

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

Do you qualify for financial assistance for nursing home care?

KC Elder Law

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Supporting Kansas and Missouri families throughout the Elder Care Journey for over 25 years.

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Introduction

The decision to move a family member or loved one into a nursing home is a life-changing and emotional decision for everyone involved.

Along with the emotional challenges that come along with that transition, the spouse or relative helping a person through that transition also faces the immediate dilemma of how to find the right nursing home. The task is no 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 facility.

For many, the most difficult question to answer is a financial one: How do I cope with nursing home bills that are $6,000 to $10,000 per month or more, and may increase at a later date if the resident requires a higher level of care? It is difficult to find the right nursing home, or even seriously commit to searching for the right nursing home when it seems like there are no facilities in your price range.

There is so much misleading and even downright false information floating around about Medicaid. Don't make potentially life-changing decisions based on secondhand information from members of your community or the internet without concrete knowledge of Medicaid regulations and State law. Good intentions don't translate into good advice, and what worked for someone else or their loved ones may not work for you.

This Beginner's Guide to Medicaid Planning and Division of Assets is designed to help provide you with information and answers to the questions that you will encounter, if you haven't already. These are questions which we, as Elder Law attorneys and nursing home professionals, deal with on a daily basis.

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

How to Pay for Nursing Home Care

A huge concern for most people facing nursing home care is how to pay for it. There are basically four ways that you can pay the cost of a nursing home:

- **Long Term Care Insurance** - If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of the nursing home. However, the majority of people facing a nursing home stay do not have this coverage.

- **Pay with Your Own Funds** - Many facilities refer to this as "private pay" and quite simply, it means paying for the cost of a nursing home out of your own pocket. With nursing home bills averaging between $6,000 and $10,000 per month, this is usually a short term solution at best.

- **Medicare** - This is a national health insurance program primarily for people 65 years of age and older, certain younger disabled people, and people with kidney failure. Medicare provides short term (rehabilitation) assistance with nursing home costs, but will not cover long term (custodial) care.

- **Medicaid** - This is a federal and state funded and state administered medical benefit program which can pay for the cost of the nursing home if certain asset and income tests are met.

What is Medicaid?

As stated above, Medicaid is a benefits program funded by federal and state governments and administered by each state. What that means is the rules can vary from state to state which makes understanding how to qualify for benefits even more confusing. This is especially true for families living in Kansas and Missouri with a loved one moving into a nursing home across State Line.

Medicaid has become the long term care insurance of the middle class. But eligibility to receive Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have. The rules are extremely complicated and confusing. Without planning and accurate advice, many people spend more than they should and their family security is jeopardized.

Let's Start with the Basics: What are Exempt Assets and What are Countable Assets?

To qualify for Medicaid, applicants must pass some fairly strict tests on the amount of assets they can keep. Exempt assets are those which Medicaid will NOT take into account when calculating what must be spent down.

Exempt Assets

- Home, if principal residence (equity up to $713,000)
- Personal belongings and household goods
- One vehicle, regardless of value
- Income-producing real estate (exempt in Kansas, sometimes in Missouri)
- Burial spaces and certain related items for applicant and spouse
- Up to $1,500 designated as a burial fund for applicant and spouse, if they don't have funeral plans
- Irrevocable prepaid funeral contract
- $1,500 or less face value is exempt in Kansas. Missouri allows $1,500 towards the cash surrender value and/or revocable funeral plans
- Working farms

All other assets are general non-exempt or "countable"

Countable Assets

- Cash, savings, and checking accounts, credit union share and
  draft accounts
- Certificates of Deposits
- U.S. Savings Bonds
- Individual Retirement Accounts (IRA), Keogh plans (401K, 403B). * Currently the exception to this rule is that they are exempt for a community spouse in Kansas, not in Missouri
- Nursing Home Accounts
- Prepaid funeral contracts which can be canceled
- Real estate (other than the residence)
- More than one car or truck
- Boats or recreational vehicles
- Stocks, bonds, or mutual funds
- Land contracts or mortgages held on real estate sold
- Any other asset not considered exempt by Medicaid

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 $5,726 in Missouri/$2,000 in Kansas. But what about a married person?

Division of Assets:
How Medicaid works 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 couples. The intent of the law was to change the eligibility requirements for Medicaid where one spouse needs nursing home care while the other spouse remains in the community, i.e., at home. The law, in effect, 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. 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 approximately $154,140. The other half of the countable assets must be "spent down" until less than $2,000 remains in Kansas and less than $5,726 remains in Missouri. The amount of the countable assets which the at-home spouse gets to keep is called the Community Spouse Resource Allowance (CSRA).

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 $2465 to $3,854. There is no limit on the amount of income for the at-home spouse.

If the community spouse does not have at least $2,465 in gross 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 (i.e., up to at least $2,465). The nursing home spouse's remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment.

To illustrate, assume the at-home spouse receives $800 per month in Social Security. Also assume that her needs are calculated to be the minimum of $2,465. With her Social Security, she is $1,388 short each month.

$2,465	**community spouse's monthly needs (as determined by formula)**
-$ 800	**community spouse's Social Security**
=$1,665	**short fall**

In this case, the community spouse will receive $1,665 (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.

So, those are the basics of Medicaid. Now, let's talk Medicaid planning. Like tax planning, knowing how to navigate the laws can save families significant amounts of money and help qualify them more quickly for benefits.

Following are just a few examples of how consulting someone knowledgeable in Medicaid laws can make all the difference:

Scenario One
Medicaid Planning for Married People

Ralph and Alice were high school sweethearts who lived in Kansas City, Missouri, their entire adult lives. Two weeks ago, Ralph and Alice celebrated their 51st anniversary. Yesterday, Alice, who has Alzheimer's, wandered away from home. Hours later she was found sitting on a street curb, talking incoherently. She was taken to a hospital and treated for dehydration.

Ralph comes to see you after their family doctor tells him he needs to place Alice in a nursing home. He tells you they both grew up during the Depression and have always tried to save something every month. Their assets, totaling $100,000, not including their house, are as follows:

Savings account	$15,000
CDs	$45,000
Money Market account	$37,000
Checking account	$3,000
Residence (no mortgage)	$80,000

Ralph gets Social Security and Pension checks totaling $1,500 each month; Alice's check is $450. His eyes fill with tears as he says, "At $7,500 to the nursing home every month, our entire life savings will be gone in less than three years!" What's more, he's concerned he won't be able to pay his bills because a neighbor told him that the nursing home will be entitled to all of their Social Security checks.

There is good news for Ralph and Alice. It's possible he will get to keep his income and most of their assets, and still have the state Medicaid program pay Alice's nursing home costs. While the process is far from instantaneous, the end result will certainly be worth it.

To apply for Medicaid, he will have to go through the Missouri Family Support Division (FSD). If he does things strictly according to the way FSD tells him, he will only be able to keep about 1/2 of their assets (or about $50,000) plus he will keep his income.

But the results can actually be much better than the traditional way to qualify for Medicaid, which is the "spend-down" that most people are familiar with.

Ralph might be able to turn the spend down amount of roughly $50,000 into an income stream for him that will increase his income and meet the Medicaid spend down virtually right away. In other words, if handled properly Alice may be eligible for Medicaid from the first month that she goes into the nursing home.

Please note this will not work in every case. That's why it is important to have an Elder Law attorney guide you through the system and the Medicaid process to find the strategies that will be most beneficial in your situation. Ralph will have to get advice from someone who knows how to navigate the system in order to keep most of what he and Alice have worked so hard for. This is possible because the law does not intend to impoverish one spouse 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 Ralph and Alice's dilemma. Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the state law.

Scenario Two
Setting Aside Money, via 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 developmentally 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 $7,500 per month out of savings. Margaret is concerned 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 that Sam could have if he were eligible. Medicaid would pay his bill. However, according to the information she got from 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, and there is.

Margaret can consult an Elder Law attorney to set up a “special needs trust” with the $48,000 to provide for Elizabeth. As soon as Margaret transfers the money to 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 and perhaps even criminal penalties. Still, some people question making gifts before entering a nursing home.

Scenario Three
Giving Money to a Caregiver Penalty-Free

John's daughter, Stephanie, moved in with John, so she could provide care for him in hopes of keeping him home for as long as possible. They agreed that she would quit her job and he would pay her a weekly amount for caregiving.

It's possible that at some point nursing home placement will be the only option for John. All of his money will be considered available to pay for his care at the nursing home and he will not be eligible for Medicaid assistance until all of his assets have been depleted.

Certainly the care Stephanie provided, while he remained in the home, is just as valuable to him and worthy of payment as the care he will be provided in the nursing home. With a care contract in place, he can pay Stephanie, as his caregiver, and every penny spent will count towards his "Medicaid spend down" should he apply for benefits.

Having a care contract in place also ensures Medicaid will not impose penalties on the money received by Stephanie. Without a contract in place, Medicaid will assume the money transferred is a "gift" or a "transfer of assets" and will impose penalties resulting in ineligibility for Medicaid benefits.

Services provided include, but are not limited to, meal preparation, shopping, arranging medical appointments and friends' visits, bathing and dressing, housecleaning, chauffeuring, and overseeing medications. The amount a caregiver is paid varies widely depending on location and on the level of services being performed. Personal care services can range anywhere from $18 to $26 an hour and geriatric-care management services can be even more.

This compensation is considered ordinary income for Stephanie and therefore income taxes will need to be paid. Depending on contract structure, social security and other payroll taxes may also need to be withheld. It's also wise to check any long term care insurance as some policies have provisions which will allow payment to family members who provide care.

From a Medicaid perspective, it is imperative that Stephanie is paid no more than fair market compensation. She should keep a detailed log to document time worked and services performed. Personal services cannot be provided while John is in nursing home nor can there be a duplication of services if a home health aide is also providing care.

The bottom line: if you are caring for a loved one or receiving care from a loved one, a care contract is a good idea for both parties involved, for multiple reasons. Before entering into such a contract, be sure to consult an Elder Law attorney experienced in drafting such contracts and knowledgeable with respect to their effect on Medicaid qualification.

Also, if you are a child who has been caring for your parent for over two years, there is another Medicaid planning technique that may be available which would allow your parent to transfer their home to you, without incurring Medicaid transfer penalties. This is not true in all cases, but if you and your parent meet certain criteria, the exemption known as the "Caretaker Child Exemption" could be a great way to ensure your parent's home stays in the family.

The above are just a few examples of how a family can protect some of their assets and still qualify for benefits. Everyone's situation is unique and so are the Medicaid planning strategies applicable to their individual situations.

It would be impossible to cover all of the planning techniques available in this Beginner's Guide to Medicaid. But, what we can do is address:

Commonly Asked Questions

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

Yes. The entire amount is counted unless you can prove some or all of the money was contributed by the other person who is on the account. This rule applies to cash assets such as: savings and checking accounts, credit union share and draft accounts, certificates of deposit, and U.S. savings bonds.

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. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility.

In Kansas, every $247.62 gift creates a penalty of one day. So even though the federal Gift Tax laws allow you to give away up to $15,000 per year without gift tax consequences, those gifts could result in a period of ineligibility for Medicaid of approximately two months. Gifts may be possible; however, it is critically important that you have the advice of an attorney well-versed in these rules.

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.

But, my accountant told me I can give away $18,000 per year?

As discussed earlier, many people have heard of the federal Gift Tax provision that allows them to give away $18,000 per year without reporting that gift to the IRS. What they do not know is that this refers to a Gift Tax exemption.

It is not an absolute right to give money away, especially not where Medicaid is concerned. Having heard of the exemption, they wonder, "Can't I give my assets away?" The answer is, maybe, but it has absolutely nothing to do with the gift tax exemption. To avoid Medicaid penalties, Medicaid exemptions (not tax exemptions) are the rules that you need to be concerned with. Money can be given away without penalty only if it's done within the strict allowances of the Medicaid rules.

Even though the federal Gift Tax law allows you to give away up to $18,000 per year without reporting to the IRS, those gifts could result in a Medicaid period of ineligibility.

Not reporting a $18,000 gift to the IRS is perfectly legal. Failing to report a $18,000 gift to Medicaid is fraud, and could create criminal liability in addition to Medicaid ineligibility.

Will I lose my home to Medicaid?

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 on to his or her children.

Under the Medicaid regulations, the home is an exempt asset (so long as equity is less than $713,000). This means that it is not taken into account when calculating eligibility for Medicaid. But in 1993, Congress passed a little-debated law that affects hundreds of thousands of families with a spouse or elderly parent in a nursing home. That law requires states to 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 (or until both spouses are deceased if it is a married couple). Then, federal law requires that states attempt to recover the benefits paid from the recipient's probate and in some cases non-probate estate. Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation. The non-probate assets include assets owned jointly or payable to a beneficiary.

About two-thirds of the nation's nursing home residents have their costs paid in part by Medicaid. Obviously, the Estate Recovery law affects many families. The asset most frequently caught in the Estate Recovery web is the home of the Medicaid recipient. A nursing home resident can often own a home and receive Medicaid benefits without having to sell the home. But upon death, if the home is part of the probate or non-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. 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 legal 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 would be in your best interest to seek legal help.

Generally, nursing home planning and Medicaid planning is an aspect of the services provided by Elder Law attorneys. Consumers must be cautious in choosing a lawyer and carefully investigate the lawyer's credentials. 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. Google reviews are always a great testimony to the service you can expect, as well.

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 or her practice involves nursing home planning. Or you may want to ask how many new nursing home planning cases the law office handles each month. There is no correct answer. But there is a good chance that a law office that assists with two nursing home placements a week is likely to be more up-to-date and knowledgeable than an office that helps with two placements a year.

In the end, follow your instincts and 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.



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