



THE CONSUMER'S GUIDE
TO
WASHINGTON STATE

Medicaid Planning

A REVIEW OF
THE AVAILABLE OPTIONS
IN PLANNING FOR
LONG TERM CARE
AND
LONG TERM ILLNESS

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The Purpose of this Guide

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make. The laws are very complex and the decision is very emotional. That emotional time can be fraught with downfalls. Make one wrong step and assets can be lost or benefits can be denied. In addition to all of this, the language about ‘spend downs’ and ‘exemptions’ and ‘estate recovery’ is very foreign. This is not a comfortable place or a comfortable time to be acting by yourself.

At times like these, it’s important that you pause, take a deep breath, and understand that there are things that you can do. Good information is available and you can make the right choices for you and your love one.

This Guide is designed to help provide you with information and some of the answers to some of the questions that you will encounter. These are questions that we Elder Law Attorneys deal with every day. It is our goal to take most of the mystery out of moving through the process.

In October of 2006, Governor Christine Gregoire sent a letter to all Washington State Residents over the age of 50. That letter is a warning to all residents of the state of Washington to plan ahead for the crisis of a Long Term Illness. That letter is attached at the end of this booklet.

Essentially, the letter urges people to consider Long Term Care Insurance, which is an excellent thought. We briefly discuss Long Term Care Insurance later in this booklet.

Why Plan Ahead?

Because of the complexity of the Medicaid and Nursing Home laws, many people get caught up in a trap before they know that the trap has even been set. On February 8, 2005 the United States Congress passed a set of laws which is such a trap. That set of Laws (called the Deficit Reduction Act of 2005) changed everything about Long Term Care Planning.

It is difficult to acknowledge, but in 2005 Congress mandated that every person who does not plan ahead for Long Term Care must become destitute before the US Government will help with financial aid. Congress mandated long term planning to avoid the traps.

There is an ever present moral debate inherent in the aspect of planning.

One the one hand, some people believe that they paid taxes all of their life and that should they become seriously ill, the government should then pay something back.

However, on the other hand, there are many people who believe that the government should not go broke providing financial aid to persons who have the ability to pay their own way.

It does not really matter how you feel about this great moral dilemma. Congress has settled the issue, and although some people feel that the laws are bad laws, they are nevertheless the laws that we all must live within.

How to pay for Nursing Home Care.

The average cost of a nursing home in the State of Washington is now in excess of \$5000 per month. For people who do not plan ahead Congress mandated that they must pay for their care from their own resources, until they are out of money and assets. Run the math yourself to determine how long assets will last if being eroded by \$5000 per month.

There are essentially three ways to pay for Nursing Home Care.

First; you can purchase Long Term Care Insurance,
Second; you can pay your own way until your assets are gone or you pass away, or
Third: if you are destitute (under the government's definition) the government will help pay the cost.

Let's talk about these:

Long Term Care Insurance:

If you are fortunate enough to have this type of coverage, the benefits may go a long way toward paying the cost of the nursing home. There is no question but that Long Term Care Insurance is one of the best of options for most people. Long Term Care is a planning tool. One must meet the eligibility requirements of the insurance companies, which can vary. Eligibility is primarily based on health and age.

Some people are not insurable under the industry standards. Some people are simply too old to be insurable. Some people are not able to or willing to pay the

premiums to the insurance company. For those people, the insurance may not be a viable option. Their options are therefore reduced.

But, the gauntlet has been set: every person needs to plan ahead, and the possibilities of Long Term Care Insurance considered.

Private Pay

This is the method many people are required to use at first. Quite simply, it means paying for the Long Term Care out of your own pocket. Unfortunately, given the cost of Long Term Care, people who employ this option are often left destitute, ultimately with no money to spend for their own basics of life; such as personal care items or clothing. We'll talk more about this later.

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 assets and income tests are met. Again, we'll talk about this later, but suffice it to say that the tests require successful applicants to be destitute. We'll go over the government's definition of 'destitute' later.

Since the option to purchase long term care insurance is best discussed with insurance agents, this Guide will focus on Planning and Medicaid.

What about Medicare?

There is a great deal of confusion about Medicare and Medicaid. The distinction is critical to any planning.

Medicare is the federally funded and state administered health insurance program primarily designed for older individuals (i.e. those over age 65). There are some limited long term care benefits that can be availed under Medicare. In general, if you are enrolled in the traditional Medicare plan, and you've had a hospital stay of at least three days, and then you are admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care) Medicare may pay for awhile. (If you are on a Medicare Managed Care Plan a three day hospital stay may not be required to qualify)

If you qualify, traditional Medicare may pay the full cost of the nursing home stay for the first 20 days and can continue to pay for the next 80 days. There is a deductible that is nearly \$120 per day. The math tells us that of the \$5000 average monthly cost of nursing home, Medicare will only pay \$1400.

In order to qualify for this coverage two factors must be met. The first is that skilled nursing care must be required. That call is up to the government (with the input of the doctor). Anything less and there is no coverage.

The second factor that must be met is that the care provider must certify that improvement in the medical condition must be continually made. Any plateau in the condition is a disqualifying circumstance.

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our

experience Medicare benefits usually fall far short of the 100 day maximum period. Even if Medicare does cover the 100 day period, what then? What happens after the Medicare coverage has been used?

At that point, in either case you're back to one of the other alternatives . . . Long Term Care Insurance, Private Pay, or Medicaid.

Medicare is also highly discriminatory. It does not pay for treatment for all diseases or conditions. For example, a long term stay in a nursing home may be caused by Alzheimer's or Parkinson's disease, and even though the patient received hospital care, the treatment will not be paid for by Medicare, because there is no progress to completely recover. This is called 'custodial care' and Medicare will not pay for custodial care.

What is Medicaid?

Medicaid is a governmental benefits program which is primarily funded by the federal government and administered by each state. Most times, the rules vary from state to state because each state is allowed to set its own standards for eligibility and benefits. We are only going to focus on State of Washington eligibility.

One primary benefit of Medicaid is that, unlike Medicare (which only pays for skilled nursing), the Medicaid program will pay for long term care in an assisted living facility, group home, or nursing home. Medicaid will pay for custodial care and long term rehabilitative care.

The Medicaid program is there to help people out. By default, the Medicaid program has become the long term care insurance of the middle class. However, in order to take advantage of this program, one must meet very strict eligibility requirements, which we will discuss next. These tests surround a person's ability to pay their own way, and probes into a person's finances for the 5 years prior to making an application for benefits under the program.

Why Seek Advice for Medicaid Planning

The reasons for Medicaid Planning are simple:

First, because by the time someone has become seriously ill and in need of Long Term Care, it is too late to do much of any planning. We Elder Law Attorneys used to be able to do what was called ‘crisis planning’, but all of that went away with the February 2005 law changes.

Second, you need to provide enough assets for the security of yourself and your loved ones because they too may have a similar health or financial crisis. Some people may want to leave assets to their children. A long term illness can seriously jeopardize such desires.

Third, the rules are extremely complicated and confusing. Inadequate planning can result in a total disqualification of benefits and no personal assets to pay for the cost of care. If they improperly gave their assets away, even if the gift was to a charity or for a very good reason, they can and will be denied Medicaid benefits. They would be faced with the impossible task of getting the donated money back or forfeiting benefits.

The State of Washington is undergoing a series of changes which seriously effect when a person can qualify for State help to pay for Long term care. Technically, this process is called financial medical planning.

To qualify for Medicaid, applicants must pass some fairly strict tests of the amount of asset they can keep. Any asset which a person is not allowed to keep must be liquidated and the money used to pay the cost of care.

Exempt Assets. Assets which you are allowed to keep.

To understand how Medicaid works, we first need to review what are known as ‘exempt’ assets or assets which the applicant gets to keep. Exempt assets are those which Medicaid will not take into account (at least for the time being). In general, the following are the primary exempt assets:

In order for the State and federal government to pay the cost of Long Term Care, a husband and wife can keep the following assets:

- i. A primary residence, consisting of a house or mobile home but the equity in that residence cannot be more than \$500,000.
- ii. All of the personal furniture, furnishings and belongings in the residence.
- iii. A car of unlimited value if used for primary transportation.
- iv. \$42,000 worth of ‘other property’, which may include real estate or investments or bank deposits.
- v. Small Life Insurance Policies if dedicated for burial
- vi. Certain Qualified Annuities.
- vii. Assets which have been shifted into Safe Harbor Trusts

A single person is allowed to keep only a maximum \$2000 worth of assets, the Safe Harbor Trust accumulation, and a small insurance policy which has been pre-arranged to pay

burial costs: no house, car, investments or annuities are allowed.

When faced with Long Term Care, a single person can make a written statement that they intend to return home. If such a statement is signed, the state will provide benefits. However, the state will place a lien on the residence and force the sale of the residence when they determine that the person cannot return home.

Widows and widowers are treated as single persons.

These rules are inflexible. If a person has more than the allowed assets, then the State will not help pay the cost of long term care.

Countable Assets:

All other assets are generally not-exempt and are countable. Unless you see it listed in the above section, it is a countable asset. Basically all money and property and any item that can be valued and turned into cash is a countable non-exempt asset unless it is one of those assets listed above.

Before the State will begin to pay the cost of long term medical care, an applicant, whether they are a single person or married couple must 'spend down' their assets to the levels that are set out above. For people who do not plan ahead, this hard fact can mean that they must spend all of their assets for their care.

Planning under the Changes:

Under the 2005 changes, a person is entitled to Medicaid benefits once they are destitute and after any calculated period of ineligibility has passed. This is where the planning gets tricky. Stay inside the rules and there is no problem. But, if the state determines that the rules have been broken, then there is no coverage or benefits.

The planning rules have intricacies of their own but are generally as follows:

Countable Assets can be converted to Exempt Assets. There are a number of techniques that can help convert Countable Assets into Exempt Assets.

1. A husband and wife can take countable investments or cash and buy a Medicaid Qualified Annuity (which is an exempt asset). A single person is not permitted this luxury. The kicker is that these annuities must start to pay out before an application for Medicaid benefits is made. Also, the State of Washington must be a named beneficiary of the annuity, behind the spouse.
2. Countable Assets can be used to improve Exempt Assets. (e.g., Improvements to a house) Again, a single person is not allowed this luxury.
3. Any person (whether married or single) is entitled to spend as much of their assets as they want for their own use, so long as the use is not for another person. (e.g. the purchase of a better car or the purchase of usable assets for the benefit of the well spouse)
4. Given sufficient time, any person is entitled to transfer

assets out of their name in order to reduce the total assets to the stated maximum levels. However, there are strict guidelines for such transfers. Let's spend some time on this technique.

Once an application for Medicaid is made, the state will 'look back' for a period of 5 years before the application is submitted. Any transfer of assets for less than Fair Market Value will disqualify the applicant for benefits for a calculated period of time.

The disqualification period begins when the person is destitute. The disqualification period is calculated by dividing the value of the gifted property by \$5100 (the amount changes quarterly).

So, for example a husband and wife give \$20,000 cash to a charity in March of 2005. (or to a granddaughter for education, or to a child for a vacation or whatever).

Then in April of 2008 the husband becomes ill and has to go into a nursing home.

At that point, the wife must 'spend down' the assets to the Exemption amounts that we set forth above.

Let's say that the wife needs to spend down \$75,000 (or whatever amount is in excess) for the husband's care. That should take her to about August of 2009 (assuming monthly care in the amount of \$5000).

At that time the husband would be eligible for benefits. EXCEPT, that the \$20,000 gift disqualifies the husband for benefits.

The state would then calculate the period of ineligibility as follows:

$$\begin{array}{rcl} & \$20,000 & \text{divided by} \quad \$5100 \\ = & 3.92 & \\ & \text{(amount of gift)} & \text{(monthly cost of} \end{array}$$

care)

The state would then make the wife Private Pay for the husband's care for 3.92 months out of their savings account. This would obviously significantly cut into the wife's savings account.

It may not be possible for the wife to go back to the grand daughter and ask for the money back, but that would be the other option.

With proper planning such a result could be avoided.

But, what if the above example was a single person who spent all of their assets for their own care by August of 2009? The disqualification laws hold that this single person would be denied benefits, even if they had no way to pay for care. Not a pretty result. Again, with proper planning, this nasty result can be avoided.

Safe Harbor Trusts.

Transfers are allowed into what are called ‘Safe Harbor’ Trusts or ‘Safe Harbor Accounts’. These are also called ‘Family Holding Trusts’ or ‘Medicaid Qualification Trusts’. They are known by a number of names but essentially a Safe Harbor Trust is an irrevocable trust that is allowed to hold money or assets.

The use of such a trust avoids the problems with people, either married or single, running out of assets before a period of disqualification ends.

In the example above, the \$20,000 gift to the granddaughter could be placed into such a trust, for the benefit of the grand daughter. True, she would not be able to use the money for her education at the time, but the trust could be written that the money would be released to after a calculated period of time. She could then use the money to pay off school loans or other purposes.

But the effect of the trust is that if the husband and wife run out of money before a disqualification period ends, that the money can be taken out of the trust and used for the husband’s care. The wife’s savings would not be eroded. Again, in our example above, the grand daughter might not get the intended gift. But she might also get a portion of the gift of what is left over after the disqualification period ends.

Let’s remember who we are trying to protect. A spouse should not be left destitute because one spouse contracts a serious long term illness. Worse, a single person should not lose all of their assets if they temporarily go into a nursing home for custodial care and get well enough to come out.

Some Common Questions

1. I have 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 all cash assets, such as:

- Savings and checking accounts
- Credit Union share and draft accounts
- Certificates of Deposit
- US Savings bonds
- Mutual Fund or Stock accounts
- Any other form of investment

2. What about my retirement funds: pensions, IRA's 401K plans or such. Are they Countable Assets?

Again, Yes. Retirement funds of any nature, regardless of which spouse owns them are Countable Assets. The government really does not even care what the tax impacts of cashing in retirement funds may be. You could end up paying for the care and having a big tax bill.

3. I have assets that I accumulated before our marriage. Are those countable?

Again, and sadly Yes. All of the assets of both spouses, which are not defined as exempt, are countable. This is true even if the parties have a pre-nuptial agreement. The government spend down mandates are very clear and very inflexible.

4. Can't I just give my assets away?

This answer is Maybe, but only if it is done just right. As we point out above, the Medicaid law has severe penalties for people who simply give away their assets and then later apply for Medicaid benefits.

The problem that you may have by simply giving your assets to your kids with the hope of out waiting any period of disqualification is that the assets can be taken from the child by a creditor or spent by the child.

The use of the Safe Harbor Trust is much preferable, because the assets cannot be taken out by a creditor and can only be taken out if your designees agree in writing.

5. I have heard that I can give away \$12,000 per year. Can I?

Many people have heard that they can give away money to children or heirs and not have that gift counted against them. The amount used to be \$10,000 per year. This is an IRS rule for estate and gift taxes and a completely different set of laws governing taxes. The answer is No. Any gift is a disqualifying transfer.

6. But I want my kids to inherit some of my property when I pass away. How can that happen?

The only safe way is to use a Safe Harbor Trust. If you use such a trust and you pass away, the property will be inherited by your children without a probate of your estate.

7. Will I lose my home?

Probably not while you are alive. Remember that a husband and wife can keep their primary residence. However, for single persons, the house is not exempt.

This means that the state will place a lien on the house for each month's Medicaid benefits paid. Once the single person passes away, the state will force the sale of the house and 'recover' the amounts that have been spent.

8. I have heard the term 'Estate Recovery'. What does that mean?

Estate Recovery is the process used by the state to recover any and all of the benefits that the state paid. If a spouse passes away, who has been in a nursing home, the state will make all efforts to ensure that the surviving spouse has no more assets than allowed. If the surviving spouse has more than the exempt amounts, then they will have to pay the excess to the state.

If a single person passes away, then the state will take every effort to discover assets and force the liquidation of those assets and pay itself back for the benefits paid. Any excess will be paid to the heirs.

9. What do I do if I have spent all of my money and have been disqualified by the state?

The 2005 laws included provisions for what is called a 'hardship waiver'. Essentially you must plead your case to a DSHS Caseworker, who must make certain findings that to deny benefits would cause a serious medical threat to your health.

Such hardship waivers are very difficult to prove and should be engaged by an Elder Law Attorney who is proficient in this niche of the law. These proceedings are very time consuming and can be very expensive to pursue. Many of these requests are denied. (you are in the state system and dealing with state employees) The state does not provide free lawyers for these types of matters.

Legal Assistance

There is no question but that aging persons and their family members face many unique legal issues. As you can tell from the discussion of the Medicaid program, the legal, finance, 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, you really do need legal help, in order to avoid the traps. Where can you turn for that help? It is difficult for the consumer to be able to identify lawyers who have the training and experience required to provide guidance during this most difficult time.

Generally, nursing home planning and Medicaid planning is an aspect of the services provided by Elder Law Attorney. Consumers must be cautious in choosing a lawyer and carefully investigate the lawyer's credentials. Just because a lawyer states that they are an 'Elder Law Attorney' does not mean that they have the expertise to help you successfully through the system. Here are some questions to ask:

1. How long has the Lawyer practiced Medicaid eligibility law?
2. What percentage of the Lawyer's practice is devoted to nursing home law?
3. Does the Lawyer lecture on the subject, and to whom?
4. Has the Lawyer published any written material that can be reviewed?
5. Is the Lawyer a member of any national Organizations devoted to the topic?

6. How much time has the lawyer spent in staying current in this area of the law?
7. Will the Lawyer customize a plan which takes into account your specific finances?
8. Will the Lawyer 'stay the course' with you through such a long term set of issues?
9. Will the Lawyer monitor your financial progress?
10. What is the Lawyer's philosophy about nursing home financial qualification and does that philosophy meet your own philosophy?

Think about each of these questions. You may have additional questions to ask. Because when you first meet with the Lawyer you need to be prepared. You may be asked to spend a lot of money and unfortunately this type of law requires a great deal of expertise and as such can get expensive. The decision on what Lawyer to hire should not be based upon cost alone, but rather the rapport that you can establish and how much 'bang for the buck' that you perceive.

Finally, it has also been stated that "knowledge is power". Hopefully you now have valuable information which will help you make the decision which is right for your circumstances. If you have any questions, or need further information, please feel free to call the author of this guide.

About the author:

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