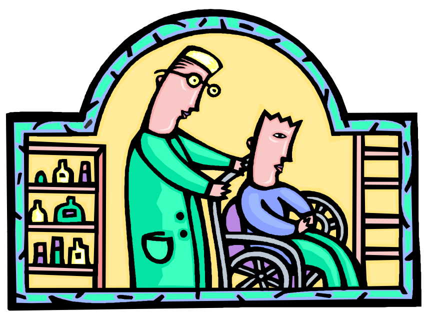
# Do You Qualify for Financial Assistance

# For Nursing Home Care?



## A Consumer's Guide to

## Medicaid Planning and Division of Assets

## Introduction

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make.

Perhaps the move is being made because the family member can no longer care for him or her self, has a progressive disease like Alzheimer's, or has had a stroke or heart attack.

No matter the reason, those involved are almost always under great stress.

At times like these, it's important that you pause, take a deep breath and understand that there are things you can do. Good information is available and you can make the right choices for you and your loved one.

This Consumer's Guide to Medicaid Planning and Division of Assets is designed to provide you with information and answers to some of the questions you will encounter. These are questions we, as Elder Law attorneys, deal with on a daily basis.

Our clients have found this guide to be a valuable resource, and we hope you will find it useful too.

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**A**mericans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years (can you imagine?). Now, as we enter the 21st century, life expectancy has almost doubled that figure. As a result, we face more challenges and transitions in our lives than those who came before us.

One of the most difficult transitions people face, as they get older, is the change from independent living in their own home or apartment to living in a long-term-care facility, or "nursing home." There are many reasons why this transition is so difficult. One is the loss of their home...a home where the person lived for many years...with a lifetime of memories. Another is the loss of independence. Still another is the loss of the level of privacy we enjoy at home, since nursing home living is often shared with a roommate.

Most people who make the decision to move to a nursing home do so during a time of great stress. Some have been hospitalized after a stroke, some have fallen and broken a hip, and still others have progressive dementia like Alzheimer's disease and can no longer be cared for in their own homes.

Whatever the reason, the spouse or relative helps a person transition into a nursing home faces the immediate dilemma of how to find the right nursing home. The task is no small one, and a huge sigh of relief can be heard when the right nursing home is found and the loved one is moved into the nursing home. However, for many, the most difficult task is just beginning, because the real challenge then becomes how to cope with nursing home bills that may total $8,500 to $10,000 per month or more?

**TOP FIVE COSTLIEST/CHEAPEST STATES FOR ELDERLY CARE**

THE RISING COST OF NURSING HOME/ ASSISTED LIVING CARE

Top five states for nursing home care per day:

| Most Expensive | | Least Expensive | |
|---|---|---|---|
| 1. Alaska | $687 | 1. Louisiana | $141 |
| 2. Connecticut | $376 | 2. Minnesota | $154 |
| 3. Hawaii | $364 | 3. Arkansas | $155 |
| 4. New York | $350 | 4. Missouri | $157 |
| 5. Massachusetts | $329 | 5. Kansas | $158 |

Top five states for assisted living costs per month:

| Most Expensive | | Least Expensive | |
|---|---|---|---|
| 1. Washington, D.C. | $5,231 | 1. Arkansas | $2,170 |
| 2. Vermont | $4,627 | 2. North Dakota | $2,408 |
| 3. Connecticut | $4,622 | 3. Mississippi | $2,466 |
| 4. Delaware | $4,608 | 4. Louisiana | $2,512 |
| 5. Maine | $4,575 | 5. Oklahoma | $2,628 |

Source: *Metlife's Mature Market Institute*

**Massachusetts is among the most expensive states in the country for long-term care.**

## How to pay For Nursing Home Care

One of the things that concern people most about nursing home care is how to pay for that care. There are basically, four ways that you can pay the cost of a nursing home:

1. *Long-Term-Care Insurance* - If you are fortunate enough to have this type of coverage, it may go a long way towards helping to pay the cost of the nursing home care. Unfortunately, long-term-care insurance has only started to become popular in the last few years and most people facing a nursing home stay do not have this kind of coverage. Plus, by the time many people consider purchasing long-term-care insurance,

they are not physically or medically able to qualify for the coverage. But, if they do qualify, they may not be able to afford the premiums.

2. *Pay with Your Own Funds* - This is the method many people are required to use at first, after any coverage provided by Medicare. Quite simply it means paying for the cost of nursing home care out of your own pocket. Unfortunately, with nursing home bills averaging between $8,500 and $10,000 per month, <u>few people can afford a long-term stay in a nursing home.</u>

3. *Medicare* - This is the federal health insurance program primarily for people 65-years of age and older, certain younger disabled people, and people with end-stage kidney failure. Medicare provides short-term assistance with nursing home costs, but only if you meet the strict qualification rules.

4. *Medicaid* - This is a federal and state funded medical benefit program administered by the states, which will pay for the cost of long-term-care in a nursing home if certain asset and income tests are met.

Since the first two methods, private pay (i.e. using your own funds) and long-term-care insurance, are self-explanatory, our discussion will concentrate on Medicare and Medicaid.

## What About Medicare?


There is a great deal of confusion about ***Medicare*** and ***Medicaid.***

Medi<u>care</u> is the federally funded and state administered health insurance program primarily designed for older individuals (i.e. those over age 65). There are some limited long-term-care benefits that can be available under Medicare. In general, if you are enrolled in the traditional Medicare plan and you've had a hospital stay of at least three days before being admitted to a nursing home, (often for rehabilitation or skilled nursing care) Medicare may pay for a portion of your stay.

If you qualify, traditional Medicare may pay the full cost of the nursing home stay for the first 20 days; and can continue to pay the cost of the nursing home stay for the next 80 days, but with a co-payment amount of $144.50 per day (2012). Some Medicare supplemental insurance policies will pay the cost of that deductible. For Medicare Managed Care Plan enrollees, there is no deductible for days 21 through 100, as long as the strict qualifying rules continue to be met.

So, in the **best-case** scenario, the traditional Medicare or the Medicare Managed Care Plain may pay up to 100 days for each "spell of illness." In order to qualify for these I00 days of coverage, however, the nursing home resident must be receiving daily "skilled care" and generally must continue to "improve." (Note: Once the Medicare and Managed Care beneficiary has not received a Medicare covered level of care for 60 consecutive days, the beneficiary may again be eligible for the 100 days of skilled nursing coverage for the next spell of illness.)

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience, it usually falls far short of the 100 day maximum. Even if, Medicare does cover the 100-day period, what then? What happens after the 100 days of coverage have been used?

At that point, you're back to one of the other alternatives...long term care insurance, paying the bills with your own assets, or qualifying for Medicaid.

## What is Medicaid?

Medicaid is a Welfare benefits program that is funded primarily by the federal government and administered by each state. Sometimes the rules will vary from state to state, based on the State's interpretation of the Federal Laws, or the latitude permitted to the states within the laws.

One primary benefit of Medicaid, unlike Medicare (which only pays for skilled nursing), is that the Medicaid program will pay for long-term-care in a nursing home once you've qualified. Medicare does not pay for treatment for all diseases or conditions. For example, a long-term stay in a nursing home might be required by the resident's Alzheimer's or Parkinson's disease, and even though the patient receives medical care, the treatment will not be paid for by Medicare. These stays are called "custodial" nursing stays. Medicare does not pay for custodial nursing home stays. In that instance, you'll either have to pay privately (i.e. use long-term-care insurance or your own funds), or you'll have to qualify for Medicaid.

## Why Seek Advice for Medicaid?

As life expectancies and long-term-care costs continue to rise, the challenge quickly becomes how to pay for these services. Most people cannot afford to pay $9,500 per month or more for the cost of a nursing home care, and those who can, may find their life savings wiped out in a matter of months.

Fortunately, the Medicaid Program is there to help. In fact, in our lifetime, Medicaid has become the long-term-care insurance program of the middle class. But the eligibility to receive Medicaid benefits requires that you pass certain "means" tests on the amount of income and assets that you have. The reason for Medicaid planning is simple. ***First,*** you need to provide enough assets for the security of your loved ones -- they too may have a similar crisis in the future. ***Second***, the rules are extremely complicated, confusing and change routinely with the change of administrations (both state and federal). The result is that without planning and advice, many people spend more than they should, thereby jeopardizing their family's security!

## Exempt Assets and Countable Assets: What Must Be Spent?

To qualify for Medicaid, applicants must pass some fairly strict tests on the amount of assets they can keep. To understand how Medicaid works, we first need to review what are known as exempt and non-exempt (or countable) assets. Exempt assets are those that Medicaid will not take into account (at least for the time being). In general, the following are the primary exempt assets:


⇒ Home, as long as the equity in the house does not exceed $750,000. The home must be your principal place of residence. The nursing, home resident may be required to show some "intent to return home" even if this never actually takes place.

⇒ Personal belongings and household goods.

⇒ One vehicle.

⇒ Income producing property.

⇒ Burial plot and certain related items for applicant and spouse.

⇒ Up to $1,500 designated as a burial fund for applicant and spouse.

⇒ Irrevocable prepaid funeral contract.

- ⇒ Value of life insurance….**if** the face value of all policies is less than $1,500.00. If total face amount exceeds $1,500.00, then the cash value of all policies is countable.

All other assets are generally non-exempt, i.e., they are countable. Basically, all money and property and any item that can be valued and turned into cash, is a countable asset unless it is one of those assets listed above as exempt.

Countable Assets include:

- ⇒ Cash, savings accounts, checking accounts, credit union and draft accounts.
- ⇒ Certificates of deposit.
- ⇒ U. S. Savings Bonds.
- ⇒ Individual Retirement Accounts (IRA), Keogh plans (401K, 403B).
- ⇒ Nursing home accounts.
- ⇒ Any contract that can be canceled.
- ⇒ Revocable Trusts (and some Irrevocable Trusts, depending on the trust terms)
- ⇒ Real estate (other than the residence).
- ⇒ More than one car.
- ⇒ Boats or recreational vehicles.
- ⇒ Stocks, bonds, or mutual funds.
- ⇒ Land contracts or mortgages held on real estate sold.

While the Medicaid rules themselves are complicated and tricky, it's safe to say that a single person will qualify for Medicaid as long as he/she has only exempt assets plus a small amount of cash and/or money in the bank, up to the maximum of $2,000.00

## Some Common Questions

### *I've added my kids' names to our bank account. Do they still count?*

Yes! The entire amount is counted unless you can prove that the other person who is on the account contributed some, or all, of the money in the account. This rule applies to cash assets such as:

- ⇒ Savings and checking accounts
- ⇒ Credit union share and draft accounts
- ⇒ Certificates of deposit
- ⇒ U.S. Savings Bonds

### *Can't I just Give My Assets Away?*

Many people wonder, can't I give my assets away? The answer is, maybe, but only if it's done just right. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In Massachusetts, for example, for every $279.00 given away anytime during the five years prior to the date you submit a Medicaid application creates a one (1) day period of ineligibility. So even though the IRS federal gift tax laws allow you to give away up to $13,000 per person per year **without gift tax** consequences, each $13,000.00 gift could result in a 47 day period of ineligibility for Medicaid benefits.

Though some individuals do spend virtually all of their savings on nursing home care, Medicaid often does not require it when there is a spouse who is living in the community. There are a number of strategies that can be used to protect a family's financial security.

### *Will I Lose My Home?*

Many people who apply for medical assistance benefits to pay for nursing home care ask this question. For many, the home constitutes much or most of their life savings. Often, it's the only asset that a person has to pass on to his or her children.

Under the Medicaid regulations, the home is an unavailable asset. This means that it is not taken into account when calculating eligibility for Medicaid. But in 1993, Congress passed a little-debated law that affects hundreds of thousands of families with a spouse or elderly parent in a nursing home. That law requires states to try to recover the value of Medicaid payments made to nursing home residents.

Estate recovery does not take place until the recipient of the benefits dies. Then, federal law requires that states attempt to recover the benefits paid from the recipient's probate estate. Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation. Some believe the federal law permits states to go even further and recover from non-probate assets, including assets owned jointly or payable to a beneficiary.

About two-thirds of the nation's nursing home residents have their costs paid in part by Medicaid. Obviously, the Estate Recovery law affects many families. The asset most frequently caught in the Estate Recovery web is the home of the Medicaid recipient. A nursing home resident can own a home and receive Medicaid benefits without having to sell the home. But upon death, if the home is part of the probate estate, the state may seek to obtain reimbursement for the payments that were made by the state for the Medicaid recipient.

Since Medicaid rules are constantly changing, you will need assistance from someone knowledgeable about these rules.

# DIVISION OF ASSETS:

## Medicaid Planning for Married People

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988. It applies only to couples. The intent of the law was to change the eligibility requirements for Medicaid where one spouse needs nursing home care while the other spouse remains in the community, i.e., at home. The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets, the couple gathers all their countable assets together in a review. Exempt assets, discussed above, are not counted.

The countable assets are then divided in two, with the at-home or "community spouse" allowed to keep a maximum of $13,640.00. Any amount over the $13,640.00 must be "spent down" until less than $2,000 remains in countable assets in the institutionalized (nursing home) spouse's name. The amount of the countable assets, which the at-home spouse gets to keep, is called the Community Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance (MMMNA). This permits the community spouse to keep a minimum monthly income ranging from about $1,839.00 to $2,739.00. These amounts are indexed and change each year.

If the community spouse does not have at least $1,839.00 in income, then he or she is allowed to take a portion or all of the income of the nursing home spouse in an amount large enough to reach the MMMNA (i.e., up to at least $1,839.00). The nursing home spouse's remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment.

To illustrate, assume the at-home spouse receives $700 per month in Social

Security and the institutionalized spouse receives $1700 per month from Social Security. Also, assume that her needs are calculated to be the minimum of $1,839.00. With her Social Security, she is $1,139.00 short each month.

| | |
|---|---|
| $1,839 | at-home spouse's monthly needs (as determined by formula) |
| 700 | at-home spouse's Social Security |
| $1,139 | shortfall |

In this case, the community spouse will be allowed to keep $1,139 of the institutionalized spouse's social security benefits each month to ensure he/she has the minimum monthly income of $1,830.00. The rest of the nursing home spouse's income ($561.00) will then go to the nursing home to partially pay for the cost of his/her care. The nursing home will bill MassHealth directly for the balance of the cost of the institutionalized spouse's care.

This does not mean, however, that there are no planning alternatives that the couple can pursue. Consider the following case studies:

## CASE STUDY:

## Medicaid Planning for a Married Couple

Ralph and Alice were high school sweethearts who lived in Yarmouth, Massachusetts, their entire adult lives. Two weeks ago, Ralph and Alice celebrated their 5lst anniversary. Yesterday, Ralph, who has Alzheimer's, wandered away from home. The police found him, hours later, sitting on a street curb talking incoherently. They took him to the hospital. Now the family doctor has told Alice that she needs to place Ralph in a nursing home. Ralph and Alice grew up during the Depression. They always tried to save something, each month. Their assets, totaling $200,000 (not including their house), are as follows:

| | |
|---|---|
| Savings account | $95,000 |
| CDs | 165,000 |
| Money Market account | 27,000 |
| Checking account | 13,000 |
| Residence (no mortgage) | 280,000 |

Ralph gets a Social Security check for $1,200 each month; Alice's check is $300. Her eyes fill with tears as she says, "At $9,500 to the nursing home each month, our entire life savings will be gone in less than three years!" What's more, she's afraid she won't be able to pay her monthly bills because a neighbor told her that the nursing home will be entitled to all of Ralph's Social Security check.

There is good news for Alice. It's possible she will get to keep everything... all of their assets and all of the income ... and still have the state Medicaid program pay Ralph's nursing home costs. The process may take a little while, but the end result will be worth it.

To apply for Medicaid, she will have to go through the Division of Medical Assistance (DMA) called MassHealth here in Massachusetts. If she does things strictly according to the way MassHealth tells her, she will only be able to keep about $113,640 plus she will be entitled to a minimum monthly income to pay her expenses. But the results can actually, be much better than that.

Massachusetts's law allows her to seek an increase in her income allowance. Based on her current income of $300, she will be able to keep all of her husband's social security of $1,200. That means that she would still be $339 short of the permissible minimum monthly needs allowance of $1,650. However, Alice must proceed properly and if so, she may be entitled to keep their entire savings, and Medicaid will pay for Ralph's nursing home.

The challenge, however, is ensuring that the application is submitted properly and that any purchase of any financial products be coordinated with the application process. A transfer of assets between spouses is not considered a disqualifying transfer. Therefore, once we determine the amount of "excess assets" (that amount over the $113,640) the excess amount can be used to purchase an immediate annuity in the name of the community spouse with a monthly benefit that will raise the income of the community spouse.

This approach converts a countable asset to a "stream of income" for the benefit of the community spouse, which does not count against the institutionalized spouse for the purpose of qualifying for Medicaid benefits.

This is possible because the law does not intend to impoverish one spouse because the other needs care in a nursing home. This is certainly an example where knowledge of the rules, and how to apply them, can be used to resolve Alice's dilemma.

Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the current state law. For example, some children never gain independence -- they remain dependent on their parents.

What can be done in such a case?

## CASE STUDY:

## A Trust for a Disabled Child

Margaret and Sam have always taken care of their daughter, Elizabeth. She is 45, has never worked, and has never left home. She is "developmentally disabled" and receives SSI (Supplemental Security Income). They have always worried about who would take care of her after they die. Some years ago, Sam was diagnosed with dementia. His health has deteriorated to the point that Margaret can no longer take care of him. Now she has placed Sam in a nursing home and is paying $9,450 per month out of savings. Margaret is even more worried that there will not be any money left for the care of Elizabeth.

Margaret is satisfied with the nursing home Sam is in. The facility has a Medicaid bed available that Sam could have if he were eligible. Medicaid would pay his bill. However, according to the information she got from the social worker. Sam is $88,000 away from Medicaid eligibility. Margaret wishes there was a way to save the $88,000 for Elizabeth after she and Sam are gone. There is.

Margaret can consult an Elder Law attorney to set up a "special needs trust" with the $88,000 to provide for Elizabeth. As soon as she does, Sam will be eligible for Medicaid. Elizabeth won't lose her benefits, and her security is assured. However, any trust must be reviewed for compliance with Medicaid rules.

## CASE STUDY:

## Financial Gifts to Children

After her 73 year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter, Joan, need advice. Dark circles have formed under Mildred's eyes. Her hair is disheveled and Joan holds her hand, trying to console her grief.

"The doctor says Harold needs long-term care in a nursing home," Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about

Medicaid benefits for nursing, homes, but doesn't want her mother left destitute in order for Harold to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve her mother's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away $13,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused federal Gift Tax law with the issue of transfers and Medicaid eligibility. A "gift" to a child in this case is actually a transfer, and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, the state will "look back" five years to see if any gifts have been made. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or transfers for less than fair market value that are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

For example, each $13,000 gift made during the five years prior to a Medicaid application creates a Forty-Seven (47) day period of ineligibility in Massachusetts.

So, what can Harold and Mildred do? They can institute a plan, save a good portion of their estate, and still qualify for Medicaid. The plan may involve transfers of money for value received, such as a personal care contract, or it may involve a purchase of an annuity. However, the annuity must not violate the federal law or the Medicaid rules.

But remember, when it's given away, it's given away. Studies have shown that "windfall" money received by gift, prize, or lawsuit settlement is often gone within three years. In other words, even when the children promise that money (or family home) will be available when needed...their own "emergencies" may make them spend the money. You must consult a knowledgeable advisor on how to set up a plan that complies with the law and achieves your goals.

## Legal Assistance


Aging persons and their family members face many unique legal issues. As you can tell from our discussion of the Medicaid program, the legal, financial, and care planning issues facing the prospective nursing home resident and family can be particularly complex. If you or a family member needs nursing home care, it is clear that you need expert legal help. Where can you turn for that help? It is difficult for the consumer to be able to identify lawyers who have the training and experience required to provide expert guidance during this most difficult time.

Generally, nursing home planning and Medicaid planning under MassHealth are specialized services provided by certain Elder Law attorneys. Consumers must be cautious in choosing a lawyer and carefully investigate the lawyer's credentials.

How do you find a law office that has the knowledge and experience you need? You may want to start with recommendations from friends who have received professional help with nursing home issues. Who did they use? Were they satisfied with the services they received? Hospital social workers, Alzheimer's and other support groups, accountants, and other financial professionals can also be good sources of recommendations.

In general, a lawyer who devotes a substantial part of his or her practice to Elder Law and nursing home planning should have more knowledge and experience to address the issues properly. Don't hesitate to ask the lawyer what percentage of his practice involves nursing home planning.

Ask whether the lawyer is a member of any Elder Law planning organization? The leading national organization of Elder Law attorneys is the National Academy of Elder Law Attorneys (NAELA), 1577 Spring Hill Rd., Suite 220, Vienna, VA 22182. While mere membership in the Academy is open to any lawyer and is no sure sign that the attorney is an experienced Elder Law practitioner, membership does at least show that the lawyer has some interest in the field. In addition, the Academy runs educational programs across the country throughout the year to help lawyers stay current on the latest aspects of elder law and nursing home planning. Attending these sessions takes time and commitment on the part of the lawyer and is a good sign that the lawyer is attempting to stay up to date on nursing home issues. You may want to look for an attorney who is a member of NAELA and has recently attended one or more of its educational sessions.

In the end, follow your instincts and choose an attorney who knows this area of the law, who is committed to helping others, and who will listen to you and the unique wants and needs of you and your family.

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