Nursing Home Planning

Discover The Loopholes Buried In Hundreds Of Pages Of MassHealth Regulations That Save Seniors In Massachusetts Thousands Of Dollars!

10 Nursing Home Planning Secrets

by Doug Grainger & Ann Marie Grainger, Esq.

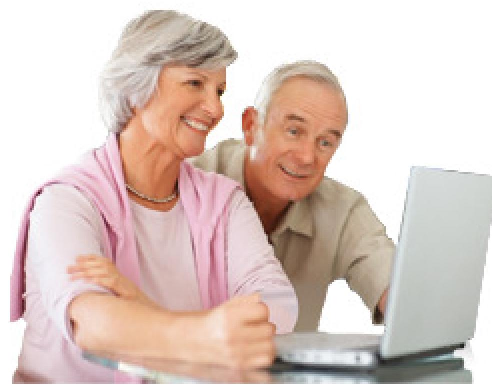
If you live in Massachusetts and you are planning to go into a nursing home, then you need to know the facts about how nursing home regulations work in Massachusetts.

This is where we come in. We are Doug Grainger and Ann Marie Grainger, Esq. We are Elder Law Attorneys in Barnstable. For over 20 years, we have been specializing in the preparation of nursing home & estate planning documents throughout Massachusetts.

We have successfully helped hundreds of families plan for the future by protecting their assets from nursing homes and MassHealth. Why should you consider this before going into a nursing home? There are many benefits to you—and your family. Here's one very important benefit: you'll prevent the nursing home or MassHealth from forcing the sale of your family home.

Once you have learned these "10 Nursing Home Planning Secrets", you can relax, knowing that you've already planned for future inevitable—and even unexpected—events. Your assets and your family will be protected.

If you've put off nursing home planning, you may share one or more of the reasons given by recent respondents to a survey as to why:



1) Haven't gotten around to it/procrastination.
2) Confused by the nursing home planning process.
3) Don't know who to go to for help.

Nursing home planning isn't the lightest topic to tackle. However, once you've made your nursing home planning decisions, you can put it behind you, knowing that the details are handled.

Give your family that special gift of having planned ahead. It's one less thing they'll need to deal with later. Otherwise, without a properly set up plan in place, your family will have no choice other than to go through the ordeal of deciding on your care for you.

We developed this FREE report, called "10 Nursing Home Planning Secrets", to help you begin planning. It's easy to understand and you can begin learning what you need to know before going into a nursing home.

Here is What You Will Learn from this Valuable Nursing Home Report:

- What's the first line of defense in protecting your family's home from MassHealth…
- When going into a nursing home, what Yes or No answer (if checked incorrectly) will force the sale of your family home within 9 months…
- What health care benefit are only 5% of eligible veterans taking advantage of…
- How can you be paid by MassHealth for taking care of your parent…
- How can you prevent MassHealth from putting a lien on your parent's house…
- And much more…

1. When going into the nursing home, what yes or no answer, if checked wrongly, will force the sale of your family home within 9 months and disqualify you for MassHealth benefits until all the proceeds are spent down for the nursing home?

When applying for MassHealth at a nursing home you will be asked if your loved one intends to return to the family home. If you answer NO, the family home must be liquidated in 9 months and the proceeds would disqualify your loved one from MassHealth until all the money is spent down to less than $2,000.

If you answer yes, which you can legally do no matter the health your loved one is in, then your home is considered a non-countable asset and would not be liquidated.

However, if you did check off No and you are being forced to liquidate your family's assets, you can call our office and we can most likely halt Medicaid Spend-Down and protect your loved ones assets even if is more than $500,000, for example.

2. How do you immediately protect hundreds of thousands of dollars, if not over one million, with no 5 year look back even if you or your parent is paying between $10 and $14 thousand dollars a month to a nursing home?

(This little known strategy is buried in hundreds of pages of MassHealth Regulations, and could halt nursing home spend down immediately. You or your parent can access this money for their needs.)

You can put the countable asset in a Pooled Trust, which is a trust established and administered by a qualified non-profit organization. The funds are no longer considered countable assets, and as long as there is less than $2,000 in your loved ones regular bank account, they can immediately qualify financially for MassHealth.

We had a client come to us whose father had $350,000 and was going into a nursing home. After paying around $13,000 for one month we put the money into a Pooled Trust and MassHealth began paying the nursing home. Mass Health pays the nursing Home approximately $4,200 a month.

When the patient passes, the Trust will have to pay back MassHealth, who is listed as the primary beneficiary of the Trust. However, the patient's Social Security and Military Pension of about $3,500 are being paid to the nursing home as the Patient Paid Amount, so the deficit to MassHealth is only about $700 per month.

The Trust also pays out many of the patient's additional needs not covered by MassHealth. After 2 years, his account is still worth more than $300,000 and his deficit with MassHealth is only about $16,000.

There are several Pooled Trusts available in Massachusetts with various fees and charges. We work with those that have lower charges and benefit our clients the most. If you are interested please call our office.

3. What is the first line of defense in protecting your family's home from MassHealth according to a recent presentation by the Massachusetts Chapter of the National Academy of Elder Law Attorneys? Hint: it isn't an Irrevocable Trust.

MassHealth Regulations provide for protection of your house being sold for repayment of any monies they have spent on your behalf for long term care, if you have a Long term Care Insurance Policy that meets certain minimum requirements.

The policy must pay a minimum benefit of $125 a day for 2 years and have a waiting period of one year; meaning that you must be in a long term care situation where a Doctor says you cannot perform 2 of 6 activities of daily living for one year before the policy begins to pay. The policy must have a legend that talks about its eligibility for MassHealth.

We had a client come to our office who had purchased a long term care policy when they were a resident of New York State. We were told that this policy would not qualify but we were free to appeal any decision MassHealth might make and that we could possibly win, but as of right now it would not protect our clients home from sale by MassHealth if she owed them money.

When entering a Nursing Home the policy must have some benefit left even if it is only $5. If you were in an assisted Living Facility and your Insurance Company was paying Long Term Care Benefits, you should leave the last payment on the policy in case you have to go into a Nursing Home or MassHealth could force the sale of your home to recover any monies they spend on your behalf.

These minimal policies are relatively inexpensive compared to the benefit they give you. Of course, you have to be in good health. We had a couple come in the office were the male was 59 and his wife was 55. The cost for this type of policy was $93 a month for coverage of both spouses.

This not only would protect their $500,000 home from the MassHealth Recovery Team but provide $91,250 apiece in Long Term Care benefits; a benefit they are highly likely to use. For a couple where both spouses are 70, the payment is around $200 a month. Again, not much money compared to the benefits it could provide.

4. If your spouse is in a Nursing Home, how can you halt Medicare Spend Down immediately, even if you have, for example; $700,000 in liquid assets? The procedures to do this are buried in hundreds of pages of regulations.

Hint: The nursing home is not going to show you where to find them.

If your spouse goes into a nursing home you are allowed to keep $119,220. Any assets above this level must be spent down at a rate of approximately $11,000 to $14,000 payments per month to the Nursing Home until your spouse has below $2,000 in assets.

Only then will MassHealth begin paying the Nursing Home. Also, you may be allowed to keep between $1,939 and $2,931 of your spouse's income, depending on your circumstances. You can keep your own income.

As an example, let's say you have $619,220. You could immediately qualify your spouse for MassHealth by putting $500,000 into a Medicaid Compliant Annuity. This would turn an asset into an income stream and would not be considered a countable asset for Medicaid. Instead of having the $500,000 you would be receiving monthly payments from the insurance company.

The Annuity must be actuarially sound, meaning that the term of the annuity cannot exceed the life expectancy of your spouse as determined by the MassHealth Life Expectancy Tables. The payments must be in equal amounts.

MassHealth must be designated as the primary beneficiary. If the community spouse dies before the term of the annuity runs out, MassHealth has to be the primary beneficiary to recover the funds they have paid for the Nursing Home Spouse.

This annuity has to be irrevocable and cannot be transferred; meaning that once you start receiving payments it cannot be stopped or transfer to someone else. You are allowed to save the payments since your spouse has less than $2,000 and is already qualified for MassHealth. For this reason, you should make the term of the annuity as short as possible. The annuity must be purchased from a commercial insurance company.

We have had very good success with Medicaid Compliant Annuities and at this time MassHealth is not challenging them. Before setting up this type of annuity consult with an Elder Law Attorney.

5. If you are taking care of your parent in your home, how do you protect tens of thousands of dollars, if not six figures, from MassHealth so long as your parent lives with you for only one year?

If you are taking care of a parent in your house, MassHealth allows you to establish a life estate for your parent and keep all funds your parent paid you for this right as long as the parent stays out of the Nursing Home and does not apply for MassHealth Benefits for one year.

An example from our practice will help you understand how this works. A woman in her late 50s came into our office. She said she was caring for her mother in the home that the mother had given her 6 years ago.

The mother had about $250,000 and was beginning to fade. What could she do to protect her mother's funds from the nursing home? We told her that she had no problems with the house because she had received the house more than 5 years ago.

Anything given to her by her mother within a 5 year period at less than fair market value would be considered a countable asset by MassHealth, so she was okay as far as the house was concerned.

What she could do was to set up a life estate for her mother. She essentially was selling a right to her mother to live in her home for life. During this period she could not sell the home without the mother's consent. Under MassHealth regulations the money the mother gave to the daughter for this right could be kept in total by the daughter as long as the mother lived in the home for 1 year.

We calculated the payment as follows. The mother was in her mid-80s and according to the MassHealth Life Expectancy Tables she had 5.5 years of life expectancy. We calculated rent at $1500 a month. We can add a premium because the daughter was giving up the right to sell the house during this period. The total amount for the life estate came to $99,000 (5.5x12x1500). The mother paid the daughter this amount.

This would be considered a permissible transfer by MassHealth as long as the mother stayed out of the Nursing Home and did not apply for MassHealth benefits for one year. If the mother were to go into the Nursing Home after one year, we could make her immediately eligible for MassHealth by putting her remaining funds into a Pooled Trust or Medicaid Compliant Annuity as discussed in one of our previous points.

6. My parents put their home in an Irrevocable Trust to protect it from the Nursing Home 15 years ago. My dad passed away and then my mom spent 7 years in a Nursing Home. After my mom had spent all her money, MassHealth paid for the last 5 years.

My mom died a few months ago and MassHealth just put a lien on the house for $252,000 and told us to come up with the money in 9 months, or the house would be sold off. I thought the house was protected. What happened? What can we do?

The budget for MassHealth is skyrocketing. The budget for 2015 is $13.5 billion, up from a fiscal 2014 budget of $11.9 billion. This is a 13.4% increase and is obviously unsustainable. MassHealth is heavily scrutinizing all Irrevocable.

Irrevocable means you can have no control over the assets you put into an Irrevocable Trust. If you have a Trust, that gives you too much control there is a good chance that MassHealth will shoot it down.

Your only choice is to hire a lawyer and take MassHealth to court if a lien is placed on your family's property. There is no clear cut answer right now. There is a big conflict between Federal and State law.

It is a good time to have your trust reviewed by an Elder Law Attorney. We recommend only doing this type of Trust if you implicitly trust your Trustee.

Make sure there is language in the Trust that would bring your home back into the Estate when you die so that your Estate receives a step up in cost basis or your beneficiaries could be faced with large capital gains taxes.

7. If you are taking care of your elderly parent in their home, how can you set up a contract that would deed the family home to you as long as you have taken care of your parent for two years, even if they subsequently go to a Nursing Home?

We have seen many people who have been taking care of their parents for years in the parent's home.

They don't realize that if they set up a care givers contract and then take care of their parents for 2 years, then the home can then be deeded to them and MassHealth will never force the sale of the house even if the parent subsequently spends years in a Nursing Home paid for by MassHealth.

The contract should be signed by the parent or guardian and notarized. It should list the duties of the care giver. The care giver must give the parent the same care that a nursing home would give and show that if it were not for this care, the parent would have to go into the nursing home.

We recommend that the care giver keep a daily log of all activities relative to the care that is given. For example, a schedule of when medication is taken, feeding, bathing, transferring, exercising, dressing and toileting.

A doctor should write a note that the care is equal to that provided by a nursing home. This should be done once per year. Periods for some respite by the care giver can also be written into the contract.

8. Why is planning for Long Term Care at a younger age rather than on an emergency term basis is perhaps the most important financial plan you need to put into place if you want to leave a legacy to your children and live your final years in comfort?

Let me relate to you the story of one of our clients who passed away last year. She was living alone in the marital home for about 2 years after her husband had died. She began to have cognitive impairment and could no longer drive or take care of herself. It was decided to move her into an assisted living facility.

The family found a beautiful facility that had been an old sea captain's home with a limited amount of units. She bought an apartment for $200,000, 90% of which would be refunded when she left the facility or passed away.

Her china, artwork and photos were moved into the unit, so as to lessen the impact of the transition. The cost was about $5,500 a month.

This woman and her husband had been paying into a Long Term Care Policy for almost 25 years. After much back and forth with the insurance company over about a year, the insurance company began paying for most of the monthly cost.

Meanwhile, she was waited on hand and foot by the staff, enjoyed the company and collegiality of the other seniors, enjoyed meals that were up to gourmet standards, had exercise classes every day and was taken on various field trips and shopping jaunts while she was up to it.

When her cognitive problems escalated into Dementia after about 5 years, her cost was increased to $12,000 a month. However, she received a corresponding increase in care commensurate with her needs. Because she had the Long Term Care Policy she had the funds to pay for the extra care.

At a Nursing Home, while someone might pay $12,000 a month or more, they are really paying for the other 2 to 3 people that are on MassHealth. Also, at the Nursing Home, the people on MassHealth are required to have the same care that the person who pays full freight receives.

Finally, she passed away peacefully, taken care of up to the last minute in the Assisted Living Facility. About $360,000 of her costs at the facility were paid by the LTC policy that cost her about $75,000 over a 25 year period.

Because her assets were divided into 2 Trusts, preserving her husbands $1,000,000 exemption from MassState Estate Tax, over $100,000 in taxes were saved. The Trust also enabled her Estate to by-pass probate, saving an additional $50,000-$75,000.

Proper planning saved the Estate almost $500,000 and enabled her to live the last 6 years of her life in comfort and peace.

If you have been procrastinating about Estate and Nursing Home Planning, go down to a nursing home and take a tour. Is that how you want to spend your final years; in a stale hospital like environment? Would you rather leave your hard earned funds to your family?

If you don't plan, then most of your money could go to the Nursing Home where you will be paying for the others who are not paying. It could go to the Commonwealth of Massachusetts in Estate Taxes and to Attorneys and the Court if your legacy is tied up in Probate.

Here are some things you can do. Remember everyone is different.

At least get a minimal LTC Policy that would exempt your home from liquidation by MassHealth should you end up in a Nursing Home paid for by MassHealth or home health care paid by MassHealth. As mentioned before, a minimal policy costs about $200 per month for a couple both age 70.

If you have a large CD or Money Market account, you might consider putting the money in an insurance policy that pays, for a 70 year old, around $311,000 in long term care benefits over a 6 year period. You can get your money back at any time with this policy with no penalty.

Of course, if you exercised these rights, then you would lose any interest gained or benefits. If you are willing to wait 3 years before you are able to get your money back, another policy pays about $357,000 in LTC benefits over a 6 year period.

Modern Life Insurance Policies in some cases pay LTC benefits. Typically, about 2% per month of the death benefit can be accessed for long term care. Once a person is deemed to not be able to perform 2 of the 6 activities of daily living by their doctor, they can usually access the funds for any type of care and do not have to show reimbursement slips.

We recently had a 66 year old woman get a life insurance policy with a death benefit of $262,000 for $500 a month. She could use about $5240 per month of the death benefit for long term care. If she never uses the LTC benefit her beneficiaries will receive $262,000 income tax free upon her death.

With all the aforementioned policies you would be subjected to insurance underwriting to make sure you are in reasonably good health. This could range from a telephone interview to a visit by a nurse at your home for a cursory physical.

Another option is investing in Annuities that have Health Care Riders. The Deficit Reduction Act of 2005 provides for this type of rider on annuities. Here is how one of the insurance Companies structures their rider.

An account that can be only used for income builds up at about 7%. At age 70 for example, you decide to take income. You would receive about 6% of the account in income for life or joint life. Provided you have held the account for 2 years or more and you could not perform 2 of the 6 activities of daily living, certified by your doctor, the amount of interest doubles for a 5 year period.

You can use this money for any purpose. You do not need any underwriting or physical to qualify for this product. Unlike Life Insurance it can be used in your IRA.

The sooner you start planning for the eventuality that you will grow old (hopefully), become weak and eventually pass away, the easier and less costly Long Term Care Planning might be. Most experts put at 70% the odds that a couple will need long term care sometime during their lives.

9. What VA benefit is available for Veterans and their widows for home health care, assisted living or nursing home care that pays up to $2120 per month tax free and can be received even if you are in a nursing home and would not disqualify you from MassHealth?

Only 5% of eligible Veterans are taking advantage of this benefit.

Eligibility Requirements

- Must have served at least 90 days of active duty with at least one day during a period of war.
- Must have anything other than a Dishonorable discharge.
- A surviving spouse must have been married to the veteran at the time of his passing.
- Must require the assistance of another person to perform some of the daily activities of living.
- Must meet income and countable asset criteria established by the VA.
- Must be 65 years and older or totally disabled.

Eligible Periods of War

World War II: December 7, 1941 – December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.

Korean conflict: June 27, 1950 – January 31, 1955, inclusive.

Vietnam era: The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.

The income requirements are generally that the veteran or his spouse is spending more money on their health care than they are taking in and that they need help with at least 2 of the 6 activities of daily living. They must have less than $80,000, or $40,000 for a single spouse.

Let’s say your mom who is widowed is in a nursing home, and your dad who is deceased was a World War 2 Veteran; she might be eligible for $1,149 a month tax free income that would not disqualify her from MassHealth.

If she was worth more than $40,000, funds that exceed this amount could be put in a Trust that would have no look back and immediately qualify her for this benefit.

These are the amounts that a Veteran or their surviving spouse would be eligible for:

Surviving Spouse	$1,149
Single Veteran	$1,788
Married Veteran	$2,120
Married Vets	$2,837

10. How can you be paid $15 per hour, $22 for overtime, holidays and weekends, by MassHealth for taking care of your parent in your home or their home?

The Personal Care Attendant Program is part of a movement by MassHealth to care for seniors in their homes and keep them out of the nursing home. MassHealth gives the senior funds to hire a personal care attendant. Children of seniors, but not their spouses are eligible to become Personal Care Attendants.

The senior must need help in performing 2 of the 6 activities of daily living and this help must be prescribed by their Doctor or nurse practitioner.

A MassHealth representative comes to the house and produces a report detailing the amount of weekly hours the senior needs for his or her care. The senior must be eligible for MassHealth. Assets and income may have to be restructured to qualify your loved one for this benefit.

I really appreciate that you took the time to read these “10 Nursing Home Planning Secrets”. This was set up as 10 questions and answers that have helped many people in Massachusetts just like you.

If you have some other questions about your specific situation or general questions about MassHealth and nursing home planning, please feel free to get in touch with me.

You can reach me by phone at 508-280-0774. Or if you prefer to send me an email, just reply to this email now.

I look forward to speaking with you soon.

Warm Regards,

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Ann Marie Grainger graduated from UMass cum laude with a degree in Business Administration, Yale University with a Masters in Public Health where she wrote her thesis in Life Satisfaction of the Elderly and from the University of Connecticut with a Doctorate in Juris Prudence. She has been a practicing attorney on Cape Cod for more than 27 years and specializes in Elder Law. Ann is a member of the National Academy of Elder Lawyers Association.

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