

# THE ELDER LAW ATTORNEY

An Advocate to Help Seniors, People with Special Needs, and their Families

Massachusetts Chapter  
National Academy of Elder Law Attorneys, Inc.

**MassNAELA**



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Elder Law Attorneys, Inc.

## WHAT IS ELDER LAW?

Elder law attorneys concentrate on issues that concern seniors, individuals with special needs, and their families. Elder law attorneys can:

- Prepare wills, trusts, powers of attorney, health care proxies, homestead declarations and other estate and healthcare planning documents.
- Assist in obtaining substitute authority for incapacitated persons via guardianship or conservatorship and advise guardians and conservators.
- Assist families in administering estates.
- Advise on buying long term care and supplemental health insurance, and evaluate proposed policies.
- Advise about Social Security, Social Security disability, and other public and private retirement benefits.
- Assist in applying for Community and Long-Term Care Medicaid (Masshealth in Massachusetts), Medicare, and other government programs.
- Provide special needs planning and advocacy to help families maximize the potential and quality of life of their loved ones with special needs.
- Make sure nursing home residents' rights are respected and respond to quality of care complaints.
- Represent clients in disputes involving nursing homes, assisted and independent living facilities, Social Security, Medicare, Medicaid, or managed care.
- Help address instances of elder abuse or exploitation.
- Assist in applying for Veteran's Benefits.

Attorneys who work primarily with seniors and individuals with special needs work with other professionals such as accountants, financial planners and geriatric care managers to address their clients' complex legal issues in a comprehensive way.

## IS THERE A PLAN?

- Do you have a relative who is receiving care in a nursing home?
- Has your parent just been diagnosed with Alzheimer's or Parkinson's disease, or another chronic condition?
- Is your spouse or parent recovering from a stroke?

The potential need for long-term care in a nursing home can cause stress and anxiety for seniors and their families. In Massachusetts, nursing home care can cost between \$100,000 - \$150,000 per year.

While Medicare and supplemental health insurance plans may cover most of the medical expenses of an acute illness, they provide little or no coverage for nursing home care. Unless long-term care insurance was previously purchased, the only program available to assist in financing nursing home care is Medicaid (known as MassHealth in Massachusetts). Medicaid is a joint federal-state public benefits program which has a complex set of eligibility rules.

### BE PREPARED!

*Find out what you need to know and what steps to take before a crisis arises.*

## WHAT ARE THE MASSHEALTH ELIGIBILITY RULES ?

- Will we have to sell our home?
- Will my parents be eligible for MassHealth if they have \$100,000 in the bank?
- What will happen to the vacation property?
- When should the MassHealth application be filed?

### Asset Limits

To qualify for MassHealth coverage of nursing home care, an individual cannot own more than \$2,000 in "countable assets". Ordinarily, marital assets cannot exceed \$128,420\*. It may be possible to retain substantial assets and still qualify for MassHealth! The home does not have to be sold to qualify for MassHealth. It is a "non-countable asset" as long as the MassHealth application is completed correctly.

\*2019 adjusted annually.

### Treatment of Income

Once qualified for MassHealth, the nursing home resident must use his or her income, after certain deductions, to pay for the nursing home. MassHealth pays the rest. The spouse at home does not have to pay any of his or her income to the nursing home. Sometimes, income of the nursing home resident can be kept for the spouse at home.

*For every rule, there is an exception. You may be one of the exceptions. An experienced elder law attorney can assess your potential eligibility for MassHealth.*

## HAVE YOU MADE GIFTS WITHIN THE PAST 60 MONTHS?

MassHealth reviews all financial records for the 60 months prior to application. The purpose of this “look-back” period is to find any transfers which might disqualify the applicant from receiving benefits. A transfer is disqualifying if during this period the applicant or spouse transferred a countable asset, or the principal residence, for less than fair market value. Disqualifying transfers, even small gifts, can result in a period of ineligibility for MassHealth even when all other assets have been spent down. Gifting is sometimes still a good strategy if done early enough, but should only be undertaken with the advice and assistance of an elder law attorney.

Are your circumstances special?

Do you have assets over \$2,000 for an individual or \$128,420\* for a married couple?

Do you own your home or other real estate?

Do you have a trust?

Do you have a son or daughter with a disability?

Is your son or daughter living in your home and taking care of you?

Then you have a lot to gain from consulting a knowledgeable elder law attorney to advise you about your legal rights in these special situations and develop a plan to protect you and your family.

\*2019 adjusted annually

## ARE YOU FILING FOR MASSHEALTH BEFORE DETERMINING YOUR LEGAL RIGHTS?

The MassHealth application process can be lengthy and cumbersome. As a result, some nursing homes contract with private companies to prepare MassHealth applications for residents.

While MassHealth application companies typically charge a low fee, it is highly recommended that the MassHealth applicant or his/her family hire *independent* legal representation.

Non-attorney MassHealth application preparers are frequently referred by nursing homes for the sole purpose of filing MassHealth applications. These companies are unable to provide legal advice and merely assist with the preparation and filing of applications. It is important to understand that *significant* financial loss can result from an application that is filed sooner than appropriate.

An elder law attorney, however, will assess each applicant's individual situation *prior* to filing an application, and provide legal advice and guidance on all planning options available to provide for their future financial security and quality of care. With an elder law attorney, your relationship is protected by attorney-client privilege and by the attorney's professional duties of client confidentiality and loyalty; in contrast, non-attorney preparers may share private financial information with the nursing home and others.

## HOW CAN I FIND AN ELDER LAW ATTORNEY?

Most elder law attorneys are members of the National Academy of Elder Law Attorneys (NAELA), a non-profit association of attorneys specializing in legal issues affecting seniors and individuals with special needs. The Massachusetts Chapter of NAELA is one of the most active chapters nationally, with approximately 500 member attorneys.

To find a Massachusetts elder law attorney near you, visit our website at [www.massnaela.com](http://www.massnaela.com).

or

Visit the NAELA website at [www.naela.org](http://www.naela.org) for a listing of all NAELA members.

*This informational brochure is provided as a public service and is not intended to provide legal advice. For information as to how the laws apply to your specific situation, consult an elder law attorney.*