

## Trends in elder law: expanded community benefits

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The practice of elder law has centered on MassHealth coverage of nursing home care since its inception almost three decades ago. While that remains a large part of the practice today — in terms of planning in advance of and responding to health care crises — new avenues are available help pay for home and assisted living care, the preference of most seniors.

The challenge, however, is that while there is a single MassHealth program that pays for care in virtually all nursing homes, the plethora of different programs and eligibility criteria for care in the community make it very difficult for families to find the best care options available.

As a result, elder law attorneys and geriatric care managers often must help guide them through the morass.

Following is a primer on the available community benefits under MassHealth, SSI and veterans benefits.

### Community coverage

#### *MassHealth eligibility*

In order to be eligible for community benefits, seniors must spend down to \$2,000 in countable assets and have monthly income between \$903 and \$2,022, depending on the program and clinical need.

Typically, to be eligible for MassHealth, the income limit is \$903. However, many applicants qualify for the "waiver" program, which allows an increased income limit of \$2,022.

To be eligible for the waiver program, applicants must clinically require nursing home care even though they are receiving the services at home.

The Office of Medicaid is not imposing a penalty period for community-based benefits at this time. That means that the transfer of assets to get under the limit do not affect eligibility, though they would if the senior were to require nursing home care during the subsequent five years.

It is important to note, however, that the regulations do allow MassHealth to impose a penalty period for community-based benefits, but it has not done so to date. That could change at any time.

Some of the available community MassHealth programs are as follows:

- Adult Foster Care

AFC is a program designed to provide payment of up to \$1,500 a month to a caretaker other than a spouse who lives with the individual who needs services. The income is non-taxable and can be of great assistance to family members who are caring for loved ones to replace lost income or to use to hire some part-time assistance.

The actual monthly stipend is based on the number of activities of daily living with which the senior needs assistance. Activities of daily living, for example, are dressing, eating, bathing, toileting and transferring.

Applicants can learn more about the program and apply for coverage through their local Aging Service Access Point — or ASAP — or at CaregiverHomes.com.

- Personal Care Assistant

PCA is a program designed to provide individuals with disabilities some relief in paying aides that they hire privately. Family members can qualify as PCAs. In order to be eligible, applicants must need “hands-on” assistance with at least two activities of daily living. Mere monitoring or supervision is not enough.

In addition, either the beneficiary or someone else living in the household must be able to supervise the PCA.

To determine eligibility, the local ASAP or other contracted agency, such as the Boston Center for Independent Living, performs a clinical assessment of the applicant and makes a recommendation to MassHealth for the number of hours of care needed.

Once approved, MassHealth contributes \$12 per hour to the cost of PCAs. The payment can be deposited directly into the worker’s bank account with a pay stub to the beneficiary for her records. Beneficiaries or their families can pay the PCAs for the difference between their rate and the \$12 per hour or for additional hours of care not covered by MassHealth.

- Community Choices

The Choices program is designed to provide seniors with a variety of at-home services, such as skilled services, home health aides, housekeeping, laundry, meal preparation and transportation to and from doctor’s appointments.

Applicants must be eligible for the “waiver” program, as discussed above. Similar to the PCA program, a representative from the local ASAP visits the applicant to determine the level and type of services required. The agency then makes a determination as to how many hours and what services it will provide.

The services must be provided through agencies and individuals with which MassHealth has contracted. That is one of the differences between Choices and PCA; you do not hire your own workers under the Choices program.

ASAPs serve as the main access point for these programs and can often be of great assistance.

- Program for All Inclusive Care for the Elderly and Senior Care Options

PACE and SCO are so-called capitated programs, under which Medicare and MassHealth together pay health care providers a fixed monthly amount to provide all care needs of participating seniors.

These can be great programs for the right patients, especially those who are frail, because the programs are designed to look at the whole patient and to provide comprehensive care to keep the senior healthy. The sicker the patient becomes, the higher the programs’ costs.

The PACE and SCO programs use a team approach of staff physicians, nurses and therapists, and the patient must give up her own doctors. In addition, the programs may use adult day health centers rather than provide home care during the day, and will typically contract with particular assisted living and nursing home facilities when such care is needed, giving the patient and her family fewer options.

Each patient needs to determine whether the benefit of the comprehensive care outweighs those limitations.

Finally, PACE and SCO programs do not exist statewide.

### **Veterans Aid and Attendance**

Increasingly, veterans and their spouses are taking advantage of the Veterans Administration’s A&A program, which pays up to \$1,800 a month toward home care or assisted living care for those who qualify.

In order to qualify, applicants are limited to about \$80,000 in countable assets (though the amount varies depending on the applicant's age).

Similar to community MassHealth, the Veterans Administration does not impose a penalty period for transferring assets prior to application, but will terminate benefits for a year if assets are transferred while already receiving benefits. For instance, that might occur if the veteran sold a house and transferred the proceeds to once again get below the countable asset limit.

In terms of income qualification, the A&A pension is available up to certain limits to cover the shortfall between the veteran's income and his cost of care.

### **Assisted living facilities**

While PACE, SCOs and A&A can pay for assisted living facility care as well as home care, MassHealth also offers a couple of programs to assist with the cost of care in assisted living facilities. However, unlike nursing home care, not all assisted living facilities contract with MassHealth.

To be eligible, the assisted living facility must participate and also have spaces available. Often they have an unwritten rule that they require two years of private payment before the resident is put on the waiting list for one of its subsidized units, and no one can be sure in advance how quickly the waiting list will move — something to keep in mind when looking for the appropriate facility.

- Group Adult Foster Care/SSI-G

GAFC provides assistance with the cost of services provided at assisted living facilities, and SSI-G provides assistance with the cost of rent. Many facilities require that participating residents have both, and one cannot have SSI-G without GAFC. Those whose income is too high to be eligible for SSI-G may still qualify for GAFC.

To be eligible for GAFC, residents must be eligible for MassHealth, which means their income is limited to \$903 and their assets are limited to \$2,000. Again, the agency is not imposing a penalty period for transferring assets for community MassHealth at this time.

However, unlike many of the other Mass-Health community programs, assisted living residents cannot use the "waiver" to increase the income limit to be eligible for the GAFC program. But they may be able to meet a deductible and still qualify for benefits if it makes sense financially.

For SSI-G on the other hand, to be eligible there is a \$2,000 asset limit and the Social Security Administration imposes a penalty period for transfers made within three years of application. It also has a strict income limit of \$1,148 per month against which there are no deductions. So residents whose income is only a few dollars over the limit are ineligible.

The result is that some residents qualify for GAFC only if the facility is contracted with MassHealth, does not require dual eligibility for SSI-G, and if it makes sense financially to meet the deductible.

### **Conclusion**

The good news is there are more options than ever before to help pay for non-nursing home care, and the commonwealth has been creative in doing its best to leverage the available public benefits programs.

The bad news is that has created a complicated and uncertain terrain for families trying to get care for their loved ones, as well as for the professional advising them.

Upcoming elder law events

The National Academy of Elder Law Attorneys and the National Aging and Law Conference will co-sponsor the National Aging & Law Institute on Nov. 10-12 at the Seaport Boston Hotel.

More than 25 advanced educational sessions will be offered on topics such as the status of health care reform and its impact on Medicare and Medicaid; the intersection of veterans benefits and Medicaid; the future of Social Security and SSI benefits; strategic practice management and

leadership development; tax and estate planning for same-sex partnerships; marketing techniques; and ethical issues that all professionals face.

Also, an advanced elder law boot camp will be held on Nov. 8-9.

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