

What you need to know about Medicaid Planning

AN EASY-TO-USE FAMILY GUIDE



COMPLIMENTS OF
THUES LAW OFFICES



THEUS LAW OFFICES, L.L.C.
1902 Jackson Street, Alexandria, LA 71301 • phone 318-541-8999 • fax 855-777-0039
www.theuslawoffices.com

Get the help (*and protection*) that you deserve

Though there are many complexities to Medicaid planning, it's important to understand Medicaid is there to help families like yours. Medicaid planning is the best way to ensure you receive the benefits to assure you protect as much of your hard-earned assets as the law allows, and to receive the care you need.

The first step in Medicaid planning is education. The more you know about how Medicaid works, the better you will be able to look out for the interests of your family.

Provided within is a brief look at some aspects of Medicaid law. It will hopefully dispel much of the confusion around Medicaid qualification. For more detailed information, it's best to consult with a qualified legal advisor. So, think of this as an introduction.

Let's get started...

Things to remember

IT'S NEVER TOO LATE

Medicaid planning can begin anytime, even if your loved one is already living in a skilled care facility. But the sooner you plan, the more options you will have to protect what's important to you.

YOU CAN KEEP YOUR HOME

If you're married, and you or your spouse needs to go into a nursing home, your home is exempt from Medicaid's calculation of what your contribution to the costs of care should be. If you are unmarried or widowed, and you go into a nursing home, your house may be exempt if you follow certain procedures. Even though your house is safe while you reside in a nursing home, it will likely be lost to Medicaid after your death. Planning is key to preserving your home whether married, single or widowed.

DON'T GIVE AWAY THE STORE

Since major changes to laws in 2006, "gifting" away your assets create unforeseen circumstances and can make you ineligible for Medicaid benefits for 5 years or more! Far from protecting yourself, you will be undermining your own security.

MIND THOSE SAFE HARBORS

Congress has created a number of "safe harbor" provisions for protecting your assets. These provisions exempt certain assets and allow transfers to children or siblings, who meet certain eligibility requirements, as well as putting assets in certain kinds of trusts.

CAREFULLY CHOOSE WHEN YOU APPLY

Applying too early can mean a longer wait for Medicaid qualification than necessary, while applying too late can mean having to pay for months of care you may not have had to pay. *Rule of thumb: Do not apply for Medicaid without a plan to ensure you qualify.*

GET THE RIGHT HELP

Medicaid planning is a complex matter. You need to expert assistance to keep your assets safe. Be sure to find legal counsel who limits their practice to this area – someone with proven expertise in Medicaid law.

Rule of thumb:

Do not apply for Medicaid without a plan to ensure you qualify.

What are the *rules* for Medicaid qualification?

Medicaid is a federal program that provides health coverage for people with limited assets and incomes. It covers the cost of nursing home care for those who meet the program's economic requirements for eligibility, and in several states, it will also pay for care in your home!

Though it's a federal program, Medicaid is administered by the states. Federal law empowers each state to enforce Medicaid eligibility rules according to its own interpretation. This means that application of these rules can vary significantly from state to state and, in some states, from county to county. Qualification for care in your home is also different for qualifying for care in a nursing home.

Your Medicaid planning advisor can best help you determine how the rules apply to your specific circumstances in your specific locality. Before you get into the specifics, however, it's a good idea to familiarize yourself with the general federal guidelines for Medicaid qualification that apply everywhere.

ASSETS

Generally speaking, assets fall into two categories: "countable" and "non-countable." To qualify for Medicaid benefits, a nursing home resident can have \$2,000 in countable assets in 2018. The spouse of a nursing home resident, or "community spouse", can retain a maximum of \$123,600 (2018) of the couple's joint countable assets. *(These amounts are adjusted annually for inflation.)*

Certain assets are not counted in arriving at this amount. They include:

- **All or part of applicant's principal residence** *(see "Some simple planning options")*
- **Personal possessions** *(furniture, clothing, jewelry, etc.)*
- **One motor vehicle** *(some limitations apply to unmarried people)*
- **Prepaid funeral plan for applicant, spouse or family members**
- **Life insurance** *(up to a certain limit)*
- **"Other assets" needed to raise the community spouse's total income up to the statutory minimum** *(see allowable income on the next page)*
- **If you don't own a home, you may purchase a "life estate" in a child's or other's home. A life estate is the right to live in a residence without owning it.**
- **A home owned with a sibling for one year.**

ESTATE RECOVERY

What happens to a Medicaid recipient's estate when he or she passes away? Like so much else, that depends on whether they have properly planned to protect it.

When a Medicaid recipient dies, the state must attempt to recover the benefits paid to that individual from his or her estate – that is a requirement under federal Medicaid law. However, the state cannot proceed with this recovery process if any of the following applies:

- **If the recipient's spouse is still living**
- **If the recipient has a child under the age of 21**
- **If the recipient has a child who is blind or disabled**

Some states have expanded the scope of assets from which they can recover the cost of a Medicaid recipient's care. Trusts are often used to protect your assets both during your life and after your death. A qualified Medicaid Planning Attorney can advise you on the many types of trusts available.

PROPERTY LIENS

In addition, the state can place a lien on an unmarried Medicaid recipient's home, unless certain dependent relatives live on the premises or the state permits a "Homestead Exemption" (see "*Some simple planning options*"). Sale of the property, while the recipient is still living, could result in the loss of Medicaid coverage (*due* to excessive assets) and an obligation to use the sale proceeds to satisfy the lien.

There are exceptions to this rule, as well. Satisfaction of the lien is not required if the applicant returns home prior to their death or one or more of the following individuals reside on the property:

- **The recipient's spouse**
- **A child under the age of 21**
- **A child who is blind or disabled**
- **A sibling with an equity interest in the home**
- **A child who cared for the recipient for the two years preceding his or her application for Medicaid coverage**

Note: The lien is solely for the purpose of recovering the cost of Medicaid care paid prior to the recipient's death. Consult your Medicaid planning advisor for more details.

ALLOWABLE INCOME

How much income are you allowed under Medicaid law? There are different answers for the "community spouse" and the individual who resides in a nursing home.

- **Nursing home residents** can only keep up to \$38.00 (2018) a month (depending on your state) as a personal needs allowance – the rest of their income must go to help cover the cost of their care.

- If the resident is married, the **community spouse** can keep up to \$3,090.00 a month (2018), including income from the nursing home spouse. Many states permit the community spouse to retain all of their individual income without limit.
- If the resident has a **dependent child** living at home with the community spouse, Medicaid may permit an additional allowance.
- Federal law provides any community spouse that has more than the allowable income, may need to contribute up to 25% of the excess toward the institutional spouse's cost of care. Luckily only a few states enforce this. Check with you Medicaid advisor to see if this situation applies to you.

Do I have to wait 60 months? The *asset transfer "box"*

Many people believe that if you give your assets away, you must wait 60 months to qualify for Medicaid. This is not that case. The 60 month requirement applies to the financial disclosure you must provide, not eligibility.

Think of it this way: When you go to apply for Medicaid, imagine you're bringing a box with you. In that box is every financial transaction you've made for the previous 60 months. That is all you need to provide - if you made a transaction 61 months ago, it's not in the box. So 60 months is just the size of the "box" ... it's that simple.

However, this has nothing to do with determining your qualification for Medicaid. It is what Medicaid sees in the "box" that determines whether you will qualify. If you make the proper planning decisions, you may qualify immediately even if the "box" contains information that might otherwise make you ineligible for Medicaid.

This 60 month period is what is referred to as the Medicaid "look back period." With appropriate planning and expert assistance, you can give yourself the best opportunity to qualify for Medicaid coverage when you need it.

LOOK-BACK EXPECTATIONS

You can make certain asset transfers without negatively affecting your prospects for timely Medicaid qualification. These include transfers to:

- **A spouse**
- **A child who is blind or disabled**
- **Trusts that solely benefit the applicant or applicant's spouse**
- **Trusts that benefit a blind or disabled child**
- **Trusts that solely benefit a disabled person under the age of 65** (*in some cases, the recipient*)

Some simple planning *options*

- If you are married, your home is exempt and cannot be taken if one spouse applies for Medicaid. If you are single or widowed, up to \$572,000 (2018) of equity in your home is exempt (many states have raised the limit). Some states permit a “Homestead Exemption” which protects a married or single applicant’s home regardless of value. *Transferring your home to your children will result in immediate ineligibility for Medicaid.*
- A nursing home or hospital that offers to file a Medicaid application for you has no obligation (and often is unable) to advise you on how to protect your assets. Only a qualified Medicaid planning attorney can provide you with the options you need to make an informed decision.
- Long-term care insurance should always be considered. An annual premium for a couple is usually less expensive than one month of nursing home care, and when incorporated with proper planning it may also enable you to stay home if you become ill.

Special *needs*

SUPPLEMENTAL NEEDS TRUSTS

In 1993, Congress enacted new laws that entitle disabled individuals to get the same estate planning benefits as non-disabled individuals without affecting their eligibility for state or federal benefits. A Supplemental Needs Trust can be created by an individual with their own funds or be created by someone other than a disabled individual, typically a parent or relative.

GAURDIANSHIP/TUTORSHIP

As a parent of a special needs child, you are the minor child’s “natural tutor” and can make all decisions regarding the child. However, your rights as tutor do not allow you to have access or control over your child’s assets. In addition, when your child turns 18, you lose your rights as natural tutor to make health care and other life decisions for them. To maintain these rights, you must commence a tutorship proceeding in Court or the state will have legal authority over your disabled loved one. To avoid losing your authority, you should contact a qualified attorney to begin a tutorship proceeding at least six months prior to your child’s 16th birthday.

**Give yourself the best opportunity to
qualify for Medicaid coverage.**

Spousal *protections*

The spouses of nursing home residents are provided certain protections under Medicaid law. Here is a brief overview:

- **Snapshot of couple's assets** - With married applicants, Medicaid takes a "snapshot" of the couple's assets when the ill spouse enters a hospital or long-term care facility for at least a 30-day stay.
- **Community spouse resource allowance** - This rule allows the community spouse to keep up to \$123,600 (2018) of additional assets above and beyond the non-countable assets. You may be permitted to keep assets above \$123,600 if you meet certain criteria.
- **Minimum monthly maintenance needs allowance** - If the nursing home resident is the principal breadwinner, and the community spouse does not have enough income to live on, the community spouse can keep some or all of the nursing home spouse's monthly income. The total amount the community spouse may retain is \$3,090.00 (2018).

For updated amounts and special exceptions, consult your Medicaid planning advisor.

Contact us. *We can help!*

The best advice we can give you is this: Start planning now. No one knows that the future will bring. The sooner you start preparing for your golden years, the fewer surprises there are likes to be. And a little planning now can make a big difference for you and your loved ones later on.

At Theus Law Offices we are passionate about helping people avoid emotional pain in life. We are problem solvers and help eliminate client's fears and ensure life's difficult situations remain stress-free. We help people avoid losing their lifetime of assets to the government, cost of care, lawsuits or other predators. In addition, we find ways for families to keep loved ones home as they age by utilizing Medicaid, Veterans and other government benefits. Our clients thank us for showing them options that they didn't even know existed. At Theus Law Offices, it's all about keeping life simple for you and your family.

Contact us today for a consultation. We are glad to help.