



Caring For Frail Elders: Enriching Elder Experiences

Case Management Society of New England
April 27, 2024

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Who is she?

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Who is she?

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Brief History

Prior to June 22, 1999, if you had a disability or needed nursing home level of care, and had or needed Medicaid, you were institutionalized.

Two Georgia women living in a state-run in-patient psychiatric unit wanted to live independently and their medical professionals said they were capable.

The state said no, it is too expensive!

They sued.

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They Won

The US Supreme Court ruling resulted in the following principles:

- Unjustified institutionalization of people with disabilities is discrimination and violates the ADA;
- States are required to provide community-based services for persons with disabilities otherwise entitled to institutional services when the state's treatment professionals reasonably determine that: a) community-based care is appropriate, b) the person does not oppose such placement, and c) the placement can reasonably be accommodated, taking into account resources available to the state and the needs of others receiving state-supported disability services;
- A person cannot be denied community services just to keep an institution at its full capacity; and,
- The ADA does not require that community-based services be imposed on people with disabilities who do not desire it.

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But the ADA is not Medicaid

The case was not about Medicaid but since Medicaid pays the bulk of long-term-care expenditures, it forced the states to alter their policies.

CMS now reviews state Medicaid programs with an eye to encouraging states to strengthen their community services.

The Frail Elder Waiver (FEW) is a Home and Community Based Waiver paid by Medicaid

Lois and Elaine's litigation was the catalyst for Home and Community Based Waivers

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Purpose

Many elders who are nursing facility eligible prefer to remain in their homes in the community when sufficient supports can be put into place to maintain them safely in this setting. The purpose of the Frail Elder Waiver is to make such supports available to frail elders, aged 60 and older who have been determined through an assessment process to meet a nursing facility level of care and require supports to reside successfully in the community. Included in this waiver are individuals with a variety of needs that can be met through supports that range from basic to intensive levels.

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Goal

The goals of the Frail Elder Waiver include: maintaining eligible elders in a home setting, avoiding, delaying or shortening nursing facility stays, meeting the wishes of elders who prefer to stay in their homes, and providing cost-effective, high-quality alternatives to support elders' home and community-based service needs

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Institutionalization Absent the Waiver

State must assure CMS that without the waiver, the individual would be institutionalized
Individual must be given the choice of either institutionalization or home and community-based waiver services, along with all the "feasible alternatives" under the waiver

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Fiscal Neutrality

The state must assure CMS that, for any year that the waiver is in effect, the average per capita expenditures under the waiver will not exceed 100 percent of the average per capita expenditures that would have been made under the Medicaid state plan for the level(s) of care specified for the waiver had the waiver not been granted

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Long-Term MH Financial Eligibility



\$2,000

Institutionalized Individual Resource Allowance



\$1,071,000

Home Equity Limit



\$154,140

Community Spouse Resource Allowance



\$72.80

Personal Needs Allowance (PNA)



\$433

Average Daily Cost of Nursing Facility



\$2,465.00/ 3,853.50

Minimum / Maximum Monthly Maintenance Needs Allowance

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Examples of Countable Assets

Checking accounts

Savings accounts

Retirement Accounts (most cases)

Life Insurance policy with cash value (total cash value of policies <\$1,500 are exempt)

Joint accounts

Money Market/CD Accounts

Cash

Real Estate (other than primary residence or equity over the threshold)

Investment accounts

Stocks/Bonds

Additional Vehicle*

Assets in Trust*

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Frail Elder Waiver Requirements

Must be age at least age 65 or age 60 and totally and permanently disabled
 Must meet the clinical requirement that the person would be in a nursing home but for the FEW services (Clinical Eligibility Review)
 Be able to live safely in the community with FEW services
 There is an income cap and asset cap. The income cap is 300% of the Federal Benefit Amount (FBR). The FBR for 2024 is \$943 for an individual which means that the FEW income cap is \$2,829.
 Income greater than \$2,829 will result in a recurring 6-month deductible
 Income of Healthy spouse is not counted but assets limited to \$2,000 and \$154,140 (2024) for MassHealth Standard in the community.

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Frail Elder Waiver Deductible Example

1. The deductible only applies to applicants when their individual income exceeds the \$2,829 FEW monthly income limit (2024).
2. Assume person applies with an income is \$3,150 (just them, not spouse).
3. That amount is greater than the \$2,829 income limit.
4. The Monthly Income Standard for a Community Spouse used to calculate the deductible is \$522 (2024).
5. The SSI income disregard is \$20 (SSI & Federal Medicaid Regs flow to MH).
6. The deductible would be $\$3,150 - (\$522 + \$20) = \$15,648$ deductible paid every 6 months.

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Equity Still Requires Litigation

Litigation was filed in October of 2022 against Massachusetts because Massachusetts did not provide supports to allow individuals with disabilities in nursing homes to leave the nursing homes and live in the community

That suit was settled on April 16th with Massachusetts agreeing to invest 1.1 billion in funds available through the American Rescue Plan Act to strengthen, enhance, and expand community-based services.

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Services Offered Through the Frail Elder Waiver

- Alzheimer's/Dementia Coaching
- Chore
- Companion
- Complex Care Training and Oversight (formerly Skilled Nursing)
- Enhanced Technology/Cellular Personal Emergency Response System (PERS)
- Environmental Accessibility Adaptation
- Evidence Based Education Programs

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Services Offered Through the Frail Elder Waiver

- Goal Engagement Program
- Grocery Shopping and Delivery
- Home Based Wandering Response Systems
- Home Delivered Meals
- Home Delivery of Pre-packaged Medication
- Home Health Aide
- Home Safety/Independence Evaluations (formerly Occupational Therapy)

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Services Offered Through the Frail Elder Waiver

- Homemaker
- Laundry
- Medication Dispensing System
- Orientation and Mobility Services
- Peer Support
- Personal Care
- Respite
- Supportive Day Program

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Services Offered Through the Frail Elder Waiver

- Supportive Home Care Aide
- Transitional Assistance
- Transportation

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FEW New for 2024

Two new services offered for 2024 per the Massachusetts section 1915(c) HCBS Waiver MA.0059.R08.00 Renewal Application filed 1/1/24

1. "Assisted Transportation"
2. "Assistive Technology-Electronic Comfort Animals"

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Exempt (non-countable) Assets

- personal belongings
- household furnishings
- an automobile
- Irrevocable burial contract (pre-need funeral arrangements – no limit) plus \$1,500 burial account
- term life insurance policies and employer policies with no cash value
- primary residence

- **Single applicant:** applicant must either live in the house or have "intent" to live in it, and home equity interest must be no greater than \$1,071,000 (2024). Applicant isn't forced to sell. HOWEVER, applicant's income cannot pay for expenses, and if house remains in applicant's name MassHealth can place a lien on the property for the value of benefits provided. House is entirely exempt if a child under 21, or who is blind or disabled, lives in the home.

- **Married applicant with healthy spouse living at home (Community Spouse):** the home is exempt, regardless of where the applicant resides, if a non-applicant spouse resides there. HOWEVER, applicant's income cannot pay for expenses (some exceptions), and if house remains in applicant's name MassHealth can place a lien on the property for the value of benefits provided.

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The Look-Back Period

- When reviewing an applicant's eligibility, MassHealth is allowed to **look back** at every financial statement, analyzing every financial transaction for each of the countable assets, going back **five years from the requested eligibility date**.
- This includes any asset that was open during this period, even if it was subsequently closed.
 - Ex) If applicant's requested eligibility date is May 1, 2024, MassHealth may request statements for every asset open between May 1, 2019 to the present date.
- MassHealth analyzes the statements for any disqualifying transfers.
 - MassHealth defines disqualifying transfer as "any transfer of an asset for less than fair-market value."
 - Ex) Gifts (transfer for less than fair-market value)
 - Ex) Tax Planning
 - Ex) Sale of a car or real estate for less than fair market value

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Avoiding the Spend-Down

Specialized trust (in flux)	Asset to income stream	Pre-paid irrevocable funeral contract
\$1,500 burial account	Exempt transfers	Home repairs
Allowable medical expenses	Mortgage payments	

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Exempt Transfers

- Between Spouses
- Disabled Child
- Dependent
- Joint Stocks
- Complex plans/arguments for successful fair hearing outcome

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Major Money Mistake\$

- Spending Down
- Giving away money to qualify for MassHealth (in any amount)
- “Hiding” money from MassHealth
- Beware annuities – if done incorrectly, will be a disaster
- Using “Medicaid Services” companies
 - They do the easy part – filling out the application. No skill required.
 - They share confidential information with the nursing home.
 - They “really work” for the nursing home even though paid by the individual.
 - “Cheap” but they push for spending down and get paid even if application denied, then no \$ to fix can cost families everything.
 - Qualifying for benefits and protecting assets requires legal skill/knowledge!

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