

# Medicaid Planning

## PLAN OR PAY What are your options?

### The Purpose of this Article

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make. The laws are very complex and the decision is very emotional. That emotional time can be fraught with downfalls. Make one wrong step and assets can be lost or benefits can be denied. In addition to all of this, the language about 'spend downs' and 'exemptions' and 'estate recovery' is very foreign. This is not a comfortable place or a comfortable time to be acting by yourself. At times like these, it's important that you pause, take a deep breath, and understand that there are things that you can do. Good information is available and you can make the right choices for you and your love one. This Guide is designed to help provide you with information and some of the answers to some of the questions that you will encounter.

### Why Plan Ahead?

**First**, because of the complexity of the Medicaid and Nursing Home laws, many people get caught up in a trap before they know that the trap has even been set. On February 8, 2005 the United States Congress passed a set of laws which is such a trap. That set of Laws (called the Deficit Reduction Act of 2005) changed everything about Long Term Care Planning. It is difficult to acknowledge, but in 2005 Congress **mandated that every person who does not plan ahead for Long Term Care must become destitute before the US Government will help with financial aid. Congress mandated long term planning to avoid the traps.**

**Second**, because by the time someone has become seriously ill and in need of Long Term Care, it is too late to do much of any planning.

**Third**, you need to provide enough assets for the security of yourself and your loved ones because they too may have a similar health or financial crisis. Some people may want to leave assets to their children. A long term illness can seriously jeopardize such desires.

**Fourth**, the rules are extremely complicated and confusing. Inadequate planning can result in a total disqualification of benefits and no personal assets to pay for the cost of care. If they improperly gave their assets away, even if the gift was to a charity or for a very good reason, they can and will be denied Medicaid benefits. They would be faced with the impossible task of getting the donated money back or forfeiting benefits.

**Fifth**, to qualify for Medicaid, applicants must pass some fairly strict tests of the amount of asset they can keep. Any asset which a person is not allowed to keep must be liquidated and the money used to pay the cost of care.

## **How to pay for Nursing Home Care with Medicaid**

Third: You can plan to qualify for Medicaid as part of your estate plan.

### **What about Medicare?**

Medicare may pay for a while. (If you are on a Medicare Managed Care Plan 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 for the next 80 days**. In order to qualify for this coverage two factors must be met. The first is that skilled nursing care must be required. That call is up to the government (with the input of the doctor). Anything less and there is no coverage.

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience Medicare benefits usually fall far short of the 100 day maximum period. Even if Medicare does cover the 100 day period, what then?

What happens after the Medicare coverage has been used?

### **What is Medicaid?**

Medicaid is a "needs based" government program established during President Johnson's administration to pay for the medical costs of the indigent population. As health care costs (particularly long term care custodial costs), have outpaced the rate of inflation, the middle class and upper middle class have also looked to the Medicaid program to pay for skyrocketing long term care expenses. On February 8, 2006, President Bush signed into law new legislation, entitled the Deficit Reduction Act of 2005 (the "DRA"), which made significant modifications to the then existing Medicaid laws.

Medicaid is a governmental benefits program which is primarily funded by the federal government and administered by each state. Most times, the rules vary from state to state because each state is allowed to set its own standards for eligibility and benefits.

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 an assisted living facility, group home, or nursing home. Medicaid will pay for custodial care and long term rehabilitative care.

The Medicaid program is there to help people out. By default, the Medicaid program has become the long term care insurance of the middle class. However, in order to take advantage of this program, one must meet very strict eligibility requirements, which we will discuss next. These tests surround a person's ability to pay their own way, and probes into a person's finances for the 5 years prior to making an application for benefits under the program. It is highly recommended that you see an elder law attorney and/or other qualified professional before developing an appropriate estate plan.

## **Can you retain assets and income and still qualify for Medicaid?**

**Yes**, subject to very stringent statutory limitations. The asset and income criteria for qualification for **nursing home** and **home care** Medicaid differ as do the Medicaid qualification requirements for a married couple as compared to a single person.

## **Legal Assistance**

There is no question but that aging persons and their family members face many unique legal issues. As you can tell from the discussion of the Medicaid program, the legal, finance, 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, you really do need legal help, in **order to avoid the traps**. 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 guidance during this most difficult time.

Generally, nursing home planning and Medicaid planning is an aspect of the services provided by Elder Law Attorney. An elder law attorney is a lawyer who concentrates his or her practice in legal matters of the elderly. Elder law attorneys are skilled in addressing a wide range of needs of the elderly. They can assist with estate planning, locating programs to address the needs of the elderly and their families, and helping their clients obtain the care and help they need now and in the future. Among the issues an elder law attorney must be called upon to address are:

- Financial and health care planning for seniors
- Estate and tax planning

- Transfer of assets and asset preservation and protection
- Medicare and Medicaid planning
- Issues affecting older workers
- Hospital discharge and nursing homes admission issues
- Housing alternatives for seniors
- Surrogate decision making, including guardianships

Just because a lawyer states that they are an 'Elder Law Attorney' does not mean that they have the expertise to help you successfully through the system. Here are some questions to ask:

1. How long has the Lawyer practiced Medicaid eligibility law?
2. What percentage of the Lawyer's practice is devoted to nursing home law?
3. Does the Lawyer lecture on the subject, and to whom?
4. Has the Lawyer published any written material that can be reviewed?
5. Is the Lawyer a member of any national Organizations devoted to the topic?
6. How much time has the lawyer spent in staying current in this area of the law?
7. Will the Lawyer customize a plan which takes into account your specific finances?

Think about each of these questions. You may have additional questions to ask. Because when you first meet with the Lawyer you need to be prepared. You may be asked to spend a lot of money and unfortunately this type of law requires a great deal of expertise and as such can get expensive. The decision on what Lawyer to hire should not be based upon cost alone, but rather the rapport that you can establish and how much 'bang for the buck' that you perceive.

#### **About the author:**

**Louis Lepore is an attorney admitted to practice law in the states of New York, New Jersey and Florida. He has a B.S in accounting from St. Johns University, and an extensive graduate education, including an L.L.M. in taxation from Georgetown university. He has vast experience in tax matters, over ten years of experience working for the New York State Department of Taxation and Finance, and is a member of the National Academy of Elder Law Attorneys.**

**Mr. Lepore uses his education and experience to help clients deal with taxation issues in real estate, estate planning, and probate. He has dedicated his practice**

**of law to providing quality legal representation and personal attention to all of his clients, whether he is drafting a simple will or handling a complex estate. He is a frequent lecturer on the topics of Estate Planning, Medicaid Planning and Trusts.**

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