behalf transfer income or the right to income? Yes No
- 18.b. Did you, your spouse, or someone on your behalf transfer, change ownership in, give away, or sell any assets, including your home or other real estate? Yes No
- 18.c. Did you, your spouse, or someone on your behalf change the deed or the ownership of any real estate, including creating a life estate, even if the life estate was purchased in another person's residence? Yes No
- 18.d. If you purchased a life estate in another person's home, did you live in the home for at least one year after you purchased the life estate? Yes No
- 18.e. Did you, your spouse, or someone on your behalf add another name to the deed of any property you own? Yes No
- 18.f. Did you, your spouse, or someone on your behalf receive or give anyone a mortgage, loan, or promissory note on any property or other asset? Yes No
- 18.g. Did you, your spouse, or someone on your behalf purchase or in any way change an annuity? Yes No

19. In the past 60 months, has any property that was available or belonged to you or your spouse been transferred into or out of a trust? Yes No

If you answered yes to any of the questions above, you must fill out the following, and send us proof of this information.

Description of asset/income		Date of transfer (mm/dd/yyyy)
Transferred to whom	Relationship to you or your spouse	Amount of transfer \$
Description of asset/income		Date of transfer (mm/dd/yyyy)
Transferred to whom	Relationship to you or your spouse	Amount of transfer \$
Description of asset/income		Date of transfer (mm/dd/yyyy)
Transferred to whom	Relationship to you or your spouse	Amount of transfer \$