

Getting Started

Your Family's Guide to
Senior Resources on Community
or Nursing Home Medicaid Benefits,
Programs and Services



Table of Contents

Introduction	1
What is Elder Law?	1
Is a Nursing Home Needed?	2
How to Select a Nursing Home	2
What is Medicaid/What is Masshealth?	4
Medicaid Facts for Single Person	4
Medicaid Facts for Married Person	5
What is Medicaid Planning?	6
Financial Planning to Pay for Nursing Home Stay	7
- Strategies for Married Couples	
- Strategies for Single Individual	
- Post Planning for after Medicaid approval	
Financial Planning for at Home Care	9
Veterans Aid & Attendance Pension	10
Legal Considerations	11
- Medicaid Application Process	
- Fair Hearing Appeals	
- Planning for the Healthy Community Spouse	
Proper Legal Documents	12
- Health Care Proxy	
- Durable Power of Attorney	
- Will(s)	
- Deed(s) with Retained Life Estate	
- Trust(s)	
- Medi-Will with Testamentary Trust	
- Guardianship and/or Conservatorship	
Resources	16
- Governmental Agencies	
- Care Guidance	
- Area Agencies on Aging/Aging Service Access Points	
- Legal Guidance	
- Financial Guidance	

Introduction

This informational booklet has been created for elders and their families as well as health care, financial and legal professionals who are interested in, or who are already providing services to seniors who have long term care needs in the community or in a nursing home facility. The purpose of this booklet is to provide guidance and concise information to those who need to sort through the complex issues that

are faced as families try to meet their elder care goals. Due to the inherent complexities in navigating elder care options and strategies, we strongly suggest that families work with professionals who will advocate for them as they work to achieve their goals.

(Any figures provided in this booklet are as of January 2021 and are subject to change, fluctuate or may become obsolete.)

What is Elder Law?

Elder Law is defined as the practice of law with a concentration in issues that affect senior citizens and their families. An Elder Law Attorney handles a range of issues that focus on the needs of the elderly, working with tools and techniques to meet specific goals and objectives. This holistic approach includes:

- Estate planning and asset preservation
- Long term care and Medicaid planning
- Accessing various benefits and programs to pay for care options
- Preparing and executing living documents that prepare for possible incapacity and allow for seniors to choose trusted alternative decision makers

There are several resources listed on pages 16-17 to contact regarding the issues covered in this booklet.

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Is a Nursing Home Needed?

Once the determination has been made that an elder can no longer remain safely at home or in an alternative housing environment such as senior housing or assisted living, a plan must be developed as quickly as possible for a nursing facility. Those who already have a plan in place are far ahead of the game, **however even when no planning has been done, strategies exist to ensure placement in the best facility possible, as well as utilizing and protecting the available assets and resources for the elder.**

Medicare will pay for short term rehabilitation at a nursing home for a period of time, up to 100 days per diagnosis or event, as long as the recipient is determined to clinically qualify for skilled nursing or rehabilitative care (Physical/Occupational/Speech Therapies). Beyond that coverage limit, if an individual still needs care in a nursing facility their options are based on what type of, if any, planning has been done. Payment would range from private paying from available savings, accessing their long term care insurance benefit (if applicable) or qualifying for long term care benefits under the Medicaid Benefits program.

If a nursing home is not needed, but services are needed at home, see page 9 "At Home Care and Financial Planning for at Home Care".

How to Select a Nursing Home

When someone is faced with the overwhelming responsibility of finding a nursing home for a loved one, the question often is asked, "Where do I begin?" Although this is a very difficult process, with some professional guidance, the decision can be one that is fully informed and instills confidence that the best decision was made.

Common factors in the decision-making process are as follows:

- Reputation and rating of nursing home (medicare.gov)
- Longevity of staff
- Cost: immediate and long term
- Convenience of location for family and/or friends
- Availability of physician
- Availability of secure dementia care unit
- Availability of Medicaid/Masshealth

The next step is to identify the facilities in your area that meet the criteria you have established for selection.

Listings of facilities in the Greater Boston Area can be obtained from your Local Area Agency on Aging (AAA) or the Executive Office of Elder Affairs (EOEA) at 1-800-AGE-INFO. (1-800-243-4636)
www.800ageinfo.com

A "real time" visit to the facility is essential. Tours should include at least one unannounced visit to the facility. Ask to speak to family members of other residents. Also, contact the local ombudsman for information about the history of the nursing home and get a copy of the facility's state inspection report. This is a good time to contact friends and family members you know who have loved ones in a nursing home, as well as elder resource specialists, such as geriatric care managers and elder advisory groups who have clients or patients currently in facilities.

Meet with the administration staff and ask yourself the following questions: Did I feel welcome? Did the admission director find out about my family member's wants and needs? Was the facility clean? Were there any strong odors? Was the staff friendly? Did the residents appear well cared for? Listen and observe. You can learn a lot about the facility by watching and paying attention.

Once the admission process has begun, remember that the staff of the facility is meeting your loved one for the first time. They do not know his or her likes or dislikes, or those little nuances that make providing for them, more efficient and effective. The best way to help in this process is to tell the staff, in writing, as much information as possible about how to best care for your loved one. Make a point of getting to know the staff, and most important, stay involved. Let everyone know how committed you are to your loved one's care. A care plan should be developed that is tailored to the individual's need. Ask to be notified when this occurs and review it with the staff.

If you find another facility that better suits your family's needs, it is always possible to transfer care. Some facilities have a waiting list, so if the one you want becomes available, and it would not be too emotionally disruptive for the elder to be moved, the transfer can occur.

What is Medicaid/Masshealth?

Medicaid is the governmental program, which pays for, among other things, long term care at a nursing home. However, like many other governmental programs, it is "means tested." Many different rules, regulations, mathematical formulas and guidelines apply and have to be navigated before someone may be eligible for benefits.

Individual states have a certain amount of autonomy in interpreting and implementing their programs. Therefore, we will mention laws and regulations that are specific to the Commonwealth of Massachusetts.

Medicaid in Massachusetts is called Masshealth and is administered through the Division of Medical Assistance.

Medicaid Facts for a Single Person in a Nursing Home

Five Year look back: Gifts made within 5 years of applying for Medicaid may disqualify individual from obtaining benefits

Exempt Assets are:

- \$2,000 dollars
- Prepaid funeral
- Whole Life insurance up to \$1,500 face value
- Term insurance is exempt
- \$1,500 for additional burial expenses
- \$72.80 per month patient needs allowance
- Car is exempt
- Health insurance premiums are exempt
- Primary residence is NOT exempt except under very limited circumstances
- **A Lien will be placed on any residence, however certain exemptions exist for an adult caregiver child who resides in the home, as well as a sibling with ownership interest in the home or a disabled child.**
- In some cases homes can be converted to exempt business property
- Some non-exempt asset can be converted to access immediate benefits (*see Financial Planning Strategies page 8*)

Medicaid Facts for Married Person in a Nursing Home

Five Year look back: Gifts made within 5 years of applying for Medicaid may disqualify individual from obtaining benefits

Exempt Assets for Spouses:

- Approximately \$130,380 as adjusted for inflation
- Primary residence is exempt
- Car is exempt
- Income of community spouse is exempt
- Prepaid funerals for both are exempt
- Whole Life insurance up to \$1,500 for each, however, excess life insurance (cash-value) can be applied to spousal \$130,380 exemption
- Term insurance
- Health insurance premiums
- \$72.80 per month for nursing home spouse (patient needs allowances)
- No penalty for transfers between spouses
- Business properties are exempt (may be lienable)
- Some non-exempt assets can be converted to exempt assets
(See Financial Planning Strategies page 7)



What is Medicaid Planning?

Medicaid planning is the process of protecting assets and obtaining Medicaid benefits in the event of a costly, long-term nursing home stay or for care and services provided at home.

Preemptive planning is best while the senior is healthy or somewhat healthy, as more options are likely to be available. When an emergency happens, the options are more limited. However, many legal techniques can still be implemented. An extended illness can take a profound financial toll on the person who is ill, as well as their family.

Medical and technological breakthroughs have allowed people to live longer. However, these last years can be filled with complex ailments resulting in diminishing quality of life. Moreover, many families are stuck in what society now calls "the sandwich generation." These are people who are caring for their own children and their aging parents. Finances often dictate that the caregiver be working. As a result, the adult child may no longer be able to care for the aging parent without Medicaid benefits and services.

When a nursing home or care and services at home are needed, a lifetime of savings can quickly diminish. Therefore, it is imperative that the family seek competent counsel in helping to legally preserve the maximum amount of assets allowed by law. Legal and financial planning strategies are specifically discussed under the following sections "Financial Planning to Pay for Nursing Home Stay" page 7 and "Legal Considerations" page 11 as well as "At Home Care and Financial Planning to Pay for at Home Care" page 9.

Government regulations have made it increasingly more difficult to accomplish this. Constant changes in these laws make it necessary for the family to hire an attorney who restricts his or her practice to elder law and Medicaid planning. The attorney will often have to work in tandem with the senior's financial planner and/or tax accountant to deal with ancillary tax matters that may arise with the restructuring of assets.

Financial Planning to Pay for Nursing Home Stay

Financial planning for emergency nursing home cases involves two major disciplines: legal and financial. Variables, such as the income of a nursing home resident, the cost of nursing home expenses, the amount of assets available and the determination of any special circumstances to obtain exemptions are needed to formulate a plan to protect the maximum amount of assets. The laws for single people and married people are structured differently. In either case, a plan is needed to avoid spending all of your assets before you begin to get funding from Medicaid.

Strategies for Married Couples

In the event a married individual (only one spouse) needs Medicaid Benefits, the rules and regulations are less egregious to help prevent the total impoverishment of the spouse not in the nursing home. The spouse in the nursing home still is only entitled to keep \$2,000 or less, but the spouse in the community is allowed to keep a maximum of \$130,380.

Again, by following the rules and regulations created by federal and state law, a married couple is able to utilize exemptions and asset preservation techniques that allows one to protect greater than the \$130,380 limit even after an individual enters a nursing home with the proper planning.

Strategies include exploring the following:

- Alternatives to nursing home care
- Utilizing spousal transfer rules—there are currently no penalties for transfer of assets between spouses
- Applying for some of nursing home spouse's income to be preserved for an at home spouse when applicable
- Converting non-exempt assets into exempt assets
 - Transfer non-exempt assets into a Medicaid compliant annuity
- Protecting the family residence which is an exempt asset and is not lienable as long as the at home spouse is alive and is not in a nursing home
- Protecting and verifying previous estate planning and gifting strategies

For a specific listing of exemptions, please refer to page 5 of this booklet.

Strategies for Single Individuals

In the event a single person is faced with nursing home costs, in order to qualify for Medicaid Benefits, the individual may have a maximum of only \$2,000 or its equivalent in assets and is allowed to keep \$72.80 per month in income.

Fortunately, by following the rules and regulations created by federal and state law, an individual is able to utilize exemptions and asset preservation techniques that allows one to protect greater than the \$2,000 limit, even after an individual enters a nursing home with the proper planning.

Strategies include exploring the following:

- Alternatives to nursing home care
- Utilizing appropriate exemptions (see page 4)
- Transfer non-exempt assets into an approved pooled trust (D4C)
- Transfer non-exempt assets into a Medicaid compliant annuity
- Protecting and verifying previous estate planning and gifting strategies
- Transfer non-exempt home to an adult child caregiver, disabled child or sibling when appropriate and applicable

Post Planning After Medicaid Approval

A critical strategy in the Medicaid Planning process involves situations that may occur **after** approval that could potentially disqualify the resident for continued benefits. For instance, if planning is being done for a married couple and the at home spouse predeceases the spouse in the nursing home, any assets the nursing home spouse inherits could be a disqualifying event causing Medicaid to deny ongoing benefits.

Therefore, after approval for benefits is achieved, the spouse at home should establish a plan protecting the remaining assets. An appropriate plan should consider any current or foreseeable care options, financial and legal needs of the at home spouse.

Also, just as vital, planning must be done in anticipation of the potential for future nursing home needs of the at home spouse.

At Home Care and Financial Planning for at Home Care

One benefit that is often overlooked is Community Medicaid. Community Medicaid, a means tested program, is a governmental program that helps pay for care at home. **As a general rule, Community Medicaid will pay up to 28 hours of care per week at home. Specifically, a certified home health aide or personal care attendant to provide assistance with eating, bathing; dressing; ambulation; and toileting to name a few.** Private agencies generally charge \$25-\$30 per hour for such care which can be burdensome for families. In addition, many Adult Day Health Centers accept Community Medicaid. It may be necessary to hire an attorney who restricts his or her practice to elder law and Medicaid planning to navigate the complicated rules to qualify clients for this benefit.

Some of the Community Medicaid Programs include:

- 1. Community Choices Program:** which is designed for the frailest seniors to provide intensive services to those who are at imminent risk of nursing home placement.
- 2. Personal Care Attendant (PCA) Program:** which is designed to give individuals with long-term disabilities both control over how their own personal care needs are met and the choice to live at home independently.
- 3. Program of All Inclusive Care for the Elderly (PACE):** which is a comprehensive program for assisting older adults to stay in the community (some PACE programs pay for care at some Assisted Living Facilities).
- 4. Caregiver Homes Program:** which is an Adult Foster Care Program that pays for an adult child, relative or friend who lives with the senior (not including a spouse) to care for the senior at home.

The general rule for Community Medicaid is the recipient's gross monthly income must be \$2,382 or less (a well spouse's income does not count). Also, generally no more than \$2,000 in assets (not counting the home) may be kept in the recipient's name. As of 2021, Medicaid could possibly impose a penalty period on transfers for community base benefits. Therefore should a senior have more than \$2,000, the transfer of excess assets could possibly affect community based Medicaid eligibility (Although any such transfer could affect nursing home Medicaid eligibility in the future).

Veterans Aid & Attendance Pension

The Veterans Aid & Attendance Pension is a non-taxable monetary benefit paid monthly directly to an eligible veteran and/or their spouse who is in need of the aid of another person to perform functions of daily living. Those eligible to receive such payments can use that money to pay for services that come into their home such as homemakers or home health aides in order to assist with such tasks as housework, laundry, food shopping, and personal care tasks such as bathing and dressing. Such payments can also be used to pay for care in an assisted living facility.

Eligibility Guidelines:

- Wartime Veteran or surviving spouse
- Served at least 90 days of continuous active duty, one day during a wartime period
- Honorable Discharge or equivalent
- In need of assistance with daily care
- Income/Asset Requirements

Eligibility Dates of Service:

WWII December 7, 1941-December 31, 1946
Korea June 27, 1950-January 31, 1955 Vietnam
August 5, 1964-May 7, 1975 Gulf War ...
August 2, 1990-to be determined

Those eligible for this Pension can use the funds to help finance the cost of care at an assisted living facility or at home. The following is a summary of the monthly monetary benefit:

- Individual Veterans can receive up to \$1,936 per month
- Veterans and Spouses can receive up to \$2,295 per month
- Surviving Spouses can receive up to \$1,244 per month

Legal Considerations

Medicaid Applications to the Division of Medical Assistance (DMA)

This concerns the actual compiling of years of legal and financial documents to be submitted in application form to the Division of Medical Assistance requesting that the state approve the request for Medicaid benefits to pay for an individual's nursing home or at home care. This step can only be taken after all non-emergency or emergency financial planning strategies have been implemented.

An application should not be filed without an analysis of income and assets by a qualified long term care Medicaid Planning professional. If a denial is received before appropriate planning is done, the opportunity to do any planning may be lost!

Fair Hearing Appeals

Should the DMA contest the appropriateness of the Medicaid application, an appeal would ensue if a legal determination were made that the DMA had erred in its determination of ineligibility. Also, a fair hearing appeal is sometimes utilized to increase the monthly income that a spouse may keep, under certain circumstances.

Planning for the Healthy Community Spouse

After one spouse is approved for Medicaid benefits in a nursing home, it is vital that the legal and financial needs of the healthy spouse be addressed. For example, care issues may arise now that he or she is alone in the home, and a plan for payment for care needs or eligibility for other government programs must be carefully looked at.

Proper Legal Documents

Health Care Proxy

A legal document in which you authorize another individual to serve as health care agent and to make informed health care related decisions on your behalf in the event that you are unable to do so.

Durable Power of Attorney

A legal document in which you select an individual to act as your "Attorney-in-fact," authorizing that person to make legal and financial decisions on your behalf.

Will(s)

A legal document stating a person's intention for the settlement of his or her estate with regard to naming a personal representative (formally known as "executor"), paying final debts and disbursing any remaining assets to selected individuals. A Will is "probated" and must be presented to the Probate Court unless all assets have been disbursed previous to death or after death under the terms of a trust, a beneficiary designation (such as IRA's, life insurance) or assets passed by operation of law, such as joint ownership with rights of survivorship.

Deed(s) with Retained Life Estate

Transfer of actual ownership of any real estate to another individual or individuals while retaining/keeping the legal right to use (or live in) the real estate for the remainder of a person's life. The advantages of this type of deed, is that upon death of the original owner/life estate tenant, the new owner/remaindermen has unlimited use and ownership of the real estate without having to go through the probate process. Furthermore, for Medicaid purposes, the transfer is deemed a gift and thus after the corresponding penalty period is over, a person would be qualified for Medicaid benefits and the real estate would be protected. Lastly, this type of Deed has capital gain advantages versus a straight transfer or deed without having retained a life estate.

Trust(s)

There are various forms of Trusts depending on the goals and needs of the person(s) ie. Donor(s) creating the Trust. Examples are as follows:

Real Estate Trust: Real estate is transferred to a Realty Trust. Upon the death of the Donor, the Trust names the person(s) owning the real estate and typically is passed to such person(s) without restriction and without the need of a Probate Court.

Family Trust: Assets such as savings accounts, stock, mutual funds, can be owned by a Family Trust. Accordingly, upon the death of the Donor, as with the real estate in a Realty Trust, the liquid asset(s) are passed to the person or people named without the need of a Probate Court. Typically, both the Realty Trust and Family Trust are "revocable", meaning the Donor can change the person(s) named as beneficiary at any time for any reason as well as revoke and/or amend the trust in whole or in part, as opposed to an "irrevocable" trust, which cannot be changed, revoked or amended. Only specific types of irrevocable trusts are protected against the cost of long term care once the five year "look back" period has passed.

Spendthrift Trust: A Trust implemented to manage assets for an individual who is not capable of handling their own financial affairs. This type of trust is usually funded at death.

Minor Trust: Assets are held in a Minor Trust for the benefit of a minor until the minor attains a specific age or ages as designated by the Donor. For example, a grandfather leaves \$100,000 in a minor trust for his 13 year old grandson. The Trustee (person responsible for "holding" the funds) is obligated under the Trust to disperse 50% of the trust property upon the minor's 25th birthday and 50% upon the minor's 30th birthday. The age of distribution may be tailored to the Donor's desire.

Estate Tax Minimization Trust: Married individuals with significant asset levels and estates could create marital trusts to benefit from their spousal exemptions and therefore minimize or even eliminate any estate "inheritance" taxes.

Supplemental Needs Trust: Should an individual be receiving governmental assistance, an inheritance gift could disqualify that individual from any assistance. The Supplemental Needs Trust is designed so that the individual shall continue to receive the governmental benefits and the trust assets would be used to "supplement" any further needs the individual may have.

Medi-Will with Testamentary Trust: A variation of the typical will and trusts previously discussed. These documents are specifically designed for a healthy spouse who has an ill spouse and wishes to protect assets from being directly inherited by the ill spouse who is potentially facing or currently receiving long term care.



Guardianship and/or Conservatorship

If the proper Power of Attorney and Health Care Proxy documents have not been previously implemented and the individual is determined to be incapacitated and/or incompetent, a guardianship and/or conservatorship petition may be needed. For example, if a person is refusing placement in a care facility, is at risk of leaving the facility against advice, and/or is non-compliant with an important medication regime, such as anti-psychotic medication, a concerned family member or friend can petition the appropriate Probate Court to become the legal guardian of that person. The guardian would then have the legal right and obligation to arrange for placement and/or decide that certain medications can be given.

RESOURCES

This is a partial listing of frequently used resources. When contacting any of the organizations listed below, be sure to ask if they have suggestions about additional resources you may want to contact.

Government Agencies

Massachusetts Department of Public Health

617-624-6000

Nursing Home Search Page

<http://webapps.ehs.state.ma.us/nursehome/>

Massachusetts Executive Office of Elder Affairs

General Information & Referral Assistance (9am-5pm)

617-727-7750 or 1-800-243-4636

www.800ageinfo.com

Massachusetts Division of Medical Assistance/Masshealth

Client Services, Medicaid Eligibility

1-800-841-2900

www.mass.gov/masshealth/

Care Guidance

Senior Resource Center, Inc.*

Elder Advisory Group providing guidance on care and financial issues as well as legal overview

617-472-6600

www.HelpingElders.com

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RESOURCES

Legal Guidance: Elder Law

Falco & Associates, P.C.

Attorneys at Law

50 Quincy Ave

Quincy MA 02169

617-472-3341

www.falcoandassociatespc.com

MA-NAELA

Massachusetts Chapter of National Academy of Elder Law Attorneys, Inc.

617-566-5640

Greater Boston Legal Services

617-371-1234

www.gbls.org

Financial Guidance

Senior Resource Center, Inc.*

50 Quincy Ave

Quincy, MA 02169

888-869-6295

www.HelpingElders.com

AARP

American Association of Retired Persons

www.aarp.org

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