

The Law Office of
ARTHUR P. SKARMEAS, LLC
447 Boston Street
Topsfield, MA 01923
978-887-0093
Fax: 978-887-7293
www.skarmeaslaw.com

ELDER LAW

As part of our estate planning practice we also focus on issues that affect our elderly clients. As they age they may require the care of a nursing home but often they will not have sufficient information to plan or prepare for the expense involved. This can result in the use of all of life's hard-earned assets to pay for nursing home care. In many instances this can be avoided through proper planning. Our goal is to assist our clients in preserving their accumulated assets to the maximum extent allowable by law.

Massachusetts MassHealth/Rules for Nursing Home Eligibility

MassHealth (or Medicaid) is the primary method of paying for nursing home care in the Commonwealth of Massachusetts. Unlike Medicare, MassHealth is not an entitlement program. Eligibility for benefits occurs only when the Commonwealth considers an applicant to be impoverished. While every situation is different, through the proper application of the complicated set of MassHealth regulations, there is often much that can be done to achieve our clients' goals.

The Earlier you Plan the More you Save

Because of MassHealth's "look-back" rules, the flexibility available to you in taking steps to preserve your assets diminishes as you get closer to needing nursing home care. While there are still steps that can be taken (even after a nursing home admission), the options become limited the longer you wait.

The Look-Back Period and Potential Penalties

As you may be aware, these laws changed with the Deficit Reduction Act of 2005. Now, for most asset transfers, the look-back period will be five years. That means that any transfer made more than five years before the MassHealth application will not be subject to consideration or any penalties. The look-back for certain transfers to trusts remains five years. Again, early planning can help in this regard. If a transfer is made for less than fair market value within the look-back period (five years or less prior to the filing of the MassHealth application), then the Masshealth applicant will lose eligibility for one month for every \$7,680.00 (approximate) transferred (this is the applicable amount as of August 2006 and is based on the average monthly cost of a nursing home stay and is adjusted yearly). Before you consider a transfer for less than fair market value, carefully consider whether you believe that nursing home care is in the foreseeable future. If you

have already made an asset transfer, carefully evaluate the value and timing of that transfer in conjunction with the timing of your MassHealth application.

Assets a MassHealth Applicant can possess

This can be complicated but in general the answer is no more than \$2000.00 in countable assets.

Countable assets generally do not include:

- The applicant's personal residence if located in Massachusetts (with some restrictions)
- One automobile with a value not to exceed \$4500.00, but the value may be any amount for a community spouse.
- Personal possessions such as jewelry, furnishings etc.
- Inaccessible assets

Again it is important to remember that these assets are not considered by the DMA when determining MassHealth eligibility.

This is an area where rules are frequently changing. It is important for you to stay in contact with your attorney to remain informed.