financial assistance for long term care

A Consumer's Guide to Medicaid Planning

Introduction

The decision to move a family member or loved one into an assisted living or long-term care facility 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 himself or herself…or 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 is designed to help provide you with information and answers to some of the questions you will encounter. These are questions which 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.

let's get started

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. Now, it is around 84 years of age. 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 is the change from independent living in their own home or apartment to living in an assisted living facility or in a long-term care facility (often referred to as a nursing home). There are many reasons why this transition is so difficult. One is the loss of 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 at an assisted living facility, community-based living is the norm, and often there is shared living with a roommate in a nursing home.

Most people who make the decision to move to an assisted living or long-term care facility 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 safely cared for in their own homes.

Whatever the reason, the spouse or relative who helps a person transition into an assisted living or long-term care facility during a time of stress faces the immediate dilemma of how to find the right facility. The task is no small one, and a huge sigh of relief can be heard when the right home is found, and the loved one is moved into the assisted living or long-term care facility. For many, the most difficult task is just beginning: *How to cope with an assisted living bill that may be $5,500 or more per month or a long-term care bill that may total $6,000 to $9,000 per month or more?*

how to pay for long-term care expenses ———

whether you reside at home, in an assisted living facility, or in a long-term care facility, (i.e. a nursing home).

Long-term care is needed when you are limited in your ability to carry out basic self-care tasks, called activities of daily living (ADLs). ADLs are bathing, dressing, transferring, toileting, eating, continence, and taking medications. You may also need help with household chores, meal preparation, and bill paying. Long-term care is commonly referred to as custodial care, and the goal of long-term care is to help you attain the best quality of life of which you are able.

One of the things that concerns people most about long-term care is how to pay for the care. There are basically four ways that you can pay for long-term care expenses:

…1 Pay with Your Own Funds

This is the method many people are required to use at first. Quite simply, it means paying for the cost of your care out of your own pocket. Unfortunately, with nursing home bills averaging between $6,000 and $9,000 per month in our area, few people can afford a extended stay in a nursing home.

…2 Traditional Long-Term Care Insurance

If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of your long-term care expenses in an assisted living facility or a nursing home. And if you have purchased a long-term care insurance policy on or after July 1, 2006 that meets certain qualifications and is considered a "partnership" policy, you may be able to protect more of your assets when applying for Medical Assistance or later on in estate recovery. While there are now incentives to purchase long-term care insurance, the reality is that most people needing custodial care do not have this coverage. Additionally, in the last few years, traditional long-term care insurance has fallen out of favor due to its expense, significant premium increases, and the "use it or lose it" nature of the coverage.

. . .3 Financial Products with Long-Term Care Riders (Combination Products).

Since the enactment of the Pension Protection Act of 2006, there are now combination insurance products that may help you finance your long-term care. Combination products are life insurance or annuity products which will pay the insured a lifetime benefit for long-term care expenses, with a corresponding decrease in the policy death benefit or account value. Any remaining death benefit or account value is paid to the policy beneficiary at the insured's death.

Features of combination products:

- Benefit flexibility. Products pay a lifetime long-term care benefit to the insured if needed. The remaining death benefit or contract value is paid to the beneficiary.

- Premiums are guaranteed never to increase.

- Payments for qualified long-term care expenses are income tax-free.

. . . 4 Veterans Benefits

If you are a veteran or the spouse of a veteran and meet the eligibility requirements, you may be able to have your long-term care expenses paid for if you receive your long-term care in one of Minnesota Veterans Home long-term care facilities (Minneapolis, Hastings, Fergus Falls, Luverne, and Silver Bay). NOTE: often there is a waiting period of one year or longer before you may be admitted to a veterans home. Once you are admitted to a veterans home, you will pay a monthly maintenance charge based on your assets and income.

. . .5 Medicare

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

. . .6 Medicaid

In general, this is a federal and state funded medical benefit program, administered by the state, to pay for the cost of some assisted living expenses (not room and board) and the nursing home if certain asset and income tests are met.

Since the first two methods of long-term care insurance and private pay (i.e. using your own funds) 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. Medicare 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 a hospital formally admits you as an impatient pursuant to a doctor's order, and you have a stay of at least three overnights, and THEN you transfer to a skilled nursing facility (often for rehabilitation or skilled nursing care), Medicare may pay **for a while**.

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 deductible that's $164.50 (2017) per day. Some Medicare supplement insurance policies will pay the cost of that deductible. So, in the best case scenario, Medicare may pay up to 100 days for each "spell of illness." In order to qualify for the 100 days of coverage, however, the Medicare beneficiary must be receiving daily "skilled care" and generally must continue to "improve". (Note: Once the Medicare 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 government benefits program designed to assist individuals pay for long-term care expenses if the recipient meets program asset and income limitations. The federal government establishes the general boundaries of the program, and if a state wants to be reimbursed for some of its cost, the state's program must fall within the federal government's guidelines. Minnesota's Medicaid program is called "Medical Assistance."

One primary benefit of Medical Assistance is that, unlike Medicare (which only pays for skilled nursing), the Medical Assistance program will pay for long-term care expenses once you've qualified. Medicare does not pay for treatment of all diseases or conditions. For example, a long-term stay in a nursing home may be caused by 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. 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 Medical Assistance.

why seek advice for medicaid?

Life expectancies continue to rise, and so do long-term care costs. The challenge quickly becomes how to pay for these custodial services. Many people cannot afford to pay $5,500-$9,000 per month or more for the cost of assisted living or a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months to a few years.

Fortunately, the Medical Assistance program is there to help. In fact, in our lifetime, Medical Assistance has become the long-term care insurance of the middle class. But to be eligible to receive Medical Assistance benefits, you must pass certain tests on the amount of income and assets that you have. The reason for Medical Assistance planning is simple. First, you need to provide enough assets for the security of your loved ones – they too may have a similar health crisis. Second, the rules are extremely complicated and confusing. The result is that without planning and advice, many people **spend more than they have to** and their family security could be jeopardized.

excluded assets and available assets: what must be spent?

To qualify for Medical Assistance, applicants must pass some fairly strict tests on the amount of assets they can keep. To understand how Medical Assistance works, we first need to review what are known as Excluded Assets, Unavailable Assets, and Available (or countable) Assets.

Excluded Assets are those assets which Medical Assistance will not count towards an applicant's asset limit (at least for the time being). In general, the following are the primary *Excluded* Assets:

- **The homestead as long as your spouse or a protective relative continues to live at home. If you are single and no protective relative is living in the home, your home will be *Excluded* for up to six months after entering a nursing home. After six months, if there is no reasonable expectation that you will return home, then the home becomes an *Available* Asset. NOTE: the excluded value of the home is limited to $560,000 (for 2017). However, this equity limit does not apply IF:**
    - **Your spouse or a protective relative resides in the home; OR**
    - **You have an ownership interest in the home AND it is reasonable that you will return home**
- **Personal belongings and household goods**
- **One car or truck**
- **Income-producing real estate**
- **Burial spaces and certain related items for applicant, spouse, and any member of the applicant's immediate family**
- **Up to $1,500 designated as a irrevocable burial fund for each applicant, his or her spouse, and children**
- **Irrevocable prepaid funeral contract**
- **Value of all life insurance if the total face value is $1,500 or less. If it does exceed $1,500 in total face amount, then the cash value in these policies is countable**

Unavailable Assets are assets that have a legal impediment for liquidation. A life estate is an excellent example of an *Unavailable* Asset. A life estate is created when a homeowner transfers the house to the children, but retains the right to live in the house. The homeowner is called the "life tenant," and the children are the "remaindermen." The life tenant cannot sell the home without the signatures of all the remaindermen, and their respective spouses, on the deed. If one person decides not to sell the house, the house cannot be sold, creating a legal impediment. CAUTION: The transfer of a remainder interest in the home creates a period of ineligibility for Medical Assistance benefits. Please seek advice from an Elder Law attorney to determine if this strategy is appropriate for your situation.

All other assets are generally *Available*, and are counted towards your asset limits. These assets are available to pay for your long-term care expenses. Basically, all money and property, and any item that can be valued and converted into cash, is an Available Asset unless it is one of those assets listed above as Excluded. Available Assets include:

- **Cash, savings and checking accounts, credit union share and draft accounts**
- **Certificates of deposit**
- **U.S. Savings Bonds**
- **Stocks, bonds, or mutual funds**
- **Individual Retirement Accounts (IRA), Keogh plans (401K, 403B)**
- **Annuities**
- **Cash surrender value of life insurance**
- **Real estate (other than the residence, i.e. cabin)**
- **Trust assets (depending on the terms of the trust)**
- **Partnership interests**
- **Land contracts or mortgages held on real estate sold**
- **More than one car**

While the Medical Assistance rules themselves are complicated and tricky, it's safe to say that a single person will qualify for Medical Assistance as long as he/she has only *Excluded* Assets plus $3,000 or less in Available Assets.

some common questions

1. I've added my kids' names to our bank account. Do the bank accounts still count?

Yes. The entire account amount is available unless you can prove some or all of the money was contributed by someone other than you oryour spouse who is an owner of the account. This rule applies to cash assets such as:

- **Savings and checking accounts**
- **Credit union share and draft accounts**
- **Certificates of deposit**

2. Can I receive Medical Assistance benefits at home?

Yes, if you require a nursing home level of care and it is cost-effective to receive the care at home. The county will do an assessment of your health care needs to determine if you are eligible for this program. The name of this Medical Assistance program for those over the age of 65 who wish to receive care in the community is called the Elderly Waiver ("EW") program.

Though some families do spend virtually all of their savings on nursing home care, Medical Assistance often does not require it. There are a number of strategies which can be used to protect family financial security.

medical assistance planning for married couples

The Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988 applies only to married couples. The intent of the law was to change the eligibility requirements for Medical Assistance when one spouse needs long-term care ("long-term care spouse") while the other spouse remains in the community ("community spouse") 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 Medical Assistance.

The community spouse is allowed to keep up to a maximum of $120,900 (in 2017). This amount may change on January 1st of each calendar year. The amount of assets which the community spouse is allowed to keep is called the Community Spouse Asset Allowance (CSAA). The remaining assets must be "spent down" to $3,000. The $3,000 is the long-term care spouse's allowance.

When the long-term care spouse eventually qualifies for Medical Assistance, then it is important to understand what will happen to the community spouse's income. First, none of the community spouse's ***income*** will have to be used to pay for the long-term care spouse's care. Second, the community spouse is entitled to a minimum amount of monthly income. This is called the minimum monthly income allowance. This figure changes on July 1st of each calendar year. For 2017, the minimum monthly income allowance is $2,005.

The long-term care spouse keeps $97 per month (for 2016) of his or her income as a personal needs allowance. Then, if the community spouse's monthly income is less than the sum of the minimum monthly income allowance plus an "excess shelter allowance," then the community spouse is allowed to keep the income of the long-term care spouse in an amount large enough to reach the sum of minimum monthly income allowance, plus excess shelter allowance. The long-term care spouse's remaining income goes to the care facility and must be used to pay for the long-term care.

The "excess shelter allowance" is equal to the sum of your monthly shelter expenses (rent, mortgage, property taxes, homeowner's insurance, homeowner's association dues), less $602 (for 2017). This avoids the necessity (hopefully) for the community spouse to dip into savings each month, which would result in gradual impoverishment.

To illustrate, assume the community spouse receives $588 per month in Social Security. Also assume that her needs are calculated to be $2,135.00. With her Social Security, she is $1,547.00 short each month.

In this case, the community spouse will receive $1,547 (the shortfall amount) per month from the long-term care spouse's Social Security. The rest of the long-term care spouse's monthly income, less $97, will then go to pay for the cost of his care.

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

case study: medicaid planning for married people

Ralph and Alice were high school sweethearts who lived in Minneapolis, Minnesota, their entire adult lives. Two weeks ago, Ralph and Alice celebrated their 51st anniversary.

Yesterday, Ralph, who has Alzheimer's disease, wandered away from home. The police found him, hours later, sitting on a street curb, talking incoherently. They took him to a hospital. Now the family doctor has told Alice that she needs to place Ralph in a long-term care facility. Ralph and Alice grew up during the Depression. They always tried to save something each month. Their assets totaling $185,000 (not including their house) are as follows:

IRA	$75,000
Savings account	$35,000
CDs	65,000
Money Market account	17,000
Checking account	3,000

Ralph gets a Social Security check for $1,310 each month; Alice's check is $788. Her eyes fill with tears as she says, "At $8,500 to the care facility every month, our entire life savings will be gone in two 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. She will be able to keep $120,900 of assets plus the home, as well as receive most of Ralph's income.

This is possible because the law does not intend to impoverish one spouse because the other needs long-term care. 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 care facility and is paying $6,500 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 care facility Sam is residing in. According to the information she received from the social worker, Sam is $48,000 away from Medical Assistance

eligibility. Margaret wishes there was a way to save the $48,000 for Elizabeth after she and Sam are gone. There IS a way.

Margaret can consult an Elder Law attorney to establish a “supplemental needs trust” and fund it with the $48,000 to provide for Elizabeth. As soon as she does, Sam will be eligible for Medical Assistance. Elizabeth won’t lose her benefits, and her security is assured.

Of course, all trusts must be reviewed for compliance with Medical Assistance rules. Also, failure to report assets is fraud, and when discovered, will cause loss of eligibility and repayment of benefits. Still, some people wonder if they can give their money away and still qualify for Medical Assistance.

I heard I can give away $14,000 per year; can I?

Many people have heard of the federal *gift tax* law that allows them to give away $14,000 (in 2017) per person per year without paying any gift taxes. What they do not know is that this refers to an annual *gift tax* exclusion amount. Having heard of the exclusion, they wonder, “**Can’t I give my assets away?**” This answer is, maybe, but only if it’s done within the strict allowances of the law.

The law has severe penalties for people who simply give away their assets to create Medical Assistance eligibility. So even though the federal gift tax laws allow you to give away up to $14,000 per year *without gift tax consequences*, those gifts could result in a period of ineligibility for Medical Assistance benefits. Still, some parents want to make gifts to their children before their life savings is all gone. Next, consider the following case study:

case study: financial gifts to children

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

“The doctor says Harold needs long-term care in a nursing home,” Dorothy 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 Medical Assistance benefits for long-term care expenses, 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 Dorothy’s assets.

“Can’t Mom just give her money to me as a gift? She asks. “Can’t she give away $14,000 a year? I could keep the money for her so she doesn’t lose it when Dad applies for Medical Assistance.”

Joan has confused federal gift tax laws with the issue of *transfers and **Medical Assistance eligibility***. A “gift” to a child in this case is actually any “uncompensated transfer”, and Medical Assistance has very specific rules about such transfers.

At the time Harold applies for Medical Assistance, the state will "look-back" five years from the date of the Medical Assistance application to see if any gifts have been made by the applicant or his or her spouse.

The state won't let you just give away your money or your property to qualify for Medical Assistance. Any gifts or transfers for less than fair market value that occurred in the look-back period may cause a delay in Harold's eligibility for Medical Assistance.

In addition, the penalty period on asset transfers will not begin until the Medical Assistance applicant has already spent down his or her assets to $3,000. This will frustrate the gifting plans of most people, especially since during a penalty period, you must privately pay for your care.

For example, Dorothy gave away $32,500 on September 5, 2016. This gift will create a five-month period where Harold will be ineligible for Medical Assistance benefits (using the July 1, 2016 – June 30, 2017 monthly average nursing home cost). The gift was made within the five year look-back period of Harold's Medical Assistance application and therefore the gift will need to be reported on the application. Harold applies for Medical Assistance because he is at his $3,000 allowance and Dorothy is at her community spouse resource allowance.

Harold will be denied Medical Assistance benefits because of the gift. Harold and Dorothy will have to privately pay for Harold's care for the next 5.2 months (until the penalty expires) unless their daughter returns the entire amount to Dorothy and Harold within one year of the Medical Assistance application.

So what can Harold and Dorothy do? They can institute a plan, save a portion of their estate, and still qualify for Medical Assistance. The plan may involve transfers of money for value received, such as a care contract, or the plan may involve making gifts. It is important for you to consult a knowledgeable advisor to discuss your specific situation and to learn about your options and the consequences of your actions.

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 will be available when needed, their own "emergencies" may make them spend the money. You must consult a knowledgeable advisor on how to set a plan that complies with the law and achieves your goals.

estate recovery

The law requires states to try to recover the value of Medical Assistance payments made on behalf of long-term care recipients. This is referred to as *Estate Recovery*. Depending on the circumstances, *Estate Recovery* is not collected until the recipient of the benefits dies and there is no community spouse. The claim may be made against the recipient's interest in real property (a lien) or against the estate of the recipient or the estate of the spouse of the recipient.

About two-thirds of the nation's long-term care residents have their costs paid in part by Medicaid. The asset most frequently caught in the Estate Recovery web is the home of the Medical Assistance recipient. A long-term care recipient can own a home and receive Medical

Assistance benefits without having to sell the home as long as the community spouse or protective relative resides there. But upon the death of both spouses, or if the protected relative no longer resides in the home, and depending on the specific circumstances, the State of Minnesota may have the county enforce a lien filed against the home. When the home is eventually sold, the Medical Assistance lien is paid off at that time.

Since Medical Assistance rules are constantly changing, you will need assistance from an Elder Law attorney about these rules.

legal assistance

Aging persons and their family members face many unique legal issues. As you can tell from our discussion of the Medical Assistance program, the legal, financial, and care planning issues facing the prospective long-term care recipient and family can be particularly complex. If you or a family member need long-term 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, long-term care planning and Medical Assistance planning are aspects of the services provided by 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 long-term care issues. Who did they use? Were they satisfied with the services they received? Hospital social workers, Alzheimer 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 long-term care 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 long-term care planning. Or you may want to ask how many new long-term care planning cases the law office handles each month. There is no correct answer. Ask whether the lawyer is a member of any Elder Law planning organizations. Is the lawyer involved with committees or local or state bar organizations that have to do with long-term care planning? Does the lawyer lecture on long-term care planning? If the lawyer lectures to the public, you might try to attend one of the seminars. This should help you decide if this is the lawyer for you.

The leading national organization of Elder Law attorneys is the National Academy of Elder Law Attorneys (NAELA), 1604 North Country Club Road, Tucson, Arizona. 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. You may want to look for an attorney who is a member of NAELA.

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.

notes