

CHAPTER 9

MASSHEALTH (MEDICAID) Nursing Home and Long-Term Care Benefits

INTRODUCTION

For most older adults, the prospect of long-term care in a nursing home is, to say the least, unpleasant. Older adults worry that the cost of long-term care will deplete their estates. The cost of nursing home care in Massachusetts, which typically ranges from \$140,000 to \$190,000 per year (the daily rate is often over \$400), only serves to compound these fears. The premiums to purchase long-term care insurance to pay for the cost of long-term care are frequently beyond the means of middle-income older adults, or long-term care insurance may not even be available to some older adults due to preexisting medical conditions.

Many older adults receive assistance from the federal Medicare program to help pay for medical expenses and the cost of prescription drugs. Generally, Medicare may pay for a portion of short-term rehabilitation in a skilled nursing facility but not for non-skilled (custodial) care. Medicaid (known as MassHealth in Massachusetts), on the other hand, is a joint federal-state program that pays for nursing home care for individuals who meet complex financial eligibility and clinical rules. The term “MassHealth” will be used throughout this chapter. A growing percentage of older adults are seeking alternatives to nursing homes, including remaining at home with caregivers or moving to independent living communities, continuing care retirement communities or assisted living facilities.

A. FINANCIAL ELIGIBILITY

1. Income and Assets Chart

INCOME All money an applicant receives, such as:	ASSETS Anything an applicant owns, such as:
Social Security	Cash
Dividends	Mutual Funds
Pensions	Automobile
Rental Income	Real Estate
	Retirement Accounts
	Whole Life Insurance

MassHealth is a complex area. Rules and regulations change frequently, and there are many exceptions to the rules. Unlike private health insurance, MassHealth has the right to recover its costs from your estate. It is important to consult with an experienced elder law attorney.

2. Income Limitations

- a. **Personal Needs Allowance (PNA):** There are no income thresholds for nursing home residents so long as the applicant’s income does not exceed the private pay rate at the nursing home. Instead, the resident contributes all of their income toward the monthly cost, minus certain allowed deductions for health insurance premiums and a Personal Needs Allowance (PNA), which is currently \$72.80, and MassHealth covers the difference.
- b. **Community Spouse:** If there is a non-applicant spouse, called a “community spouse,” they will be able to keep all of their own income. If that income is low and falls below a certain minimum, or if they have certain extraordinary expenses, the community spouse will then be allowed to keep a portion of the nursing home spouse’s income, as outlined in Section C of this chapter.

c. **Example 1: Community Spouse Deduction:**

EXAMPLE 1
Community Spouse Deduction

Charlotte is 70 years old and unmarried. She is admitted to a nursing home for long-term care and applies for MassHealth. She receives Social Security income of \$1,000 per month. She pays a Medicare supplement health insurance premium of \$220 per month. She must pay \$707.20 (\$1,000 - \$220 - \$72.80) of her Social Security to the nursing home each month as Patient Paid Amount (PPA), assuming she has less than \$2,000 of countable assets and is otherwise eligible. MassHealth will pay for the balance of her nursing home and medical care.

3. Minimum Monthly Maintenance Needs Allowance (MMMNA) and Shelter Expense

- a. **MMMNA:** MassHealth rules provide that a community spouse needs income equivalent to 150% of the federal poverty level for two persons, which through June 2025 is \$2,555, and is referred to as the Minimum Monthly Maintenance Needs Allowance (MMMNA). MassHealth will determine the community spouse’s actual income as well as their actual expenses.
- b. **Shelter expense:** In addition to the basic MMMNA, MassHealth makes an adjustment if the community spouse’s shelter expenses exceed 30% of the minimum (which is currently \$766.50).
- c. **MMMNA and PPA Calculations:** MassHealth calculates the MMMNA at the time it determines the nursing home spouse’s PPA, which is the amount of income the nursing home spouse must pay to the nursing home toward the costs of care each month. A MassHealth-eligible nursing home resident must pay all of their monthly income to the nursing home as PPA, minus certain allowed “deductions,” which include a PNA (\$72.80) to be used to meet the resident’s personal needs (e.g., haircuts, newspapers, etc.). Other deductions include the costs of any medical or health insurance premiums and, in Example 2 on this page, a Spousal Monthly Maintenance Income Allowance of \$400.

If the community spouse and nursing home resident’s combined income is insufficient to satisfy the MMMNA, a community spouse may file and present evidence at an administrative appeal to request an increased asset limit sufficient to generate additional income to satisfy the MMMNA. An experienced elder law attorney should be consulted to evaluate the merits of and prepare for such a hearing.

d. **Example 2: MMMNA and Shelter Expense:**

EXAMPLE 2
MMMNA and Shelter Expense

Mrs. Smith, a community spouse, has monthly income of \$1,800. Her shelter costs (mortgage payments or rent, condo fees, real estate taxes, homeowners insurance, utilities) total \$1,566.50, which is \$800 more than the federal minimum of \$766.50. As a result, Mrs. Smith’s MMMNA is \$3,355 which is the total of the minimum monthly allowance of \$2,555 plus the \$800 excess shelter costs. Because Mrs. Smith requires additional funds above her own \$1,800 income to satisfy her \$3,355 monthly need, each month her spouse can transfer \$1,555 (\$3,355 - \$1,800) of his income to her, to the extent available, rather than include it in his Patient Paid Amount that is paid to the nursing home.

4. Asset Limitation

- a. MassHealth imposes a \$2,000 asset limit for an individual applicant age 65 or older, or a single applicant of any age in a skilled nursing facility. Additionally, in 2025, the community spouse (if any) is generally allowed to keep up to \$157,920 of countable assets. This amount can be increased through an appeal by either spouse establishing that the amount of income generated by the community spouse’s asset allowance is inadequate to raise the community spouse’s income to the

MMMNA.

b. **MassHealth divides assets into three categories:**

- i. Non-countable assets;
- ii. Countable assets.

(Only countable assets are considered with respect to asset limitations. The assets of a married couple age 65 and older, when one member resides in a nursing home, are treated differently); and

- iii. Inaccessible assets.

c. **Non-Countable Assets:**

- i. A principal residence in Massachusetts (See special rules for the principal residence);
- ii. Household belongings and furnishings;
- iii. Personal belongings (e.g., clothing, jewelry, furniture, etc.);
- iv. Burial plots for the applicant and members of their family;
- v. Prepaid irrevocable burial contracts;
- vi. A \$1,500 burial bank account for miscellaneous funeral and burial expenses;
- vii. Term, group or other life insurance policies that have no cash surrender value;
- viii. Life insurance policies with face values totaling up to \$1,500, regardless of cash surrender value; and
- ix. One automobile for use by the applicant or their family. See Example 3.

d. **Countable Assets:**

All assets not considered non-countable or inaccessible are considered countable assets; that is, they are counted toward an applicant's \$2,000 asset limit, or the community spouse's \$157,920 limit. In some cases, both jointly held assets and assets in a trust will be viewed as countable assets.

e. **Example 3: Countable and Non-Countable Assets:**

EXAMPLE 3

Countable and Non-Countable Assets

Richard owns his home worth \$250,000, a car worth \$4,000 and mutual funds worth \$50,000. MassHealth does not consider the value of Richard's home or car when calculating Richard's countable assets. MassHealth does consider the \$50,000 Richard owns in mutual funds as a countable asset.

f. **Inaccessible Assets:**

- i. **No current legal ownership.** Like non-countable assets, inaccessible assets are also not included in the calculation of an applicant's assets for MassHealth purposes. Inaccessible assets are those to which the applicant has no current legal access, such as expected inheritances before probate is completed, or divorce assets prior to a final decree.
- ii. **Example 4: An Inaccessible Asset Can Become Countable**

EXAMPLE 4

An Inaccessible Asset Can Become Countable

Karen's sister Betty died six months before Karen applied for MassHealth. Under Betty's will, Karen is entitled to one-half of Betty's estate, which is worth \$200,000. Karen has not yet received any money from Betty's estate. The \$100,000 Karen expects to receive from Betty's estate is an inaccessible asset. Once Karen receives the \$100,000, it becomes a countable asset.

g. **Jointly Held Assets:**

MassHealth presumes that all funds held in joint bank accounts belong to the applicant. This presumption can be overcome if the non-applicant joint owner can demonstrate that they contributed part or all of the funds to the account.

i. **Example 5: Who Contributed to a Joint Account?**

EXAMPLE 5 Who Contributed to a Joint Account?
Andy owns a joint bank account with his daughter, which totals \$10,000. His daughter contributed \$8,000 of that amount when she was going through a divorce. When Andy applies for MassHealth, it is presumed that Andy owns all of the \$10,000 in the joint account. If, however, Andy can prove that \$8,000 of this account is attributable to his daughter, only \$2,000 will be counted as Andy's assets.

ii. **Example 6. A Joint Account Presumption**

Other assets held jointly, such as real estate, stocks, bonds and most mutual funds, are presumed to be owned proportionately by each owner. This presumption can also be overcome, and in some cases, the entire asset may be deemed inaccessible.

EXAMPLE 6 A Joint Account Presumption
Edna and Charley are joint owners of a stock and bond mutual fund with a value of \$20,000. If Edna applies for MassHealth, it may be presumed that she owns 50% of the mutual fund, or \$10,000. (See Section E regarding transfer penalties for additions to joint accounts made during the five-year look-back period.)

5. Special Rules for the Principal Residence

- a. **Equity in the home:** MassHealth will treat equity in an applicant's home, up to \$1,097,000 (as of 2025), as a non-countable asset if it is located in Massachusetts, and if the applicant, living in a nursing home, expresses in the MassHealth application an intent to return to that home.
- b. **Exemptions:** Any one of the following persons lives in the home:
 - i. The applicant;
 - ii. The applicant's spouse;
 - iii. A child under age 21;
 - iv. A disabled or blind child of any age;
 - v. A relative who is dependent on the applicant;
 - vi. A child who lived in the home for at least two years immediately before the applicant moved into a nursing home, and provided care that permitted the applicant to remain at home; or
 - vii. A sibling who has an equity interest in the home and has lived there for at least one year before the applicant moved into a nursing home.
- c. **Intent to return home:** If the applicant checks the box indicating that they do not intend to return home, the home becomes a countable asset and must be put on the market for sale.

6. Estate Recovery and MassHealth Liens

- a. **MassHealth Estate Recovery Unit (ERU):** ERU can recover for long-term care or nursing home benefits provided on behalf of a recipient of any age. Recovery, however, is limited under current law to collecting from the recipient's probate estate and, in the case of the recipient's home, can only be pursued if there is no surviving spouse, child under age 18, or disabled child of any age living in the home.

- b. **MassHealth’s current policy limit of \$25,000:** MassHealth will not pursue any estate recovery if the value of the member’s estate is \$25,000 or less.
- c. **LTCI exemption:** MassHealth cannot pursue estate recovery against the member’s primary residence if the member had a qualifying long-term care insurance policy, with available funds, at the time of their admission to a nursing home.
- d. **Pre-death lien over 55 on real property:** If the recipient owns real property, MassHealth may place a lien on such real property for the amount of funds expended on the recipient’s behalf after the recipient reaches age 55. This lien may be placed on the recipient’s real property (including, but not limited to, their primary residence) even before the recipient’s death, provided certain conditions are met.
- e. **Conditions:**
 - i. The recipient permanently resides in a nursing home;
 - ii. The recipient receives notice of the lien; and
 - iii. There is no spouse, child under age 18, or disabled child of any age residing in the house.
- f. **Notice liens definition:** These pre-death liens are simply notice liens. MassHealth has no claim against the real estate until the recipient dies and it files a claim against the estate. If the house is sold during the recipient’s life, however, MassHealth can seek recovery from the proceeds of the sale.
- g. **Notice forms and contact information for MassHealth Estate Recovery Unit (ERU):**
 - i. The notice form is mailed by the MassHealth Estate Recovery Unit (ERU) of the Executive Office of Health and Human Services (EOHHS) to authorized representatives or estate personal representatives.
 - ii. Petitions for probate filed in Massachusetts probate courts require the petitioner to state that ERU has first been notified of the death with a copy of the petition and the death certificate.
 - iii. The address and phone number of the ERU are: The Commonwealth of MA, Executive Office of Health and Human Services, MassHealth Estate Recovery Unit, PO Box 15205, (800) 754-1864/ (508) 856-7803 and fax (508) 856-7803.
- h. **Delayed or waived estate recovery:** MassHealth regulations also include circumstances in which estate recovery can be delayed or waived, so it is important to consult the latest regulations upon the death of a MassHealth member to determine whether and the extent to which MassHealth can recover against the estate. Estate recovery will not be required until after the death of a surviving spouse, if any, or while there is a surviving child who is younger than 21 years old or a child of any age who is blind or permanently disabled. This request is time-sensitive.
- i. **An Act to Improve Quality and Oversight of Long-Term Care — Chapter 197 of the Acts of 2024:** On Sept. 6, 2024, Gov. Maura Healey signed into law the above-titled Act. The Act amends GL 118E: 31 to explicitly limit MassHealth estate recovery to only federal mandated recovery for nursing home care and certain other long-term care costs for individuals who die on or after Aug. 1, 2024. It also ends estate recovery for people with disabilities receiving assistance under MassHealth’s CommonHealth program, subject to federal approval. Expect further guidance from MassHealth identifying what other long-term care costs are subject to mandatory recovery, recovery for people enrolled in managed care plans that pay for nursing home and other long-term care costs, and the effective date of the exception for the CommonHealth program.

7. Protecting the Home:

- a. **Legal strategies:** Older adults often want to “protect their home.” There is, unfortunately, no uniformly agreed-upon strategy to accomplish this goal. There are various legal strategies that may be employed in an attempt to protect a home, including, but not limited to, irrevocable trusts, life

estate deeds, outright gifts, and other strategies for the home (and other assets), but each planning option presents complex pros and cons for an older adult to consider.

b. **Relevant issues are:**

- i. The options available if MassHealth coverage is required during the five-year look-back period require special consideration;
- ii. The degree to which a strategy does, in fact, successfully protect homes during current MassHealth applications, administrative fair hearings and/or court appeals;
- iii. The level of control retained by the older adult over their home;
- iv. The older adult's access to equity in their home in the future (e.g., through a reverse mortgage);
- v. The tax impacts on the older adult and their family; and
- vi. The risks to an older adult's ongoing right to reside at home.

c. **Complexity and changes:** Due to the extraordinary complexity of these issues, we continue to see changes in the relevant statutes, case law, regulations and MassHealth practices.

B. TRUSTS

1. Definition

If a MassHealth applicant is the beneficiary and grantor of a trust, and if, under any circumstance, trust principal (as opposed to trust income) can be paid to the grantor, then any amount of principal that the trustee has the discretion to pay to the applicant is considered a countable asset. Even principal that can be paid by a trust not created by the applicant may be countable under certain circumstances. The assets are considered countable even if a trustee never pays principal to the applicant.

a. **Example 7: A Beneficiary of Trust Assets**

EXAMPLE 7
A Beneficiary of Trust Assets
Paul is the beneficiary of a trust, which he set up himself. The trust holds \$100,000 in assets, and the trustee has the authority to make any amount of distributions of interest and principal to Paul on a regular basis. Paul applies for MassHealth. MassHealth will consider the entire \$100,000 as a countable asset for Paul.

b. **Example 8. Revocable Trust Assets**

If the applicant or their spouse is the grantor of a revocable trust, all assets in the trust are considered countable assets. The result is the same even if the applicant or their spouse is not a beneficiary of the revocable trust. See Example 8.

EXAMPLE 8
Revocable Trust Assets
Sam funds a revocable trust where his brother is trustee and his nephew is beneficiary. The trust holds \$100,000. Sam applies for MassHealth. MassHealth will consider the entire \$100,000 as a countable asset for Sam because Sam can revoke the trust at any time or transfer trust assets back to himself.

c. **Irrevocable Trusts**

Not all trust assets are countable assets, though. For example, certain types of trusts, including carefully drafted irrevocable trusts funded before the look-back period, "pooled trusts" qualifying under 42 U.S.C. s. 1396(d)(4)(C) and qualifying testamentary supplemental needs trusts, may prevent assets in such trusts from being deemed countable assets by MassHealth.

d. **Trust Complexities**

Treatment of trusts is a very complex area of law due to requirements of federal law, state regulations

and court decisions. Questions regarding the creation of and transfers of assets to and from trusts should be carefully reviewed with an experienced elder law attorney.

C. COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA)

1. CSRA Definition

When a nursing home spouse has a spouse at home (called a “community spouse”), the resource rules are more complex. A married couple’s assets are pooled for the purpose of determining the nursing home spouse’s eligibility. MassHealth will calculate the couple’s total countable assets (sometimes called the “snapshot date”) as of the first day of a nursing home stay lasting 30 days or more. The couple’s assets are pooled without regard to which spouse actually owns the asset. The community spouse is allowed to keep a portion of the assets, called the Community Spouse Resource Allowance (CSRA), based on the equivalent of 120% of the federal poverty level for two persons.

- a. **Amount of CSRA:** In 2025, the maximum CSRA is \$157,920. If the countable marital assets exceed that amount, the excess assets disqualify the nursing home spouse, and must be spent down or applied to the costs of their nursing home care.
- b. **Increased CSRA:** Under certain circumstances, the community spouse may request an increased CSRA to meet living expenses, but that is a rare occasion because MassHealth will not grant an increased CSRA unless the community spouse needs more than the combined monthly income from both spouses to meet their living expenses.
- c. **90-day rule to transfer assets to community spouse:** Where MassHealth approves the nursing home spouse for eligibility, any assets higher in value than the \$2,000 asset limit still held in their name must be placed in the community spouse’s name within 90 days. If the nursing home spouse has assets exceeding the \$2,000 after 90 days, it will trigger a disqualification.
- d. **Example 9: Asset Transfer Between Spouses**

EXAMPLE 9
Asset Transfer Between Spouses
Mr. Smith is entering long-term care in a nursing home and is entitled to retain a CSRA of \$157,920. Mrs. Smith has \$79,000 in her name alone. There remains, however, \$20,000 in assets in Mr. Smith’s name. The Smiths are allowed 90 days to transfer all but the permissible \$2,000 from Mr. Smith’s name into Mrs. Smith’s account.

- e. **Uncooperative spouse:** In situations where one spouse refuses to cooperate with MassHealth, such as by refusing to supply the necessary documents, or the spouse has been physically separated from the applicant for reasons other than the MassHealth application, MassHealth may disregard the uncooperative or physically separated spouse’s assets, though an appeal may be necessary. In such a situation, the uncooperative or physically separated spouse will not be entitled to any of the applicant spouse’s income.

D. PERMISSIBLE SPEND-DOWN OF EXCESS ASSETS

1. Married Couples

A married couple need not necessarily spend down any assets that exceed the CSRA on nursing home expenses. For example, the excess assets can be used to pay off existing debt, e.g., a mortgage balance, or to make repairs or necessary purchases, such as a pre-need funeral contract, but timing is very important.

2. MassHealth-Compliant Annuity

Another option to consider is for the community spouse to purchase a MassHealth-compliant annuity, which converts excess countable assets into an income stream to the community spouse. The annuity income can be retained by the community spouse because the community spouse is not subject to an

income limit.

- a. **Requirements:** The MassHealth-compliant annuity must satisfy very specific requirements, including that it must be immediate, cannot have a balloon payment, must be irrevocable, cannot exceed the purchaser’s life expectancy, cannot be assignable, and must satisfy MassHealth requirements concerning naming the Commonwealth of Massachusetts as beneficiary.
- b. **Short-term:** Typically, the community spouse prefers an annuity with the shortest term possible, so as to recover funds more quickly. Non-MassHealth-compliant annuities can result in MassHealth disqualifying transfer penalties. An elder law attorney may present yet further spend-down options for consideration.

3. The Spend-Down Process

- a. **Single Person:** When a single applicant has countable assets that exceed the amount allowed by MassHealth, they will want to reduce these assets below the \$2,000 limit. This process is called a “spend-down.” There are many ways to achieve a spend-down, including purchasing non-countable assets, paying debts, purchasing an annuity and even gifting assets, knowing that there will be a controlled period of disqualification.
- b. **Married Couples:** Regardless of the options used to achieve the spend-down, the applicant will usually want to qualify for MassHealth as quickly as possible. A married couple has a greater range of options to achieve eligibility (and to save more assets) than a single individual.
- c. **Example 10: How the Spend-Down Process Works**

EXAMPLE 10	
How the Spend-Down Process Works	
Jack is single, requires nursing home care and has countable assets totaling \$34,000. In order to become eligible for MassHealth, Jack will need to spend down \$32,000. Jack is allowed to keep \$2,000 in assets. Jack spends his money in the following manner:	
Balance to be spent down:	\$34,000
Purchase of a prepaid burial contract:	\$10,000
Purchase of a burial plot:	\$2,000
Pay off credit card debt:	\$10,000
Attorney and professional fees (for illustrative purposes only):	\$8,500
Burial account:	\$1,500
Total remaining (allowable):	\$2,000

E. TRANSFER RULES

- 1. **Intent:** Medicaid, as implemented by MassHealth, was designed to provide medical-related coverage to those individuals and families who do not have enough assets to meet these needs themselves. Through a number of regulations, the program discourages individuals from intentionally impoverishing themselves by gifting to qualify for MassHealth.
 - a. **Five-year look-back period:** MassHealth will review financial records and penalize the applicant and/or their spouse for gifts or transfers made for less than fair market value during the 60-month period prior to applying for MassHealth (known as the five-year look-back period).
- 2. **Disqualifying Transfer Definition:** MassHealth will deem a transfer to be disqualifying if the applicant and/or community spouse transfers any assets, whether countable or non-countable, for less than fair market value during the look-back period, unless an exemption applies.
 - a. **Divisor rule:** MassHealth determines the period of ineligibility by dividing the total amount of disqualifying transfers by the applicable MassHealth divisor rate, which is currently \$441 and is regularly adjusted by MassHealth.

b. **Exemptions:** MassHealth does have several exemptions to its transfer penalties. For example, no penalties are applied when an applicant or their spouse transfers any assets to a spouse or to a blind or qualifying disabled child or to a qualifying trust for a disabled individual.

c. **Example 11: How the Look-Back Period Works**

EXAMPLE 11 How the Look-Back Period Works
Florence owns a condo with a fair market value of \$220,500. On April 1, 2025, Florence transfers the condo to her non-caretaker, non-disabled daughter as a gift. On June 1, 2025, Florence enters a nursing home and applies for MassHealth. Because the gift occurred during the 60-month period prior to the MassHealth application, MassHealth imposes a disqualifying transfer penalty of 500 days ($\$220,5000 \div \441 per day). As a result, MassHealth will not approve benefits for the applicant during the 500-day period commencing on June 1, 2025, assuming she is otherwise eligible for MassHealth on that date.

d. **Penalty period:** There are no penalties when an applicant or their spouse transfers the principal residence to a child who is under age 21, to a sibling who has lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home, or to a qualifying caretaker child. A caretaker child is a child of the applicant who lived in the house for at least two years immediately prior to the applicant's institutionalization and who, during that period, provided care that allowed the applicant to remain in the home.

e. **Penalty period date:** MassHealth applies the disqualifying transfer penalty period beginning on the date when an applicant is "otherwise eligible" for MassHealth benefits. If an applicant delays the MassHealth application for more than 60 months after making a disqualifying transfer, it is not necessary to report the transfer to MassHealth. In this manner, an applicant can essentially cap their ineligibility at a maximum of 60 months. Applying for MassHealth too soon after a large transfer for less than the fair market value of the asset transferred can cause a much longer than necessary disqualification period. In the unfortunate event that an applicant is deemed ineligible, or disqualified from receiving benefits, it is imperative that the applicant consult with an elder law attorney to discuss what options, if any, are available.

f. **Example 12: Timing Is Important When Looking at When to Apply for MassHealth**

EXAMPLE 12 Timing Is Important When Looking at When to Apply for MassHealth
Mike owned a house with a fair market value of \$661,500. On April 1, 2020, Mike transferred the house as a gift to his non-caretaker, non-disabled son. On Feb. 1, 2025, Mike applied for MassHealth. MassHealth looked back 60 months from the date of Mike's application and flagged the disqualifying transfer. MassHealth calculated a 1,500-day ineligibility period ($\$661,500 \div \441 per day). This ineligibility period will commence on Feb. 1, 2025, and last 1,500 days (4.1 years). If Mike had waited to apply until after April 1, 2025, the transfer would not have been included in the look-back period and he could have been eligible for benefits on April 2, 2025, assuming he made no further disqualifying gifts after April 1, 2020.

F. DEEMING TRANSFERS TO BE GIFTS

1. Purpose of Transfers

A long-standing regulation, found at 130 CMR 520.019(F), states that MassHealth will not penalize an individual for transfers made for less than fair market value if the applicant proves, to MassHealth's satisfaction, that the assets were transferred exclusively for a purpose other than to qualify for MassHealth.

- a. **Transfers less than fair market value:** Despite this regulation and the reason for the transfer, MassHealth routinely considers transfers made for less than fair market value to be disqualifying gifts, resulting in a penalty period.
- b. **Gifts:** Gifts made for the purpose of paying for a grandchild's tuition, wedding plans, a down payment on a child's home, etc., may be viewed by MassHealth as disqualifying transfers, regardless of the donor's actual intent. Gifts using an individual's "annual exclusion" amount are still considered disqualifying gifts for MassHealth purposes.

G. MASSHEALTH APPLICATION PROCESS

1. **Process:** The MassHealth application is often difficult and time-consuming to complete. Applications are submitted to a central office of the Division of Medical Assistance, which scans the application and assigns it to one of the long-term care units for processing. Final determinations on an applicant's eligibility may take several months or more.
2. **Documentation Required:** The supporting documentation required for a successful application is substantial and includes, among other things, copies of health insurance cards and premium information, 60 months of bank and investment account statements, copies of checks, verifications of all withdrawals and transfers, two years of income tax returns, life insurance policies, gross and net income, trust documents (if applicable) and, if the applicant is married, a copy of the certificate of marriage and household expense information.
3. **Bank Withdrawals and Transfers:** Withdrawals, transfers, and sales of assets occurring in the 60-month period preceding the application must be explained, or disqualification periods may result. Many practitioners compare the process to the complexity of a multi-year tax audit. Under these circumstances, the use of a qualified elder law attorney experienced in the preparation and submission of MassHealth applications is strongly recommended.

H. IMPORTANCE OF AN ELDER LAW ATTORNEY

1. **Massachusetts Chapter of NAELA (MassNAELA):** Careful long-term care planning with an attorney experienced with Medicaid issues, particularly an elder law attorney who is a member of MassNAELA, prior to a hospitalization or medical crisis ensures that families understand their rights. Such planning allows families to evaluate their options and, ideally, enables families to protect the family home and other substantial assets.
2. **Planning Prior to Medical Crisis:** The more a person or family plans before a medical crisis occurs, the more assets the family can save. Good planning involves protecting the independence, integrity and wishes of the older adult or couple, as well as protecting assets. MassHealth may implement current and/or future proposed regulations to modify the law, or change the way it interprets the law.
3. **Experienced Attorney:** An experienced attorney will be able to conduct a complete review of your personal and financial situation, make appropriate recommendations to address your health care needs, and provide you with a framework of recommendations to protect your assets according to your own personal wishes.
4. **Eligibility Questions:** If you or a loved one is a current MassHealth beneficiary, or you have questions about eligibility or an application, you may call the state's toll-free number at (888) 665-9993. This service is available 24 hours a day, seven days a week, and can provide information on eligibility dates, plan information, items needed to process your case, examples of verifications, address information and more.

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