



MASSBAR

A S S O C I A T I O N

2018 ELDER LAW EDUCATION PROGRAM Taking Control of Your Future: A Legal Checkup

NINTH EDITION



Presented with the generous assistance and continued collaboration of the
Massachusetts Chapter of the National Academy of Elder Law Attorneys

www.MassNAELA.com

CHAPTER 4

COMMUNITY MEDICAID (MASSHEALTH) BENEFITS

Programs for Elders at Risk for Institutionalization

INTRODUCTION

In addition to providing long-term care coverage, Medicaid (known as MassHealth in Massachusetts) also offers community benefits that enable an elder to stay at home while still receiving necessary care. Community MassHealth offers various programs and services to elders who meet both financial and medical qualifications. Those under age 65 can also qualify if they are permanently disabled, although different rules apply. Individuals who are eligible for MassHealth insurance can also be covered by their own private insurance. For those elders who wish to live at home, MassHealth offers various programs that allow a senior to receive care within his or her home. Adult and supportive day care, transportation and caretaker services are among a multitude of benefits that MassHealth provides to empower seniors to live at home. An elder law attorney can help an individual determine which program might be most appropriate for an elder's particular circumstances.

A. Home- and Community-based Services Waivers

For elders who require nursing home level care, but would like to live at home or in a residential community, Home- and Community-based Services Waivers (also referred to as the Frail Elder Waiver) authorize MassHealth to pay for those services if those benefits can be obtained at the same or a lower cost. The waiver program serves three important purposes: (1) saves the state money; (2) allows the senior to remain at home with care; and (3) provides seniors greater choices in their care. Under the waiver program, the responsibility of care for the senior is shifted to family members or other designated caregivers. The goals of the program are to help seniors age outside of a nursing home, and to promote independent living. If an elder qualifies for the waiver, he or she can participate in the Community Choices, Personal Care Attendant or PACE programs or senior care organizations

(SCOs), if eligible.

The waiver allows those seniors who are eligible for nursing home care to receive services at home.¹ To qualify for the waiver, a senior must either be at least 65 years old or, if under 65, be permanently and totally disabled.² Additionally, the individual must meet a clinical requirement and show that, if he or she did not receive waiver services, he or she would require institutionalization.³ In addition to the typical asset limitation of \$2,000 for MassHealth services, the waiver imposes a 2018 income threshold of \$2,250 per month. For couples, the income of the healthy spouse is not counted in determining eligibility. The non-applicant spouse's assets, however, are limited to \$123,600 (2018). If both spouses are applying for Frail Elder Waiver services, there is a \$3,375-per-month income threshold (2018) and a \$3,000 combined asset limit.

If an individual's income is greater than \$2,250, or a couple's income is greater than \$3,375 (if both spouses are applying), there will be a recurring six-month deductible which must be met before MassHealth coverage will begin. For example, if a single applicant's gross monthly income is \$2,300 (\$50 over the program threshold), the Medicaid \$522 standard (plus a \$20 income disregard) is applied and subtracted from \$2,300. That figure, \$1,483, is then multiplied by six and, as a result, an \$8,898 deductible must be met every six months before MassHealth benefits will begin/resume.

Applicants seeking coverage under the Personal Care Attendant (PCA) program have lower recurring deductibles, since \$1,337 is subtracted from their gross income, resulting (using the prior example) in \$963 which, when multiplied by six, imposes a \$5,778 deductible that must be met every six months to maintain eligibility. Applicants must meet the deductible by paying qualifying medical expenses, including Medicare and supplemental health insurance premiums. Once the deductible is satisfied, MassHealth covers services for the balance of the six-month period and the individual may retain all of his or her income. In many cases, however,

individuals find that they can meet the recurring six-month deductible only if they have access to other resources (non-countable VA Aid and Attendance benefits or spousal assets, for example).

Services and benefits of the waiver include MassHealth coverage of adult day health and supportive day programs. Supportive day is a social model day program and adult day health is a medical model day program for seniors who need supervision and health services during the day, but will return home at the end of the day (the individual can leave home for services and be covered by the waiver). In addition, MassHealth covers home health services under the waiver. Additional benefits may also include home delivered meals, home modifications to improve accessibility, and transportation assistance for medical or other appointments.

1. Community Choices (FEW)

Community Choices is a more care-intensive program for Frail Elder Waiver participants who either face imminent nursing home placement or currently reside in a nursing home but wish to return home or to the community. To be eligible, the senior must be already enrolled in or eligible for the Frail Elder Waiver. The program provides extensive home and community-based services to elders who require nursing home level care and exhibit at least one of four indications of frailty:

- Actively sought nursing home facility care within the last six months;
- Recently experienced a serious medical event, regression in physical or cognitive functional ability, or a cumulative deterioration in functional ability;
- Was discharged from a nursing facility within the last 30 days; or
- Is at risk of nursing facility admission due to the instability or lack of capacity of informal or formal supports.

Services are also provided to elders who exhibit at least one of five clinical characteristics demonstrating risk:

- Needs 24-hour supervision because of complex health conditions;
- Experiences a significant cognitive impairment;
- Is unable to manage/administer prescribed

medications;

- Experiences frequent episodes of incontinence; or
- Requires daily supervision and assistance with two activities of daily living (ADLs).
- ADLs are activities performed by a PCA to physically assist a member to transfer, take medications, bathe or groom, dress and undress, engage in passive range of motion exercises, eat, and toilet.⁴

Services are provided by an agency hired through MassHealth and administered through the local Aging Service Access Point (ASAP). Community Choices offers more hours of service than any other similar program and the care can often be put in place more quickly than other community care programs. Services offered include personal care, homemakers, nursing, companions, chore assistance, delivered meals, grocery delivery, laundry, transportation, home-based wander response systems, transitional assistance, and supportive day and adult day health.⁵

2. PACE

The PACE program provides comprehensive medical and social services to frail elders so as to allow them to live in their communities and to receive all of their health services under the same umbrella.⁶ To be eligible, an individual must: (1) be 55 years of age or older; (2) live in a service area of a PACE organization; (3) be able to live safely in the community; (4) be certified by the state as eligible for nursing home care; and (5) agree to receive health services exclusively through the PACE organization.⁷ All of the medical services are provided by MassHealth at no cost to the elder. Financial eligibility is in accordance with all other MassHealth Programs and, therefore, an individual's assets cannot exceed \$2,000 and a couple's assets cannot exceed \$3,000⁸ if both are seeking coverage. If only one member of a couple needs services, the other spouse's income will be disregarded and the non-applicant spouse's assets are limited to \$123,600. In addition, the income threshold for an individual is \$2,250 (with a deductible imposed, if the applicant's income exceeds this figure).

Through PACE, MassHealth will coordinate care for the elder and provide the individual with

medical professionals including doctors, nurses, aides, therapists and social workers. Under this program, the elder receives his or her primary care, emergency care, prescription drugs, in-home services, transportation and more. The services are available 24 hours a day, seven days a week.

3. Personal Care Attendant Program

The PCA program provides personal care services to elderly and disabled Massachusetts residents who wish to remain living at home. The PCA program is administered by MassHealth and seeks to enable independent living and prevent unnecessary or premature nursing home institutionalization. While MassHealth pays the caregivers, participants in this program or their surrogate are responsible for directing the care to assist with the ADLs and instrumental activities of daily living. A PCA participant acts as an employer, and can hire friends, neighbors or certain family members (spouses and legal guardians are not eligible) to be his or her personal care attendant.⁹ Effective July 1, 2017, the PCA wage rate is \$14.56-per-hour, increasing to \$15-per-hour as of July 1, 2018.

To be eligible for the program, an individual must have a permanent or chronic disability that requires him or her to receive assistance to perform at least two ADLs. ADLs are activities performed by a PCA to physically assist a member to transfer, take medications, bathe or groom, dress and undress, engage in passive range of motion exercises, eat, and toilet. A doctor or nurse practitioner must prescribe the services for the elder, and the services must be medically necessary.¹⁰ Additionally, the senior must meet the \$2,000 asset limitation to qualify for MassHealth and a \$3,000 asset limitation for a couple. Each PCA applicant is assessed by a nurse and occupational therapist during enrollment in the program to determine the number of hours per week assistance is required; MassHealth will then provide a budget for care services. Benefits include assistance with ADLs (i.e., bathing, grooming, eating, etc.), instrumental ADLs (i.e., homemaker services, laundry, meal preparation, etc.) and assistance with transportation. A personal care attendant may not be paid: (a) to help a senior who is in a hospital, nursing facility or in a community program funded by MassHealth; (b) to provide social services such as

babysitting, recreation or educational activities; or (c) to provide medical services that are available from other MassHealth providers.¹¹

4. Senior Care Options

Senior Care Options (SCO) is a no cost health insurance and care program for individuals eligible for MassHealth and Medicare, who are 65 or older, and it offers health services with social support services. SCO members receive all covered health services through the SCO plan and they have a primary care physician (PCP) who is affiliated with the SCO and 24-hour access to care and active involvement in decisions about their care. All services are provided by the SCO and the PCP and a team of nurses, specialists, and geriatric support services develop an individualized plan of care. Enrollment is voluntary and open to MassHealth standard members who: (1) are 65 or older; (2) reside in an area serviced by a SCO; (3) live at home or in a long-term care facility; (4) do not have to meet a recurring six-month deductible; and (5) do not have end-stage renal disease. The benefits for SCO members include all health services covered by MassHealth Standard; coordination of care, including a centralized record of medical information, individualized assessment, primary and specialty medical care, preventive care, emergency care, X-rays and lab tests, medical supplies and equipment, prescription drugs, mental health and substance abuse treatment, rehabilitative therapy, nursing facility care, if needed, transportation for services, geriatric support services, adult day care, dental care and eye care, home care services and family caregiver support.

B. Other Programs for Elders

MassHealth also offers community programs to those elders who are not at risk for institutionalization, but nonetheless require help within the home. These programs help prevent a senior from entering a long-term care facility and aim to promote independent living among elders.

1. SSI-G/Group Adult Foster Care

The SSI-G (the Supplemental Security Income assisted living benefit) and Group Adult Foster Care (GAFC) programs are designed for seniors who wish to transition to assisted living facili-

ties (by statute referred to as assisted living residences), but cannot afford the monthly rates. The GAFC program pays a daily rate to the assisted living facility directly for personal care and services, while the SSI-G component pays for the rent portion at an assisted living facility to the individual directly. An individual can get GAFC benefits without SSI-G. GAFC pays \$47.74-per-day (\$1,432.20-per-30-day month) directly to the assisted living facility for services, such as daily personal care, homemaking, meals and transportation. The assisted living facility may combine the GAFC services with the room and board which is paid by the resident, and another program called SSI-G. The resident does not have to apply for or be eligible to receive SSI-G in order to qualify for GAFC.

Certain assisted living facilities offer a limited number of beds for applicants who meet certain eligibility criteria: (1) over the age of 60 or chronically disabled; (2) have a medical, physical, cognitive, or mental condition that limits their ability to care for themselves; (3) need daily help with one or more ADLs (i.e., dressing, bathing, eating or toileting); (4) have the ability to live independently, with support services; (5) meet eligibility requirements for public housing, GAFC, Elder-Choice subsidized rents and/or SSI-G; (6) do not need full-time skilled nursing care; and (7) are medically approved for assisted living by his or her physician and Aging Services Access Point (ASAP).

To qualify for GAFC, an individual may not have more than \$2,000 in countable assets and a couple may not have more than \$3,000 in countable assets. In addition, if an individual's income is greater than \$1,012 (2018), or a couple's income is greater than \$1,372 (if both spouses are applying), there will be a recurring six-month deductible. For example, if a single individual's gross monthly income is \$2,012 (\$1,000 over the program threshold), the Medicaid \$522 standard (plus a \$20 income disregard) is applied and subtracted from \$2,012. That figure, \$1,470, is then multiplied by six (six months) and, as a result, an \$8,820 deductible must be met every six months before GAFC benefits will begin.

Applicants must satisfy the deductible by paying

qualifying medical expenses, including Medicare and supplemental health insurance premiums. Once GAFC benefits are in effect, the resident is required to contribute his or her income toward the monthly rent portion; GAFC pays the medical portion. In cases where an applicant needs to meet a recurring six-month deductible, GAFC eligibility can be maintained only if the individual has access to other resources (non-countable VA Aid and Attendance benefits or spousal assets, for example).

2. Massachusetts Adult Family Care

The Adult Family Care program is a relatively new MassHealth program that provides care to the elderly or disabled by having the senior move into a caregiver's home or having a caregiver move into the elder's home. Similar to all MassHealth programs, the applicant must have less than \$2,000 in assets to qualify. Eligible caregivers include family members, friends or a professional service. Spouses and legal guardians are not eligible caregivers. Caregivers are paid for the 24-hour personal care they provide, and typically offer assistance with ADLs and instrumental ADLs. Although MassHealth will not pay for the room and board of the individual, depending on the level of care, caregivers receive an annual tax-free payment of between \$8,000 and \$18,000 from MassHealth.

To be eligible for Adult Family Care, the applicant must be elderly or disabled and require 24-hour assistance with ADLs. Care requirements, however, cannot be so severe as to necessitate residency in a nursing home.

CONCLUSION

A long-term nursing facility is not the only choice for an elder. There are a multitude of options for seniors who require medical care or assistance with everyday life, but do not wish to enter a nursing home. One of MassHealth's community programs might be the solution for a qualified elder to remain at home and independent. Applying for the above programs can be very complicated. Practices and policies often differ among MassHealth workers and offices. Individuals seeking eligibility should consult with an experienced elder law attorney knowledgeable about these programs.