MASSACHUSETTS MEDICAID UPDATE

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Planning to Buy the Home for Two Thirds the Fair Market Value

A. Non countable assets: 130 CMR 520.008(A)

1. The home: Massachusetts regulation 130 CMR 520.008(A) provides that the home of the applicant or member and the spouse and any land pertinent to the home, as determined by the MassHealth agency, if located in Massachusetts and used as the principal place of residence, are considered non-countable assets, except when the equity interest in the home exceeds the amount described at 130 CMR 520.007(G)(3). The home is subject to 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 520.021-520.024.

Planning Note: It is important to realize the home, although once a non-countable asset is now exempt from this status when the equity value exceeds $750,000.

B. Ability to purchase the home for two thirds the assessed value 130 CMR 520.007(G)(1-4)

1. Real estate as a countable asset: All real estate owned by the individual and the spouse, with the exception of the principal residence as described in Masshealth regulation 130 CMR 520.008(A), as mentioned above, but only when the equity value is less than the allowable $750,000 limit as described in regulation 130CMR 520.007(G)(3), also mentioned above, is a countable asset. However, business and nonbusiness property essential to self support as described in regulation 130CMR 520.008(D) is a non countable asset. (130 CMR 520.007(G)(1)).

2. Nine month Exemption: The value of any such real estate shall be exempt for nine calendar months after the date of notice by the Masshealth agency, provided 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. Massehalth agency will extend the nine month period as long as the individual or spouse continues to make a good faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4). (130CMR 520.007(G)(2)).

Planning Note: what is fair market value: Based on conversations with supervisors at Massehealth, they have determined that fair market value for purposes of the nine month exemption shall be either the realtors valuation or an appraisal of the property. In addition, if an individual accepts an offer for less that the stated fair market value then any such difference shall be treated as a disqualifying transfer. In other words, an individual would not be in violation of 130 CMR 520.007(G)(2) by not accepting any offer that is below the fair market value as defined above.

> **3. Good faith effort to sell real estate**. The individual or spouse must verify his or her good faith effort to dispose of countable real estate by such evidence as advertisements or documentation of the listing of the real estate with licensed real estate agents or brokers, including a report of any offer from prospective buyers. The Masshealth agency will terminate eligibility if, at any time, the individual rejects a reasonable offer to buy the real estate. An offer to buy the real estate is considered reasonable if it is at least two thirds of the fair market value, unless the individual proves otherwise to the Masshealth agency's satisfaction. (130 CMR 520.007(G)(4).

Planning Note: what is a good faith effort to sell real estate? Massehealth reads this regulation together with regulation 130 CMR 520.007(G)(2) so as to mean that the property must have been listed with a licensed broker for at least nine months before one would be able to extend the nine month exemption period described in 130 CMR 520.007(G)(2). In addition, the individual must show that there has not been an offer equal to the fair market value or asking price as described above. Once this criteria has been satisfied Masshealth will not only extend the nine month exemption period for the real estate but also will now mandate that the individual accept any offer so long as it is at least two thirds of the fair market value otherwise the individual will be terminated from Masshealth benefits. However, fair market value is now determined by the real estate tax bill value in accordance with regulation 130 CMR 520.007(G)(3) which indicates the value shall be the real estate tax assessment or a more recent market appraisal.

> **Example**: Jane is a single person who just entered the nursing home and the Children are interested in how to save the home as that was always their mother's wish. The home has been appraised for $400,000 and is assessed by the town for $350,000. Jane has social security and a pension totaling $3,000 per month income and the Medicaid rate for her at the nursing home is $5,500 per month. Jane has less than $2,000 of other assets.
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> **Solution**: Apply for Medicaid and sign the notice indicating that Jane will sell the property for fair market value and provide and appraised value of the property in accordance with 130 CMR 520.007(G)(2)(4). Provided all other eligibility requirements are satisfied Jane should be approved for Masshealth benefits right away. The property should now be listed with a broker for the next nine months and it should be unlikely that someone will offer the asking price, which is equal to the fair market value set by the appraisal mentioned above. During this nine month period, a lien will be accruing against the property but only at a rate of $2,500 per month which

is the difference between Jane’s income and the Medicaid rate. At the expiration of the nine month period there will be a lien against the property in the amount of $22,500 (9months x $2,500per mt). However, a child could now by the property for two thirds of the assessed value as shown on the real estate tax bill which is $233,310 (350,000 x 66.66%). Even if the child could only sell the property for $350,000 that would be a savings of $116,690 (350,000-233,310). More importantly, it may be a better investment to hold on to or maybe the child simply needed a place to live.

Additional Planning Benefit: Once the lien has been paid off one could purchase an immediate annuity for the balance of the Jane’s life expectancy in an effort to try to save some of the proceeds from the sale of the house that went to her.