

Paying For a Nursing Home: Medicaid (Part 6 of 12) Protecting the Family Home

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“How can the State make us sell Dad’s farm?” John and Sue are upset and confused by the notice they’ve recently received from the Pennsylvania Department of Human Services, stating that over \$150,000 is owed to the State of Pennsylvania out of their late father’s estate. “It’s all he had left when he passed away, and it’s been in our family for three generations. He was approved for Medicaid a long time ago to pay for the nursing home, so we thought that everything had been taken care of. Now we find out that the State is going to make us sell the family farm to pay off Dad’s Medicaid debt. How can this be happening?”

Situations like this are sad, but all too common. Pennsylvania, like all states, is required by the federal Medicaid law to attempt to recover Medicaid payments from the estates of deceased Medicaid recipients over age 55. Under the Pennsylvania “Estate Recovery” program, when an elderly Medicaid recipient dies, there is a claim by the Department of Human Services against that person’s estate for all of the Medicaid payments that person received.

Now one might think that because Medicaid is a welfare program, requiring folks to be “impoverished” before they can be eligible for benefits, that the “estates” of such folks wouldn’t amount to much. And this would be true, except for one thing. Many Medicaid recipients in a nursing home still own their home, because as long as they indicate on their Medicaid application that they “intend to return home,” their home is still their “residence” and is therefore an exempt resource during their lifetime which they are not required to sell in order to be eligible for Medicaid. However, as soon as the person dies, the home becomes “non-exempt”, and available to repay the state.

Each year Pennsylvania, through its Estate Recovery program, acquires millions of dollars worth of family homes from the estates of deceased Medicaid recipients.

Had John and Sue realized their father’s farm was at risk, they could have sought professional guidance from an experienced Elder Law attorney while there was still time to take action and might well have been able to protect the family farm.

Protecting their home is often the main goal my clients have when they come to see me. In fact, this is one of the reasons I got into the field of Elder Law in the first place. When I handled real estate transactions, I would frequently have clients who would come to an appointment saying they wanted to transfer their house to their kids, “for one dollar.” When I asked them why, the most common response was, “So the nursing home won’t get it.”

While I quickly realized after looking into this that it wasn't the nursing homes that were to blame, the more I learned about Medicaid and public benefits law, the more I realized how important it is for folks at risk of nursing home placement to take the proper legal steps to protect the family home from a Medicaid "Estate Recovery Claim." There are a number of different legal strategies for accomplishing this, and each family's situation has to be looked at very carefully to decide what will work best. However, simply deeding the house outright to the children is almost *never* the best strategy, as it makes the parents unnecessarily vulnerable to losing a secure place to live out their lives, results in the maximum period of ineligibility for Medicaid for the parents, and can create an additional tax burden for the children. Factors that need to be taken into consideration include:

- Are both parents still alive?
- Who currently lives in the home?
- Is there anyone else who has an ownership interest in the home?
- What is the level of competency of the parent(s)?
- Is either parent in a nursing home or may one or both of the parents require nursing home care in the foreseeable future?
- Has a child been living in the home and providing care for a parent?
- Are any of the children disabled or receiving public benefits?

For a married couple, the home can almost always be protected if the proper legal steps are taken while both are still alive. For a single person, it can be more complicated, but often it is still possible to protect the home from Estate Recovery. *In either case, the sooner such action is taken, the greater the chance for success.*

👉 *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 – **even if someone is already in a nursing home.** 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 in 2006, 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 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. 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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