LEGACY LAW FIRM, P.C.

Estate Planning • Elder Law • Business Planning

UNDERSTANDING MEDICAID

Helping Seniors and Their Families Cope with the High Cost of Long-term Care

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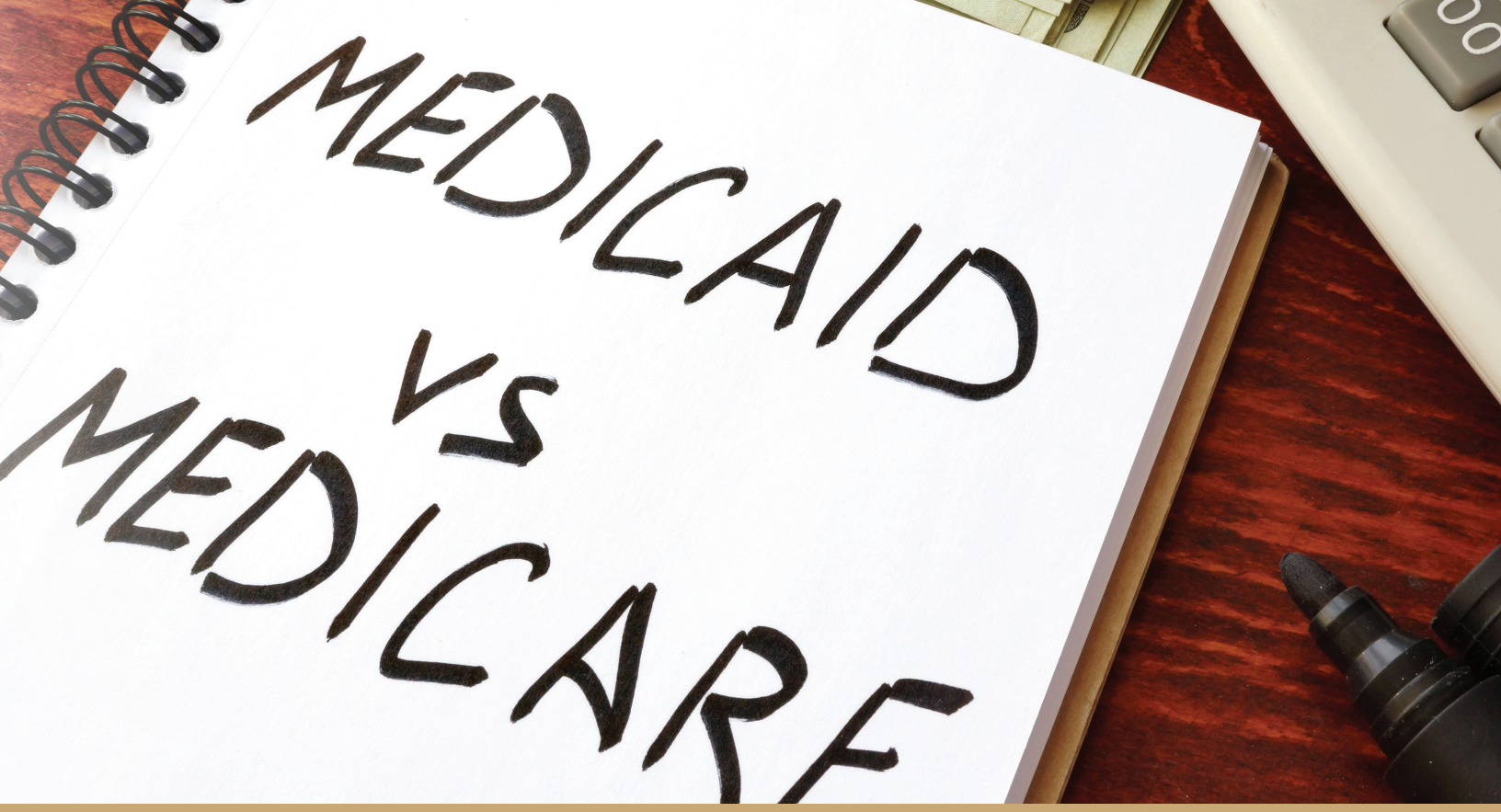


Medicare, Medicaid, And Planning For Long-Term Care

Many people are confused about the difference between Medicare and Medicaid as it pertains to the challenge of paying for expensive long-term care. This is not surprising. The two programs sound similar and both provide for medical care. Let's start with a brief definition of each program.

Medicare is an entitlement program. Everyone who reaches the age of 65 and is eligible to receive benefits from Social Security can also receive Medicare. Medicaid, on the other hand, is a public assistance program. It is designed to help people with limited income and assets pay for medical care. Recipients of Medicaid assistance must meet certain income and asset guidelines.

Another fundamental difference between the two programs is that Medicare is run entirely by the federal government, whereas Medicaid is a joint federal-state program.

Every state has its own Medicaid system, which helps explain why eligibility rules differ from one state to the next and why a few states use different names for Medicaid, such as Medi-Cal in California and MassHealth in Massachusetts. Whatever a state's program is called, to receive money from the federal government it must adhere to federal guidelines. Typically, the federal government pays for approximately one half of a state's program, with the state itself paying for the rest.

Now let's look at how the two programs differ with regard to planning for long-term care.

Medicare, by and large, does not cover long-term nursing home care. Medicare is health insurance and it is not long-term care insurance. For example, Medicare Part A will only cover at most up to 100 days in a skilled nursing facility for a particular illness, and only after the patient has spent at least three days in a hospital. Worse, from day 21 to day 100, the individual in the skilled nursing facility must make a copayment of $217 per day. Few people actually receive Medicare coverage for the full 100 days, in part because of the copay, and in part because restrictions and conditions for coverage are quite stringent.

Medicaid, on the other hand, does cover long-term nursing home care for people who meet its income and asset limits. One hundred days, one year, five years—Medicaid will pay for the care as long as the recipient is eligible. Given the high cost of nursing home care, the dearth of affordable alternatives, and the restrictions inherent in Medicare coverage, Medicaid is now the single largest payer of nursing home stays in the United States.

So, can you get assistance from Medicaid to pay for nursing home care? If your income and assets are less than your state's guidelines, you are already eligible. If your income and assets exceed state limits, you have to take the appropriate steps to become eligible. The sooner you take these steps, the better, and you have to be careful.
For example, you can't simply give your "stuff" away a few weeks before entering a nursing home and expect Medicaid to pay for your stay. When you apply for Medicaid, any gifts or transfers of assets made within five years of the date of application are subject to penalties. This is known as the look-back period. And what is the "penalty?" It is the amount of time during which the person transferring the assets will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid determines to be the average private pay cost of a nursing home in your state.

The bottom line is this: While Medicare can help pay for a short-term stay in a nursing home, Medicaid can pay for long-term care. Through proper planning, you can obtain assistance from Medicaid to pay for nursing home care, and protect your hard-earned assets in the process. The sooner you start planning, the better your chances of getting the care you need while protecting most, if not all, of your assets.

The Top Eight Mistakes People Make With Medicaid Qualification

1. THINKING IT'S TOO LATE TO PLAN.

It's almost never too late to take planning steps, even after a senior has moved to a nursing home.

2. GIVING AWAY ASSETS TOO EARLY.

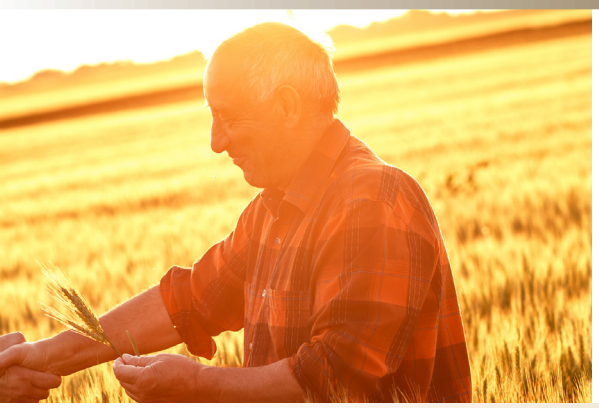
First, it's your money (or your house, or both). Make sure you take care of yourself first. Don't put your security at risk by putting it in the hands of your children. Precipitous transfers can cause difficult tax and Medicaid problems as well.

3. IGNORING IMPORTANT SAFE HARBORS CREATED BY CONGRESS.

Certain transfers are allowable without jeopardizing Medicaid eligibility. These include: certain transfers to disabled children, caretaker children, certain siblings and into trust for anyone who is disabled and under age 65; a transfer to a "pay-back" trust if under age 65; and a transfer to a pooled disability trust at any age.

4. FAILING TO TAKE ADVANTAGE OF PROTECTIONS FOR THE SPOUSE OF A NURSING HOME RESIDENT.

These protections include petitioning for an increased community spouse resource allowance, and in some instances petitioning for an increased income allowance.



5. APPLYING FOR MEDICAID TOO EARLY.

This can result in a longer ineligibility period in some instances.

6. APPLYING FOR MEDICAID TOO LATE.

This can mean the loss of many months of eligibility.

7. NOT GETTING EXPERT HELP.

This is a complicated field that most people deal with only once in their lives. Tens of thousands of dollars are at stake. It's penny wise and pound foolish not to consult with an attorney who specialize in guiding clients through the process.

8. CONFUSION ABOUT THE DIFFERENCE BETWEEN LIFETIME LIENS ON PROPERTY AND ESTATE RECOVERY.

Estate recovery is the process that the State undertakes to recover certain Medicaid benefits paid on behalf of a Medicaid enrollee after the enrollee passes away. There are a number of exceptions to lifetime liens on property, but for estate recovery there is only a deferral for a surviving spouse and a hardship waiver.

MEDICAID
The Myths And The Realites

Bill & Sally

Bill and Sally are in their late-seventies. Bill receives about $1,200 a month in social security income and about $800 a month from a pension. Sally receives approximately $600 each month in social security. They own their home outright, but Bill will soon need to move into a skilled nursing facility after a recent stroke. Sally is nervous about the expense. She knows that nursing homes cost over $10,000 per month, and that their combined monthly income of $2,600 will not come close to covering the cost, let alone leave any money for Sally to live comfortably. Bill and Sally have about $125,000 in savings, but that won't last long paying for Bill's nursing home care and Sally's living expenses.

Sally is scared she will have to sell the family's home just to pay the bills, and she has no idea where she will live when that day comes. Sally and Bill have two children, and they wanted to leave some sort of inheritance for the kids. But, Sally sees no way to make this happen if Bill goes into a nursing home. So, she decides to keep Bill at home and care for him. Sally isn't really able to provide all the care Bill needs, though she does her best. After months of hard work, Sally's own health begins to decline.

Bill and Sally are suffering needlessly based on inaccurate information given to Sally. She had heard that Medicare might provide some assistance for nursing home expenses, but that it would only last for three months. She also heard that insurance supplements would provide no assistance in paying for nursing home care. Although both are true, there is a third way that could help Sally pay for Bill's nursing home bill – Medicaid.

Medicaid is a benefit program funded mostly by the federal government, but administered largely by each state. Medicaid will pay the long-term care costs of people who qualify – and unlike Medicare, there is no time limit. Sally was aware of Medicaid, but she thought it would be nearly impossible to qualify. However, with the assistance of an elder law attorney and a little planning, Bill was able to qualify for Medicaid and enter the nursing home without depleting their life savings. If Sally had known this earlier, she and Bill might have made different decisions and both would have been much healthier and happier.

Hank & Ellen

Hank is 72 and Ellen is 69. Retired for several years, they have started traveling a few times a year to visit their children and grandchildren in neighboring states. During one of these visits, their oldest child asked what would happen if one of them suddenly became sick. Hank and Ellen had not thought much about it since they were both in good health, but they decided to schedule an appointment with an elder law attorney when they returned home.

Hank and Ellen have lived in and owned the same home since they married 45 years ago. Their checking, savings, and CD accounts total $325,000. They worked hard all of their lives, watched their expenses, and lived frugally without making any extravagant purchases. They want to make sure that they are both protected should they need long-term care, and they want to be able to pass on some of their hard-earned assets to their children and grandchildren.

When Hank and Ellen met with their elder law attorney, they knew they would need to update their Will and powers of attorney. However, they were surprised to learn that they could actually plan now to avoid running out of money in the future should they need long-term care either at home or in a facility. With the help of their elder law attorney, they were able to place $200,000 and their home into a Medicaid Asset Protection Trust, which named their children as beneficiaries of the trust.

In the event that Hank and Ellen needed additional funds to pay for long-term care or an emergency, their children would be able to take a distribution from the irrevocable trust rather than using their own money for Hank and Ellen's needs. Hank and Ellen decided to put the remaining $125,000 in a revocable trust that they would use for their living and travel expenses. Ellen would also apply for a long-term care insurance policy to provide further protection for them should her health fail (Hank had previously applied but was denied). Should either of them need long-term care and Medicaid benefits, the $200,000 in the irrevocable trust would not be counted against them after the five-year Medicaid penalty period passed.

Unfortunately, six years later, Hank had a severe stroke. Ellen tried to care for him at home, but was simply not able to do so. Ellen went back to the elder law attorney for help. Because she and Hank had planned ahead and set up an irrevocable trust, Ellen was able to keep all of the remaining cash assets in their revocable trust, and Hank was able to qualify immediately for state Medicaid benefits. The irrevocable trust, which had now grown to $215,000, remained in place but did not count against Hank since more than five years had passed.

Ellen breathed a big sigh of relief, knowing that she did not have to worry about paying for Hank's care and could instead focus on visiting him and supporting him.

As illustrated by the situations of Bill and Sally, as well as Hank and Ellen, it is important for seniors and their loved ones to plan early for the possibility of needing long-term care. There are not only financial benefits to doing so, but also numerous non-financial benefits, including reduced stress on the family and peace of mind knowing that the family's needs are taken care of regardless of any health care crisis that may occur. Schedule an appointment with an experienced elder law attorney today to plan for your future.

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CONTACT US TODAY!

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