

HOW TO OBTAIN NURSING HOME CARE *WITHOUT* GOING BROKE

Are you frightened that your life savings will be spent on your spouse's nursing home care, leaving you without resources to pay for your own living expenses or health care?

Would your loved one benefit from living in a private room, but you don't know how you can pay the increased difference in rates between the private and semi-private room rates?

Would your loved one's quality of life improve if you just had a little extra money to provide items such as a private phone line or cable television?

There are many myths about nursing home costs and Medicaid qualification. There is, however, one reality that cannot be denied – **the price of nursing home care is increasing every year**. The average monthly nursing home cost as determined by the State Medicaid Agency in 2001 was \$2,930. The average cost increased to \$3,131 in 2002, \$3,673 in 2003, \$3,860 in 2004, \$4,167.33 in 2005, \$4,257.60 in 2006, \$4,358.57 in 2007; \$4,614.90 in 2008, and \$4,916.55 in 2009, 2010, and 2011 (this figure changes in April each year).

Unfortunately the average price of nursing home care as determined by the State Medicaid Agency does not include all the costs associated with living in a nursing home. The average assessed cost only accounts for the price of the room. The patient must still pay for all medications, medical supplies, adult briefs for incontinence, etc. These additional expenses bring the actual monthly costs to approximately \$4,500 - \$7,500. Thus, the actual price to live in a nursing home is usually between \$50,000 - \$80,000 per year. Paying this amount for even one year can be devastating to a spouse or family.

This report will:

- explain the Medicaid eligibility rules, including the myths about Medicaid
- describe real examples how Medicaid Planning helped families just like yours
- share Medicaid Planning techniques that preserve assets while still allowing you to qualify for Medicaid benefits.

I. Medicaid Eligibility Requirements

To be eligible for Medicaid benefits, a person must meet both income and resource limitations.

A. Income

1. Income Cap: The maximum amount of income a person can receive and qualify for Medicaid in 2009 is \$2,022 per month. This is only a starting point. If your income is more than the income cap of \$2,022 per month, read # 2 below.
2. Income Spend-down: If your income exceeds \$2,022, but is less than the private pay rate for a semi-private room in the nursing home where you reside, then you will still qualify for Medicaid if you execute an income only “Miller Trust.”

B. Resources / Assets

1. Single Individual: A single person (never married, separated, divorced, widowed) is permitted to have no more than \$2,000 in “countable” assets.
2. Married Couple with only One Person in the Nursing Home: In 2010, a married couple is permitted to have \$111,560 in “countable” assets, as long as only one person is seeking Medicaid benefits.
3. Married Couple and Both Persons in a Nursing Home: Each person is considered “single” for Medicaid purposes and is, therefore, only allowed to have \$2,000 each.

II. Myths about Medicaid

There is a lot of accessible information about Medicaid. Unfortunately, much of the information you read or hear is incomplete or wrong. To complicate matters, each state has its own different Medicaid laws and rules which change regularly. Therefore, what occurs in Florida may not be allowed in Georgia. What was allowed in Georgia last year or last month, may not apply now. Below are a few of the most commonly stated Medicaid myths:

A. **MYTH**: You must wait three years before applying for Medicaid if resources are transferred to someone else. **WRONG** – There used to be a three year look back period for “gifts” made from one person to another. However, look back period is now **FIVE years**. Additionally, the period of time a person has to wait to qualify for Medicaid depends on the size of the gift, when it was given, whether or not the person is living in a skilled nursing facility when the gift is given, and what other assets the person still has. If gifts have been made, even if they are to churches, for birthday presents, etc., it is imperative that you speak with an elder law attorney to determine the consequence of making the gift.

B. **MYTH**: You must SPEND DOWN all of your assets and become impoverished to get Medicaid. **WRONG** – With proper Medicaid planning, some or all of your money can be preserved without spending it frivolously on things you do not need.

C. **MYTH:** Your house will be taken by the Government if you receive Medicaid.

Partially WRONG – Congress has enacted the Estate Recovery Statute which requires states to recover benefits paid to Medicaid beneficiaries upon their death. To do so, the State will place a lien on the real property owned by a Medicaid recipient. Georgia has begun an enforcement program to recover its costs. If people are particularly fond of their residences, they will want to make provisions for it well in advance. Otherwise, the beneficiary of the property can keep the house as long as they pay the value of it (up to the amount the state paid on behalf of the Medicaid recipient for medical costs) to the State upon the death of the Medicaid recipient. There are planning strategies a person may do that can minimize or avoid estate recovery. Contact an Elder Care Attorney for more information.

D. **MYTH:** Any kind of attorney can advise me about Medicaid laws. **WRONG** – Any attorney who has competent knowledge of Medicaid can advise clients as to the law, but not all attorneys have that knowledge. The Medicaid laws are convoluted, complex, and always changing on both the federal and state levels. Be sure that the attorney you consult with is very familiar with the Medicaid eligibility rules.

III. Medicaid Stories

Everyone has a particularly situation. The path for everyone is not the same. Below are just a few examples of families and their stories of how they benefitted from Medicaid Planning. The names have been changed for privacy, and dollar figures are not exact.

A. Jane and Pete – Pete is 75 years old and developed Alzheimer’s Disease six years ago. The disease progressed quickly and Pete could no longer function safely at home even though his physical health was very strong. Pete moved into assisted living for a number of years, but then needed to move to a nursing home. Jane, his wife, is 60, very active and healthy. Their combined assets total \$175,000. Jane continues to live in their house, which has a mortgage and tax bills. Jane is not yet receiving Social Security because she is not old enough. Unfortunately, Jane had to quit her job to take care of Pete before he moved to assisted living. She has not been able to obtain a job since. Pete’s income is not sufficient to maintain Jane at home and pay for his nursing home care. Although Jane and Pete did not initially qualify for Medicaid benefits, they were able to preserve all of their assets through Medicaid planning. This gave Jane sufficient resources to continue to meet her expenses and provide Pete the best quality of life possible.

B. Thelma – Thelma is 90 years old and a widow. She and her brother, Zach, had been living together for 15 years before Thelma moved into a nursing home. Zach’s health was becoming frail and he could no longer take care of Thelma since she broke her hip and was no longer able to

walk or bathe herself. Although Thelma is 90 years of age, she has no dementia and is very alert. At the time Thelma entered the nursing home, she had \$30,000, which exceeded the \$2,000 permitted by Medicaid. Thelma continued to enjoy going out to dinner, buying new clothes and perfumes, and going to the movies. Much of Thelma's money was preserved through Medicaid planning, which allowed Zach to pick her up and take her to the places she enjoys. Without these resources, Thelma's quality of life would decline, increasing the probability of depression and further illness. In addition, because Zach took care of Thelma at their home, they were able to delay or avoid estate recovery.

C. Christine – Christine is 82 and a recent widow. She was living in assisted living until her husband passed away. Within a month of his passing, Christine's health declined and she had to move to a nursing home. Christine's assets amounted to \$120,000. Half of Christine's assets were preserved and she was able to obtain Medicaid benefits. Christine continued to own her house. In addition to the yearly taxes that must be paid, Christine's son, Robert, is renovating the house so it will be more marketable to sell in the future. Since Robert lives out of state, the money that was preserved permits Robert to fly in to visit with his mother regularly and renovate the house. Had Christine not done any Medicaid planning, Robert would not be able to afford to visit his mother as often, nor do the necessary repairs to Christine's house.

IV. Medicaid Planning Techniques

The process of qualifying a person for Medicaid, while preserving assets, is very particular. The theory behind Medicaid planning is to get the nursing home resident below the maximum amount of resources permitted to qualify for Medicaid, while also preserving that person's assets to maintain their quality of life. Since each person is different with different needs, one plan will not suit everybody.

For Medicaid purposes, there are two different types of resources/assets. There are resources that count against you for qualification purposes and assets that do not count toward your maximum allowable limit. For example, a person is permitted to have one car regardless its value. This is a non-countable asset. In contrast, an investment account with stocks and bonds is considered a countable asset and the value of the account is considered when determining if a person is eligible. There are several different types of countable and non-countable assets. Determining which assets a person can have and keep and which ones they cannot is critical when determining when a person can qualify for Medicaid.

The Elder Care Attorney devises a plan that legally turns countable assets into non-countable assets, while preserving these assets. If done improperly, converting assets could create a transfer of assets penalty which could prevent the person from qualifying for Medicaid for many years.

V. Deficit Reduction Act of 2005 (DRA)

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005, which dramatically changed the eligibility rules for Medicaid. Some of the major changes affected “gifting”, annuities, life estate interests, and the equity in a person’s home. Consult with a professional before applying for Medicaid to educate yourself on how the laws may affect your situation.

VI. Conclusion

A person who lives in a nursing home, or who is planning to move to a nursing home, can preserve assets and qualify for Medicaid benefits to pay for all or a portion of the nursing care costs. Although there is a lot of different information available about Medicaid and the actions a person can take to obtain Medicaid, a person should consult with an Elder Care Attorney before transferring any money or property from one person to another. The wrong type of transfer could prevent the nursing home resident from qualifying for Medicaid. Proper planning, however, may allow a person to obtain Medicaid and still preserve assets. If you would like to save up to \$5,500 per month on nursing home costs, call Collier & St. Clair, LLP an Elder & Special Needs Law Firm and ask how we can help you and your family.

VII. Legal Disclaimer

This information has been provided for informational purposes only. It does not constitute legal advice. The receipt of this information does not establish attorney-client privilege. Proper legal advice can only be given upon consideration of all the relevant facts and laws. Therefore, you should not act upon any of the information contained herein without seeking appropriate counsel.

**Collier & St. Clair, LLP
Elder & Special Needs Law
Mission Statement**

To support our clients in the creation of a long-term plan for preserving assets, maximizing independence, and enhancing quality of life.

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