

PLANNING FOR LONG TERM CARE IN MASSACHUSETTS

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INTRODUCTION

It can be difficult to predict how healthy you will be years or even decades in the future. It can be even more difficult to figure out how to pay for care that you may or may not need years or even decades in the future. Long term care is very expensive. Nursing homes in Massachusetts currently cost approximately \$12,000 per month. This cost is only rising, making long term care a tremendously burdensome expense for all but the very wealthy. However, even those with significant savings or assets would generally prefer to pass those assets along to their loved ones, instead of spending them on a nursing home or other long term care.

Surprisingly, long term care is not usually covered by standard health insurance plans. Under both federal and Massachusetts law, you are required to have basic health insurance. However, neither federal nor Massachusetts law requires you to have long term care insurance, despite the fact that long term care is often the most costly health care expense people face and can cause severe financial hardship for many families.

There are many different types of long term care services and many different ways to pay for these services. Navigating these choices can be quite complex. To help guide you through this vast world of long term care, we have written this pamphlet with the hope of providing you with an overview of the many types of programs and payment methods available to people in Massachusetts.

In Part One, we discuss some of the different types of long term care available. In Part Two, we explain the advantages and disadvantages of private long term care insurance. Part Three provides an overview of the most commonly used government-funded programs. In Part Four, we describe some of the tools and strategies you may use to plan ahead, and Part Five offers a list of resources available for long term care planning.

There are steps you can take now that will make things easier for you and your family down the road. There is no one-size-fits-all answer; every person is different, and you should carefully consider what is best for you and your family. Additionally, when the federal Affordable Care Act goes into effect on January 1, 2014, there may be even more changes to how people pay for long term care that are not included here. However, we hope to provide you with the basic information and resources you need to understand and take advantage of the opportunities available to you and avoid some of the most common obstacles.

PART ONE: TYPES OF LONG TERM CARE

There are several different types of long term care. These differences are usually related to the severity of medical conditions and the extent of services provided by the facility. The principal types of facilities are assisted living facilities, skilled nursing homes, and rehabilitation facilities. Many of the services provided in these facilities can also be provided in your own home, although often at a higher cost.

ASSISTED LIVING FACILITIES

Assisted living facilities are generally for couples and individuals who are in reasonably good health and do not need significant medical attention. Residents typically have their own rooms or apartments, eat most of their meals in a dining facility and/or prepare meals in their own unit, participate in activities, and come and go in and out of the facilities as they choose.

The assisted living facility typically provides an hour or so per day of assistance, such as bathing, dressing, doing laundry and cleaning, or help with medications. While assisted living facilities generally have a nurse on staff or have a provider visit once per week or month, they are not equipped to provide medical care or nursing care.

Assisted living facilities generally are not covered by either of the principal state and federal health insurance programs, Medicaid and Medicare, respectively. There are some state and local subsidies for people with limited assets, such as the MassHealth Group Adult Foster Care Program. Some, but not all, long term care insurance policies cover assisted living. For the most part, however, residents will need to pay for assisted living facilities out of their own assets. Many people are able to do this by first selling their primary residence and then using some or all of that money to purchase a unit in an assisted living facility.

SKILLED NURSING HOMES

Skilled nursing homes are facilities that provide skilled nursing care. Skilled nursing care is care that can only be provided by certain types of licensed or professional health care workers, such as nurses, physical and occupational therapists, or speech language pathologists. Skilled nursing homes provide 24-hour nursing care for those who are unable to live safely on their own and require assistance with daily activities, such as bathing, eating, and using the restroom. Many skilled nursing homes offer both long- and short-term care, and some offer specialty services, such as care for those with Alzheimer’s disease. Some long term care insurance policies and some public programs, principally MassHealth, pay for skilled nursing home care. Medicare will sometimes pay for care in skilled nursing homes, but only under certain circumstances.

REHABILITATION FACILITIES

Rehabilitation facilities often provide a similar level of care as skilled nursing homes, but for those who only need a heightened level of care for a limited period of time. Rehabilitation facilities provide medical monitoring following a serious medical event, such as a stroke or surgery, for people who do not need to be in the hospital any longer but are not yet ready to return home or enter a long-term nursing home facility. Long term care insurance policies and MassHealth usually pay for this type of care the same way they pay for long term care in skilled nursing homes.

GRADUATED FACILITIES

There are a number of senior living complexes in Massachusetts which combine various levels of care and allow residents to move from one level of care to the next as their health condition requires. These facilities, which are also called Continuing Care Retirement Communities (“CCRCs”), usually allow for independent living for those who need little

or no care, assisted living for those who need a minimal or intermediate level of care, and, finally, 24-hour nursing home care for those who need the most care. These facilities typically provide amenities such as dining facilities and social activities and services that may include housekeeping and 24-hour security. People typically enter graduated facilities while they are still relatively healthy and independent.

Each graduated facility has its own payment policy. Many require entrance fees and monthly fees thereafter. Some will require a resident to purchase a long term care insurance policy that will pay for care at the graduated facility, if he or she does not already have one. In certain circumstances, public programs such as MassHealth will pay for some levels of care.

HOME CARE

Home care enables individuals to live in their own homes while receiving home health services and/or homemaker services. Home health services can include skilled nursing care, physical or occupational therapy, and basic medical assistance such as changing bandages and helping with medications. Homemaker services help with tasks such as bathing, dressing, and using the restroom, as well as housekeeping and meal preparation. Some, but not many, long term care insurance policies will pay for home care, and very few long term care insurance policies will pay for 24 hour home care. Public programs such as Medicare and MassHealth will pay for some types of home care.

PART TWO: PRIVATE LONG TERM CARE INSURANCE

Originally, long term care insurance was meant to help people pay for nursing home care without spending all of their savings. However, the options for long term care today have expanded to include assisted living and home care. Some, but not all, long term care insurance policies will cover the costs of these services as well as nursing home care.

WHAT ARE THE BENEFITS OF LONG TERM CARE INSURANCE?

Nursing home care in Massachusetts currently costs around \$12,000 per month, which adds up to approximately \$144,000 per year. Assisted living facilities cost less, but still cost approximately \$3,000-\$7,000 per month, in addition to an initial fee required before you move in. Less expensive types of long term care, such as home care, at an average rate of \$22 per hour, can still add up to thousands of dollars each month, depending on the number of hours of care needed. For most people, these costs are too high to fund themselves. Given past experience, it is very likely that the costs of long term care will only increase in the future.

Long term care insurance plans are similar to other health insurance plans. Every month, you pay a fee—called a premium—in exchange for coverage if and when you need care. Unlike Medicaid and Medicare, these plans are administered by private companies. There are several large companies and other smaller ones that sell such policies.

WHO IS ELIGIBLE FOR LONG TERM CARE INSURANCE?

Eligibility standards vary from policy to policy. In general, if you are in reasonably good health, not currently receiving long term care services, and are between the ages of 18 and 84, you can probably obtain long

term care insurance. However, if you have a preexisting condition, you may not be eligible for long term care insurance.

Even if you are eligible for a long term care insurance policy, there may be significant limitations. For example, the policy may only pay for some services, or you may have to pay higher premiums.

SHOULD I BUY LONG TERM CARE INSURANCE?

The decision whether to purchase long term care insurance can be a complicated one, and it is important to be well informed. Below are some things you should consider when making your decision:

- **Coverage.** Make sure you read the fine print and understand exactly what your long term care insurance plan will and will not cover. Many plans only cover nursing home care and do not cover assisted living facilities or home care services. Most people prefer getting care at home, if possible, because it tends to be more comfortable, more convenient, and less expensive than nursing home care. It also allows you to continue living with your partner who might still be quite healthy.

Additionally, many policies will not pay for care for those with Alzheimer's disease or dementia. It is common for policies to only pay for a limited number of days for Alzheimer's or dementia patients, potentially leaving them worse off than if they had not purchased long term care insurance and had instead relied solely on government programs and/or invested money they had spent on premiums. When choosing a long term care insurance policy, be sure to read the fine print and select a policy that covers home care and care for those with Alzheimer's disease or dementia.

- **Premium costs.** In general, the younger you are when you sign up for long term care insurance, the lower your monthly premiums will be. For example, someone who signs up while

she is still in her 50s will probably pay less per month than someone who signs up while in her 70s. However, if you elect to purchase a long term care policy at a younger age, you obviously will be paying premiums for a longer period of time. You should carefully consider the costs and benefits of any policy.

- **Elimination periods and deductibles.** Your long term care insurance policy may not start paying for your care right away. Instead, you will usually have to either pay a deductible or wait for the “elimination period” to end. An elimination period is when the insurance company will wait for a set amount of time—such as 30, 60, or 90 days—before it will begin to pay for your care. During this time, you will need to pay for your care on your own or through another source of funding. When choosing a long term care insurance plan, try to find one with a short elimination period or a low deductible.
- **Lifetime limits.** Many long term care insurance plans will not pay for long term care indefinitely. Instead, they will only pay for a certain amount of time or until they have paid a certain amount of money. For example, a long term care insurance plan might only pay for your care for five years, or it might only pay up to a total of \$100,000 or some other limit. While there are some policies that will pay for your care for as long as you live, these policies are rare and tend to have higher premiums.
- **Longevity.** Long term care is most important for people who will live past the age of 65. You should consider such factors as your current health and how long close family members have lived when deciding whether to purchase long term care insurance. You should also consider whether there is a genetic predisposition to diseases such as Alzheimer’s when deciding on long term care insurance.

- **Your current financial status.** In general, it isn't worth purchasing long term care insurance if you can't afford it. There is little sense in putting yourself under financial strain for coverage that you might not ever need. And if you do need care eventually, there are government programs that can help if you qualify financially. As a general rule, only buy long term care insurance if you can afford to pay for it comfortably. Even if you can afford long term care insurance, you may prefer to invest the money you would spend on premiums in another way and elect to pay for long term care out of your personal funds in the future.
- **Inflation.** The cost of health care is currently rising faster than inflation. This means that in the future, health care will probably cost significantly more than it does today. For example, the insurance that you buy today may cover \$200 per day of care. Although \$200 per day may be significant now, 20 years in the future, \$200 per day may be inadequate. An inflation rider, sometimes called inflation protection or a benefit increase rider, will increase your benefits each year to compensate. If you do decide to purchase long term care insurance, be sure to find a policy that offers some sort of inflation protection.

If for some reason you decide not to purchase inflation protection, make sure you find out what your options are if you later change your mind. Many plans only allow you to sign up for inflation protection during an "open enrollment" period, which may only occur once every few years.

- **Buyer beware.** Long term care insurance policies can be very complicated. It can be difficult to understand what your policy does and does not include. To make matters worse, the long term care insurance industry is not regulated as strictly as some other types of insurance industries are. Many long term care

insurance companies have gone out of business. Some are very difficult to deal with when you are trying to get them to pay for long term health care. There are some dubious companies out there whose product offerings are not much more than scams. Before you purchase long term care insurance, do your research. Make sure you are purchasing it from a reputable company and that you understand exactly what the policy covers.

There are several large insurance companies that have a reputation for providing reliable long term care insurance policies. One of them may be right for you, but you should always make sure to do as much research as possible and think carefully about your decision.

HOW CAN I FIND OUT MORE?

The U.S. Department of Health and Human Services has developed a website called the National Clearinghouse for Long Term Care Information. You can visit it at www.longtermcare.gov.

If you have an attorney, especially one who specializes in elder law, ask her if she thinks you would be a good candidate for long term care insurance, and if so, what company and what type of policy she would recommend.

PART THREE: GOVERNMENT PROGRAMS

A. STATE RESOURCES: MEDICAID (MASSHEALTH)

One of the most common ways people pay for long term care is Medicaid. Only a minority of people can afford to pay for all of their long term care on their own or have private long term care insurance. Some people with limited assets and income are eligible for Medicaid right away. Others can pay for long term care on their own for a limited period of time, but when their money runs out, they usually become eligible for Medicaid.

Medicaid is a state-run program. In Massachusetts, Medicaid is called MassHealth, but both terms refer to the same program. MassHealth, one of the most generous Medicaid programs in the country in terms of eligibility, offers several different programs that cover different types of long term care. Most, but not all, nursing homes accept MassHealth; however, there are some types of long term care, such as assisted living centers, that may not be covered by MassHealth.

Each MassHealth program has slightly different eligibility criteria. This section of the guide will give you an overview of the types of coverage MassHealth provides and what you should do if you think you might be eligible.

WHAT MASSHEALTH PROGRAMS ARE AVAILABLE TO HELP ME PAY FOR LONG TERM CARE?

- **MassHealth Standard.** MassHealth Standard is the only type of MassHealth coverage that will pay for long term care in a nursing home. MassHealth Standard may also pay for some long term care services that you receive in your home.
- **MassHealth Frail Elder Home and Community-Based Services Waiver (“MassHealth Frail Elder Waiver”).** The MassHealth

Frail Elder Waiver pays for long term care services for people who live in their homes or in assisted living centers. It is also known as the Nursing Home Diversion Program, because it enables people to receive the type of services provided by nursing homes while remaining in their own homes.

- **MassHealth CommonHealth.** MassHealth CommonHealth covers the same services as MassHealth standard for people with disabilities.

The eligibility standards and application process for each of these programs are different. Below are some of the most important things you need to know about each of these programs.

1. MASSHEALTH STANDARD

AM I ELIGIBLE FOR MASSHEALTH STANDARD?

Eligibility for MassHealth Standard coverage for long term care in a nursing home is based on the following financial criteria:

- **Assets.** To be eligible for MassHealth Standard, you must have no more than \$2,000 worth of assets in your name or \$3,000 combined between you and your spouse if you are married. Assets include most of your belongings, property, and savings. Assets even include things like a life insurance policy with a cash value. However, MassHealth does not include the following:
 - Personal property, including clothes and household items;
 - Your home, up to \$802,000 of its equity value, as long as it is located in Massachusetts; and
 - One vehicle, as long as it is for the use of you or your spouse.

There are also other types of assets that may not be considered by MassHealth.

- **Income.** Whether your income makes you eligible for MassHealth Standard depends on several factors. First, the state determines how much it will pay per day for care at each facility, and this amount may vary depending on what level of care you need. Next, the state will determine your countable income. This is the income you receive every month minus certain types of income and expenses, such as a personal needs allowance, uncovered medical costs, and VA Aid and Attendance income. You will need to contribute your countable income towards the cost of your care. If your countable income is less than what the state will pay, you will be eligible for MassHealth, which will pay the difference. If your countable income is more than what the state will pay, but less than the amount it would cost you to pay for your care privately, you will be subject to a six month spenddown. A spenddown is like a deductible: that is, you must pay a certain amount for your care before your MassHealth coverage will kick in. The state uses a complex formula to determine what your spenddown amount will be.
- **Immigration status.** Unfortunately, if you are a “special status immigrant” – that is, you have a green card, but have had it for less than 5 years – you are not eligible for Medicaid programs. Massachusetts provides some coverage through MassHealth Essential, but this program does not cover any long term care benefits. Special status immigrants should seek private sources of funding for long term care.

HOW DO I APPLY FOR MASSHEALTH STANDARD?

The application for MassHealth Standard asks you questions about your financial history and any insurance policies you may have. You can apply on your own, but many people find the application process to be very difficult. Below are some of the things you should know before you start the application process.

- **MassHealth applications can take a long time to process.** You should expect that it could take anywhere from a few months to more than a year to get your application approved. However, once approved, MassHealth will pay for services you received beginning three months before you initially applied. If you paid for these services yourself, MassHealth will reimburse you.

- **The “Five-Year Lookback.”** One of the most important things you should be aware of when applying for MassHealth Standard is that you will be asked to provide all of your financial records from the past five years.
 - If you transfer assets, you will be ineligible for MassHealth for up to 5 years. MassHealth will assume that if you transfer \$1,000 or more out of your accounts, you are doing so to become eligible for MassHealth. Unfortunately, this is even true of genuine gifts, like birthday presents. MassHealth calculates the length of your ineligibility by dividing the amount of the transfer by \$8,370. For example, if you transferred \$100,000, you would be ineligible for one year, because $\$100,000 \div 8,370$ is approximately 12 months.

 - If you are subject to the transfer penalty, your ineligibility period won’t begin until you enter the nursing home, have no more than \$2,000 in assets, and have no other source of payment for the nursing home. This means that if you apply 2 years before you enter the nursing home, you will still be ineligible for a maximum of 5 years *from the time you enter the nursing home* – NOT 5 years from the time you apply for MassHealth.

 - Transfers that happened 5 years and 1 day (or more) before you apply for MassHealth will not be counted. Unfortunately, it can be hard to predict when you will need nursing home care – or if you ever will at all. A general rule of thumb is that if you

already have a chronic and progressive illness, you should think very carefully about every transfer over \$1,000 you make.

- Always be truthful in your application. Some people find it tempting not to report transfers or assets on their MassHealth application. It is very important to tell the truth on your application. MassHealth has the ability to look up anything your name is associated with, which includes bank accounts, cars, and homes – so it will be able to find out anyway.
- Exceptions to the five-year lookback. The good news is that there are several types of transfers for which you will not be penalized:
 - You may transfer money or other assets to
 - your spouse;
 - a blind or disabled child; or
 - a trust for the benefit of a blind or disabled child or a disabled individual under the age of 65.
 - You may transfer your home to
 - your spouse;
 - a blind or disabled child;
 - a trust for the benefit of a blind or disabled child or a disabled individual under the age of 65;
 - a child under the age of 21;
 - a sibling who has lived in your home during the year before you enter the nursing home and who already has some equity interest in your home; or
 - a caretaker child – that is, a child who lived with you in your home for at least two years before you entered the nursing home and whose care prevented you from needing to enter a nursing home earlier.
 - If the person to whom you transferred the assets is able to give you those assets back, MassHealth will not penalize you for the

transfer. Instead, it will be treated as if you had the asset all along – that is, you will still need to spend the money until you have \$2,000 or less, but your eligibility for MassHealth benefits will not be affected.

- **I made a prohibited transfer in the last 5 years, and now I need nursing home care. What should I do?** In this case, you should try to find a lawyer who specializes in elder law or MassHealth to help you with your application. You should also expect the application process to take longer than usual, because it is likely that you will initially be denied benefits and will have to appeal. You may also want to start gathering letters from the people to whom you made transfers, indicating that the intent of the transfers was to make a gift, and not to bypass MassHealth eligibility rules. This will not guarantee that you will be successful in your application, but it may help.

WHAT ABOUT MY SPOUSE?

There are special rules to help protect your spouse if you need to be cared for in a nursing home.

- **Income.** If you are in a nursing home, but your spouse is still at home, your spouse will continue to keep any income he or she receives in his or her own name. Your spouse will not have to use his or her income to pay for your nursing home care. In some cases, your spouse will even get a portion of your income, instead of all of your income going to the nursing home.
- **Assets.** Your spouse will be able to keep up to \$115,920 of assets without affecting your MassHealth eligibility.

WILL THE STATE TAKE MY HOUSE?

Although it is a common fear that the government will take your house or force you to sell it to pay for your nursing home care, the general rule

is that your house will remain safely yours. If your spouse or a disabled child continues to live in your house, it will not be counted as an asset for the purpose of determining MassHealth eligibility. Even if your house is now empty, as long as you intend to return home to it, it will not be counted as an asset as long as its equity value is less than \$802,000. In fact, selling your house may actually leave you worse off, because once you receive money for it, that money *will* be counted as an asset for the purposes of MassHealth eligibility.

IS THERE SOMEONE WHO CAN HELP ME WITH MY APPLICATION?

In general, it is a good idea to find someone to help you with your application. If you do decide to seek help, the following resources may be able to guide you:

- **Your nursing home.** Many nursing homes have a staff person who can help you with your application.
- **An attorney who specializes in elder law.** Some attorneys will help with MassHealth applications. For names of organizations that provide free or low cost legal assistance, see Part Five below.
- **Your local SHINE counselors.** For more information about SHINE counselors, see Part Five below.
- **Medicaid consulting firms.** These consulting firms are often staffed by people who used to be MassHealth caseworkers and, as a result, are very familiar with the application process. They also often have good relationships with the current MassHealth caseworkers and are generally very successful in getting applications approved. They typically charge a one-time fee and will communicate with you, your caseworker, and your family.

MAINTAINING ELIGIBILITY

Once you are approved for MassHealth benefits, your eligibility will still need to be reevaluated once per year. This means that you will need to send in documentation each year that shows you are still eligible. If you do not, you will stop receiving benefits. The re-approval process is usually simple and typically takes 1-3 months.

However, the process can get more complicated if you are eligible for and enrolled in MassHealth before you turn 65. The financial criteria for eligibility change when you become 65, so it is relatively common to hear of people who were receiving MassHealth benefits who get a termination notice shortly after their 65th birthday. If this happens to you, you may want to talk to an attorney about other MassHealth programs for which you might be eligible.

Your eligibility may also be in jeopardy if you inherit an estate. For example, if a loved one dies and leaves you all of their property while you are in a nursing home, you will be expected to use that inheritance to pay for your care. Even if you had been eligible for MassHealth, you will lose your eligibility until your assets are once again less than \$2,000. You will then need to reapply for MassHealth.

WHAT ELSE DO I NEED TO KNOW?

Partly as a result of inadequate funding, MassHealth caseworkers—the people who make the initial decisions whether to approve or deny your application—are extremely busy and overworked. The average MassHealth caseworker handles 100-200 cases at any given time. Unfortunately, this means that caseworkers are not always able to put the time into each application that they should, which sometimes translates into applications being improperly denied.

One general strategy to help prevent an unfair denial is to call your caseworker after you have applied to make sure MassHealth has all the information that you sent it. When you put your application in the mail,

use the “return receipt requested” service so that you will get documentation that MassHealth has received your application. You should also keep copies of all the paperwork you send in with your application, in case something gets lost.

Although in many circumstances people with fewer resources and assets are disadvantaged, generally they have an easier time getting approved for MassHealth, because it is easier for them to show that they need help paying for their care. When people who don’t have much money get denied, it is usually because they did not provide all the information MassHealth asked for with their application. Thus, it is very important to be thorough in your application and provide everything MassHealth asks for.

Because MassHealth eligibility is keyed to financial need, getting MassHealth benefits can be most difficult for the middle class. As a general rule, a couple with \$120,000 or less in assets should consult a legal services agency, such as Greater Boston Legal Services, or a Medicaid consulting firm for advice about MassHealth eligibility.

A couple with more than \$120,000 in assets should consult a private attorney. Private attorneys are not cheap, and may cost you anywhere from \$10,000 to \$20,000. However, their expertise may actually allow you to *save* money in the long run—sometimes as much as \$100,000 more than you would have if you tried to handle the process on your own. Not only that, but if you wait until after you have gotten yourself into a tricky situation, your legal fees will likely cost more, and it will be more difficult for your attorney to help you save money.

Finally, if your initial application is denied, there are two important things you should know. First, you should appeal the decision, rather than reapplying. If you appeal, and you eventually win, MassHealth will pay for benefits as far back as 3 months before you *first* applied. If you reapply, MassHealth will only pay for benefits as far back as 3 months before the time you *reapplied*. Because the process can take quite some time, appealing can end up saving you a substantial amount of money. Second, there is a very short time frame within which you can

appeal. In general, you must appeal within 30 days of your denial. However, if you want to continue receiving benefits while your appeal is pending, you must appeal within 10 days.

The bottom line is that if your application is denied, you should speak to an elder law attorney as quickly as possible for help with the appeals process.

2. MASSHEALTH FRAIL ELDER WAIVER

As recently as 5 or 6 years ago, if you needed more than 8 hours of care per day, you would have most likely needed to go into a nursing home. However, there are two big problems with sending people to nursing homes. First, many people don't want to go to a nursing home unless absolutely necessary. Second, nursing home care is very expensive, both for individuals and the state.

Today, the MassHealth Frail Elder Waiver is designed so that people who need care similar to what they would receive in a nursing home can receive that care in their homes instead. This program covers services such as adult day care, home delivered meals, home health aides, personal care, and transportation assistance. This program allows people to remain in the comfort of their own homes and costs the state less money.

AM I ELIGIBLE FOR THE MASSHEALTH FRAIL ELDER WAIVER?

You must be at least 60 years old to be eligible for the Frail Elder Waiver. Unlike MassHealth Standard, eligibility for the Frail Elder Waiver is based on both financial *and* clinical criteria.

- **Financial criteria.** Like MassHealth Standard, you must have \$2,000 or less in assets. Your income must be no more than \$958 per month. However, the five-year lookback does NOT apply. This means you do not have to worry about any transfer

over \$1,000 from the past five years the same way you would for MassHealth Standard.

- **Clinical criteria.** Clinical criteria vary depending on the program you are applying for. In general, you will need to have limited functional ability and you must require the level of care provided in nursing homes. Your local Aging Services Access Point (“ASAP”) will determine if you are eligible. For more information about ASAPs, see Part Five below.

HOW DO I APPLY FOR THE MASSHEALTH FRAIL ELDER WAIVER?

The first thing you should do is contact your ASAP. They will assign you a case manager. The case manager will then typically make a referral to a nurse from ASAP. The case manager may also help you with your application, which is almost 20 pages long and can be difficult to do on your own.

To assess whether you meet the clinical criteria, the nurse assigned to your case will visit you in your home and will ask you to sign a form allowing them to speak to your primary care doctor. Once you are determined to be clinically eligible, it is very rare for MassHealth to deny your application for clinical reasons.

WHAT ELSE DO I NEED TO KNOW?

Unlike nursing home care, it is not possible to pay privately for the Frail Elder Waiver. The program is only available through MassHealth.

Even if you are eligible for this program, you may still be put on a wait list before you are able to receive these services.

3. MASSHEALTH COMMONHEALTH

MassHealth CommonHealth is a program that provides the same benefits as MassHealth Standard. It is designed for people with disabilities and has different eligibility criteria than MassHealth Standard.

CAN I GET MASSHEALTH COMMONHEALTH?

- **Financial criteria.** Unlike MassHealth Standard, MassHealth CommonHealth has no income or asset limit for eligibility. This means that no matter how much money you make, you will still be eligible for CommonHealth. However, depending on how much income you receive, you may have to pay a premium or a one-time deductible.
- **Clinical criteria.** You must have a disability. MassHealth will conduct a review to determine whether you are disabled under state and federal law.
- **Employment criteria.** You must work 40 hours per month or more. However, MassHealth is fairly flexible about this requirement. Almost any kind of employment—such as walking a friend’s dog, babysitting for your grandchildren, or even licking envelopes—will be sufficient. You will need to get a letter from the person for whom you work confirming that you work for them 40 hours or more per month. This must be paid work.

HOW DO I APPLY?

To apply for MassHealth CommonHealth, you will need to go through the same application process as MassHealth Standard.

B. JOINT STATE-FEDERAL PROGRAMS

There are two primary resources that are jointly funded by federal and state programs. These resources are the Senior Care Options Program and the PACE Program.

1. SENIOR CARE OPTIONS PROGRAM

The Senior Care Options Program (“SCO”) covers all services that are covered by MassHealth Standard. This includes nursing home care and community long term care. Other benefits include specialized geriatric support services, adult day care, and home care services. SCO provides services whether you live independently, at home but with support services, or in a nursing home.

Enrolling in SCO can make things easier for you, because it combines benefits from MassHealth, prescription drug plans, Medicare (if you are 65 or older), and unique SCO benefits into one, more convenient plan. However, you must go to the doctors within the SCO network. You can quit SCO at any time.

AM I ELIGIBLE FOR SCO?

You are eligible for SCO if you:

- Are 65 years of age or older;
- Are eligible for MassHealth Standard;
- Live within a program service area; and
- Do not have end-stage renal disease.

HOW DO I APPLY?

If you are interested in the SCO program, you should contact your local senior care organization. The staff at these organizations will make sure you are eligible for and enrolled in MassHealth. You must fill out the

MassHealth Senior Care Options enrollment form and choose a primary care physician. If you need help, someone from your local senior care organization will be able to help you.

For more information, call 1-888-885-0484, or visit <http://www.massresources.org/senior-care-options.html>.

2. PACE PROGRAM

The Program of All-Inclusive Care for the Elderly (“PACE”) provides a well-integrated array of long term services for elders so that they can continue to live at home or in the community. Members receive all of their health services through the PACE program.

AM I ELIGIBLE FOR PACE?

You are eligible for PACE if you:

- Are 55 years of age or older
- Are eligible for nursing home care
- Are able to live safely in the community
- Live within a PACE service area
- Receive income no more than \$2,130 per month
- Have countable assets of no more than \$2,000

If you are not eligible for MassHealth, you may have to pay a monthly premium for PACE.

HOW DO I APPLY?

Contact the PACE site nearest you. There are six PACE sites in Massachusetts: Boston, East Boston, Mattapan, Cambridge, Lynn, and Worcester. Visit <http://www.massresources.org/elder-service-plans.html> for contact information.

C. FEDERAL RESOURCES: MEDICARE

Contrary to popular belief, Medicare does not pay for long term care. Although Medicare provides general health care coverage for those 65 and older, long term care is not included in this coverage. If Medicare is your primary form of health insurance, you will still need to find a way to pay for long term care.

The one exception to this general rule is if you have been admitted to a hospital for 3 days or more. In this case, Medicare will pay for up to 100 days of care in a nursing home following your hospital admission if necessary. However, there are some potential obstacles you should be aware of:

First, Medicare only pays the whole bill for the first 20 days of your nursing home stay. After that, you will have to pay a co-insurance fee, which is currently \$148 per day. This fee can be a significant expense. If, for example, you are in the nursing home for the full 100 days, 80 days at \$148 per day will cost you \$11,840. However, there are some types of back up insurance that may pay for all or part of the \$148 per day fee. These include Medigap policies, which are also known as Medicare supplements, or MassHealth in some cases.

Second, if you have been in a nursing home within the last six months, Medicare will only pay for 100 days total within those 6 months. For example, if 3 months ago you were in a nursing home for 40 days, Medicare will only pay for 60 days of a second nursing home stay. If you used up your 100 days 3 months ago, Medicare will not pay for a second nursing home stay at all.

Finally, it is important to know how the hospital classified your stay. Medicare will only pay for up to 100 days of skilled nursing care following an *inpatient* admission. However, what may seem like an inpatient stay to you may be billed by the hospital as an “observation” stay, even if you are in the hospital for several days. If the hospital has classified your stay as an observation, Medicare will not pay for 100

days of skilled nursing care. Make sure you ask the hospital how it has classified your stay to avoid an unpleasant surprise on your bill.

PART FOUR: PLANNING AHEAD

We recognize that we have provided you with information about many different programs, each of which has very different eligibility requirements. At this point, you may find yourself wondering how to anticipate what care you will need 10, 20, or 30 years from now and what steps you should take to prepare.

Although there is no foolproof way to plan for every possibility, there are steps you can take in advance that may help put your mind at ease. In this section, we describe some of the things you can do and tools you can use to better prepare yourself for the future. Some of these tips, such as those in the section on estate planning and other financial strategies, may be most relevant to people with significant assets. However, other tips, such as those listed in the section on choosing an alternate decision maker, are important for everyone, regardless of your financial situation.

A. CHOOSING AN ALTERNATE DECISION MAKER

As you get older, there may come a time when you no longer have sufficient mental capacity to make important decisions for yourself. This section discusses three of the most important tools that you can put in place now that will make things easier for you and your family if and when you are no longer able to make your own decisions.

DURABLE POWER OF ATTORNEY

A durable power of attorney is granted when you legally authorize someone to make financial decisions on your behalf if you become unable to make your own decisions. It is very important to give someone durable power of attorney, but it is also very important to choose someone whom you trust. Giving durable power of attorney to a loved one avoids the long, expensive process of appointing a guardian or custodian that must occur if you become incapacitated before

naming a durable power of attorney. You can revoke a durable power of attorney at any time. Your lawyer can help you set up a durable power of attorney.

HEALTH CARE PROXIES

A health care proxy is when you legally authorize someone to make medical decisions on your behalf if you become unable to make your own decisions. It is similar to the power of attorney, but applies to medical decisions instead of financial ones. This person will become your agent and will make decisions such as whether you want to be resuscitated if your heart or breathing stops, or whether you want to be kept alive by receiving food and/or fluids through tubes. Like a durable power of attorney, you should assign someone whom you trust to be your health care proxy. Everyone should establish a health care proxy. Your lawyer can help you with this. Many hospitals and doctors' offices can also help.

LIVING WILL

A living will is a document in which you describe what types of medical treatments you do or do not want if and when you face terminal illness. Massachusetts does not formally recognize living wills, so your doctors will not be legally required to follow your wishes as expressed in a living will. However, it is still a good idea to have one. In a living will, you can specifically explain what measures you want to be taken if, for example, your heart stops, you stop breathing, or you are in a coma. Many people choose to put "Do Not Resuscitate" orders in their living wills, which means that if your heart stops or if you stop breathing, the doctors who are treating you will not use CPR or artificial cardiac life support to prolong your life. You should also consider what your wishes are with respect to the use of artificial feeding tubes or pain medication. Writing down your wishes in advance increases the chances that they will be carried out and alleviates some of the stress that your family and loved ones will likely experience during this difficult time. If you are

able, tell your providers at the hospital as well as your family and friends that you have a living will.

B. ESTATE PLANNING AND OTHER FINANCIAL STRATEGIES

Below is a description of some of the most common strategies that may enable you to become eligible for MassHealth sooner, while still preserving some of your assets for you or your loved ones.

TRUSTS

In its most basic form, a trust is when property is held and managed by one person for the benefit of another. Despite popular belief, trusts are not only for the wealthy. In fact, if you put your assets in certain types of trusts, you may be able to shorten the length of time during which you will be ineligible for MassHealth.

Lawyers often use irrevocable trusts, testamentary trusts, and special needs trusts in long term care planning. Under certain circumstances, each of these trusts can be used to help you become eligible for MassHealth as soon as possible. An irrevocable trust is a trust that you cannot change once it is set up. The downside to an irrevocable trust is that you will not be able to access funds once they are put in the trust. Testamentary trusts are created by a will, and special needs trusts are used to benefit someone with disabilities.

A pooled disability trust is a trust that is managed by a non-profit organization and is meant to benefit someone with disabilities. The big advantage of this type of trust is that generally, these trusts will not affect your eligibility for MassHealth programs, but you will still be able to access the money you put into the trust. However, after your death, MassHealth may be able to access whatever money is left over in the trust to recoup money spent on your care. There are three major pooled disability trusts in Massachusetts: the Berkshire County ARC

Master Special Needs Pooled Trust; the CJP Disabilities Trust; and PLAN of Massachusetts.

A revocable trust—that is, a trust over which you retain control—is a way to keep your money safe from probate. However, one common misunderstanding is that a revocable trust will allow you to avoid spending your money on long term care. In reality, although revocable trusts do keep your money safe from probate, MassHealth will still require you to use that money to pay for long term care before you will be eligible for benefits.

All of these different types of trusts can be valuable estate planning tools when used under the right circumstances. You should speak to your attorney if you are interested in setting up a trust.

ANNUITIES

An annuity is a financial device for which you pay an insurance company a sum of money up front, and the insurer will pay you back in installments for the rest of your life or for a set amount of time. Under certain circumstances, annuities can give you access to your money without delaying your eligibility for MassHealth. To do so, however, the annuity must meet several criteria. These criteria can be complicated, so you should speak to an attorney if you are thinking about purchasing an annuity.

PRE-PAID FUNERAL ACCOUNTS

While it may seem grim, a pre-paid funeral account is a good way to protect your family from additional expenses after your death. Once you begin receiving MassHealth benefits, you can only put up to \$1,500 towards pre-paid funeral expenses. However, before you become eligible for MassHealth, there is no limit on how much you can put toward pre-paid funeral accounts. Although you may not want to put too much money into one of these accounts, it is a good way to protect some of your assets without affecting your eligibility.

MAKING PURCHASES

Although MassHealth will penalize you for transferring your assets to someone else within the five-year lookback period (see Part Three, above), in general, you will not be penalized for purchasing things or spending money. Nursing homes, for example, sometimes recommend that you buy plenty of clothes and personal items, because such purchases will not affect your eligibility for MassHealth, and it can be difficult to buy such items once you are on MassHealth. You can also pay off mortgages or other debts. This strategy makes your assets non-countable for the purposes of MassHealth eligibility, which means that you will be eligible for MassHealth sooner and will spend less out of pocket on your long term care.

C. ESTATE RECOVERY AND TAXES

Both estate recovery and taxes can make some of the tools and strategies described above less attractive options than they may initially seem to be. Below is a description of how estate recovery and taxes may affect your plan for the future.

ESTATE RECOVERY

One pitfall to be aware of is that after your death, Massachusetts can recover from your probate estate whatever it spent on your care through MassHealth or other publicly funded health care you received starting at age 55. In other words, if MassHealth paid \$50,000 for your long term care, after you die, Massachusetts can claim \$50,000 back from your probate estate.

However, property held outside your probate estate is safe from estate recovery, and can be passed along to your loved ones after you die. Additionally, the state cannot recover from your estate while your spouse is still alive. You should speak to an attorney to determine how you can best preserve your assets for your loved ones after your death.

TAXES

All of the estate planning tools described above can have significant tax implications. These implications are too complicated to explain here, but you should make sure you discuss these tax implications with your lawyer.

D. AN EYE TOWARDS THE FUTURE

Finally, there are a few small, simple steps you can take that will likely make acquiring long term care coverage much easier for you when you need it. You should take these simple steps while you are still in good health, regardless of what your financial situation is.

- **Become familiar with your nursing home options.** There are over 400 nursing facilities in Massachusetts. As you approach an age where a nursing home may soon become necessary, it is a good idea to learn more about the types of facilities available. It is also a good idea to visit a few facilities that are convenient for you and close to your loved ones. Some payment methods, such as long term care insurance or PACE, will only pay for stays in specific nursing homes, so it is a good idea to learn in advance which facilities are covered. Additionally, if you have been diagnosed with a particular disease or condition, you should consider whether there are any nearby facilities that specialize in caring for people with that disease or condition. Visiting and choosing a facility in advance will help you avoid having to scramble to choose if and when you suddenly need nursing home care.
- **Review your financial condition and how you are likely to be able to pay.** It is a good idea to review your finances before you need long term care. Knowing how you will approach such a large expense long before you actually need that care will help put your mind at ease and allow you to take steps that will make the transition easier for you and your family.

- **Consider long term care insurance and private payment options.** Each nursing home has different rules about what types of payments it will accept. Some nursing homes will only accept private payment. You should consider setting aside a certain amount of money for nursing home care so you will have the ability to go to whatever facility you want, if and when you need to. As an alternative, you should consider purchasing a long term care insurance policy, keeping in mind the potential issues we describe in Part Two.
- **Talk about these issues candidly with your children or other loved ones.** While it can be difficult to have a conversation with your family about long term care, it is better to address these issues sooner rather than later to avoid unnecessary difficulties and misunderstandings down the road.
- **Have a plan and write it down.** Sometimes the simple act of writing down your plan can put you and your loved ones at ease. Not only that, but by writing it down, you increase the odds that your plan will be followed if you unexpectedly lose the capacity to make decisions for yourself.
- **Consult with professionals listed in Part Five.** The people and organizations listed in Part Five can help you plan for the future. You should consider consulting some of them if you think you need assistance.

PART FIVE: RESOURCES

In Massachusetts, there are a variety of organizations that offer assistance navigating your long term care options. Below is a list of organizations that can help you figure out what you need to do to get the coverage you need.

LOCAL SENIOR CENTERS

Most communities have a local senior center. The quality of the services they provide varies from neighborhood to neighborhood, but they are a great place to call first if you aren't sure where to turn.

In Boston, senior centers are run by the Commission on Affairs of the Elderly, which you can reach by calling 1-617-635-4366. For more information, you can also visit their website at <http://www.cityofboston.gov/elderly/default.asp>. The Veronica B. Smith Multi-Service Senior Center is located in Brighton. You can reach the Veronica B. Smith Center by calling 1-617-635-3213.

Cambridge residents can reach the Cambridge Senior Centers and Council on Aging by calling 1-617-349-6220. For more information, visit <http://www.cambridgema.gov/DHSP/programsforadults/seniorscouncilonaging.aspx>.

To find your local senior center if you live in another city or town, visit <http://www.mass.gov/elders/service-orgs-advocates/coa/> and click on "Directory of COA Sites in Massachusetts," which provides a phone number for each local Council on Aging in the state.

ASAPS

ASAPs (Aging Services Access Points) are private, non-profit agencies that help to provide a social safety net for those aged 60 and older. There are 27 ASAPs throughout Massachusetts. Eligibility for ASAP

services is based on income, and is most often available to people who are already on MassHealth.

ASAPs can give you information, refer you to someone who can help you, and develop, maintain, and reassess a plan for providing you with the services you need. They can also help connect you with services such as Meals on Wheels and help with tasks such as transportation, showers and bathing, housekeeping, and other types of adult daytime assistance. They are a great source of information; however, ASAPs generally do not help with MassHealth applications. To find your local ASAP, visit www.800AGEINFO.com/map.

HEALTH CARE FOR ALL'S HELPLINE

Health Care For All is a private, nonprofit organization in Boston that is “dedicated to making quality, affordable healthcare accessible to everyone, regardless of income, social or economic status.” You can call Health Care For All’s Helpline for free advice about your health care coverage options and to help you solve problems related to your health care coverage.

You can reach the HelpLine by calling 1-800-272-4232 between 9 am and 5 pm, Monday through Friday. You can also request help by filling out an online form, available at <http://hcfama.org/index.cfm?fuseaction=Page.viewPage&pageId=765&parentID=549>. Someone will get back to you the next business day. There are counselors available who speak English, Spanish, Portuguese, and Mandarin.

SHINE COUNSELORS

Massachusetts offers free health insurance information, counseling, and assistance to residents of Massachusetts who are eligible for Medicare and the people who care for them via the SHINE Program. SHINE (Serving Health Information Needs of Elders) is staffed by volunteers who are specially trained in the types of health insurance options

available to seniors. SHINE Counselors are a great source of information. They can also help connect you to your local ASAP.

You can meet with a SHINE Counselor in person, over the telephone, or via email. To make an appointment, call 1-800-AGE-INFO and press 3. You can also find the phone number for your local SHINE program office by visiting <http://www.mass.gov/elders/docs/medicare-d/shine-by-town.pdf>.

GERIATRIC CARE MANAGERS

Geriatric Care Managers (“GCMs”) are individuals that you or your family can hire to assess your situation and help you figure out what your options are for long term care. Government programs such as Medicare and Medicaid do not pay for GCMs, so if you want to hire one, you will have to pay for him or her yourself.

However, GCMs can be a very valuable resource. They can make things easier for you and your family by providing a range of services, such as researching all of the available options for your long term care, reviewing the facts of your situation, meeting your family, visiting your home, and making recommendations. They may even provide services such as accompanying you to doctors’ appointments to help you understand healthcare information that the doctor tells you about. GCMs are often former nurses and can help make an assessment of what types of clinical care might be best for you. They do not provide health care, but they can help you plan for future care.

The National Association of Professional Geriatric Care Managers maintains a database of GCMs. You can search for a GCM near you by visiting <http://memberfinder.caremanager.org/>.

LEGAL SERVICES

The WilmerHale Legal Services Center, located in Jamaica Plain, offers free or low-cost legal services, including estate planning and assistance

with government benefits such as Medicaid and private insurance cases, to residents of Suffolk County who meet certain financial criteria. The Center is staffed by both attorneys and current Harvard Law School students. For more information, contact the Center at 1-617-522-3003 or visit their website at

<http://www.law.harvard.edu/academics/clinical/lsc/>.

Greater Boston Legal Services (GBLS) offers free legal services to people of limited means. The Elder, Health and Disability Unit of GBLS can help ensure that you get and maintain access to the health care coverage you need. To be eligible, you must live in one of the 31 cities and towns covered by GBLS, and you must either meet certain financial criteria or be at least 60 years of age. GBLS has offices in Boston and Cambridge. For general information, call 1-800-323-3205. For the Boston office, call 1-617-371-1234; for the Cambridge office, call 1-617-603-2700. You can also visit their website at <http://www.gbls.org/>.

There are other similar organizations in Massachusetts that may also be able to provide low cost or free legal assistance. The WilmerHale Legal Services Center and GBLS may be able to refer you to another organization that can help you.

PRIVATE ATTORNEYS

There are many knowledgeable and highly competent private attorneys who can help you navigate the obstacles and opportunities you may encounter in trying to plan for long term care. If you have sufficient assets and/or income with which to pay a private attorney, make sure to do some research first. Explore the websites of private attorneys or law firms that specialize in elder law or estate planning. Try to evaluate whether they appear to be knowledgeable about long term care issues, and consider the depth of information they provide. After you do your research, it is a good idea to then call 2 or 3 different attorneys in order to find one that you are comfortable with. The first consultation is often free of charge, but you should ask the attorneys about this if cost is a concern.

MASSHEALTH

As discussed in Part Three above, due to current staffing levels, it can sometimes be difficult to reach MassHealth. However, if you do need to speak with someone from MassHealth about eligibility or the status of your request for long term care coverage, contact the MassHealth Enrollment Center at 1-888-665-9993. You can also contact the MassHealth Customer Service Center at 1-800-841-2900 for more general inquiries about MassHealth benefits and enrollment. You can visit the MassHealth website at <http://www.mass.gov/eohhs/gov/departments/masshealth/>.

LOOKING FORWARD

Planning for long term care can be very complicated. There are many different options, each with different rules. Not only that, but the Affordable Care Act, which was signed into law by President Obama in 2010, will bring many significant changes over the next few years. Many of its key provisions go into effect as of January 1, 2014, and it remains to be seen how these changes will unfold and how long term care options and services will be affected. As a result, some of the information we have provided may soon become outdated. Nonetheless, we hope that we have provided you with the resources you need to be able to ask informed questions and make informed decisions, regardless of how the world of long term care changes in the future.

WHO WE ARE

This guide is the result of a collaborative effort between the Center for Health Law and Policy Innovation of Harvard Law School and WilmerHale. This guide was written by Deborah Cho, Sophie Kim, and Lauren Parisi, under the supervision and guidance of Robert Greenwald and Richard Johnston, to provide some fundamental information about how long term care coverage works in Massachusetts.

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