

# Frequently Asked Questions about Medicaid

Kemp Scales, CELA<sup>1</sup>

## What is the difference between Medicare and Medicaid?

- **Medicare** is a federal *health insurance program* for which you qualify by being elderly or disabled, without regard to your wealth. Anyone age 65 or older who is eligible to receive Social Security retirement benefits (or who has been eligible for Social Security Disability Insurance for two years) automatically qualifies for Medicare.
- **Medicaid** is a joint federal-state program that also provides health care to the elderly and disabled. However, unlike Medicare, it is not enough that you are “categorically” eligible (that is, elderly, blind or disabled) and in ill health – you also have to be “impoverished,” that is, spent down to the Medicaid asset level of just a few thousand dollars.

**Why is Medicaid important for seniors who have Medicare?** The main gap for seniors with Medicare is that it was never intended to pay for long-term nursing care. (At most, Medicare will only pay for 100 days of nursing-home care, and in most cases that payment period is closer to 20 days). So Medicaid is important for seniors primarily because it will cover the cost of long-term nursing care, and for as long as it is needed.

**Does Medicaid pay for all of the costs of long-term nursing home care?** Medicaid will pay for all of the costs of nursing home care not covered by your private health insurance or another government program (such as Medicare or VA benefits) or your income.

**If I’m in a nursing home on Medicaid, does all of my income have to go to the nursing-home?** Generally, yes. If you’re single all but \$45 a month plus what’s needed to pay your health insurance premiums will go to the nursing home. In addition, if you’re married and your spouse has limited income, some or even all of your income can go to your spouse to bring him or her up to a minimum level, currently \$2,003 a month.

**Who is eligible to receive long-term care Medicaid?** You are eligible for Medicaid to pay for your long term care in Pennsylvania if you are age 65 or (or blind or disabled), a U.S. citizen, a resident of Pennsylvania, and you meet both the medical and financial requirements.

**What is the Medical Requirement for Medicaid?** This simply means you must need a nursing-home level of care – that is, be unable to complete without assistance several “activities of daily living,” such as eating, bathing, dressing, or toileting, and your care cannot be adequately provided by an Assisted Living Facility.

**What is the Financial Requirement for Medicaid?** This requirement has two parts: income and resources. Pennsylvania is a “medically-needy” state, which means you are income eligible for long-term care Medicaid in a nursing home if your “countable” monthly income is less than your monthly medical costs.<sup>2</sup> You are asset eligible when your “countable” assets are no more than \$8,000 (if your gross monthly income is less than \$2,199), otherwise your assets must be down to \$2,400.

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<sup>1</sup> Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.

<sup>2</sup> Medicaid also has a program in Pennsylvania to provide limited care to seniors *living at home*, known as the PDA Waiver program. Its eligibility requirements are the same as for nursing-home Medicaid with one important difference. There is an income cap for care at home of \$2,199 a month, which means that if the person applying for the Medicaid Waiver program has monthly income of \$2,200 or more, he or she cannot “spend down” income on medical expenses to the \$2,199 level and become eligible. (It is possible for such folks to spend down income for non-waiver Medicaid eligibility, but since it must be down to just \$425 a month, very few seniors – if any – can cover their monthly food, shelter, clothing and other non-medical expenses at that rate without assistance from family members and the services of an elder-law attorney.)

What is “countable” income? If you are single, virtually all of your income, whether earned or unearned, is countable. Exceptions include food stamps and other types of needs-based assistance, as well as a portion of the VA pension. If you are married, Pennsylvania follows the “name-on-the-check” rule, which means that income belongs to the person whose name is on the check. So, for example, the Social Security or pension you receive each month is your income, but any income received in the name of a non-applicant spouse is not counted. (Income in a check in the name of both spouses is counted as half to each.)

What are “countable” assets? Essentially whatever assets you have that are either cash or that you have the legal right and ability to convert into cash are considered “countable,” with a number of exceptions, the most important of which are:

- your personal residence;
- your household goods and personal effects;
- one automobile;
- an irrevocable burial account;
- the cash value of your life insurance *if the total face value of all or your life insurance is not more than \$1,500*; and
- for a married couple, the IRA, 401(k) or other retirement accounts of the “community spouse” – that is, the spouse who is not applying for Medicaid.

Pretty much everything else you own is countable: your bank accounts, CD’s, annuities, stocks or bonds, mutual funds, the cash value of life insurance in excess of \$1,000 (except as noted above), other motor vehicles, non-residential real estate, assets in a revocable trust, your own retirement accounts, etc.

If you are married and are the one going into the nursing home, all of the assets of both you and your spouse must be disclosed. Except for the retirement account of the “community spouse,” it makes no difference whether the assets are titled in your name, your spouse’s name, or in both names. However, your spouse is entitled to keep half of the countable assets, with a current minimum (2017) of \$24,180 and a current maximum of \$120,900.

**Will I lose my home if I have to go into a nursing home?** For a married couple, the house is not at risk as long as there is a “community spouse” – that is, a spouse who is not in a nursing home or applying for Medicaid. However, for a single person (and this includes a married couple situation if the “community spouse” dies first), the house is definitely at risk: it will either have to be sold during that person’s lifetime and the proceeds paid to the nursing home, or sold after that person’s death and the proceeds paid to the Pennsylvania Department of Human Services.

**Isn’t there a penalty for those who make gifts and later have to apply for Medicaid?** There is a five-year “look-back period” for Medicaid eligibility. This means that anyone applying Medicaid to cover long-term care (in a nursing home or at home under the PDA Waiver program) has to list on the application any gifts made in the prior 60 months (five years). All such gifts made during that period (except for gifts totaling no more than \$500 in any one calendar month) are accumulated and will result in a period of time that the applicant cannot receive Medicaid. The purpose of this calculation is to prevent folks from “impoverishing” themselves by transferring everything out of their name (to their children, for example) and then be immediately eligible for Medicaid.



The important point to remember is that the “ineligibility period” created by the gifts made during the “look-back period” is not an automatic five years. To put it another way, it is not true – as many folks believe – that if you make any gifts you cannot be eligible for Medicaid for five years. Instead, the ineligibility period is determined by dividing the total amount of gifts by the average cost of a nursing home in Pennsylvania. This year that number is very close to \$9,800. So if the total gifting in the prior five years had been \$98,000, the ineligibility period would be 10 months ( $\$98,000 \div \$9,800$ ). In other words, this calculation is just a way of saying how many months of nursing-home care you could have paid for if that \$98,000 was still in your bank account, and since you gave it away, don’t expect to get Medicaid assistance for 10 months.

# PROTECTING ASSETS

So what legal options are available to seniors to protect at least part of their life savings from the risk of having to be spent down if they later need long-term nursing care?

## Non-Crisis Planning:

- Financial Assets. For clients who are not in a crisis – that is, no one is in or about to enter a nursing home – nor do they have a foreseeable need for nursing-home care based on a medical diagnosis (Alzheimer's or Parkinson's Disease, for example), I generally do not advise them to start gifting any of their financial assets unless they have more than they are ever likely to need.
- Real Estate. On the other hand, I almost always discuss with such clients the option of protecting their home (and sometimes other real estate), because it is possible to do this without affecting their standard of living or running the risk of losing their house because of things that might happen to their children (such as debt, divorce, disability or death). In effect, where their house is concerned, clients can “have their cake and eat it, too.”

## Crisis Planning:

- Single Clients: For a single client in a nursing home, we can typically help the family protect **40% to 60%** (and sometimes more) of the assets otherwise at risk while accelerating the client's eligibility for Medicaid.
- Married Couples: For a married couple with one spouse applying for Medicaid, either in a nursing home or at home, we can typically help the family protect **60% to 80%** (and sometimes more) of the assets otherwise at risk while accelerating the client's eligibility for Medicaid.
- Obviously in crisis cases time works against you, as every day of delay can cost \$250 to \$300 or more, so the sooner we are contacted the more we can likely help you protect.

**Those we cannot help.** All this being said, there are two classes of people we cannot help:

- The *second* most common reason we cannot help your family in a crisis situation is if the nursing-home client is not mentally competent and does not have a financial power of attorney that includes an “unlimited gifting authority.” This is especially true for single clients. And this is because the only way for you to protect your assets is to get them out of your name and control (or to get an interest in your house out of your name and control). Thus, if you do not have the mental capacity to sign the legal papers necessary to transfer your assets, and you do not have a power of attorney that specifically gives your agent the authority to do so, there may be no way for us to help you protect any of your life savings.



For this reason we always discuss with our clients the importance of having a good financial power of attorney in place that includes language clearly permitting the agent to transfer money and property out of the client's name without limitation as to amount. (Is there a risk in giving such broad gifting authority to an agent? Yes, of course. But you have to compare that risk to the risk of not doing so. And for those occasional clients who have some doubt about their agent abusing this authority, I suggest that they probably don't want that person as an agent at all.)

- However, by far the *most* common reason we cannot help families in a crisis is a very simple one – no one calls. There are so many families out there that we could help who never call us. And I think a major reason for this is a nearly universal misunderstanding about Medicaid and Nursing Homes – namely, that “once you are in a nursing home, it is too late to protect any assets.” This is NOT true, not by a long shot. But what is certainly true is that we cannot help folks who never call.