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# Medicaid Planning Basics

## Medicaid Planning Basics

Unfortunately, many nursing home residents end up exhausting their assets on long-term care. But it doesn't have to be that way. The best time to plan for the possibility of nursing home care is when you're still healthy. By doing so, you may be able to pay for your long-term care and protect assets for your loved ones. How? Through Medicaid planning. You worked hard all of your life to pay off your mortgage and build a retirement fund. You expected to live off your savings in the comfort of your own home, and you planned to leave something to your kids at the appropriate time. Suddenly, the unthinkable happens--you suffer a stroke at age 70 and must spend the rest of your years in a nursing home. What will happen to your life savings?

### Eligibility for Medicaid depends on your state's asset and income-level requirements

Medicaid is a joint federal-state program that provides medical assistance to various low-income individuals, including those who are aged (i.e., 65 or older), disabled, or blind. It is the single largest payer of nursing home bills in America and is the last resort for people who have no other way to finance their long-term care. Although Medicaid eligibility rules vary from state to state, federal minimum standards and guidelines must be observed.

In addition to you meeting your state's medical and functional criteria for nursing home care, your assets and monthly income must each fall below certain levels if you are to qualify for Medicaid. However, several assets (which may include your family home) and a certain amount of income may be exempt or not counted.

### Medicaid planning can help you meet your state's requirements

To determine whether you qualify for Medicaid, your state may count only the income and assets that are legally available to you for paying bills. Medicaid planning helps you devise ways of making your assets and income inaccessible. Over the years, attorneys have developed several strategies to rearrange finances and legally shelter assets from the state. These strategies--and the Medicaid rules themselves--can be complicated, especially since the passage of the Deficit Reduction Act of 2005, which significantly tightened restrictions on Medicaid planning. You should consult an experienced elder law attorney if you wish to take steps to protect your assets from the state.

Along with qualifying you for Medicaid benefits, Medicaid planning seeks to accomplish the following goals:

- Sheltering your countable assets
- Preserving assets for your loved ones
- Providing for your healthy spouse (if you're married)

Let's look at these in turn.

### One way to shelter countable assets is to exchange them for exempt assets

Countable assets are those that are not exempt by state law or otherwise made inaccessible to the state for Medicaid purposes. The total value of your countable assets (together with your countable income) will determine your eligibility for Medicaid. Under federal guidelines, each state compiles a list of exempt assets. Usually, this list includes such items as the family home (regardless of value), prepaid burial plots and contracts, one automobile, and term life insurance.

Through Medicaid planning, you can rearrange your finances so that countable assets are exchanged for exempt assets or otherwise made inaccessible to the state. For example, instead of spending your savings solely on

nursing home bills, you can pay off the mortgage on your family home, make home improvements and repairs, pay off your debts, purchase a car for your healthy spouse, and prepay burial expenses.

There are many other ways to shelter countable assets. Consult an experienced attorney for more information.

## **Irrevocable trusts can help you leave something for your loved ones**

Why not simply liquidate all of your assets to pay for your nursing home care? After all, Medicaid will eventually kick in (in most states) once you've exhausted your personal resources. The reason is simple: You want to assist your loved ones financially. You want to be able to leave something to them, rather than to strangers.

There are many ways to protect assets for your loved ones. One way is to use an irrevocable trust. (It's irrevocable in the sense that you can't later change its terms or decide to end it.) Property placed in an irrevocable trust will be excluded from your financial picture, for Medicaid purposes. If you name a proper beneficiary, the principal that you deposit into the trust (and possibly any income generated) will be sheltered from the state and can be preserved for your heirs. Typically, though, the trust must be in place and funded for a specific period of time for this strategy to be an effective Medicaid planning tool.

For information about Medicaid planning trusts, consult an experienced attorney.

## **If you're married, an annuity can help you provide for your healthy spouse**

Nursing homes are expensive. If you must go to one, will your spouse have enough money to live on? With a little planning, the answer is yes. Here's how Medicaid affects a married couple. A couple's assets are pooled together when the state is considering the eligibility of one spouse for Medicaid. The healthy spouse is entitled to keep a spousal resource allowance that generally amounts to one-half of the assets. This may not amount to much money over the long term.

A healthy spouse may want to use jointly owned, countable assets to buy a single premium immediate annuity to benefit himself or herself. Converting countable assets into an income stream is a plus because each spouse is entitled to keep all of his or her own income, in contrast to the pooling of assets. By purchasing an immediate annuity in this manner, the institutionalized spouse can more easily qualify for Medicaid, and the healthy spouse can enjoy a higher standard of living.

Be aware, however, that for annuities purchased on February 8, 2006 and thereafter (the date of enactment of the Deficit Reduction Act of 2005), the state must be named as the remainder beneficiary of the annuity after your spouse or a minor or disabled child.

## **Beware of certain Medicaid planning risks**

Medicaid planning is not without certain risks and drawbacks. In particular, you should be aware of look-back periods, possible disqualification for Medicaid, and estate recoveries.

When you apply for Medicaid, the state has the right to review, or look back, at your finances (and those of your spouse) for a period of months before the date you applied for assistance. In general, a 60-month look-back period exists for transfers of countable assets for less than fair market value (for transfers made prior to February 8, 2006, there's a look-back period of 60 months for transfers into an irrevocable trust and a look-back period of 36 months for all other transfers). Transfers of countable assets for less than fair market value made during the look-back period will usually result in a waiting period before you can start to collect Medicaid. So, for example, if you give your house to your kids the year before you enter a nursing home, you'll be ineligible for Medicaid for quite some time. (A mathematical formula is used.)

**Note:** Some states must amend their laws to implement the changes to Medicaid under the Deficit Reduction Act of 2005. In these states, the date the new rules will go into effect may be different than the federal enactment date of February 8, 2006. Ask an elder law attorney in your state for more information.

Also, you should know that Medicaid planning is more effective in some states than in others. In addition, federal law encourages states to seek reimbursement from Medicaid recipients for Medicaid payments made on their behalf. This means that your state may be able to place a lien on your property while you are alive, or seek reimbursement from your estate after you die.



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