Do You Qualify For Financial Assistance For Nursing Home Care?

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

Ninth Edition

340 Pine Grove Commons
York, Pennsylvania 17403-5193
(717) 747-5995

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 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 and Division of Assets is designed to help provide you with information and answers to some of the questions you will encounter. As an Elder Law attorney, these are questions that I deal with on a daily basis.

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

This guide is brought to you courtesy of

THE ELDER LAW FIRM OF ROBERT CLOFINE
CERTIFIED ELDER LAW ATTORNEY*
340 PINE GROVE COMMONS
YORK, PA 17403-5193
PHONE 717-747-5995

*Certified by the National Elder Law Foundation
as authorized by the Pennsylvania Supreme Court

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. Now that we are in 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, still others have a progressive dementia, like Alzheimer's disease, and can no longer be cared for in their own homes.

Whatever the reason, the spouse or relative helping a person transition to a nursing home during a time of stress faces the immediate dilemma of how to find the right nursing home. The task is not a 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 $8,000 to $11,000 per month or more?***

How to Pay for Nursing Home Care

Paying the bill is a main concern for those moving to a nursing home. There are basically four ways to pay for the cost of care in 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 nursing home expenses. Unfortunately, long term care insurance has lost favor in recent years and most people currently 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, since nursing home bills in the York area average between $10,000 and $12,000 per month, <u>few people can afford a long term stay in a nursing home.</u>

3. Medicare - 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 pays for the cost of the nursing home if you meet the asset and income limits.

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 designed primarily for older individuals (i.e. those over age 65) and the disabled. 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 3 days and are then admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care), Medicare may pay for a while. If you qualify, traditional Medicare (as opposed to a Medicare Advantage Plan) 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 $176 per day in 2020. Some Medicare supplement insurance policies will pay the cost of that deductible. So, in the best case scenario, the traditional Medicare may pay up to 100 days for each "spell of illness." In order to qualify for this 100 days of coverage, however, the nursing home resident must be receiving daily "skilled care" and generally must continue to "improve."

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from my 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 (called medical assistance in Pennsylvania) is a benefit program that is primarily funded by the federal government and administered by each state. The rules vary from state to state. This pamphlet discusses the rules in Pennsylvania only.

Unlike Medicare (which only pays for skilled nursing), the Medicaid program will pay for all levels of 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 caused by Alzheimer's or Parkinson's disease will not be paid for by Medicare even though the patient receives medical care. 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 $10,000 per month or more for the cost of a nursing home. 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. However, to receive Medicaid benefits you must meet certain medical and financial eligibility requirements. This is the reason for Medicaid planning. Through planning, you'll be able to provide enough assets for the security of your loved ones -- they too may have a similar crisis. Planning is necessary because the rules are extremely complicated and confusing. As such, without planning and proper advice, many people spend more than they should and their family's 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 that Medicaid will not take into account (at least for the time being). In general, the following are the primary exempt assets:

- Your home. If you are unmarried, the home is countable to the extent it is worth more than $595,000 in 2020. The home must be the principal place of residence for the applicant or spouse. The nursing home resident may be required to show some "intent to return home" even if this not a real possibility or ever actually takes place.
- Personal belongings and household goods.
- One car or truck.
- Income-producing real estate (sometimes exempt in PA).
- Burial spaces and certain related items for applicant and spouse.
- Irrevocable prepaid funeral contracts
- Cash value of life insurance if face value per insured is $1,500 or less. If it does exceed $1,500 in total face amount, then the cash value in excess of $1,000 per insured 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. **Countable assets include:**

- Cash, savings, and checking accounts, credit union accounts.
- Certificates of deposit.
- U.S. Savings Bonds.
- IRAs, Keogh plans, 401(k) & 403(b) plans (except those of the community spouse which are currently exempt in PA)
- Prepaid funeral contracts that 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 he or she has only exempt assets plus a small amount of cash and/or money in the bank, up to $2,400 (the limit is $8,000 if the applicant's gross income is less than $2,349/mo. in 2020) in Pennsylvania.

Of course, in all cases, Medicaid is not available unless the person needs nursing home care. Care in an assisted living residence or personal care home currently does not qualify.

Some Common Questions

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

<u>Yes.</u> The entire amount is counted unless you can prove the other person who is on the account contributed some or all of the money. This rule applies to cash assets such as:
- Savings and checking accounts
- Certificates of deposit
- Jointly-owned brokerage accounts

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". Under the Deficit Reduction Act of 2005, all gifts made during the 5 years prior to a Medicaid application will be looked at when asking for Medicaid. So even though the federal gift tax laws currently allow you to give away up to $15,000 per year *without gift tax consequences*, those gifts could cause big problems and make you ineligible when applying for Medicaid.

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 that 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 Medicaid eligibility requirements where one spouse needs nursing home care and the other spouse remains in the community (living at home). The law 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 called a Resource Assessment. 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 ***up to a maximum of $128,640 in 2020***. The maximum amount is adjusted for inflation each year. The unprotected countable assets must be "spent down" until less than $2,400 (or $8,000) remains. The amount of the countable assets that the at-home spouse gets to keep is called the Community Spouse Resource Allowance (CSRA). The at-home spouse also gets to keep all exempt assets.

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 $2,114 to $3,216 in 2020. The exact allowance is based on a formula that considers the community spouse's "shelter" costs.

If the community spouse does not have at least $2,114 (or a higher amount as determined by a set formula) 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. The nursing home spouse's remaining income goes to the nursing home. Hopefully, this keeps the at-home spouse from dipping into savings each month, which would result in gradual impoverishment.

To illustrate, assume the at-home spouse receives $1,114 per month in Social Security. Also assume that her needs are calculated to be the minimum of $2,114. With her Social Security, she is $1,000 short each month.

$2,114 at-home spouse's monthly needs (as per formula)
1,114 at-home spouse's Social Security
$1,000 short fall

In this case, the community spouse will receive $1,000 (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. However, the results might be much better if the couple pursues certain planning alternatives. Consider the following case studies:

Case Study: Medicaid Planning for Married People

Ralph and Alice were high school sweethearts who lived in York their entire 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	$50,000.00
CDs	100,000.00
Checking account	9,000.00
House (no mortgage)	150,000.00

Ralph gets a Social Security check for $1,500 each month; Alice's check is $1,114. Her eyes fill with tears, as she says, "At $12,000 to the nursing home every month, our entire life savings will be gone in just over one year!" 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 her 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 well worth it.

To apply for Medicaid, Alice will have to go through the Department of Human Services (DHS). At a minimum, she will be entitled to keep about half of the assets. In addition, she will be entitled to a minimum monthly income allowance of at least $2,114 per month to pay her expenses. <u>But the results can actually be much better than that if Alice does a little Medicaid planning.</u>

The challenge is that Alice needs to take prompt action before she consumes the assets paying for Ralph's care. This will be difficult unless she gets advice from someone who knows how to navigate the system. **With proper advice, she'll be able to avoid the spend-down and keep almost 100% of what they worked hard to accumulate. AND SHE CAN DO THIS AFTER RALPH ENTERS THE NURSING HOME!**

Getting good advice has become more important as the new Deficit Reduction Act of 2005 has eliminated the so-called "resource-first" approach that Pennsylvania used to follow. Under the old law, a low-income community spouse was able to keep additional resources when their mate entered the nursing home. Strategies to protect assets include taking steps to increase the Community Spouse Resource Allowance, spending excess assets on exempt resources and properly utilizing annuities and gifts that do not trigger penalties. Planning to protect assets in the event the community spouse dies before the "sick" spouse is also important.

The current protections exist because the law does not want to impoverish one spouse simply 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 "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 $12,000/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. If he were eligible, Medicaid would pay his bill. However, according to 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 establish a ***"special needs trust."*** Under the trust, the $48,000 can be set aside to provide for Elizabeth. As soon as she sets up the trust, 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 $15,000 Per Year. Can't I?

As discussed earlier, many people have heard of the *federal Gift Tax* provision that allows them to give away $15,000 per year (this limit was $10,000 prior to 2002) 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 currently allows you to give away up to $15,000 per year without incurring tax, those gifts could result in a being ineligible for Medicaid for many 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. 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 $15,000 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" 5 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 were made in the 5-year look-back period will cause a delay in Harold's eligibility for Medicaid.

For example, in Pennsylvania, four $15,000 gifts made during the 5-year years prior to a Medicaid application will currently create a period of ineligibility of just less than six months. To make matters worse, the Medicaid agency often assumes that all unexplained financial transactions were gifts.

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 stated above, the gifts must not violate the federal law or the Medicaid rules. **If done properly, you can save a significant portion of your assets even AFTER the person enters the nursing home.**

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 onto his or her children.

Under the Medicaid regulations, the home is generally an unavailable asset. This means that it is not taken into account when calculating eligibility for Medicaid. However, Pennsylvania must 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 DHS attempts to recover the benefits paid from the recipient's probate estate. In Pennsylvania, the law permits estate recovery to be expanded to allow recovery from non-probate assets, including assets owned jointly or payable to a beneficiary. This has not yet happened, however.

The asset most frequently caught in the Estate Recovery web is the Medicaid recipient's home. 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 force the sale of the home in order to reimburse the state for the payments that were made.

There are strategies that allow you to protect the home from Estate Recovery. 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 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?

Generally, nursing home planning and Medicaid planning are services provided by an Elder Law attorney. 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. Ask how many new nursing home cases the office handles each month. There is a good chance that a law office that assists with two nursing home placements <u>a week</u> is likely to be more up-to-date and knowledgeable than an office that helps with two per <u>year</u>. Is the lawyer involved with bar organizations that have to do with nursing home planning? For example, if the lawyer is asked to teach other lawyers about Elder Law and nursing home planning, that is a good sign that the lawyer is considered to be knowledgeable by people who should know.

Elder Law Certification

The leading national organization of Elder Law attorneys is the National Academy of Elder Law Attorneys (NAELA). NAELA has a sister organization known as the National Elder Law Foundation (NELF) that has been accredited by the Pennsylvania Supreme Court to offer a Certification in Elder Law. Attorneys who have been Certified as Elder Law Attorneys by NELF should have the qualifications to assist you. As of this writing, there are fewer than 65 Pennsylvania attorneys who have received the CELA designation. Robert Clofine was the 6th Pennsylvania attorney to receive the certification.

In the end, 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.

About Robert Clofine, Esquire

AWARD-WINNING PENNSYLVANIA ESTATE PLANNING & ELDER LAW ATTORNEY

ROBERT CLOFINE is the founder of The Elder Law Firm of Robert Clofine and is an attorney who has practiced in York, Pennsylvania since 1985. His practice focuses primarily on elder law, estate planning and administration, nursing home asset protection, and related matters.

Qualifications Include:

- Recipient of the Excellence in Elder Law Award from the Pennsylvania's Bar Association Elder Law Section. This is the Section's highest honor and is bestowed upon the attorney who has made superior efforts in the field of elder law, made significant contributions to the elder law bar, and who has made noteworthy service to the elderly.
- Certified as an Elder Law Attorney by the National Elder Law Foundation. Clofine was the 6th Pennsylvania attorney to receive this certification
- Author of over 300 articles on issues of estate planning and personal finance
- Mentioned and quoted by *USA Today, Money Magazine, Kiplinger's Personal Finance, Kiplinger's Retirement Report, Mutual Fund Magazine, The Wall Street Journal, Bloomberg Personal Wealth Manager and Fortune Magazine*
- Opening speaker at the Pennsylvania Bar Institute's statewide annual Elder Law Institute for 18 straight years
- Selected as a Pennsylvania Super Lawyer® in the field of Elder Law every year since 2005.
- Included in *The Best Lawyers in America®* in the field of Elder Law every year since 2008 and named Attorney of the Year in Elder Law for the Harrisburg region in 2015.
- Fellow in the prestigious American College of Trust and Estate Counsel. ACTEC is an association of lawyers and law professors skilled and experienced in the preparation of wills and trusts; estate planning; and probate procedure; and its members are elected to based on their outstanding reputation, exceptional skill, and substantial contributions to the field
- Member, Joint State Government's Commission's Advisory Committee on Decedent's Estate Laws.
- Founding member and former President of the Pennsylvania Association of Elder Law Attorneys
- Former Chair of the Pennsylvania Bar Elder Law Section and Chair of the Estate Planning & Probate Law Section of the York County Bar Association.
- 1978 *cum laude* graduate of Villanova University and 1982 *cum laude* graduate of the University of Pittsburgh School of Law.

Brought to you courtesy of

THE ELDER LAW FIRM OF ROBERT CLOFINE

340 Pine Grove Commons

York, PA 17403-5193

Phone 717-747-5995

For more information visit

www.estateattorney.com

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