

a map through the maze

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Alzheimer Care Professionals

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Medicaid Planning Before It's Too Late: What Families Need to Know

Wednesday, May 13, 2009 – 2:00 PM – 3:15 PM

Medicaid Planning Before It's Too Late: What Families Need to Know - *John L. Roberts, JD*
Medicaid planning can save assets, and provide resources for care. Understanding these tools will help you provide hope for individuals and families. This updated legal session is presented in the context of onset and progression of dementia during different decades of a person's life whether in their 50's, early 60's, 70's or older.

CASE EXAMPLES: Apply Medicaid regulations to examples of people in different age groups

They own: Farm acreage worth \$500,000 (but worth much more if it is sold and sub divided). The real estate is part of the heritage they would like to pass on to children and grandchildren.

Both Mr. & Mrs. have an IRA.

They've seen the costs of caring for a parent with Alzheimer's. What can they do to plan?

Regulations highlighted in yellow may be relevant

The Point: **Advance Planning** with trusts can protect substantial assets.



The 50's Mr. & Mrs. Farmer.



The 60's: Mr. and Mrs. Worker

Mrs. Worker has been admitted to a nursing home in Massachusetts after several months of at-home care.

The couple owns Their house, worth \$200,000 and \$20,000 in bank accounts and CDs

Mr. Worker also owns:

- \$300,000 cash value in pension fund at work
- 1/3 of a \$300,000 Vacation Home shared with extended family
- \$30,000 stock account

Regulations highlighted in tan could help Mr. & Mrs. Worker

The Point: **Crisis planning** protects some or all assets

The 70's: Mrs. Blue

Mrs. Blue owns: Her house + \$100,000 in savings.

She has a recent diagnosis; her physical health is good. She knows about the need for planning, because she cared for her deceased husband.

The Point: **Current Planning** can coordinate resources for care



The 80's: Mrs. Rose

Mrs. Rose is in her late 80's. She has been admitted to a nursing home. Protective services filed a Petition for Temporary Guardianship to arrange for the admission.

She owns: Her \$750,000 house + CDs and Savings accounts worth \$300,000. Her deceased husband served in World War II or Korea.

Regulations highlighted in rose can help Mrs. Rose

Different Facts to Think About:

Mrs. Rose lived in the house with her sister

She transferred ownership of the house to her sister

Mrs. Rose' daughter lived in the house for 2 years, and took care of her.

Mrs. Rose has a disabled child

Here are a few example paragraphs from the MassHealth *Financial Eligibility Regulations* at 130 CMR

520.007: Countable Assets (C) Individual Retirement Accounts, Keogh Plans, and Pension Funds.

- (1) Individual Retirement Accounts. An Individual Retirement Account (IRA) is a tax-deductible savings account that sets aside money for retirement. **Funds in an IRA are counted as an asset in their entirety** less the amount of penalty for early withdrawal.
- (2) Keogh Plans. A Keogh Plan is a retirement plan established by a self-employed individual. A Keogh Plan may be established for the self-employed individual alone or for the self-employed individual and his or her employees. If the Keogh Plan was established for the self-employed individual alone, the funds in the Plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh Plan was established for employees other than the spouse of the applicant or member, the MassHealth agency does not count the funds as an asset.
- (3) Pension Funds. A pension fund is a retirement plan established by an employer to provide benefit payments to employees upon retirement or disability. **Pension funds that are being set aside by an individual's current employer are not countable as an asset.** Pension funds from an individual's former employer are countable in their entirety less any penalties for withdrawal provided such funds are accessible. (See 130 CMR 520.006.)

520.007: Countable Assets (G) Real Estate

- 3) Fair-Market Value and Equity Value. The fair-market value and equity value of all countable real estate owned by the individual and the spouse must be verified at the time of application and when it affects or may affect eligibility. . . . equity interest in the **principal place of residence exceeding \$750,000 renders an individual ineligible** for payment of nursing facility and other long-term-care services, unless the spouse of such individual or the individual's child who is under age 21 or who is blind or permanently and totally disabled resides in the individual's home.
- (7) Former Home of a Community-Based Individual. If an applicant or member (or spouse, if any) moves out of his or her home for reasons other than institutionalization without the intent to return, the home, whether or not held in trust, becomes a countable asset because it is no longer used as the individual's principal place of residence. The former home is subject to the requirements described in 130 CMR 520.007(G)(2).
- (8) Former Home of an Institutionalized Individual. **If an applicant or member moves out of his or her home** to enter a medical institution, the MassHealth agency considers **the former home a countable asset** that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. . . . :
 - (a) The individual is institutionalized as defined in 130 CMR 515.001.
 - (b) None of the following relatives of the individual is living in the property:
 - (i) a spouse;**
 - (ii) a child who is under age 21 or who is blind or permanently and totally disabled;
 - (iii) **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;
 - (iv) **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
 - (v) 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: Transfer of Resources (D) Permissible Transfers.

- (1) The resources were transferred to the spouse of the nursing-facility resident . . .
- (3) The resources were transferred 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 .
- (4) The resources were transferred 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.
- (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:
 - (a) the spouse;
 - (b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled;
 - (c) 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
 - (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) 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 MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

520.023: Trusts . . . (C) Irrevocable Trusts. (1) Portion Payable.

- (a) Any portion of the principal or income from the principal (such as interest) of an irrevocable trust that could be paid under any circumstances to or for the benefit of the individual is a countable asset.
- (b) Payments from the income or from the principal of an irrevocable trust made to or for the benefit of the individual are countable income.
- (c) Payments from the income or from the principal of an irrevocable trust made to another and not to or for the benefit of the nursing-facility resident are considered transfers of resources for less than fair-market value and are treated in accordance with the transfer rules at 130 CMR 520.019(G).
- (d) The home or former home of a nursing-facility resident or spouse held in an irrevocable trust that is available according to the terms of the trust is a countable asset. Where the home or former home is an asset of the trust, it is not subject to the exemptions of 130 CMR 520.007(G)(2) or 520.007(G)(8).

520.007: Countable Assets (2) Treatment of Annuities

- (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;
- (b) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a) and is irrevocable and nonassignable, or unless the annuity satisfies 130 CMR 520.007(J)(2)(c).



Presenter: Attorney John L. Roberts, an Elder Law Attorney practicing in Longmeadow, Massachusetts. Return to MassHealthHelp.com and information on [Medicaid eligibility](#)

