

## **MASSACHUSETTS MEDICAID UPDATE**

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### **Look back provision is extended to 5 years from 3 years for all transfer 130 CMR 520.019(B)**

This regulation indicates that the transfers of resources are subject to a look back period, beginning on the first date the individual is both a nursing facility resident and has applied for/or is receiving MassHealth standard. This period generally extends back in time for 36 months. **For transfers of resources occurring on/or after February 8, 2006, the period extends back in time for 60 months.** The look back period for transfers of resources from a revocable trust to someone other than the nursing facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing facility resident is prevented, is 60 months.

Planning Note: There appears to be no difference between the Federal Deficit Reduction Act language and the language as Massachusetts has adopted it in its current regulations. In essence, there is simply a 60 month look back period for all transfers whether they be made to an individual outright, into an irrevocable trust or out of a revocable trust.

### **Period of ineligibility due to a disqualifying transfer**

1. Disqualifying transfer of resources: Regulation 520.019(C) provides a very detailed description of such transfers but is summed by stating “a disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available”.

2. Duration of ineligibility: Where the MassHealth agency has determined that a disqualifying transfer of resource has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined by 130 CMR 515.001 of all resources transferred by the nursing facility resident or the spouse, divided by the average monthly costs to a private patient receiving nursing facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. (130 CMR 520.019 (G)(1)).

Example: If an individual transferred assets for less than fair market value to a child in the amount of \$200,000, the related disqualification period would be approximately 24.9 months ( $\$200,000 \div \$8,010$ ). This calculation remains unchanged under both the deficit reduction act of 2005 and the newly enacted Massachusetts regulations adopting such act. The only difference is that the deficit reduction act prevents this ineligibility period from beginning to run on the date of the transfer.

**9-27-07 letter from the Deputy Medicaid Director at MassHealth regarding the imposition of transfer penalties-does every transfer create a penalty period?**

In general, the MassHealth workers do not review transfers of less than \$250 unless there is activity that the worker deems to be questionable and thus requires further investigation. In addition, MassHealth's transfer review policy is to review all transfers of \$1,000 or more, and only to review transfers including birthday, anniversary, holiday and charitable gifts, below that amount if there appears to be a recurring pattern of inappropriate transfers.

Planning Note: When making contributions to your church or birthday presents to loved ones please be sure to keep them under this \$1,000 limit to avoid strict scrutiny by MassHealth. However, the good news from this letter is that at least some level of lifetime gifting can continue without necessarily creating a disqualification period as prior to this clarification it certainly appeared that all transfers of any amount would have resulted in at least a 5 year disqualification period in order to get beyond the lookback period.

1. Determination of the beginning date of this period of ineligibility: 130 CMR 520.019(G)(3)

Beginning date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair market value. For transfers occurring on/or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair market value or the date on which the individual is **otherwise eligible** for MassHealth payment of long term care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing facility resident or the spouse is made. For transfers involving irrevocable trusts, the date of transfer is:

1. The date that the countable resources are transferred to someone other than the nursing facility resident or spouse; or
2. The latest of the following:
  - i. The date that payment to the nursing facility resident or the spouse was foreclosed under the terms of the trust;
  - ii. The date that the trust was established; or
  - iii. The date that any resource was placed in the trust.

Planning note: The Deficit Reduction Act of 2005 defined the beginning date of the period of ineligibility to be "the first day of the month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the state plan

and would otherwise be receiving institutional level care described in sub paragraph C based on an approved application for such care, but for the application of the penalty period, whichever is later (deficit reduction act of 2005, section 6011(B)(ii.)). Massachusetts's regulations are similar but indicate that the beginning date would commence when "the individual is otherwise is eligible for MassHealth payment"(130 CMR 520.019(G)(3)). The confusion surrounds the meaning behind otherwise eligible. MassHealth is following the federal definition. Therefore we are of the belief that by following the Federal rules and applying for MassHealth benefits and getting denied for the sole reason of having an unexpired period of ineligibility would be the safest approach to ensure the beginning of the running of such period of ineligibility.

### **Permissible Transfers 520.019(D)**

- A. Permissible Transfers: The MassHealth Agency considers the following transfers permissible. Transfer of resources made for the sole benefit of a particular person must be in accordance with federal law.
1. The resources were transferred to the spouse of the nursing facility resident or to another for the sole benefit of the spouse. However, these assets must be transferred within 90 days after the date an institutionalized spouse has been approved for MassHealth benefits. (see 520.019(D)(1))
  2. Transfers from the spouse of the nursing facility resident to another for the sole benefit of the spouse
  3. The resources were transferred to the nursing facilities residents' 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.
  4. The resources were transferred to the to a trust, a pooled trust or a special needs trust for the sole benefit of a totally and permanently disabled person who was under 65 years of age at the time the trust was created or funded.
  5. The resources were transferred to a pooled trust created for the sole benefit of a permanently and totally disabled nursing facility resident.
  6. The nursing facility resident may transfer title to the home, which he or she used as the principal residence at the time of transfer to one of the following persons:
    - (1) the spouse;
    - (2) the nursing facility resident's child who is under age 21, who is blind or permanently and totally disabled;

- (3) the nursing facility resident's sibling who has a legal interest in the nursing facility resident's home and was living in the nursing facility resident's home for at least one year immediately before the date of the nursing facility resident's admission to the nursing facility; or
  - (4) the nursing facility resident's child who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution and who, as determined by the Division, provided care to the nursing facility resident that permitted him or her to live at home rather than in a nursing facility. 130 CMR 520.019(D).
7. Transfers to an identifiable burial account or burial arrangement or similar device for the nursing facility resident or spouse.