



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
 600 Washington Street
 Boston, MA 02111
www.mass.gov/masshealth

MassHealth
 Eligibility Letter 151
 September 1, 2006

TO: MassHealth Staff

FROM: Beth Waldman, Medicaid Director *BW*

RE: **Revisions to Regulations about Assets and the Determination of Eligibility for Long-Term-Care Services**

MassHealth is clarifying the regulations about real estate and annuities as countable assets, the appeal of undue hardship decisions, and the cure of transfers that were made on or after February 8, 2006.

These regulations were originally filed as an emergency, effective February 8, 2006. These final changes are being made after public notice.

These regulations are effective February 9, 2006.

MANUAL UPKEEP

<u>Insert</u>	<u>Remove</u>	<u>Trans. By</u>
520.007 (5 of 10)	520.007 (5 of 10)	E.L. 147
520.007 (9 of 10)	520.007 (9 of 10)	E.L. 147
520.007 (10 of 10)	520.007 (10 of 10)	E.L. 147
520.008 (1 of 2)	520.008 (1 of 2)	E.L. 147
520.019 (7 of 8)	520.019 (7 of 8)	E.L. 147

Trans. by E.L. 151

MASSHEALTH
FINANCIAL ELIGIBILITY

Rev. 02/09/06

Chapter 520
Page 520.007
(5 of 10)(G) Real Estate.

(1) Real Estate As a Countable Asset. All real estate owned by the individual and the spouse, with the exception of the principal place of residence as described in 130 CMR 520.008(A), is a countable asset. The principal place of residence is subject to allowable limits as described in 130 CMR 520.007(G)(3). Business or nonbusiness property as described in 130 CMR 520.008(D) is a noncountable asset.

(2) Nine-Month Exemption. The value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).

(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. For applications received on or after January 1, 2006, 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. The allowable equity interest amount will be adjusted annually, beginning in January 2011. The adjustment will be based year-to-year on the percentage increase in the Consumer Price Index.

(a) The applicant or member must verify the fair-market value by a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (i) a special purpose assessment;
- (ii) based on a fixed-rate-per-acre method; or
- (iii) based on an assessment ration or providing only a range.

(b) In the event that a current property-tax assessment is not available or the applicant or member wishes to rebut the fair-market value determined by the MassHealth agency, a comparable market analysis or a written appraisal of the value of the property from a knowledgeable source will establish the fair-market value. A knowledgeable source is a licensed real-estate agent or broker, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction.

Trans. by E.L. 151

**MASSHEALTH
FINANCIAL ELIGIBILITY**

Rev. 02/09/06

**Chapter 520
Page 520.007**

(ii) Within 30 days after the date of the request the MassHealth agency will inform the individual in writing of the decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances, as determined by the MassHealth agency, require additional time.

(d) The nursing-facility resident may appeal the MassHealth agency undue-hardship decision and denial of payment of long-term-care services by submitting a request for a fair hearing to the Board of Hearings within 30 days after the receipt of the MassHealth agency written undue-hardship notice, in accordance with 130 CMR 610.000. If the denial occurs pursuant to 130 CMR 520.007(G)(13)(c)(i), the nursing-facility resident may instead appeal the denial of eligibility for long-term-care services by submitting a request for a fair hearing to the Board of Hearings, in accordance with 130 CMR 610.000, while the resident also submits a written request for consideration of undue hardship. If the request for the hardship waiver is later denied, the nursing-facility resident may appeal the MassHealth agency's undue hardship decision by submitting a request for a fair hearing to the Board of Hearings within 30 days after the receipt of the MassHealth agency written undue hardship decision notice, in accordance with 130 CMR 610.000.

(H) Retroactive SSI and RSDI Benefit Payments.

(1) Requirements. Retroactive SSI and RSDI benefit payments are noncountable in the month of receipt and for six months after the month of receipt. Such payments must be readily identifiable as retroactive SSI or RSDI payments, and should be deposited in a separately identifiable account. If commingled with other funds, and not separately identifiable according to the MassHealth agency, the MassHealth agency considers the total amount on deposit a countable asset. Any amount of the benefit payment still retained on the first day following the excluded periods described in 130 CMR 520.00 7(H)(1) is a countable asset.

(2) Verification. The applicant or member must verify the amount of the benefit and the date of receipt. The preferred source of verification is the notification letter from the Social Security Administration. The amount on deposit may be verified by a bank book or bank statement that shows that the benefit payment is not commingled with other funds.

(I) Trusts. The MassHealth agency will count the value of the principal and income of a revocable or irrevocable trust in accordance with 130 CMR 520.021 through 520.024.

(J) Annuities, Promissory Notes, Loans, and Mortgages.

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Purchase of an annuity is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001 in the following situations:

(a) when the beneficiary is other than the applicant, member, or spouse;

Trans. by E.L. 151

**MASSHEALTH
FINANCIAL ELIGIBILITY**

Rev. 02/09/06

**Chapter 520
Page 520.007**

(b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;

(c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or

(d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).

(2) Treatment of Annuities Established On or After February 8, 2006. In addition to the requirements in 130 CMR 520.007(J)(1), the following conditions must be met:

(a) The purchase of an annuity will be considered a disqualifying transfer of assets when:

(i) someone other than 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 annuitant;

(ii) someone other than the Commonwealth of Massachusetts is named as such a beneficiary in the second position after the community spouse or minor or disabled children; or

(iii) someone other than the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)(ii) disposes of any such remainder for less than fair-market value.

(b) Except for an annuity described in 130 CMR 520.007(J)(2)(c), the purchase of an annuity will be considered a disqualifying transfer of assets if the annuity does not satisfy 130 CMR 520.007(J)(1) and (J)(2)(a) and if the annuity is not irrevocable and nonassignable.

Trans. by E.L. 151

**MASSHEALTH
FINANCIAL ELIGIBILITY**

Rev. 02/09/06

**Chapter 520
(1 of 2) Page 520.008**

(c) The purchase of an annuity will not be considered a disqualifying transfer of assets if the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and if the annuity is:

- (i) described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;
- (ii) purchased with the proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;
- (iii) purchased with the proceeds from a simplified employee pension described in subsection (k) of section 408 of the Internal Revenue Code of 1986; or
- (iv) purchased with the proceeds from a Roth IRA described in subsection (A) of section 408 of the Internal Revenue Code of 1986.

(3) Promissory Notes, Loans, or Mortgages. The value of any outstanding balance due on a promissory note, loan, or mortgage will be considered a disqualifying transfer of assets, unless all of the following conditions are met:

- (a) the repayment terms of the promissory note, loan, or mortgage are actuarially sound, based on actuarial tables as determined by the MassHealth agency;
- (b) the promissory note, loan, or mortgage provides for equal payment amounts during the life of the loan, with no deferral and no balloon payments; and
- (c) the promissory note, loan, or mortgage prohibits cancellation of the balance upon the death of the lender.

520.008: Noncountable Assets

Noncountable assets are those assets exempt from consideration when determining the value of assets. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, the following assets are noncountable.

(A) The Home. The home of the applicant or member and the spouse and any land appertaining to the home, as determined by the MassHealth agency, if located in Massachusetts and used as the principal place of residence, are considered noncountable assets, except when the equity interest in the home exceeds the amount described in 130 CMR 520.007(G)(3). The home is subject to the lien rules at 130 CMR 515.012. If the home is placed in a trust or in an arrangement similar to a trust, the MassHealth agency will apply the trust rules at 130 CMR 520.021 through 520.024.

Trans. by E.L. 151

**MASSHEALTH
FINANCIAL ELIGIBILITY**

Rev. 02/09/06

**Chapter 520
(7 of 8) Page 520.019**

(i) The MassHealth agency will use the original application date if the nursing-facility resident provides proof within 60 days after the date of the notice of the period of ineligibility that the transfer has been fully or partially cured. In the case of a partial cure, the MassHealth agency will recalculate the period of ineligibility based on the transferred amount remaining after deducting the cured portion, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

(ii) If the nursing-facility resident provides proof later than the 60th day after the date of the notice of a period of ineligibility that the transfer has been fully or partially cured, the nursing-facility resident must reapply. The MassHealth agency will recalculate the period of ineligibility based on the amount of the transfer remaining after the cure, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

(L) Waiver of the Period of Ineligibility Due to Undue Hardship. In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) All appropriate attempts to retrieve the transferred resource have been exhausted, and the recipient of the transfer is unable or unwilling to return the resource or to provide adequate compensation to the nursing-facility resident.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation.