Paying for a Nursing Home: Medicaid (Part 5)
What You Can and Cannot Keep

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In the United States, unlike most developed countries in the world, we do not have a universal healthcare system – that is, one that provides health care and financial protection to *all* citizens. Instead we have a largely private system in which healthcare is viewed not as a right of citizenship but as a commodity best left to the private market, governed not by the democratic mechanism of one person = one vote, but by the market-based mechanism of one dollar = one vote.

The main exception to the market model in this country is Medi<u>care</u>, a government-run healthcare program for seniors and people with disabilities. Medicare, however, was never meant to cover the cost of <u>long-term</u> nursing care. The primary public benefit program that will pay for long-term care is Medi<u>caid</u>. But, unlike Medicare, it is not enough that you be elderly and ill in order to qualify, you also have to be impoverished – that is, your "countable assets" have to be spent down to just a few thousand dollars.

Thus, in order to understand Medicaid qualification, you first need to know how Medicaid treats your assets. Basically, Medicaid breaks your assets down into <u>two</u> separate categories. The first are those assets which are exempt and therefore not countable, and the second are those assets which are countable.

Exempt assets are those which Medicaid will not take into account (at least for the time being). While the laws differ somewhat from state to state, in Pennsylvania the following assets are exempt:

- **The Home.** A home with up to $552,000 of "equity value" (that is, market value less any mortgage loan balance), provided it is the Medicaid applicant's principal place of residence.[1] A nursing home resident is required to show "an intent to return home" for the home to remain exempt, but this can be done by simply checking a box on the Medicaid application (even if it is clear to everyone that the nursing home resident will never be able to return home).

    - While by checking such a box a nursing home resident can qualify for Medicaid without having to sell the home, unless the resident gets proper advice on how to protect his or her home during lifetime, at death it will be subject to an "estate recovery claim" by the Pennsylvania Department of Human Services for all the Medicaid benefits he or she had received.

    - <u>Note</u>: It is important that seniors wanting to protect their home from this risk get the advice of an experienced elder law attorney. For example, the way

[1] Also exempt is all property "adjacent" to the home (which means an exempt residence could include not only a farm house but the surrounding 250 acres or more).

most parents who do not get good advice attempt to protect their homes is by *transferring their entire house* to their children or others. *This is one of the worst ways to protect the home.*

- **Household and personal belongings.** Household goods such as furnishings and equipment commonly found in a household are excluded. So are personal effects, including (but not limited to) clothing, jewelry, items of personal care, recreational equipment, musical instruments, and hobby items.

- **Motor vehicle.** The federal law exempts one motor vehicle, regardless of value, if it is used for the owner's (or spouse's) benefit.

- **Life insurance**. Life insurance that does not accumulate cash value, such as term insurance, is excluded altogether.

  For policies that do accumulate a cash value, Medicaid regulations exclude the entire cash surrender value *if the combined face value of all policies does not exceed $1,500 for each insured person*. If the life insurance owned by a Medicaid applicant has a total face value in excess of $1,500, the cash surrender value in excess of $1,000 is counted as a countable resource of the owner.

- **Irrevocable Burial Reserves.** Burial reserves (also known as pre-paid funerals) are excluded if the money is deposited with a funeral director or financial institution under a written agreement providing that the funds cannot be withdrawn before the death of the named beneficiary. The agreement may include such items and services as casket, cemetery plot, flowers, and obituary. The total amount cannot be exorbitant, and Pennsylvania Medicaid regulations updated yearly provide an upper limit for each Pennsylvania County that the Medicaid office will approve.

  - Note: What often works well is for the Medicaid applicant to transfer a life insurance policy to a funeral home instead of cash as a way of financing the funeral cost. If properly done this is not a gift for Medicaid purposes, and it frees up more cash to be used in other ways.

  - **Retirement Plans.** For a married couple, the IRA (or 401k or other qualified retirement plan) of the "community spouse" (that is, the spouse living at home) is fully exempt, regardless of value. However, the IRA of a single person or the spouse in the nursing home *is* countable, either as a resource or as income.

  - **Property used in a trade or business**. Real estate and personal property is excluded if used in a trade or business and is essential for self-support. These resources are excluded regardless of value.

  - **Cash.** Total cash owned by the Medicaid applicant not exceeding $2,400 is exempt, or $8,000 for Medicaid applicants whose income is below a certain level. (For 2015, that maximum monthly income amount is $2,199.)

These are the principal assets that Medicaid will ignore, at least for now. Keep in mind, however, that the Medicaid estate recovery unit may come back to recoup from the Medicaid recipient's probate estate after his or her death for payments made. The principal asset subject to estate recovery is the family home. (In 2001, the Pennsylvania's estate recovery unit brought in $24,000,000, almost all of which came from homes owned by Medicaid recipients.)

Nearly all other assets are "countable." This includes checking accounts, saving accounts, certificates of deposit, money market accounts, stocks, mutual funds, bonds, IRA's of the nursing home spouse, second cars, second homes, and so on. While there are some minor exceptions to these rules, in general all money and property not listed above as exempt, is a countable asset and subject to the Medicaid harsh spend-down rules:

- For a single person in Pennsylvania, his or her entire life savings, beyond a few thousand dollars and those assets listed above as exempt, is at risk of being spent down on long-term nursing care.

- For a married couple, all of their life savings beyond a resource allowance for the community spouse) of half the couple's total "countable assets," and everything beyond $240,000, is at risk of being spent down on the nursing-home spouse's care.

☞ However, it is important to keep in mind that the Medicaid laws currently permit single people to protect anywhere from 30% to 60% or more of their assets otherwise at risk – and married couples with one spouse in a nursing home 50% to 80% or more of their assets otherwise at risk – **<u>even if someone is already in a nursing home.</u>** But the rules are complicated and must be strictly followed, so seniors will need the advice of an experienced elder law attorney to help them navigate the bureaucratic Medicaid maze.

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The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.

Note*: After the changes in the Medicaid law six years ago, it is more true than ever that "time works against you" when planning for long-term care. It is important that families who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done prior to admission to a nursing home, families need to realize* that <u>even after the 2006 changes to the Medicaid law, there remain opportunities for seniors to protect a significant portion of their life savings, even when facing an immediate crisis, with no advance planning</u>. *But since every day of delay in a crisis can result in $250 of irretrievable loss, don't delay in seeking advice.*

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