



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Office of Medicaid**  
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MassHealth  
Eligibility Letter 174  
February 15, 2008

**TO:** MassHealth Staff

**FROM:** Tom Dehner, Medicaid Director 

**RE:** **Revisions to Look-Back Periods for Transfers into or from Trusts**

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MassHealth is revising the regulations about look-back periods for transfers into or from trusts.

Due to provisions in the Deficit Reduction Act of 2005, the 36-month look-back period for certain trusts described at 130 CMR 520.023 is eliminated. The look-back period for these trusts is now 60 months. This revision describes how the 60-month look-back period will be phased in for transfers into these trusts and all other transfers for less than fair-market value.

Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

The revisions include regulations for transactions involving future performance. Any transaction that involves future payments or services will be considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value.

A clarification of the Deficit Reduction Act of 2005 requires a change in the language at 130 CMR 520.007(J)(2)(a)(i) from "annuitant" to "institutionalized individual."

Pages 520.019 (1 of 8) through 520.019 (4 of 8) have no changes. These pages are included in this eligibility letter because newly inserted language caused the text on revised pages to spill over onto succeeding pages.

These regulations are being issued as emergency regulations and are effective February 10, 2006.

#### MANUAL UPKEEP

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(ii) Within 30 days after the date of the request the MassHealth agency informs the individual in writing of the decision and of the right to a fair hearing. The MassHealth agency extends 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 520.007(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 counts 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, Mortgages, and Similar Transactions.

(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;

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(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 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; or

(iii) 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) 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).

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(c) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(2)(b), or unless the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is

(i) described in Section 408(b) or (q) of the Internal Revenue Code of 1986;

(ii) purchased with the proceeds from an account or trust described in Section 408(a), (c), or (p) of the Internal Revenue Code of 1986;

(iii) purchased with the proceeds from a simplified employee pension described in Section 408(k) of the Internal Revenue Code of 1986; or

(iv) purchased with the proceeds from a Roth IRA described in Section 408A 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 is 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.

(4) Transactions Involving Future Performance. Any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the transaction is not embodied in a valid contract that is legally and reasonably enforceable by the applicant, member, or spouse. This provision applies to all future performance whether or not some payments have been made or services performed.

**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.

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(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.

(B) Assets of an SSI Recipient. The assets of an SSI recipient are exempt from consideration as countable assets.

(C) Proceeds from the Sale of a Home. The proceeds from the sale of a home used by the applicant or member as the principal place of residence, provided the proceeds are used to purchase another home to be used as the principal place of residence, are considered noncountable assets. Such proceeds are exempt from consideration as countable assets for the three calendar months following the month of receipt. The MassHealth agency places a lien before the death of the member against any real estate in which the member has a legal interest in accordance with 130 CMR 515.012.

(D) Business and Nonbusiness Property. Business and nonbusiness property essential to self-support and property excluded under an SSA-approved plan for self-support are considered noncountable assets.

(E) Any Loan or Grant. Any loan or grant including, but not limited to, scholarships, the terms of which preclude their use for current maintenance, is considered a noncountable asset.

(F) Funeral or Burial Arrangements.

(1) The following funeral or burial arrangements for the applicant, member, or spouse are considered noncountable assets:

(a) any burial space, including any burial space for any immediate family member;

(b) one of the following:

(i) a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses; or

(ii) life-insurance policies designated exclusively for funeral and burial expenses with a total face value not to exceed \$1,500;

(c) the cash-surrender value of burial insurance; and

(d) prepaid irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense.

(2) Appreciated value or interest earned or accrued and left to accumulate on any contracts, accounts, or life insurance is also noncountable. If the applicant, member, or spouse uses any of these assets, including the interest accrued, for other than funeral or burial arrangements of the applicant, member, or spouse, the MassHealth agency considers the asset available and countable under the provisions of 130 CMR 520.007, 520.018, and 520.019.

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(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

**520.018: Transfer of Resources Regardless of Date of Transfer**

(A) The provisions of 42 U.S.C. 1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.

(B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001 who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.

(C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.

**520.019: Transfer of Resources Occurring on or after August 11, 1993**

(A) Payment of Nursing-Facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B).

(B) Look-Back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.

(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.

(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

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(C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J). The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (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;



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(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.

(7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

(E) Repayment of Financial and Medical Assistance. A nursing-facility resident who has received or will be receiving payment from a third party as a result of an accident, injury, or other loss must first repay the MassHealth agency for medical assistance under M.G.L. c. 118E, §22 and 42 U.S.C. 1396a(a)(25)(A) and (B) and the Department of Transitional Assistance for financial assistance under M.G.L. c. 18, §5G, before the MassHealth agency will consider whether a transfer of such third-party payments may be permissible under 130 CMR 520.019(D), (F), or (J).

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that:

(1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or

(2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

(G) Period of Ineligibility Due to a Disqualifying Transfer.

(1) Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

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(2) Determination of the Period of Ineligibility in Special Circumstances. The MassHealth agency determines the periods of ineligibility in the following situations.

(a) Transfers in the Same Month. When a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The period of ineligibility begins on the first day of the month in which the resources were transferred.

(b) Periods of Ineligibility That Overlap. When transfers of resources result in periods of ineligibility that overlap, the MassHealth agency adds the value of all the transferred resources and divides the total by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result is a single period of ineligibility beginning on the first day of the month in which the first transfer was made.

(c) Periods of Ineligibility That Do Not Overlap. In the case of multiple transfers where the periods of ineligibility for each transfer do not overlap, the MassHealth agency considers each transfer as a separate event with its own period of ineligibility. For non-overlapping multiple transfers occurring on or after February 8, 2006, see 130 CMR 520.019(G)(2)(i).

(d) Periods of Ineligibility of Less Than One Month. If the calculated period of ineligibility is less than one month, the MassHealth agency imposes a partial-month period of ineligibility and does not round down or disregard any fractional period of ineligibility.

(e) Transfer of Lump-Sum Income. When income has been transferred as a lump sum, the MassHealth agency calculates the period of ineligibility on the lump-sum value.

(f) Transfer of Stream of Income. When a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility for each income payment that is periodically transferred. The MassHealth agency may impose partial-month periods of ineligibility.

(g) Transfer of the Right to a Stream of Income. When the right to a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility based on the total amount of income expected to be transferred during the nursing-facility resident's life, according to the life-expectancy tables as determined by the MassHealth agency.

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(h) Transfer by the Spouse. When a transfer by the spouse results in a period of ineligibility for the nursing-facility resident, and the spouse later becomes institutionalized and applies for MassHealth payment of nursing-facility services, the MassHealth agency apportions the remaining period of ineligibility equally between the spouses. If both spouses become nursing-facility residents in the same month, the MassHealth agency divides the period of ineligibility equally between them. When one spouse is no longer subject to a penalty, any remaining penalty must then be imposed on the remaining nursing-facility-resident spouse.

(i) Multiple Transfers Occurring on or after February 8, 2006. For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result will be a single period of ineligibility beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later.

(3) Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made. For transfers involving irrevocable trusts, the date of transfer is

(a) the date that the countable trust resources are transferred to someone other than the nursing-facility resident or spouse; or

(b) the latest of the following:

(i) the date that payment to the nursing-facility resident or the spouse was foreclosed under the terms of the trust;

(ii) the date that the trust was established; or

(iii) the date that any resource was placed in the trust.

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(i) The MassHealth agency uses 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 recalculates 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 60<sup>th</sup> 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 recalculates 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) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(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.

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**520.023: Trusts or Similar Legal Devices Created on or after August 11, 1993**

The trust and transfer rules at 42 U.S.C. 1396p apply to trusts or similar legal devices created on or after August 11, 1993, that are created or funded other than by a will. Generally, resources held in a trust are considered available if under any circumstances described in the terms of the trust, any of the resources can be made available to the individual.

(A) Look-Back Period for Transfers into or from Trusts.

(1) Look-Back Period.

(a) For transfers made before February 8, 2006, the look-back period is 36 months for trusts where all or any portion of the income or principal of an irrevocable trust can be paid to or for the benefit of the nursing-facility resident, but is paid instead to someone else.

(b) The look-back period is 60 months

(i) for transfers made on or after February 8, 2006, subject to the phase-in described in 130 CMR 520.019(B)(2), if all or any portion of the income or principal of a trust can be paid to or for the benefit of the nursing-facility resident, but is instead paid to someone else;

(ii) if payments are made from a revocable trust to other than the nursing-facility resident and are not for the benefit of the nursing-facility resident; or

(iii) if payments are made into an irrevocable trust where all or a portion of the trust income or principal cannot under any circumstances be paid to or for the benefit of the nursing-facility resident.

(2) Period of Ineligibility Due to a Disqualifying Transfer. The MassHealth agency determines the amount of the transfer and the period of ineligibility for payment of nursing-facility services in accordance with the rules at 130 CMR 520.019(G).

(B) Revocable Trusts.

(1) The entire principal in a revocable trust is a countable asset.

(2) Payments from a revocable trust made to or for the benefit of the individual are countable income.

(3) Payments from a revocable trust made other than to or for the benefit of the nursing-facility resident are considered transfers for less than fair-market value and are treated in accordance with the transfer rules at 130 CMR 520.019(G).