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Medicaid and Long-Term Care

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Speaker(s)

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>>: MassHealth eligibility for nursing home care. You can find these regulations in section 130CMR501-522. And these are the MassHealth Medicaid regulations. Today I'm going to focus on long-term care MassHealth eligibility regulations, which are found here as indicated on the slide. This is regarding MassHealth for the coverage of skilled nursing. So for nursing homes. MassHealth is also available in the community for just standard insurance, for assistance with care at home or assistance with the assisted living facility. That's referred to as MassHealth community-based care. And that is an entirely different presentation than today, so much of what I'm going to talk about today in terms of countable assets, countable income, eligibility rules, do not apply at all to someone's eligibility for MassHealth in the community. This is just going to be covered on MassHealth coverage. The rules are convoluted and they're filled with exceptions, so today this is a brief presentation, it could be a day-long presentation on all the different exceptions, but we're going to touch on the most common eligibility regulations, most common exceptions. And go through each thing with you. So first I'm going to start with the resource limit. For a single individual who is applying, they can have no more than $2,000 of countable assets. For a married couple who are both institutionalized, both in a skilled nursing facility, and applying for MassHealth, they can each have $2,000 in countable assets. And for a married couple if only one person is applying for MassHealth, and one person is living in the community, so living at home or otherwise in assisted living, not the nursing home, they're limited to a combined countable asset limit of $130,380, and that's referred to as the community spouse resource alliance, also known as the CSRA. We're going to go

through what a countable asset is and what is noncountable asset is in a little bit. Even though the spouse -- a married couple, one spouse is at home, for example, you can have countable asset of approximately $130,000, the applicant in the nursing home, of that $130,000 can only have $2,000 in his or her name. The agency does give you 90 days after the application has been approved to transfer assets out of that applicant's name to the spouse in the community. So it's combined they have 130,000, and the nursing home spouse has 130,000 in their name, they can still get approved, and the agency will give them up to 90 days to transfer the assets in excess of 2,000 to their spouse. There is no penalty for transferring assets between spouses. So we'll talk a little bit about the five-year lookback, and most people know there is a penalty if you give assets away and try to apply for Medicaid. But that does not apply between spouses. So a spouse can give their spouse in the community as much money as they won't and there isn't any five-year lookback. If someone is eligible for MassHealth in the nursing home, what does that even mean? In essence it means they have to pay their PPA, their patient paid amount every month to the nursing home, and the commonwealth of Massachusetts under the MassHealth Medicaid program will pay the difference. So it's an enormous benefit. To be on MassHealth, because nursing homes range private pay can somewhere between $11,000 and $16,000 a month or more. So if the individual only has to pay their patient paid amount, it's essentially their income less deductions and the state pays the difference, that's a large benefit and very comprehensive as well. So the patient paid amount for single individual is their countable income, and they get to deduct $72.80 for their personal needs, as well as any deduction for the cost of health insurance, other private health insurance they pay for, any Medicare supplement, they're still going to be entitled to keep. There's also an additional deduction, if they have a child under 21, or a dependent child over 21, or a parent or sibling they claim as a dependent. For a married individual, they can also deduct their $72.80 health insurance premiums they otherwise pay and again, if they have a child under 21, a dependent child over 21, a parent or sibling they claim as a dependent, there may be an additional deduction for their countable income. Most often this comes up, this is the most common thing you see, where one spouse is in a nursing home and one is at home, they get the spouse at home can keep some of the income the nursing home resident's income, known as minimum maintenance needs, or MMMNA, that is a minimum of $2,155 with a maximum of $3,359 this year. These numbers all change a little bit with each passing year. Sometimes the community spouse can keep more than that. So in essence, this is when the spouse is at home and they can keep up to 21,055 of the spouse in the nursing home's income to bring the community spouse's income level up to that amount. If they have exceptional circumstances, they might be able to keep more. Because the agency as part of the MMNA calculates into that figure and the $3300 figure, the cost of food and living etc. exceptional circumstances are limited to those that are for medical reasons. So we have used this in cases where the community spouse isn't living at home, but is living in an assisted living facility and is paying privately a large chunk of their money, that expense may help them keep some of their community spouse's -- their nursing home spouse's income if necessary. That's something that you would have to go to a fair hearing on to get determined if you are filing an application seeking that. The community spouse resource allowance is the CSRA, that's that approximate $130,000 figure this year. If that is not enough to generate enough income to give the spouse what the agency terms as their MMNA, you can appeal for an increased resource allowance. There are some cases where both spouses' income is fairly low, and the spouse at home has expenses like a mortgage, or might be paying for medical expenses. They may be able to actually keep more than the $130,000. This is a fairly complicated formula that's in the regulation, and it's a regulation -- it's 130CMR520.017, if you need to do the calculation or want to look at it. But in essence, there are instances where the income is so low combined, the expenses are so high, you can keep more than 130,000. So it's an issue to keep in mind if you see low income and medical expenses, you may want to look into this. All right. So what we'll go through next are countable resources. So as a general rule, MassHealth is going to treat every asset as countable. That is funded by the applicant, the applicant's spouse, and can be sold, liquidated or otherwise converted to cash by the applicant or applicant's spouse, unless specifically excluded. So let's just go through some of the examples. These are all laid out in the regulations. But cash, so all cash is going to be countable asset. Any bank account, savings account in the applicant's name or the applicant's spouse's name is going to be treated as countable. Bank accounts, the same deal. Any bank accounts, again, 100% countable. Sometimes people say well, my daughter is on my checking account, does that mean only 50% is countable? The case of a checking and savings account, yes, it's 100% still countable and treated as the applicant's. For retirement assets, this comes up as well. People think, I have a 401(k), my dad has a 401(k), that's not countable because it's -- in order to withdraw I have to pay taxes, or a penalty. Is actually countable. All retirement assets, 401(k), IRA, are going to be countable. The only exception to that is if the spouse is working still and contributing to a retirement account by their current employer. You can make an argument that that retirement account should not be treated as countable under the regulation. Though it is not guaranteed, I would caution you to look at the regulation, because it specifically talks about pension funds in that regard, so it doesn't say a 401(k) is not countable, if the spouse is working and contributing to it pension plan provided by an employer is not countable. Though we have had success with having 401(k)s not treated as countable when the spouse is working and still contributing to it. So the next one is securities. Again, all stocks, same as cash. Any stock and investments in the applicant's or applicant's spouse's name are going to be treated as countable. Life insurance, whole life insurance policies that have a cash surrender value will be -- the cash surrender value will be treated as countable to the extent the policy is over -- more than $1500 of a cash under value. Oftentimes people have just what's called term life insurance policy, which only pays out when the person passes away. And in that case, that death benefit is not countable. So it's only whole life insurance policies that have cash surrender value. And I would definitely caution you to look at that and ask your clients about it, because it's something they don't think of, so it should definitely be on your questionnaire to ask about life insurance, both death benefit value and the cash surrender value, just so you don't miss that, because we often spend the clients down to create eligibility and they forget they have this policy of $25,000, and we sort of have to scramble at that point to try to figure out what to do with it. Real estate is a countable resource. All real estate owned by the applicant or the spouse is going to be treated as a countable asset. Unless it's business property, essential self-support, or principal residents of the applicant or spouse. I'll get into those exceptions in a little bit. For now the value of the equity in the principal residence is countable if it exceeds $906,000, so there's a $906,000 equity limit, similar to all these figures, they change a little bit every year, but this year it's 906,000. However, there is no equity limit if the applicant's spouse or the applicant's child under 21 or who is blind or permanently and totally disabled is living in the home. So if you have an applicant in a nursing home and a spouse living at home and the house is worth $2 million, the house will still be excluded and noncountable as a primary residence. If you do have a countable asset, so if the client has a home in Maine, for example, in addition to their primary residence in Massachusetts, then -- and is otherwise eligible, meaning they're down to that $2,000 countable asset limit or under $130,000 asset if they're a married couple, the agency will still deem them eligible if they sign an agreement to sell that property. The agreement to sell says they will do that within nine months. And if they need more than nine months you can file for an extension, but the agency will allow eligibility, you just have to agree to sell the property. One thing I put on here, principal residence versus former home, in is important on the application, because primary residence is noncountable asset. Up to that $906,000 figure, unless you have one of those folks living in it. In which case there's no equity limit. But a former home, so a former home is not going to be treated as noncountable. It is countable. And would be subject to this requirement to agree to sell within nine months. There is a question on the application that says do you intend to return home? So in almost all instances the answer to that is yes, and if you check yes, the agency will treat your home as a primary residence and treat it as noncountable, as opposed to treating it as a former home and treating it as countable and making you sign the agreement itself. Annuities will be countable if they can be converted to a lump sum by the applicant or spouse. Less any penalties for converting it. And it's also a disqualifying transfer of assets to purchase an annuity unless you meet the regulation. So this is another one that comes up where clients have annuities that there are penalties to withdraw it or their agent might have told them you can't withdraw it, so they think they're not countable. But typically agents are telling them you can't withdraw it because if you do, you have an enormous surcharge or penalty. It's not that you can't withdraw it, you can, but you would never be advised to and the agent would never advice you to because of all the extra penalties. So when someone comes in with an annuity thinking it's not countable because they can't convert it to a lump sum or liquidate it, you need to dig into that with them and their advisor to make sure that's the case, or see if it is, and most often it will not be. And oftentimes people, you hear before losing Medicaid -- to create eligibility for MassHealth, and that's possible to do, where you can transfer assets to an annuity and it will not be treated as a disqualifying transfer, but you have to meet the regulations under the -- which I can give you, so you have it for your reference. That's going to be 130CMR520.007J. And in essence, this is used a lot with couples. So just as an example, if you have a couple who has their primary residence and then they have some savings in excess of the $130,000 limit, you can transfer the assets to the healthy spouse, because there's no penalty for transferring assets between spouses. And then that's both -- that spouse can purchase an annuity in compliance with the regulations, which in essence has to be irrevocable, they have to receive equal payments, they have to receive the annuity over their lifetime, and they have to name the Commonwealth of Massachusetts as the first named beneficiary to the extent they don't live out the annuity term. If you buy a five-year annuity and the person passed away after four years, the Commonwealth of Massachusetts, to the extent of benefits paid will have to be named as the first beneficiary. Countable assets, revocable trusts, a lot of times clients come in and think my house is in trust, I went to a lawyer years ago, my house is protected, it's in a trust or it's in a realty trust. And I take a look at it and it's a revocable trust that is very often advised just to avoided probate, or it's a realty trust that's also the client's beneficiaries, their revocable trust is a beneficiary, or they have credit sheltered trust, very common, estate planning tool for different reasons, but those trusts are not going to be protected in terms of MassHealth planning, because they're revocable by the applicant or their spouse, the applicant itself is often the trustee, and they're the beneficiary. So for all those reasons, that type of trust is going to be counted as countable. Irrevocable trust established by the applicant or spouse, other than by will, will be treated as countable up to the maximum amount of payment that may be permitted under the terms of trust to the individual. So what that means is, an irrevocable trust, if it's an irrevocable income only trust which you often see for Medicaid planning, the income is distributed to the beneficiary. As long as the trust does not permit any distributions of principle whatsoever to the applicant or their spouse, barring some other additional challenges that have been made against the I revoke comfortable trust, that could be its own seminar, assuming that the principal cannot be distributed under any circumstance, then the assets in the I revoke comfortable trust should not be treated as countable. However, as I said, the agency has been trying to treat these trusts as countable, even after the five-year period just by looking at various terms in the trust and saying -- and arguing that because of those trust terms, the assets actually are available and could be distributed under these various circumstances, so then the whole entire trust is countable. So you have to be very careful when you're working with irrevocable trust and make sure you're up to date on all the current case law. Trusts established by a will of the applicant or spouse and trusts established by someone other than the applicant or spouse will only be countable if the trustee is required to make payments of principal and distributions are countable as well. So the first one is a will of the testamentary trust. There's a specific regulation that says if you have a trust that's created and funded at death, the assets in it will not be treated as countable assets for the surviving beneficiary, even if they are the beneficiary of the trust. So if you have a married couple and you have assets in the community spouse's name, and that community -- and the other spouse is in a nursing home, and that community spouse dies, the assets flow through her will into her trust, the nursing home resident's benefit, and even though the nursing home resident can be the beneficiary, the assets are not countable. So this is something we use quite often in elder law planning to try to provide assets available for the spouse that might be going to the nursing home while still protecting them to the extent they're not needed for the children. Also, if you have a trust that's established by someone other than the applicant or spouse, so if, for example, we have a client who is young and he's going to likely need nursing home care, his parents are still alive and are going to be leaving him assets. We've advised his parents' attorney to create a trust for him for his benefit with another family member as trustee, and so if they pass away and he's living, those assets will be available for him and his trust, but will not have to be spent down on his care. So definitely something to consider if you have a beneficiary that you think might have a disability or may need long-term care, you want to avoided trying to leave their assets to them outright. Noncountable resources, we mentioned this before, this is what we'll get into the details a bit. The principal residents is not a countable asset if it's located in Massachusetts, if used as a principal residence, and the equity limit is not exceeded. So again, the equity limit is

$906,000, but there's no equity limit if the spouse is living there, or if a child under 21 is living there, or if you have a blind or permanently and totally disabled child living there. Another type of real estate that's not countable is business or nonbusiness property essential for self-support. So this is the case where we argue this comes into play sometimes where a family has a primary residence, and they also have a three-family home that they've had for years, and they ranked out and -- they rent it out, they make a profit on that property after they pay expenses, you can argue that property is not countable either, and is nonbusiness property essential to self-support. Other noncountable assets are inaccessible assets, assets that are treated as noncountable for a period of time until they become accessible. And this is an asset to which the applicant or member has no legal access. If there's a divorce proceeding and the assets are tied up. Or I had a case where a gentleman was applying for MassHealth and he had been divorced, and we had no idea what he had for assets, because he didn't have capacity, he had no power of attorney, no healthcare agent, so someone had to go to court to get appointed as conservator. But while that process was pending the assets we had no idea about, no information about, were not treated as countable. So he received MassHealth, and once a conservator was appointed we could discover the assets and dig around to figure out where the 401(k) was, then those assets become countable. Jointly held assets, I mentioned this before, bank accounts, but basically if they're treated differently, depending on if it's a checking or saving account or an investment account. If you have a checking or savings account, where like a bank asset, and your child is on that account with you, it's going to be treated at 100% yours, meaning the applicant. Unless you can verify for us the money is actually the child's. If their income is going in there and it's really not your money, and you can prove that, that works. But adding their name to your bank account doesn't only make 50% of your money and your account countable. However, that is different for nonbank assets like investment accounts, mutual funds, and that sort of thing, if you have a joint -- a daughter on that account with you, then the asset will only be treated 50% yours. Keeping in mind, we'll talk about this in a second, but if it's -- once you put your daughter's name on it, that is a transfer, essentially, and so you'll be ineligible for MassHealth for the period of time based on the value of that transfer, which I'll show you how to calculate in a minute. So here we are at transfer of assets.

After February 2006, the rules changed on this. This number changes a little bit every year as well, but you're ineligible for one day for every $391 that you transfer. The way this works is the agency, say you transfer $100,000 to your daughter. You then are ineligible for about 255 days. You take the $100,000, divide by 391, then that's the number of days you're ineligible for MassHealth. The issue is that 255 days doesn't begin to start until the applicant's in a nursing home, the applicant's below the asset limit, so they either are under the 2,000 or under the 130,000, depending if they're single or married, the nursing home hasn't been paid, and the applicant's income is below the MassHealth reimbursement rate. So it makes it very difficult to transfer assets and create eligibility because if you give away the $100,000 and you're ineligible for 255 days, that means you have to pay privately for 255 days and you don't have the money to do that, because you're otherwise below the asset limit. This is where it's created this law created a five-year lookback. When you give assets away, you have to wait five years to apply, because the application will ask you have you made any transfers within the last 60 months. And those are the transfers you have to report and are taken into account in the valuation. They penalize all transfers for less than fair market value unless they were transferred for the purpose other than to qualify for MassHealth, or if you intend to dispose of them at fair market value, or other valuable consideration. So often people come in and say I want to pay for my grandkids' education or I have been paying for it, that shouldn't be an issue because that wasn't done with the intent to qualify for MassHealth. It was done because I wanted to make a gift. And unfortunately MassHealth will almost always assume any gift at all was in contemplation of trying to qualify for MassHealth, and it's up to us to try to make an argument otherwise. There are some exceptions where the five-year lookback for transfer penalty will not apply. So we've already gone over this before. But to a spouse, number one, you can give a spouse as much money as you want. And apply. Either directly or into a trust for the sole benefit of a child who is blind or permanently and totally disabled. So there's an exception for disabled children. Or to a trust established solely for the benefit of an individual who is under 65 and disabled. Which is known as a (unintelligible) trust. If we have an applicant under 65, and they have assets in excess of $2,000, we could create a (unintelligible) trust for them and have a trustee appointed, they can put their assets into it, and the trust can be there for their benefit during their lifetime. The state of Massachusetts does have to be the first named beneficiary on that type of trust. To the extent of benefits paid to that person. But at least they can put money aside in excess of that $2,000 limit, for example, so there's a way to pay for expenses that MassHealth doesn't cover. There's also an exemption if you transfer assets to a pool trust, solely for the benefit of a permanently disabled individuals. And so a pooled trust is managed by a nonprofit organization, often working with people like the plan of Massachusetts or Bristol county ARC, and it's similar to the (unintelligible) trust except it's for folks who can't create a (unintelligible) trust because they may be over 65 years old. The pool trust (unintelligible) for their lifetime, to cover things that MassHealth might not cover. The pool trust takes a fee, administrative fee to do that, the pool trust also will take a percentage when the person passes away. And then the Commonwealth of Massachusetts will be reimbursed as well when the person passes away, and if there's any assets after that they can go to the beneficiary. So the (unintelligible) trust and the pool trust are not great tools to pass on assets of the next generation or to whoever they're trying to get their assets to. But it is a great -- they are great tools to make sure the individual who needs MassHealth has assets over and above the asset limit to take care of themselves for their lifetime. Some additional penalty, transfer penalty exceptions when we're dealing with real estate, again, the spouse, you can transfer anything including real estate to a spouse and there's not going to be any penalty for that. You can also make a transfer of the home to a child who is under age 21. Or who is blind or permanently and totally disabled. Or to a sibling who has an equity interest in the home and who is residing in the home for the year immediately prior to nursing home admission of the institutionalized sibling. So that is in there to protect siblings who own property together. And then there's also one that -- known as the caretaker child exception where you can transfer your assets to a child who is residing in the home, for at least two years before the parent's nursing home admission and who provided care to that parent that enabled them to remain at home. If you have a situation where a child is living with the parent and providing all the care, and has lived with them for two years before they moved to a nursing home, and you can get a doctor to certify that that level of care that the child provided actually kept the parent home instead of making them move to a nursing home, then there's a chance you can transfer the house to that child with no five-year lookback. And that's something that is likely going to have to go before a fair hearing, so you'd file the application and make that argument, but very often a caseworker is not going to be able to make that determination. It might likely have to go before a hearing officer. In limited circumstance the agency 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 health would be in danger over a serious deprivation. In this case, for example, if you had an elder whose child took all of their money, for example, maybe they were their attorney and they were stealing money from their account or something like that, and then the elder had to go to a nursing home and the agency impose as penalty saying you gave your child all this money, so no you can't qualify for MassHealth, in that instance you might be trying to file here for the under hardship waiver because it wasn't the intent of the elder to give this money, it was stolen, and if they're ineligible for Medicaid there's no one to cover their expenses. So they would certainly be in danger, and that would be an example of the undue hardship waiver. If you have made gifts, so if you get -- if a parent has made gifts to a child and then needs MassHealth, within that five-year period and the agency imposes a penalty to say, you're not eligible for 300 days or whatever the case is, depending on the size of the gift, you can cure that transfer by simply returning it. So the child could return the money to the parent, it's called a cure. And then the parent could do something with the assets at that point, whether it's a pool trust or (unintelligible) trust depending on how old they are, there may be other exceptions depending on the circumstances. But that would cure the penalty. Often what comes up a parent may have made a payment to a special needs trust for a child which would typically be an exception, you can put assets into trusts for a disabled child without five-year lookback or penalty, but the trust might need revising so the child is the sole beneficiary. And they allow you to do that to cure that transfer as a well. Also state recovery and liens, so this is the whole part about being saying I want to protect my home for Medicaid, I want to make sure the agency doesn't get it. Up until now I've told you that a permanent residence is not countable, so why do people care so much about trying to protect it? They're trying to protect it from a state recovery or MassHealth lifetime lien. Even though the agency says you can have MassHealth and have a primary residence, they'll give you the benefit, but when you pass away they'll seek to recover from your estate for the value they have paid on your behalf. So they try to recover from the value of your real estate when you pass away. And similarly if you sell the property while you're alive, they'll try to recover from what they've paid to date. So for estate recovery, the agency can recover from your estate or from your -- any assets that are in your name alone, so either your real estate or any other assets you have, happen to have in your name alone, for any services paid to you after age 55, and for any services paid in a skilled nursing facility no matter how old you are. That's limited to probate assets, so those (unintelligible). And for the lien, there will be a lien -- a lien placed on the property if you received services in a nursing home, but you can have the lien deferred if there's a spouse in the home and the plot is sold, or a child under 21 or disabled child or a sibling with a legal interest in the home. So sometimes people do want to try to protect the primary residence or put it -- protect primary residence from recovery or a lifetime lien. One easy way to do that is to put it in the name of the community spouse. So if you have a married couple, you can transfer the house into the healthy spouse's name and it will be liened for a value of services for the spouse in the nursing home. You could also potentially use an irrevocable trust, that's when you transfer the home into an irrevocable trust, the applicant and/or the applicant's spouse retain no right whatsoever to the principal in the trust. They're not trustees, they cannot use the equity in the home. They'll -- if the home is sold they can't use the proceeds for their benefit. And five years after they do that, the property should be treated as noncountable, however, as I said, the agency is scrutinizing these trusts, so you want to make sure you're using a lawyer who is very familiar with them and knows what to put into the trust and what to make sure is not in there in terms of trustee powers and various other things. And then another option for the primary residence is to put property in a life estate, which is when the applicant retains a life estate interest in the property and deeds the remainder interest to someone else. For example, children. And in that case, it does protect the property from estate recovery because when the person passes, the applicant passes away, it automatically goes to the remainder beneficiaries without probate. But it doesn't protect from a lifetime lien, because the applicant will still be entitled to their life estate interest proceeds if the property is sold (unintelligible), so those proceeds will become countable assets when the property is sold. So you need to think about that and whether doing a life estate deed makes sense, and the remainder will be able to keep it if the applicant -- if the parent needs a nursing home, because if they sell it, it's not protected. This also starts a five-year lookback, just like the irrevocable trust. And it will avoided probate, as I said, and this life estate you can still get the capital gains tax exclusion if the property is sold, and the same with the irrevocable trust, I didn't mention, that but both of those can be drafted so you retain tax exclusion, and also a step up when the person passes away, those are big often big and important deals for clients, because they purchase their property in Brookline for $15,000, a long time ago and now it's worth 2 million and their capital gains tax is enormous so we want to make sure if you're doing life estates that you're drafting them so the beneficiaries get a step up in basis on that gain. And then this last part is just a little bit about the application process. So you file the application, and you're actually, have you three months to file it to seek eligibility. So assuming the person is eligible, you have three months to file the application and to seek that date back. Retroactively. Once you file the application, you're going to get an information request in every case where they ask for more information. And you have 30 days to respond to that. Sometimes less. So it's a quick turnaround, and what we try to do is look at the application and make a list for the client to say, hey, we think this is what they're going to come back with, based on what we provided, let's prepare this so we're ready instead of being under the gun. You might get a denial for lack of verification during that information request process, because you can't get the -- what they're looking for so quickly. As long as you file an appeal on that, then you can preserve the original application date, which is important to get that retroactive coverage. Then you can get your verification in by the appeal date and you should be okay. But definitely important things to pay attention to. And if you get a decision that is adverse where you get a denial because they're treating something as countable that you think shouldn't, or they're penalizing a transfer when you think there was no intent to qualify for MassHealth when the applicant made that transfer, whatever the case is, you have 30 days to appeal that notice for a hearing, and there's a hearing, and if that doesn't go your way, you can appeal that further to a superior court under 30A, and you have 30 days within that adverse decision to do that.

>>: Come in and I will do my very best to answer these. We do have a few more minutes before we are set to take a break, so any other questions, feel free to put them up on the chat now. So the first was, can the common law come after the recipient's spouse -- after the recipient's spouse dies and the spouse residing in the primary home passes away, so I think what they're asking there is if husband was receiving benefits, and then his well spouse was at home, when well spouse ultimately passed away, would the commonwealth go after the primary residence? And I believe the answer is no. So what happens there is when you have a husband and a wife, and husband is in the nursing facility, because his wife is living in the home and it remains her primary residence, it will not be a countable asset. As long as the property is transferred into her name. So no lien is placed, and therefore when she subsequently dies, no lien would be there that the commonwealth would have to -- would look to be satisfied. If wife subsequently needed benefits before she passed, then there might be an issue. Is a revocable trust countable if the beneficiary is a sibling residing in the property with the donor? Revocable trusts like Patricia said do not provide protection whatsoever for any assets. So if your property is in a rev trust, those are great for state planning processes, but they're going to afford no protection for long-term care planning purposes. If you own a piece of real estate with your sibling and the sibling has a property interest, so they have a deeded interest in the property, I believe that it will be deemed inaccessible. However, I think they can actually try to attach a lien to the sibling that's going into the facility, and that ultimately when their percentage of the property is sold, they would want to collect on that. But essentially if sibling is still living there and they have a property interest in it, I don't think they can throw sibling out, but the fact it's in a rev trust is not going to do anything, it's simply whether that sibling has a property interest. If a sibling is living there and has no property interest, no dice. Too bad. For the sibling. Once an applicant is deemed ineligible, is the applicant precluded from applying later? In other words, is that considered res judicata? So how that works is, if you're deemed ineligible, and it's usually because you're either over asset or you've made a transfer, if you're deemed ineligible because you're over assets, you can apply later on when you're under assets. If you are deemed ineligible because you have made transfers, then they're going to tell you a period of ineligibility.

And so you can't reapply during that lookback period because they're going to say you haven't appropriately -- usual ineligible for this X period of time, because of these transfers that you made. So it does depend on why you are deemed ineligible. You can go to fair hearings for a number of different reasons, your level of success at those will depend on a whole host of things, and one of those is quite frankly subjectivity of how healthy these applications, which is extraordinarily unfortunate for folks that are applying for benefits. But you can (unintelligible) transfers, if they've made a transfer and they're deemed ineligible, they can cure that transfer, but then if you cure the transfer the applicant has the asset back, and they're going to be over asset anyway. So you can reapply, but you just need to make sure that you are under asset when you reapply, and that if a lookback period was assessed, and a period of ineligibility was assessed, that period has passed. For estate recovery, did MassHealth recently establish a $50,000 exception, i.e., MassHealth would allow $50,000 to be held by the heir? I don't know. I didn't hear about that. But since I left private practice, I don't touch too many MassHealth cases. And quite honestly I don't pay a lot of attention to relevant regs. But that seems -- it seems a little too good to be true. I will tell you in my experience with MassHealth recovery in the past, there's a pecking order. So in how MassHealth recovery works, they just get in line with everyone else that's filed a claim with the probate court. So sometimes there are not sufficient assets to meet whatever they have claimed they're owed, and so they will often settle with families and say, okay, if you're selling this property for X dollars, but you owe us Y, and all of these people stand in line, then they only will get a portion of it, or if there are banks that are owed, something like that, above, there's a priority order. So I don't know about the $50,000, Trisha would know that off the top of her head. Let's see. I think that is all that we have for MassHealth questions. If you think of any others, feel free to type them in and we can address them either when we get back from the break or at the end of the morning's sessions. It is 10:18 now. So we will have a quick break, we'll come back from the break at 10:25, and we will pick up with Chris to talk about post-mortem planning. So I'll see everybody in about six minutes.