

Applying For MassHealth (Medicaid) Before Determining Your Legal Rights?

The MassHealth application process is lengthy, cumbersome, and confusing. Doing it yourself can often result in missed opportunity, denials, and costly appeal processes. Getting an Elder Law attorney involved during the appeal process is far more expensive than retaining one in the beginning.

Some nursing homes contract with private companies to prepare the applications on behalf of the potential applicant. However, these companies do not have the best interests of the applicant in mind. They represent the nursing home and are only concerned with a quick, cheap, approval for the nursing home. The companies do not staff attorneys. There is no client-attorney privilege and financial information is freely shared among all interested parties. Since the application company

does not provide legal advice, it will not inform the family of alternative legal ways of using or preserving excess funds. Even if an applicant is already in a nursing home there could be ways to preserve assets for the individual and family and still be approved.

Certain MassHealth planning strategies that were available in the recent past were affected by the passage of the Deficit Reduction Act. However, other strategies remain viable, especially for married couples and/or individuals with disabled, adult children. These options may include irrevocable trusts, supplemental needs trusts, gifting to family members (in specific, limited circumstances), and spend-down strategies. One should never implement an asset protection strategy without the advice of an Elder Law Attorney.



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What Is Elder Law?

Elder law involves complex planning for healthcare, estate planning, long-term care, and other issues facing the elder and the disabled, as well as their families. Elder law attorneys can assist with:

- ▼ Applying for Community and Long-Term Care Medicaid (MassHealth in Massachusetts), Medicare, and other government programs.
- ▼ Preparing Wills, Trusts, Powers of Attorney, Health Care Proxies, and other estate and healthcare planning documents.
- ▼ Obtaining substitute authority for incapacitated persons via Guardianship and Conservatorship and advising guardians and conservators.
- ▼ Administering trusts and estates.
- ▼ Evaluating long-term care policies.
- ▼ Drafting supplemental needs trusts.
- ▼ Ensuring nursing home resident rights are respected and responding to quality of care complaints.
- ▼ Representing clients in disputes involving nursing homes, Social Security, Medicare, Medicaid, or managed care.

Is There a Plan?

- ▼ Do you have a relative who is about to receive care in a nursing home?
- ▼ Has your parent just been diagnosed with Alzheimer's or Parkinson's Disease?
- ▼ Is your spouse or parent recovering from a stroke?
- ▼ Is your child living in your home and taking care of you?

The prospect of long-term care in a nursing home is one of the most difficult and unpleasant experiences facing elders and their families, creating stress and anxiety about the quality and high

cost of care. In Massachusetts, nursing home care averages \$90,000-\$130,000 per year and can easily wipe away a family's nest egg.

While Medicare and supplemental health insurance plans may cover most of the medical expenses of an acute illness, they provide little or no coverage for nursing home care. Unless long-term care insurance was previously purchased, the only program available to assist in financing nursing home care is Medicaid (known as MassHealth in Massachusetts). Medicaid is a joint federal-state public benefits program that has a complex set of eligibility rules.



What Should I Do If I Have More Questions?

Please contact **Attorney Kristina Vickstrom** at **508.757.3800** or by email at **kristina@vickstromlaw.com**.

Also online at **www.vickstromlaw.com**.

What are the MassHealth Eligibility Requirements?

- ▼ Will we have to sell our home?
- ▼ Will my parents be eligible for MassHealth if they have \$150,000 in the bank?
- ▼ What will happen to the vacation property?
- ▼ When should the MassHealth application be filed?

Treatment of Assets

To qualify for MassHealth coverage of nursing home care, a single individual cannot own more than \$2,000* in "countable assets". Ordinarily a couple cannot own more than \$109,560* (including \$2,000 allowed to the institutionalized spouse). However, it may be possible to retain substantial assets and still qualify for MassHealth! The home does not have to be sold to qualify for MassHealth. It is a "non-countable asset" as long as the MassHealth application is completed correctly. *2010 adjusted annually.

Treatment of Income

Once qualified for Mass-Health, the nursing home resident must use his or her income, after certain deductions, to partially pay for the nursing home. MassHealth pays the rest. The spouse at home does not have to pay any of his or her income to the nursing home. With the assistance of an Elder Law attorney, it is sometimes possible that income of the nursing home resident can be kept for the spouse at home.

MassHealth Review Process:

MassHealth reviews all financial records for the 60 months prior to application. The purpose of this "lookback" period is to find any transfers which might disqualify the applicant from receiving benefits. A transfer is disqualifying if during this period the applicant or spouse transferred a countable asset, or the principal residence, for less than fair market value. Disqualifying transfers, even small gifts, can result in a period of ineligibility for MassHealth even when all other assets have been spent-down. Gifting is sometimes still a good strategy if done early enough, but should only be undertaken with the advice and assistance of an Elder Law attorney.

