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# **Do You Qualify for Financial Assistance for Nursing Home Care?**



## **The Consumer's Guide to Medicaid Planning and Division of Assets**

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# 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 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 and Division of Assets 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 and nursing home professionals, 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.

This guide is brought to you as a service of

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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. As we enter the 21st century, life expectancy has almost doubled. 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 a long term care facility or "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 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 who helps a person transition into a nursing home during a time of stress 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 home is found and the loved one is moved into the nursing home. For many, the most difficult task is just beginning: *How to cope with nursing home bills that may total \$4,500 to \$5,500 per month or more?*

## How to Pay for Nursing Home Care

One of the things that concerns 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 toward paying the cost of the nursing home. 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 coverage.
2. **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 a nursing home out of your own pocket. Unfortunately, with nursing home bills averaging between \$4,500 and \$5,500 per month in our area, few people can afford a long term stay in a nursing home.
3. **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.
4. **Medicaid** - This is a federal and state funded and state administered medical benefit program which can pay for the cost of the nursing home if certain asset and income tests are met.

Since the first two methods of 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.

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 you've had a hospital stay of at least three days, and then you are admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care), Medicare may pay **for a while**. (If you are a Medicare Managed Care Plan beneficiary, a three day hospital stay may not be required to qualify.)

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 nearly \$100 per day. Some Medicare supplement 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 Plan may pay up to 100 days for each "spell of illness." In order to qualify for these 100 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, in either case 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 benefits program which is primarily funded by the federal government and administered by each state. The rules can vary from state to state.

One primary benefit of Medicaid is that, unlike Medicare (which only pays for skilled nursing), 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 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. 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. Many people cannot afford to pay \$4,500 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medicaid Program is there to help. In fact, in our lifetime, Medicaid has become the long term care insurance of the middle class. But the eligibility to receive Medicaid benefits requires that you pass certain 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. Second, the rules are extremely complicated and confusing. The result is that without planning and advice, many people **spend more than they should** and their family security is jeopardized.

## 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 which Medicaid will not take into account (at least for the time being). In general, the following are the primary exempt assets:

- Home, no matter what its value. The home must be the principal place of residence for one of the spouses. Estate Recovery can place a lien against your home for the amount of Medicaid benefits paid after 6 months of inpatient care at a nursing home.
- Personal belongings and household goods.
- One car or truck.
- Income-producing real estate.
- Burial spaces 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 up to \$5,000.00 each for applicant and spouse.

- Value of life insurance if death benefit is \$1,500 or less. If the death benefit does exceed \$1,500, then the cash value in these policies is countable.

All other assets are generally *non-exempt*, and 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. This includes:

- Cash, savings, and checking accounts, credit union share and draft accounts.
- Certificates of deposit.
- U.S. Savings Bonds.
- Individual Retirement Accounts (IRA), Keogh plans (401(k), 403(b)). (Exempt for the community spouse in Kansas).
- Nursing home accounts.
- Prepaid funeral contracts which can be canceled.
- Trusts (depending on the terms of the trust)
- 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 she has only exempt assets plus a small amount of cash and/or money in the bank, up to \$2,000 in Kansas.

## **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 some or all of the money was contributed by the other person who is on 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 penalties for people who simply give away their assets to create Medicaid eligibility. In Kansas, the penalty divisor for transfers prior to February 8, 2006, is the average monthly rate of \$4,000. For example, every \$4,000 given away during the five years prior to a Medicaid application creates a one month period of ineligibility. However, for transfers on or after February 8, 2006, the penalty divisor is the average *daily* rate of \$145.42 if the penalty start date is July 1, 2011 or later (this figure is subject to change each year, which is why consulting an expert knowledgeable in Medicaid law is imperative). So even though the federal Gift Tax laws allow you to give away up to \$13,000 per year *without gift tax consequences*, those gifts could result in a period of ineligibility for Kansas Medicaid of three months.

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

## **Division of Assets: Medicaid Planning for Married Couples**

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988. It applies only to married 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 one half of all countable assets to a maximum of \$109,560 (2011 allowed amount). The other half of the countable assets must be “spent down” until less than \$2,000 remains. 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. This permits the community spouse to keep a minimum monthly income ranging from about \$1,839 to \$2,739.00 of the combined income of the spouses or the community spouse’s entire income, whichever is greater.

If the community spouse does not have at least \$1,839 in income, then he or she is allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance (i.e., up to at least \$1,839). 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 \$800 per month in Social Security. Also assume that her needs are calculated to be the minimum of \$1,839. With her Social Security, she is \$1,039 short each month.

\$1,839	at-home spouse’s monthly needs (as determined by formula)
<u>800</u>	at-home spouse’s Social Security
\$1,039	short fall

In this case, the community spouse will receive \$1,039 (the shortfall amount) per month from the nursing home spouse’s Social Security and the rest of the nursing home spouse’s income 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 Wichita, Kansas their entire adult lives. Two weeks ago, Ralph and Alice celebrated their 51st 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 a 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 \$120,000, not including their house, are as follows:

Savings account .....	\$35,000
CDs .....	65,000
Money Market account .....	17,000
Checking account.....	3,000
Residence (no mortgage) .....	80,000

Ralph gets a Social Security check for \$800 each month; Alice's check is \$300. Her eyes fill with tears as she says, "At \$4,500 to the nursing home every 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 Social & Rehabilitative Services (SRS). If she does things strictly according to the way SRS tells her, she will only be able to keep about half of her assets plus she will be entitled to a minimum monthly income to pay her expenses. But the results can actually be much better than that.

Kansas law allows her to seek an increase in her income allowance. Based on a 6% rate of interest, their entire savings, plus their Social Security, will not generate enough income to bring her up to the current allowable minimum monthly income of \$1,822. However, she must proceed properly, and if so, *Alice may be entitled to keep their entire savings*, and Medicaid will pay for Ralph's nursing home.

The challenge is that this cannot be accomplished at the case worker level. It can only be done by a hearing. She will have to get advice from someone who knows how to navigate the system. But with proper advice, she'll be able to avoid the spend-down and keep everything she and Ralph have worked so hard for.

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 \$4,000 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 \$48,000 away from Medicaid eligibility. Margaret wishes there was a way to save the \$48,000 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 \$48,000 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.

Of course, all trusts must be reviewed for compliance with Medicaid rules. Also, failure to report assets is fraud, and when discovered, will cause loss of eligibility and repayment of benefits. Still, some people question making gifts before entering a nursing home.

## I Heard I Can Give Away \$13,000 per Year. Can I?

As discussed earlier, many people have heard of the *federal Gift Tax* provision that allows them to give away \$13,000 per year without paying any gift taxes. What they do not know is that this refers to a *Gift Tax* exemption. It is not an absolute right. Having heard of the exemption, they wonder, “**Can’t I give my assets away?**” The answer is, maybe, but only if it’s done within the strict allowances of the law.

So even though the federal Gift Tax law allows you to give away up to \$13,000 per year without incurring tax, those gifts could result in a period of ineligibility for months. 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, Mildred and her daughter, Joan, need advice. Dark circles have formed under Mildred’s eyes. Her hair is disheveled. Joan holds her hand.

“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 Mildred’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 three month period of ineligibility in Kansas.

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 care contract, and it may involve gifts. However, as we stated above, the gifts must not violate the federal law or the Medicaid rules. Generally, if done properly, you can often save as much as one half of your assets or more this way.

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 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.

## 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. Senate Bill 272 signed into law in May 2004 allows the state to file a claim against the estate which includes all real and personal property and other assets that the Medicaid recipient had any legal title or interest in at the time of death, including assets conveyed to a survivor, heir or assign through joint tenancy, survivorship, transfer-on-death deed, payable-on-death contract, life estates, trusts, or other similar arrangements.

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, the state may seek to force the sale of the home in order to reimburse the state for the payments that were made.

Since Medicaid rules are constantly changing, you will need assistance from someone knowledgeable 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 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 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 nursing home 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 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. Or you may want to ask how many new nursing home planning cases the law office handles each month. There is no correct answer. But there is a good chance that a law office that assists with two nursing home placements a week is likely to be more up-to-date and knowledgeable than an office that helps with two placements a year. 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 nursing home planning? If so, has the lawyer held a position of authority on the committee? Does the lawyer lecture on nursing home planning? If so, to whom? (For example, if the lawyer is asked to teach other lawyers about Elder Law and nursing home planning, that is a very good sign that the lawyer is considered to be knowledgeable by people who should know.) 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. In addition, the Academy runs three-day educational sessions twice each 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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