

**MEDICAID
PLANNING: BEFORE
IT'S TOO LATE**

Course Outline

Working with Medicaid's 5 year look back period is challenging, but spend down and impoverishment of an elder are not the only options when a nursing home admission appears to be inevitable.

Attorney Roberts explained how Medicaid planning can save assets, and provide resources for care that will delay or altogether prevent a nursing

home admission in a presentation to the Massachusetts Alzheimer's Association *Map Through the Maze* conference in Marlboro, Massachusetts on May 14th.

If you would like Attorney Roberts to present this 90 minute course to your group of organization, please call

413 567-5600



Comments from people who attended Attorney Roberts' presentation at the 2008 *Map Through the Maze* Conference



Return to our elder law website:
MassHealthHelp.com or

our Estate Planning website:
EstatePlansPlus.com

1. Single Individuals.

Medicaid

Basics for every Applicant.

Medicaid planning saves exempt assets, and transfers assets to exempt people. An understanding of these tools will help you provide hope for caregivers and family members who may feel like life is spinning out of control.

Most people are aware of the **non countable assets** that are allowed to every Medicaid long term care applicant:

- ▶ Prepaid funeral contract
- ▶ \$1,500 Irrevocable burial account
- ▶ Burial plot.

But family circumstances need careful review, to make sure that the family is not denied needed resources.

The house is non-countable and can be transferred to:

- ▶ **sibling** with a legal interest going back 1 year
- ▶ **caregiver child**, who saved the need for nursing home for 2 years or more (highlighted in the box)

Any assets can be transferred to a:

- ▶ disabled child
- ▶ trust for disabled person under age 65
- ▶ pooled trust for the nursing home resident

Assets can also be transferred to:

- ▶ an **annuity** for the nursing home resident, or for a disabled person.

- ▶ an annuity purchased with **qualified plan assets**, which will be exempt from the requirement that annuity is actuarially sound and have uniform payments.

130 CMR 520 (MassHealth Financial Eligibility Regulations)

520.007(G)(8): House is countable, **unless** occupied by:

- a spouse;
- a child who is under age 21 or who is blind or permanently and totally disabled;
- a **sibling** who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;
- a **son or daughter** who was living in the applicant's or member's home for a period of at least two years immediately before the date of the applicant's or member's admission to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or
- a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half brother or half sister; a cousin; or an in-law.

520.019(D) Permissible Transfers of resources:

- transfers to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- transfers to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the trust was created or funded.
- transfer to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- transfer of the principal residence to one of the exceptions listed above.

520.007(J)(2) Treatment of Annuities Established on or after February 8, 2006.

- The purchase of an annuity is considered a **disqualifying transfer** of assets **unless** the annuity satisfies 130 CMR 520.007(J)(2)(b), or **unless** the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is: . . . [qualified by the Internal Revenue Code as an IRA or pension plan]

2. Married Couples.

The regulations say that countable assets of the spouse who lives at home cannot exceed \$101,640. But it is permissible to:

► **Annuitize Countable Assets.** The spouse at home can take all the countable assets over that amount, and buy an annuity that complies with the regulations. The regulations say that the state must be named a remainder beneficiary if anything is left over after the death of the spouse. But current MassHealth policies do not enforce that requirement.

► **Consider the exceptions listed on the previous page,** such as a disabled child, or a caregiver child who lived in their home for the past 2 years.

► **Asset Splitting.** In cases where both spouses are

fragile, consider dividing the assets of the fragile couple. “Tenants in Common” ownership can provide flexibility. By splitting ownership, either spouse can:

- pass a ½ share to other family members upon death
- transfer ½ ownership back to community spouse if nursing home admission is needed

► **Testamentary Trust** (a Trust inside a Will) can transfer assets owned at death by the spouse at home to a Trustee for the benefit of the nursing home spouse, and leaving remaining assets for family members.

► **Transfer income producing real estate to the healthy spouse,** after the ill spouse is approved for Medicaid.

520.016(B) Treatment of a Married Couple's Assets When One Spouse Is Institutionalized.

. . . the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows . . .

The community spouse's asset allowance is the greatest of the following amounts:

- (i) the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$101,640;
- (ii) a court-ordered amount; or
- (iii) an amount determined after a fair hearing in accordance with 130 CMR 520.017.

520.007(J)(2) Treatment of Annuities Established on or after February 8, 2006.

(a) The purchase of an annuity will be considered a disqualifying transfer of assets unless:

- (i) the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual;
- (ii) the Commonwealth of Massachusetts is named as such a remainder beneficiary in the second position after the community spouse, or minor or disabled children; or
- (iii) the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)(ii) disposes of any such remainder for less than fair-market value.

3. Medicaid Planning Within 5 Year Look Back.

Working with Medicaid's 5 year look back period is challenging, but spend down and impoverishment of an elder are not the only options when a nursing home admission seems inevitable.

Medicaid planning can save assets and provide resources for care that delay or **prevent a nursing home admission.**

► **Consider modifications to the home, and paid caregivers** to make at-home care safe for the Alzheimer's patient and the care givers. Delaying a nursing home admission with quality care at home care can provide time to make asset transfers.

► **Caregiver agreements** were always a good idea

because they recognize the time that each family member gives to care, provide an organized schedule for care and other services, and prevent arguments and misunderstandings among family members.

► **Review all residential options** to delay nursing home admission. AARP counsels: look into buying a less costly home, renting an apartment, or moving into assisted living or other alternative housing.

► **Combination of Asset Transfers, Trust and/or annuity**, to cover the years that remain in the look back period.

► **Reverse Mortgage** can provide funds to bridge the 5 year look back period. Elder can take mortgage proceeds monthly, in a lump sum or "as needed" in an equity line.

4. Medicaid With 5 Years (or more) to Plan.

Many options are open when there is more time to plan.

► **Create equity interests in siblings:** The regulations will protect the interest owned by the non-institutionalized sibling, assuming the interest is created 5 years before Medicaid eligibility is needed.

► **Life estates:** if a conveyance can be made before the 5 year look back period, consider this option. If the proposed life tenants are both relatively young and healthy, they probably will make the 5 years. Consider LTC insurance to cover risk of older clients. But remember to consider pending changes in the income tax laws that will cause taxes on the profit

from sale of the house if it is sold by the family after 2009.

► **Rental property as a planning tool:** Use rents to pay overhead on Life Estate property that will avoid estate recovery.

► **Intentionally Defective, Irrevocable Income Only Trust.** If elder applies for nursing home assistance from Medicaid 5 years after she funds the Trust, Medicaid should not consider her the owner of anything in the Trust.

Unlike Medicaid, the IRS does consider the elder to be the owner of the Trust assets including her house. So, the house will still be covered by the Principal Residence Exclusion, if the day comes when the house needs to be sold during elder's lifetime. Elder can move to assisted living or condo using money from the house sale.