



# Medicaid Resource Guide

*What you need to know about the Medicaid eligibility and transfer rules*

*Prepared exclusively by*

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The information presented in these resource guides and articles is for informational purposes only and should not be construed as legal advice on any subject matter. Receipt of this information does not constitute an attorney-client relationship, and recipients should not act upon it without consulting legal counsel as individual situations and facts vary. The information may also be dated, and you should check the publication date.

## *About This Resource Guide*

This Resource Guide remains our benchmark publication. It is the result of our representation of numerous elders and their families at a point in their lives when they need understandable information on long-term care planning. Elders and their families are vulnerable and face difficult financial and quality of life issues. We remain grateful to our clients who, through their insightful questions, have made us better elder law attorneys.

Please note that the state and federal governments provide the Medicaid rules and regulations. The Medicaid program experiences constant changes from changes in funding, court interpretation, agency policy, and legislative involvement. It is not uncommon to hear of politicians attempting to overhaul the Medicaid program. The Deficit Reduction Act of 2005 changed many of the rules and regulations outlined in the earlier versions of this Resource Guide.

While the effective date of the DRA is February 8, 2006, MassHealth's interpretation of the new laws continues to evolve at the time that this brochure was updated in December 2009. Therefore, it is essential that you consult with us on all matters relating to nursing home level Medicaid before acting. You cannot fully rely on the information set out in this transitional guide. We will be regularly updating this guide as soon as new information becomes available.

We are pleased to share this Resource Guide with you, and we hope it will lend some clarity and peace of mind to you during these unsettling times. We hope it will serve as a useful tool for any person, family, or professional who has questions about Medicaid eligibility. Also, we ask you to help us make this a better publication in the future. Please feel free to contact us with suggestions or comments on ways to improve our guide.

We, at Moschella & Winston, LLP, have prepared numerous articles and brochures on specific issues affecting the elderly and the disabled. Please feel free to contact us for complimentary copies. The National Academy of Elder Law Attorneys (NAELA) and the Massachusetts Chapter of NAELA also have informational brochures on the emerging field of elder law. While this Resource Guide is helpful, there is no substitute for consultation with an experienced elder law attorney.

Thank you,

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## *Introduction*

For most elders, the prospect of long-term care in a nursing home is, to say the least, unpleasant. Elders are also often concerned that the cost of long-term care will deplete their estates. The cost of nursing home care in Massachusetts, now estimated at between \$100,000 and \$130,000 per year (the daily rate is often over \$320), only serves to compound these fears.

The cost of the monthly premiums to purchase long-term care insurance to pay for the cost of long-term care can be beyond the means of middle-income elders and often times is not available to elders due to pre-existing medical conditions.

Many elders receive assistance from the federal Medicare program to help pay medical expenses and the cost of prescription drugs. Medicare does not pay for extended nursing home care. Medicaid (known as MassHealth in Massachusetts), on the other hand, is a joint federal-state program, which pays for nursing home care for individuals that meet their financial eligibility rules.<sup>1</sup>

Understanding the complex Medicaid rules is the key to informed long-term care planning and asset protection.

In determining the financial eligibility of an applicant, Medicaid looks at the individual's assets and income.

### ASSETS

Anything an applicant owns, such as:

- Cash
- Mutual Funds
- Auto
- Real Estate

### INCOME

All money an applicant receives, such as:

- Social Security
- Dividends
- Pensions
- Rental Income

*1. Medicaid is also available to blind and disabled individuals who meet the eligibility guidelines.*

## *Asset Limitation*

Medicaid places a limit on the amount of assets an applicant age 65 or older can own in order to be eligible for Medicaid. The asset limitation is \$2,000 for an individual and \$3,000 for a couple. Medicaid separates an applicant's assets into three categories:

1. Non-Countable Assets
2. Inaccessible Assets
3. Countable Assets

Only *countable* assets are considered regarding the \$2,000 asset limitation. The assets of a couple, age 65 and older when one member is in a nursing home, may be treated differently (see Special Rules for the Principal Residence below).

### *Non-Countable Assets*

Non-countable assets are not included in the calculation of an applicant's assets for Medicaid eligibility purposes. Non-countable assets include:

- A principal residence in Massachusetts (see Special Rules for the Principal Residence);
- Household belongings and furnishings;
- Personal belongings, such as clothing and jewelry;
- Burial plots for the applicant and members of his or her family;
- Pre-paid burial contracts;
- A \$1,500 bank "burial account" for miscellaneous funeral and burial expenses;
- Life insurance with a face value up to \$1,500; and
- One automobile for use by the applicant or his or her family. (See Example 1).

#### EXAMPLE 1

##### **Countable and Non-Countable Assets**

Richard owns a house worth \$200,000, a car worth \$4,000, and mutual funds worth \$50,000. Medicaid does not consider the value of Richard's house or car when calculating Richard's countable assets. Medicaid does consider the \$50,000 Richard owns in mutual funds as countable assets.

### ***Special Rules for the Principal Residence***

MassHealth will categorize an applicant's home, valued up to \$750,000, as a non-countable asset if it is located in Massachusetts. The residence is also non-countable if the applicant is living in a nursing home and intends to return to the home if his or her medical condition improves. MassHealth may place a lien on the property for services rendered that would be paid back upon either the sale of the home or probate of the individual's estate.

If the applicant does not intend to return home, the applicant's home can also be classified as non-countable if any of the following conditions are met:

1. The applicant owns a long-term care insurance policy and meets certain requirements at the time he or she entered the nursing home, or
2. Any one of the following persons lives in the home:
  - The applicant;
  - The applicant's spouse;
  - A child under age 21;
  - A disabled or blind child of any age;
  - A relative who is dependent on the applicant;
  - A child who lived in the home for at least two years before the applicant moved into a nursing home and provided care which permitted the applicant to remain at home; or
  - A sibling who has an equity interest in the home and has lived there for at least one year before the applicant moved into a nursing home.

### ***Inaccessible Assets***

Like non-countable assets, inaccessible assets are also not included in the calculation of an applicant's assets. Inaccessible assets are assets that the applicant has no legal access, such as expected inheritances before probate is completed or divorce assets prior to a final decree. (See Example 2).

#### **EXAMPLE 2**

##### **An Inaccessible Asset Can Become "Countable"**

Karen's sister, Betty, died six months before Karen applied for Medicaid. Under Betty's will, Karen is entitled to one-half of Betty's estate, which is worth \$200,000. Karen has not yet received any money from Betty's estate. The \$100,000 Karen expects to receive from Betty's estate is an inaccessible asset. Once Karen receives the \$100,000, it becomes a "countable" asset.

## *Jointly Held Assets*

Medicaid presumes that all funds held in joint bank accounts belong to the applicant. The applicant can overcome the presumption if the non-applicant joint owner can demonstrate that he or she contributed funds to the account. (See Example 3).

### EXAMPLE 3

#### **Who Contributed to a Joint Account?**

Andy owns a joint bank account with his daughter with a balance of \$10,000. His daughter contributed \$8,000 of that amount when she was going through a divorce. When Andy applies for Medicaid, it is presumed that Andy owns all of the \$10,000 in the joint account. If, however, Andy proves that \$8,000 of this account is attributable to his daughter, only \$2,000 will be counted as Andy's assets.

Other assets held jointly, such as real estate, stocks, bonds, and most mutual funds are presumed to be owned proportionately by the persons on the account. This presumption can also be overcome. (See Example 4).

### EXAMPLE 4

#### **A Joint Account Presumption**

Edna and Charles are joint owners of a stock and bond mutual fund with a value of \$20,000. The monthly statement does not specify the percentage of each person's ownership. If Edna applies for Medicaid it will be presumed that she owns 50% of the mutual fund, or \$10,000.

## *Trusts<sup>2</sup>*

If a Medicaid applicant is the beneficiary and grantor of a trust, and the applicant can receive distributions from the trust, any amount of principal that the Trustee has the discretion to distribute to the applicant is considered a countable asset. Even principal that can be distributed by a trust not created by the applicant may be countable under certain circumstances. The assets are considered countable even if a trustee never makes a distribution to the applicant. (See Example 5).

### EXAMPLE 5

#### **A Beneficiary of Trust Assets**

Sam is the beneficiary of a trust, which he set up himself. The trust holds \$100,000 in assets and the trustee has the authority to make any amount of distributions of interest and principal to Sam. Sam applies for Medicaid. Medicaid will consider the entire \$100,000 as a countable asset for Sam.

2. Specific rules pertaining to trusts vary according to the date the trust was established and the specific terms of the trust.

If the applicant or his or her spouse is the grantor of a revocable trust, all assets in the trust are considered countable assets. The result is the same even if the applicant or spouse is not a beneficiary of the revocable trust.

Trusts are a complex area of law because of the Omnibus Budget and Reconciliation Act of 1993 (OBRA 93), the DRA 2005, and related state regulations and court decisions. Questions regarding the creation of and transfers to and from trusts should be carefully reviewed with an elder law attorney. (See Example 6).

#### **EXAMPLE 6**

##### **Revocable Trust Assets**

Jim sets up a revocable trust with \$50,000 he receives as an inheritance from his father's estate. Even though Jim's children are the beneficiaries of the trust, Medicaid will consider the entire \$50,000 as a countable asset for Jim.

#### ***Income Limitations***

In addition to the asset limitation, Medicaid places a limit on the applicant's monthly income before Medicaid will pay for remaining medical expenses. Medicaid treats income differently for those seeking eligibility who live in the community (not in a nursing home), and those who live in a nursing home or receiving higher level of medical care.

Until March 2010, the income limit for an applicant 65 or older living in the community is \$903 per month and \$1,201. Medicaid considers both earned income (wages) and unearned income (Social Security, pensions, etc.), less any medical benefit premiums paid when it calculates an applicant's total income. If an applicant age 65 or over living in the community has income in excess of this limit, he or she may still be eligible for Medicaid through a "spend-down" procedure.

For the spend-down procedure, the applicant's total countable income exceeding \$522<sup>3</sup> per month must be spent on medical needs before Medicaid will cover the remaining medical bills each month. However, the entire deductible is calculated on a six-month average. When (and if) the applicant's medical expenses reach the six-month deductible, Medicaid will pay the remainder of the applicant's medical bills for that six-month period. This process will be repeated every six months to maintain eligibility. (See Example 7).

3. 130 CMR 520.030

### EXAMPLE 7

#### **A “Spend-Down” Breakdown**

Charlotte is single, lives in her home, and receives Social Security in the amount of \$1,000 per month. She must spend on average \$458 ( $\$1,000 - (\$522 + \$20)$ ) each month on medical expenses before Medicaid will pay the remainder. Since the actual calculation is done on a six-month basis, Charlotte must spend \$2,748 ( $\$458 \times 6$ ) every six-months before Medicaid will pay for the remaining medical expenses in that six-month period.

For single applicants in a nursing home without dependents, the “spend-down” works much the same way. In this case, the applicant must pay any income in excess of \$72.80 per month on medical care costs plus a credit for any medical insurance premiums paid. Medicaid covers the difference between what the resident has in net countable income and the cost of the nursing home care. (See Example 8).

The income of couples may be treated differently (see Community Spouse Resource Allowance).

### EXAMPLE 8

#### **A Nursing Home “Spend-Down”**

From the previous example, Charlotte now enters a nursing home. She also now pays a Medicare supplement health insurance premium of \$220 per month. She must pay \$707.20 ( $\$1000 - \$220 - \$72.80$ ) of her Social Security to the nursing home each month. Medicaid will pay for the balance of her nursing home and medical care.

### ***Community Spouse Resource Allowance (CSRA)***

Under the Medicaid rules, a couple’s assets are pooled (added together) for the purpose of determining eligibility. Medicaid calculates the couple’s total “countable assets” at the time a married applicant is institutionalized (the first day of a stay in a long-term care facility or hospital which lasts thirty days or more). The couple’s assets are pooled without regard to which spouse actually owns the assets. The spouse still living in the community (the “community spouse”) is allowed to keep a portion of the couple’s countable assets. This portion of the countable assets is called the “community spouse resource allowance.”

In 2010, the maximum CSRA is \$109,560. In appropriate circumstances in which the community spouse requires more income to remain in the community, the community spouse may seek to increase the CSRA at an appeal hearing. This is often the case when the community spouse has high medical expenses or lives in a costly assisted living facility. An experienced elder law attorney should be consulted to determine whether such a hearing is appropriate.

In situations where one member of a couple refuses to cooperate with Medicaid, such as a refusal to supply the necessary documents, Medicaid may disregard the uncooperative spouse’s assets. However, in this situation, the uncooperative spouse will not be able to take advantage of the CSRA or the community spouse maintenance needs allowance.

In order to distribute assets between a couple to ensure that an institutionalized spouse

has only \$2,000 in his or her name, Medicaid allows a ninety-day period after an eligibility determination within which transfers between spouses may be made. (See Example 9).

#### EXAMPLE 9

##### **Asset Transfer Between Spouses**

Assume that Mrs. Brown is entitled to a CSRA of \$109,560. The Browns have spent-down their cash assets, leaving Mrs. Brown with \$79,000 in her name alone. There remains \$20,000 in assets in Mr. Brown's name. The Browns are allowed ninety days within which to transfer the \$20,000 from Mr. Brown's name into Mrs. Brown's account.

#### ***Annuities***

Another means of protecting "excess" assets above the allowable limit for the community spouse is done through the process of purchasing an annuity. The annuity allows for the community spouse to turn the excess countable assets above the allowable CSRA into a non-countable income stream because the community spouse does not have any income limit. The annuity must meet some specific requirements to qualify. The annuity must be immediate, it cannot have a balloon payment, it must be irrevocable, the period of payments cannot exceed the purchaser's life expectancy, and generally the annuity must be "commercially reasonable."

#### ***Community Spouse Minimum Monthly Maintenance Needs Allowance***

The spouse of an individual in a nursing home is entitled to a portion of the institutionalized spouse's income under certain circumstances. This couple can share income when the community spouse has monthly income below a minimum level set by Medicaid. This minimum monthly income level is called the "minimum monthly maintenance needs allowance (MMMNA)."

Currently, the minimum level is \$1,821.25 plus an excess shelter allowance. The excess shelter allowance is the community spouse's actual monthly housing costs, including mortgage payments, rent, property taxes, and homeowners insurance, less 30% of the minimum amount. The maximum MMMNA is \$2,739, unless exceptional circumstances can be established. These figures usually increase each year due to a cost of living allowance. However, there is no cost of living increase for 2010.

As of September 1, 2003, Massachusetts began utilizing the "Income First" method of coordinating spousal income. Under this method, if the amount of the community spouse's income is inadequate to meet his or her MMMNA, the income of the institutionalized spouse (less the personal needs allowance of \$72.80) is deemed available to the community spouse to satisfy the MMMNA. If there is enough income to meet the allowable MMMNA, the calculation is over, and any remaining income of the institutionalized spouse must be paid over to the nursing home as the Patient Paid Amount (PPA).

If the combined available income of the institutionalized spouse and community spouse along with the imputed income generated from the CSRA is inadequate to meet the allowable MMMNA of the community spouse, then the community spouse is allowed to have an enhanced Community Spouse Resource Allowance (CSRA). The community spouse will require a fair hearing to receive an enhanced CSRA.

To receive the enhanced CSRA, there is a three step process that must be used at the fair hearing. First, the hearing officer shall determine the gross income available to the community spouse. This is calculated by determining the income that would be generated if \$10,000 of the asset allowance were invested in an account yielding income equal to the current Bank Rate Monitor Index for a money market account and the remainder were invested in an account generating income equal to the current Bank Rate Monitor Index for a 2.5 year Certificate of Deposit.

Second, if the gross income available to the community spouse is less than the allowable MMMNA, then the hearing officer shall allow an amount of income from the institutionalized spouse (after allowable deductions) to be given to the community spouse that would increase the community spouse's income to an amount equal to, but not exceeding, the MMMNA.

Third, if after application of steps one and two, the gross income available to the community spouse is less than the allowable MMMNA, then the hearing officer shall increase the community spouse's asset allowance (CSRA) by the amount of additional assets that would produce enough investment income to raise the income to the allowable MMMNA. (See Examples 10 & 11).

*See: [www.mass.gov/masshealth](http://www.mass.gov/masshealth) and [www.massresources.org](http://www.massresources.org)*

#### **EXAMPLE 10**

##### **Utilizing the MMMNA**

Owen is married to Ida and lives in a nursing home that costs \$5,000 per month. He has \$1,200 in monthly income comprised of Social Security benefits and a pension and spends \$240 per month on his Medex premium. Ida only has \$400 per month in Social Security and Ida does not have any excess shelter allowance. From his \$1,200 monthly income, Owen can deduct and keep \$72.80 for his personal needs allowance and can also deduct the \$240 he spends on health care. Owen's remaining \$887.20 of income can be retained by Ida, the community spouse, as part of her Minimum Monthly Maintenance Needs Allowance because the total countable amount adds up to less than the minimum of \$1,750. Medicaid will pay the additional funds needed to cover Owen's bill to the nursing home.

#### **EXAMPLE 11**

##### **A Sample MMMNA Calculation**

Mr. and Mrs. Haywood have a total monthly income of \$2,500. \$2,000 of that comes in Mr. Haywood's name and \$500 comes in Mrs. Haywood's name. Mr. Haywood lives in a nursing home and Mrs. Haywood lives in the community. Mrs. Haywood's excess shelter allowance is \$50, giving her a community spouse minimum monthly maintenance needs allowance of \$1,762 (minimum level of \$1,712 plus excess shelter allowance of \$50). Mrs. Haywood is entitled to a share of her husband's income that will bring her from her current income level of \$500 up to her \$1,762 allowance. Mrs. Haywood is therefore entitled to \$1,262 of Mr. Haywood's monthly income. From the balance of his income, he is allowed to keep \$72.80, and \$665.20 must be paid to the nursing home as his Patient Paid Amount (PPA).

## *Transfer Rules*

Medicaid was designed to provide medical related coverage to those individuals and families who do not have enough assets to take care of themselves. Through a number of rules, the program discourages individuals from intentionally impoverishing themselves to qualify for Medicaid.

On February 8, 2006, the transfer rules and penalties were significantly tightened, requiring longer planning periods to avoid disqualification periods of eligibility for long term care coverage. Medicaid agencies scrutinize and potentially disqualify transfers made within 60 months of the Medicaid application. This is called the “look-back period.”

The purpose of the look-back period is to review financial records and penalize the applicant or spouse for gifts or sales for less than fair market value made prior to applying for Medicaid when it is arguably foreseeable that coverage will be needed. The Medicaid agency will disqualify a transfer if the applicant transfers a countable asset or principal place of residence for less than fair market value during this look-back period. (See Example 12).

### EXAMPLE 12

#### **How the “Look-Back Period” Works**

Florence owns a house with a fair market value of \$150,000. On April 1, 2006, Florence transfers the house to her daughter as a gift. On June 1, 2006, Florence needs nursing home care and applies for Medicaid. The gift of the house is counted as a disqualifying transfer because it was made within the 60-month look-back review period prior to Florence’s application for Medicaid.

The period of ineligibility for Medicaid for a disqualifying transfer is obtained by dividing the fair market value of what was transferred by the divisor rate, established by MassHealth regulations. The divisor rate is \$274 per day. (See Example 13).

### EXAMPLE 13

#### **Determining the Ineligibility Period**

In the previous example, Medicaid would take the fair market value of Florence’s house, and divide it by the divisor rate.

$$\$150,000 \div \$274 \text{ per day} = 547 \text{ days of ineligibility}$$

or

$$\$150,000 \div \$8,010 \text{ per month} = 18.7 \text{ months of ineligibility}$$

**INELIGIBILITY PERIOD** = Fair market value of transferred assets  $\div$  Average daily cost of nursing home.

Another important change added by the new law is when the disqualification period begins. If Medicaid determines that the applicant made a disqualifying transfer, the disqualification period will not start running until the individual files a Medicaid application and is denied.

If an applicant delays his or her Medicaid application for more than 60 months after making a disqualifying transfer, it is not necessary to report the transfer to Medicaid. In this situation, applicants can essentially cap their ineligibility at 60 months.

Applying for Medicaid at the wrong time after a large transfer can cause a much longer than necessary disqualification period. (See Example 14).

#### EXAMPLE 14

##### **Timing is Important When Applying for Medicaid**

Mike owned a house with a fair market value of \$600,000. On April 1, 2006, Mike transferred the house to his son as a gift. On June 1, 2006, Mike applied for Medicaid. Medicaid looked back 60 months from the date of Mike's application and recognized the disqualifying transfer. Medicaid calculated the ineligibility period ( $600,000 \div \$274$  per day) to get a 2,190 day ineligibility period. This ineligibility period will last approximately 6 years. If Mike had waited until April 1, 2011 to apply, the transfer would not have been included in the look-back period and he would have been eligible for Medicaid a year earlier.

This transfer disqualification rule does not apply to applicants for community level Medicaid benefits, but will apply if the applicant living in the community subsequently enters a nursing home. Also, transfers made to an applicant's blind or disabled child, or under certain other special circumstances, are not disqualifying transfers. For transfers made before February 8, 2006, the ineligibility period for disqualifying transfers to an individual is limited to 36 months. This description of how the new rules are applied to gifting may change as they are integrated in actual practice.

##### ***Distinguishing all Transfers as Gifts***

A long standing regulation (130 CMR 520.19(F)) states that Medicaid will not penalize an individual for transfers made for less than fair market value if they were transferred for a purpose other than to qualify for MassHealth. Despite this regulation, Medicaid routinely considers all transfers as disqualifying gifts and implements a penalty period.

This regulation has not been interpreted favorably to support the argument that the applicant did not intend to transfer assets so as to be eligible for Medicaid. With the new Medicaid laws, however, elder law attorneys will need to attempt to change the Medicaid mindset towards such transfers, where gifted funds were for express purposes such as paying for grandchildren's tuition, wedding plans, down payments for children's homes, etc.

##### ***The Spend-Down Process***

When a single applicant has countable assets that exceed the amount allowed by Medicaid, he or she will want to reduce these assets below the \$2,000 limit. The process by which an applicant reduces his or her assets to \$2,000 is called a "spend-down." There are many ways to achieve a spend-down, which may include purchasing non-countable assets, paying debts, purchasing an annuity, and even gifting assets knowing that there will be a controlled period of disqualification.

Regardless of the options used to achieve the spend-down, the applicant will usually want to qualify for Medicaid as quickly as possible.<sup>4</sup> A married couple has a greater range of options to achieve eligibility (and to save more assets) than a single individual.

#### EXAMPLE 15

#### **How the “Spend-Down Process” Works**

Jack is single, requires nursing home care, and has countable assets which total \$34,000. In order to become eligible for Medicaid, Jack will need to spend-down \$32,000. (Jack is allowed to keep \$2,000).

Jack chooses to spend-down his assets in the following way:

Total Countable Assets	\$34,000
Purchase of a pre-paid burial contract	\$10,000
Purchase of a burial plot	\$ 2,000
Pay off credit card debt	\$10,000
Attorney’s fees	\$ 8,500
<u>Burial account</u>	<u>\$ 1,500</u>
Total remaining (allowable)	\$ 2,000

#### ***Estate Recovery***

Medicaid has the right to recover the value of benefits that it provided on a recipient’s behalf after age 55 for “community” benefits. It can also recover for benefits on a recipient’s behalf for any age for long-term care or nursing home benefits. Recovery, however, is limited to a recipient’s probate estate. Medicaid can only pursue claims against the recipient’s probate estate if there is no surviving spouse, a child under age 18, or a disabled child of any age.

If the recipient owns a house, Medicaid may place a lien on the house for the amount of funds expended on the recipient’s behalf after the recipient reaches age 55. This lien may be placed on the house even before the recipient’s death provided that all the following conditions are met:

1. The recipient permanently resides in a nursing home and is not expected to return home;
2. The recipient receives notice of the lien; and
3. There is no surviving spouse, child under age 18, or disabled child of any age residing in the house.

These pre-death liens are simply “notice” liens. Medicaid has no claim against the real estate until the recipient dies. If the house is sold during the recipient’s life, however, Medicaid can seek recovery from the proceeds of the sale.

4. *In some circumstances, a disqualifying transfer may be an effective Medicaid planning tool.*

Massachusetts attempted to adopt an expanded definition of the estate for estate recovery purposes. Originally, it was to be applied to persons with a date of death after July 1, 2003. The legislature then voted to repeal the implementation of expanded estate recovery, although it is possible that the expanded estate recovery could be added back into state law in the future.

### ***Medicaid Application***

Due to the long “look-back period” and use of asset protection techniques that we have described in this guide, the Medicaid application is often difficult and time consuming to complete. Applications are submitted to a local office of the Division of Medical Assistance’s Long-term Care Units. Decisions on completed applications usually take four to six weeks.

The supporting documents needed for a successful application are substantial and include a birth certificate, health insurance cards and premium information, 36 months of bank statements, 3 years of tax returns, investment information and insurance policies, all income checks, expense information, and trust documents.

Withdrawals of assets occurring in the 60 month period preceding the application must be explained or disqualification periods may result. If the financial picture involves numerous bank accounts or transfers, many practitioners compare the process to the complexity of a multi-year tax audit. Under these circumstances, the use of an experienced elder law attorney in the preparation and submission of Medicaid applications is strongly recommended.

### ***Conclusion***

Careful long-term planning with an experienced elder law attorney prior to a hospitalization or medical crisis ensures that families understand their options. This planning allows families to evaluate all alternatives and often permits families to protect the family home and other substantial assets. The Deficit Reduction Act of 2005 has only added to an already complex planning process.

More assets can be saved when families and their elder law attorneys plan appropriately prior to a medical crisis. Good planning involves protecting the independence, integrity, and wishes of the elder individual or couple, as well as protecting possessions. At no time has the need been greater to secure the early intervention of an experienced elder law attorney to review long term care planning issues well in advance of hospitalization or nursing home placement.

An experienced elder law attorney will be able to conduct a complete review of your personal and financial situation and make appropriate recommendations to address your health care needs and provide you with a framework of recommendations to protect your assets according to your own personal wishes.

## *About Moschella & Winston*

Moschella & Winston has specialized in legal planning and protection for individuals and families for over 30 years, and our attorneys are experts in elder, disability and special needs law. We are a unique law practice concentrating on restoring peace of mind to elderly individuals, individuals with special needs, and their families.

With extensive experience in mental health, elder, disability, fiduciary, and guardianship matters, the Moschella & Winston team offers clients the convenience, continuity, and value of legal planning, implementation, and continuing care services—all handled through a single entity.

Moschella & Winston helps clients in the following areas:

- Elder & Disability Law
- Probate Administration
- Estate Planning
- Guardianships
- Special Needs Trusts
- Conservatorships
- Asset Protection
- Trust Administration
- Medicaid Eligibility
- Professional Fiduciary
- Social Security & SSI
- Professional Trustee

We also offer referrals to a network of ancillary services such as geriatric care managers, financial advisors, elder care specialists, and social workers.

All Moschella & Winston attorneys are members of the National Academy of Elder Law Attorneys (NAELA) and the Massachusetts Chapter of NAELA, and the firm partners are Certified Elder Law Attorneys by the National Elder Law Foundation. Partner Neal Winston is president elect of the Special Needs Alliance, a national invitational group of attorneys who advise and represent individuals and their families to create and administer special needs trusts. Moschella & Winston is affiliated with James G. Nelligan, Esq. of Metro Elder & Disability Law (MEDLAW) who specializes in the field of guardianships and conservatorships.

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