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QUALIFYING AN UNMARRIED INDIVIDUAL FOR MASSHEALTH

An unmarried individual can almost always qualify for

- reduced-cost (on a sliding scale, based upon income) **in-home care** through the State's Home Care program
- free or reduced-cost **in-home care** paid for by MassHealth
- substantial assistance with the cost of **nursing home care**.

In-home Care:

There are 25 Aging Services Access Points (ASAPs) in the state - private, non-profit, state-designated agencies under contract with the Massachusetts Executive Office of Elder Affairs to provide people age 60 and over, and their caregivers, with access to a variety of programs and services intended to allow older individuals to remain safely in their homes. Among the ASAPs, they provide services to individuals throughout the entire Commonwealth. To find the ASAP serving the individual needing assistance, search here: https://contactus.800ageinfo.com/FindAgency.aspx Although all ASAPs do not offer the exact same selection of services, they generally provide:

- ◊ shopping
- ◊ respite care
- ◊ information and referral
- ◊ home care services
- ◊ housing options
- ◊ assistance with applications for public benefits
- ◊ hospice care
- ◊ assisted living and long-term care ombudsman programs
- ◊ health insurance counseling (SHINE) – helps with medical billing problems, reducing insurance costs, Medicare Part D, and completing public benefits applications
- ◊ bill payer and sometimes SSA representative payee services through Money Management Program
- ◊ senior companions
- ◊ adult day care
- ◊ PCA (Personal Care Attendant) services
- ◊ protective services (elder abuse and neglect)

- ◊ case management (needs assessments, screening and eligibility determination for institutional or community-based long-term care, development of a service plan, coordination and purchase of needed services through a network of subcontracted provider agencies, and monitoring and reassessment of on-going needs)
- ◊ support for caregivers caring for an individual 60 years or older
- ◊ nutrition services
- ◊ on-line resources, printed booklets and fact sheets, lending libraries

Each ASAP typically offers six (6) state-funded programs, in addition to MassHealth, which is state- and federally-funded. The state Home Care programs each have either a $318/month or a $700/month expenditure limit, while MassHealth has no expenditure limit (in theory).

<u>Home Care Program</u>:

Services under the Home Care program may include a personal emergency response system (PERS), home-delivered meals (Meals on Wheels), and a few hours of personal care or homemaking assistance (typically not more than about 10 hours/week). More specialized service plans may include nursing assessments, in-home physical or occupational therapies, intensive case management, caregiver support, and more. This program works best for individuals who need only a minimal level of support and care – but enough that it allows them to remain at home safely.

<u>MassHealth:</u>

MassHealth offers services under the Frail Elder Waiver program for individuals whose medical needs qualify them for placement in a skilled-nursing facility, but who prefer to remain at home. The program is person-centered, need-based, and there is no maximum number of hours (again, in theory). “Waiver” refers to the fact that Massachusetts obtained an exception (waiver) from the federal government to loosen the usual MassHealth eligibility requirements, so that more individuals could qualify for care at home. The waiver was approved with the condition that, in administering the program, the average cost for the state-wide participants must be less than if all of the individuals served were in nursing homes. If all participants received 24/7 care, this would far exceed the cost of nursing home placements, since receiving this level of care at home is more expensive than in a nursing home. As a result, ASAP staff will often claim that there is a limit to the number of hours MassHealth will provide, but this is only because it is necessary that the majority of participants receive far less than 24/7 care to meet the federal mandate. In fact, approved levels of care for each individual should be based upon medical, not fiscal, needs and it is the ASAP’s responsibility to pursue funding for individuals who need the greater level of care.

While there is no <u>income</u> limit (see below), to qualify for MassHealth for in-home care, there is a countable <u>asset</u> limit of $2,000. However, this does not mean that the in-home individual must spenddown all of his or her assets before applying for MassHealth.

- A MassHealth applicant may retain a principal residence, income-producing (profitable) rental properties, one car of any value, no more than $2,000 in liquid assets, an irrevocable pre-paid funeral contract, and a $1,500 burial savings account.
- Liquid assets include bank accounts, IRAs, cash (at home or in a safe deposit box), investment accounts, shares of stock, and the cash values of annuities and life insurance policies. It is important to obtain precise, current information on each is these, so there are no surprises and there is sufficient time to access and spenddown all excess assets to establish eligibility.
- Despite regulations to the contrary, MassHealth has allowed in-home individuals to give away all assets over those which are permitted, without any penalty. This has made it very easy for individuals to qualify for in-home coverage (they simply give their assets to a trusted individual, often a child, to hold for their benefit). However, <u>**new practices and policies have been threatened in the past, and it is uncertain whether gifting assets will continue to be a permissible way to preserve assets for in-home applicants.**</u> If MassHealth elects to enforce the regulation's penalty provisions for in-home applicants, it cannot be predicted whether the provisions will be applied retroactively (gifts made in the prior 5 years) or prospectively (only gifts made after the change in practice).
- MassHealth regulations permit individuals who receive MassHealth benefits at home to convey title to their home to a revocable trust, so that the property will avoid both the Probate Court process at the individual's death and any claim by MassHealth for reimbursement. However, if the individual later needs nursing home care, MassHealth will require that title to the property be returned to the applicant's individual name as a condition of eligibility, so that the property will have to pass through Probate Court at the individual's death and MassHealth can make a claim for reimbursement.
- Even if MassHealth begins to impose a disqualification period on people who have given away funds, there are situations where it would still be worth doing (in other words, even if the applicant has to pay privately for care for a period of time because of transferred funds, the applicant may still come out ahead - become eligible for MassHealth <u>and</u> still have remaining transferred funds).
- Cash assets would simply be withdrawn from the applicant's account(s) and moved to a new account which does not reflect the applicant's name or Social Security number. Shares of stock, investment accounts, and life insurance with cash value should not be cashed out – ownership should simply be changed to the new owner(s) to avoid income or capital gains tax ramifications. Often, the necessary company-specific forms can be located on-line.
- If funds/assets are transferred to establish MassHealth eligibility, the person/people holding the funds must keep them segregated and available, and be prepared to account for each withdrawal and expenditure, in the event the MassHealth individual needs nursing home care within the next five (5) years. In that case, the person who held the gifted funds will need to account for funds spent and return the balance, to avoid imposition of a disqualification period. While MassHealth does not penalize applicants for transferring money to expedite eligibility for in-home benefits, it does penalize for funds transferred within five (5) years of applying for long-term (nursing home) benefits. Therefore, funds should only be gifted to trusted individuals who understand the importance of keeping the funds safe. Ideally, there would be more than one name on the new account(s), so that two or more individuals can access the funds.
- Transferring assets may involve liquidating qualified (tax-deferred) accounts and paying income taxes, but remember that these taxes would be paid eventually (taxes are

deferred, never avoided). Also, any Certificates of Deposits may have to be accessed and subject to an early-withdrawal penalty. In both cases, the funds saved by obtaining MassHealth coverage typically more than offset any income taxes and/or early-withdrawal fees, but these should be considered carefully before transferring funds.

- Some individuals elect to privately pay for care, so long as only a few hours/week are needed, just to avoid liquidating tax-deferred assets, incurring early-withdrawal penalties, and/or trusting a third party to hold funds responsibly. However, once care needs increase, it is often more cost-effective to incur the taxes and fees (and risk having someone else hold the applicant's assets), in order to obtain assistance with the cost of care.
- One interim option is to apply for funds from the local homecare agency's sliding scale funds (aka consumer-directed care). Under this non-MassHealth program, the individual's assets are ignored; only income is considered. The individual may be approved for only a few hours each week of coverage and a contribution toward the cost may be required, but it is typically less expensive than paying privately for the full cost. Even if an individual's income is too high to qualify for a subsidy, it can be beneficial to obtain caregivers through the ASAP, which will scrutinize the providers, maintain oversight of the process, and offer other associated services.
- Once the individual's care needs increase significantly, it may make sense to contact the local ASAP to request a medical screening in order to qualify the individual for MassHealth under the Frail Elder Waiver (<u>be sure to say in the initial telephone call that you intend to apply for MassHealth under the Frail Elder Waiver</u>; if you do not mention it, you will be directed to the sliding-scale program mentioned above, which provides significantly less coverage). The FEW program is for individuals who qualify for nursing-home-level care, but prefer to remain at home. The ASAP will send a nurse to evaluate the individual and determine the number of hours MassHealth will cover. The nurse will sign a Frail Elder Waiver form which needs to be submitted with the MassHealth application.
- When scheduling the time for the nurse to evaluate the individual, be sure to make it be at the time of day when the individual's needs are the most obvious (ex: later in the day, when the individual is not as sharp). Also, it may help to create a list of areas/tasks where the individual needs help and provide a copy to the nurse, since many of the individual's challenges may not be evident during the relatively brief evaluation. Many people minimize or deny the need for certain assistance ("Oh, of course I can make my own lunch; I do it every day"), so it is important to "correct" that with the nurse (outside of the individual's hearing).
- Once any excess assets are transferred to the trusted individual(s), the family should promptly complete and submit a MassHealth application, along with the required supporting documents and the Frail Elder Waiver (FEW) form. Note that the ASAP is required to provide a copy of the FEW to the family, so that the family can submit the application; it is not necessary, nor recommended, that the ASAP submit the FEW form to MassHealth separately or that the agency submit the application. For sure, there is no obligation to provide a copy of the MassHealth application to the ASAP.

The amount of covered MassHealth in-home benefits depends upon whether the applicant's <u>gross income</u> (from all fixed-income sources, typically including Social Security and pensions; IRA income would no longer be relevant, since any retirement accounts would have been cashed out and transferred) is less than or equal to, or greater than $2,829 (2024).

- If the individual's income is *less than or equal to* $2,829/month, all services will be free (any co-pay imposed for the non-MassHealth service will terminate).

❑ If the individual's income is $2,829/month *or greater*, there will be a recurring 6-month deductible which will need to be met before MassHealth will cover the cost of the care. The amount of the deductible depends upon the program used, but can be anywhere between a few hundred dollars and many thousands of dollars. The individual needs to show medical bills (typically in-home care expenses) which equal the calculated sum and then MassHealth will cover the cost of care for the balance of the 6-month period. Although the math and process can be daunting, <u>having income over $2,829/month does not preclude eligibility for MassHealth</u>. Unfortunately, many ASAPs and elder care advocates erroneously advise families that there is an income limit to qualify for in-home MassHealth. Here is information on how deductibles work (you may skip over this, if the individual's gross income does not exceed $2,829/month):

- The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application.
- Although the applicant is eligible for this period of retroactivity, it is almost impossible to make it work, as only *unpaid* medical bills may be used to meet the deductible and it is a rare caregiver who is willing and able to wait to be paid until MassHealth benefits have been approved (most need and/or demand to be paid weekly).
- For an applicant participating in the Personal Care Attendant (PCA) program (who will be hiring and firing the caregivers, not using an agency), the deductible is calculated by taking gross income from Social Security and any pension (ignoring all deductions), subtracting Medicare and supplemental health insurance premiums, and $1,669 (133% of the Federal Poverty Level). The result is multiplied by 6 and that is amount which must be paid up-front for medical expenses (usually home care, but can also be eye glasses, dentures, etc.) before MassHealth will pay for the balance of the 6-month period
- For an applicant participating in the Community Choices program (using an agency, not hiring and firing the caregivers), use the same formula above, but replace the $1,669 with $542, which results in a significantly larger deductible.
- This is repeated every 6 months – MassHealth ends benefits until proof is provided that the deductible has been met (medical bills paid), then benefits are reinstated
- It is beneficial to run numbers to see if it is worth applying for MassHealth
    - Example: individual's deductible is $6,000, he or she needs 10 hours/week of care, and is currently privately paying @ $25/hour
        - Using those figures, it would take the individual 24 weeks before the deductible is met ($25/hour x 10 hours = 24 weeks)
        - Since this leaves only 2 weeks left in a 6-month period, it would not make sense to apply for MassHealth (a lot of work, including liquidating and transferring assets, for minimal benefit)
    - However, if the individual's deductible is $6,000 and the client needs 30 hours/week of care, the client would meet the deductible in 8 weeks (2 months). MassHealth would then pay for the remaining 4 months. It would definitely make sense to apply for MassHealth, as this would stretch out the individual's assets (spending only $12,000/year on care, versus $39,000/year).

❑ If an applicant's income exceeds $2,829/month, the recurring deductible may be avoided by applying for the MassHealth CommonHealth program. No deductible is imposed (in other words, it does not matter how high the applicant's income is) provided the applicant can prove employment of 40 hours/month (10 hours/week), at $1/hour or greater. This can be met by documenting that the applicant is watching grandchildren after school, being a companion to a neighbor, or watching a neighbor's pet. Many individuals needing in-home care (at a nursing home level) are not able to perform any of these tasks, however, so will be subject to a deductible.

- If an applicant's income exceeds $2,829/month and CommonHealth is not an option, it is critical to transfer as many of the applicant's assets as soon as possible (*do not wait until the individual spends down assets below $2,000*). This ensures that there will be a sufficient pool of funds to draw on as the deductibles need to be met. Funds may also be needed to maintain the applicant's home and pay for food, utilities, and other expenses which exceed the portion of income the applicant will be entitled to keep each month (either $1,669 or $542, depending upon the program).
- If the applicant or the applicant's deceased spouse is/was a veteran, it is possible that the applicant will qualify for VA Aid and Attendance benefits. These are for housebound veterans who can show proof of their monthly caregiving expenses. Most notably, Aid and Attendance income is not countable for MassHealth purposes. It can be crucial for providing the extra funds necessary to allow an individual to remain home (meeting a deductible or covering home-related expenses). Note that the VA imposes penalties for transferring assets, so this option may not be available for someone wanting to qualify for both Aid and Attendance and MassHealth benefits. The local Veteran's Agent should have more information about applying for these benefits, which can take 5- 6 months for approval (but benefits are retroactive).

<u>When applying for MassHealth benefits, note the following:</u>

- You may request retroactive benefits, but eligibility cannot begin any sooner than when the individual's countable assets were reduced to $2,000 and a care plan is in place (created by the local ASAP)

    - In other words, there is no benefit to filing an application before you have complete documentation that assets have been reduced
    - Even though the application asks if you are requesting benefits back three months, it will likely be a shorter period of time. In addition, retroactive benefits can cover past medical bills, including in-home care expenses, but only if the caregiver(s) have not yet been paid. This is rare, since most caregivers cannot wait for payment. If you have caregivers who can wait for payment, you should request retroactive benefits. Once MassHealth has been approved, the caregivers can submit time sheets for payment. Keep in mind that many workers forget to authorize retroactive benefits, so I recommend making that clear on the application (a brightly—colored post-it note, for example, stating that you are seeking retroactive benefits).

- When completing the application, you should be clear that you are seeking eligibility under the Frail Elder Waiver (this ensures that applicant may have a higher level of income). Again, we either write on the top of the first page "FRAIL ELDER WAIVER" and highlight it in a bright color, or attach a large post-it note to the front page with the same phrase. Remember that this does not insure that the application will be processed correctly, but increases the chances that it will be and reminds MassHealth employees of this fact.

- ❑ During the time you are waiting for approval, you may want to take advantage of the home care agency's sliding-scale coverage mentioned above.
- ❑ As soon as benefits are approved, you can move forward with care under the Community Choices program (where the home care agency contracts with a local agency to provide caregivers).
- ❑ If you have applied for services under the Personal Care Attendant (PCA) program, that is, unfortunately, a second step after MassHealth has been approved. You may use the Community Choices program in the interim. The PCA program allows you to hire and fire your own caregivers (for example, if you wish to employ friends or family members). A 2014 memorandum issued by MassHealth instructs the Personal Care Management (PCM) agencies to take some of the initial steps toward approval, even while the MassHealth application is pending
- ❑ Note that, for individuals whose income exceeds $2,829/month, the recurring 6-month deductible which the applicant must meet to qualify for MassHealth is <u>less</u> when using the PCA program.

<u>Assisted Living</u>.

- The MassHealth program that pays for assisted living is called Group Adult Foster Care (GAFC)
- The applicant may not have more than $2,000 in countable assets to qualify.
- A house becomes a countable asset, since the applicant's principal residence is considered to be the assisted living facility.
- The applicant may, however, have one car, a prepaid irrevocable funeral contract, and a $1,500 burial savings account (see our website for details on setting that up).
- As with in-home care, MassHealth does not currently penalize for transferring assets.
- The biggest challenges of making MassHealth work in an assisted living facility are:

❑ The facility must accept GAFC. To find out if a facility accepts GAFC, you may go to https://www.mass-ala.org/, click on "Search for an Assisted Living," and then, under "Financing" use the drop-down box to search for residences that accept GAFC, Medicaid and PACE

❑ The facility must have a GAFC room available (each facility has only a limited number of so-called "low-income" rooms and there may be a waiting list)

❑ If the applicant's <u>gross</u> income exceeds $1,255-per-month (100% Federal Poverty Level), there will be a recurring 6-month deductible which must be satisfied (the amount varies and depends upon the resident's income). See our website for details on making MassHealth work for assisted living expenses, where the individual's income exceeds $1,255/month (it is a very complicated process that does not work for most people)

❑ Do not believe any assisted living facility that claims the resident is not eligible for GAFC/MassHealth because his or her income exceeds $1,255/month

- Because the resident's income must be contributed as rent each month, GAFC is successful only if the resident has other funds available (those transferred to a trusted third party)

- A resident of an assisted living facility who is a veteran, may also qualify for VA Aid and Attendance benefits, which are not countable income for MassHealth purposes, making the funds available to an applicant needing to meet any deductible.

Nursing home care.

An unmarried MassHealth applicant looking for nursing home benefits is subject to the same asset rules as for in-home care. The individual may have a principal residence, pre-paid irrevocable funeral contract, $1,500 burial savings account, automobile of any value, and $2,000 in liquid assets. Excess funds may be spent on home repairs (not cosmetic improvements), paying off any mortgage, equity line, or credit card debt, and purchasing necessary medical items, such as hearing aids, glasses, or dentures. Additional properties may be non-countable if they generate positive rental income or have been listed for sale.

However, there are two primary differences with a nursing home applicant, than when seeing benefits for in-home care or assisted-living coverage:

1) There is no income threshold. All of the nursing home resident's income, minus $72.80 for a personal needs allowance and any health insurance premium, must be paid to the nursing home each month, as the resident's contribution toward the cost (MassHealth would pay the rest); and

2) No assets can be gifted. If there were gifts made within the past sixty (60) months, the individual holding those funds will need to account for any funds spent and return the balance.

   - There are a few exceptions to the rule against gifting, which include transferring funds to a disabled or caretaker child, but there are strict criteria for these which must be met and other factors to consider.

If the above spenddowns are not sufficient to bring an individual's assets under $2,000, the only options remaining are:

1) Spend the excess on the nursing home until they are exhausted, at which time it would be appropriate to apply for MassHealth benefits;
2) Purchase an irrevocable, immediate, non-assignable annuity, which would trigger immediate eligibility for MassHealth benefits, but the monthly payments would have to be paid to the nursing home and any balance remaining at the individual's death would have to be first paid to reimburse MassHealth. This option rarely results in any savings; or

3) Place the excess funds in a pooled trust, where they will continue to be available for the rest of the individual's life. Funds remaining at the individual's death must be first paid to reimburse MassHealth, but the primary benefit of this option is that the pooled trust funds can be used for the individual during his or her life – for incidentals, cable tv or phone bills, uncovered medical procedures, supplemental caregivers or companions, travel, or to pay a single-room differential. Because MassHealth is reimbursed at a significantly lower rate than if the applicant paid privately for the nursing home care, there may be funds remaining at the applicant's death (after the pooled trust fee and satisfying the MassHealth claim). The primary benefit, however, is knowing that funds continue to be available for the individual's needs (beyond the $2,000 permitted by MassHealth). See our website for information on pooled trusts.

    - **Effective March 1, 2024, transfers to pooled trusts by individuals age 65 and older are considered a disqualifying transfer, triggering a penalty period, but there is strong legislative advocacy under way to prevent this from happening.** You would want to check the status of these efforts before considering the pooled trust option.
    - If you elect to place excess funds in a pooled trust, MassHealth requires one additional form be completed and submitted with the application: a Disability Supplement (this is because federal law says that only disabled people can put funds in a pooled trust, so you have to first prove that the applicant is disabled; this is never a problem with nursing home residents, but does add another few months to the process, while you wait for the Disability Unit to make the determination). In the meantime, be prepared for benefits to be denied, because the caseworker is required to take action after a certain period of time. In that case, you will need to appeal the denial, just to preserve the application's requested effective date.
    - The pooled trust also has forms that must be completed and accompany the check for deposit. Those are on our firm website.

Note that, if an unmarried individual is approved for community (at-home) MassHealth and then transfers to a skilled-nursing facility, typically, no further action is taken until the individual has been in the nursing home for six (6) months. In other words, if the person had gifted money to qualify for at-home benefits, the funds will not need to be returned until the 6-month mark. At that time, the nursing home resident will need to file a long-term MassHealth application, in which all transfers during the prior 60 months (5 years) will be scrutinized. Remaining funds not spent on the resident will need to be returned to avoid imposition of a disqualification period and then, after any available spenddowns, be put into a pooled trust. Also during the first six (6) months, the individual will be entitled to retain a home maintenance allowance ($1,255 in 2024), intended to cover home expenses or any rent, on the theory that it is expected that the person will be returning home within the six (6) months. This allowance ends after six (6) months.

Finally, any unmarried individual who was not on MassHealth at home prior to entering a nursing home and is screened "short term," will also be entitled to the home maintenance allowance. “Screening” refers to a nurse’s assessment about the person’s medical needs. If it is anticipated that the person might return home within six (6) months, regardless of how impractical the family might think it is, the person is entitled to the allowance. However, anyone who screens “long-term,” meaning they it is not expected that they will return home within six (6) months, does not get the allowance.

Trusts:

If a MassHealth applicant for **community (in-home) care** has titled real estate into the name of a **revocable trust**, the property may remain in the name of the trust (MassHealth does not require title be returned to the applicant’s name). If the individual is able to remain home or needs nursing home care for fewer than 6 months, the property will avoid the Probate Court process at the individual’s death and pass to the trust beneficiaries free of a MassHealth claim.

If a MassHealth applicant for **long-term (nursing home) care** has titled real estate into the name of a **revocable trust**, the property must be returned to the individual’s name, as a condition of obtaining eligibility (this forces the property through the Probate Court process at the individual’s death, so that MassHealth can make a claim for reimbursement). However, if the individual was already on community MassHealth at the time of admission, the first six (6) months of the nursing home stay are treated as an extension of the community benefits and property can remain in trust for that time. However, after 6 months, the individual is considered “long-term” and title must be returned to the individual’s name in order to qualify for continued MassHealth coverage. Occasionally, individuals who were not already on community MassHealth at the time of admission will screen (be assessed) as “short-term” (fewer than 6 months) and title may remain in trust, as well.

If a MassHealth applicant has any assets (real estate, bank accounts, investment accounts, etc.) in the name of an **irrevocable trust**, *no matter how many years ago they were placed into trust*, it is possible that the trust may not be effective to protect them from MassHealth consideration. MassHealth has gotten increasingly strict over the past several years about the provisions which must/cannot be included in an irrevocable trust to ensure that the assets are not countable. The trust terms may have been sufficient at the time the trust was created, but may no longer be adequate. If a MassHealth applicant has an irrevocable trust, it should be reviewed by a qualified attorney. If it does not meet with MassHealth’s approval, assets will need to be removed from trust, returned to the applicant (if possible), and then the same options listed above would apply.

Other resources:

800 AGE-INFO (resources): https://contactus.800ageinfo.com/FindAgency.aspx

MassOptions (resources): https://www.massoptions.org/massoptions/

MetroWest Center for Independent Living (resources for disabled individual of any age):
https://mwcil.org/

National Academy of Elder Law Attorneys (search for elder law attorney):
https://www.naela.org/findlawyer

This is intended to be a general description of the process for qualifying an individual for in-home and skilled-nursing MassHealth coverage and was current as of February 22, 2024. However, individual circumstances may permit other methods of obtaining eligibility or may limit eligibility. Because each situation is different and the laws relating to MassHealth eligibility are regularly changing, a competent elder law attorney should be consulted concerning any particular situation and legal advice relative to these issues. This article is for informational purposes only and is not intended to constitute comprehensive or specific legal advice.