

The Basics of Medicaid Planning

Assets in a revocable living trust are not protected from Medicaid liens and attachments and must be used to pay for the costs of long-term care.

If you are married, your home is exempt for Medicaid eligibility and Medicaid cannot require its sale to pay for the cost of care unless your equity in the home exceeds \$500,000. However, if you are single and must move to a nursing home then before you are able to qualify for Medicaid your home must be sold and the proceeds of the sale must be used to pay for the medical bills before you are eligible for Medicaid benefits. If you transfer your home to your children with a simple deed of gift, not only will it result in immediate ineligibility for Medicaid, but it could also:

- Trigger the requirement to file a gift tax return;
- Require your loved one to pay huge capital gains that proper planning would avoid;
- Result in your child's spouse (the in-laws) inheriting your home.

Obviously, giving your assets away means losing control and it can be a divisive to the family dynamic. What if your children were to subsequently divorce their spouse after you'd made them a gift you hoped they return if you needed it back? Or a child goes bankrupt or another is sued. The result in any of these situations is probably not what you planned. All of the money transferred at grave risk. There are asset protection trusts that allow you to determine how 100% of your assets are spent without exposing them to the need to be 'spend-down' for your long-term care needs.

Nor must you necessarily wait 60 months to qualify for Medicaid. Eligibility is calculated on a case-by-case basis. It is possible to have assets and still qualify immediately. Get professional advice and learn the facts. It is never too late to protect your assets even if you are already in a nursing home. However, applying for Medicaid prior to qualification could result in being disqualified for a longer period of time than you otherwise would have been (it's not limited to 60 months.)

Beware, the nursing home or hospital that offers to file a Medicaid application for you as they have no obligation (and often can't) advise you on how to protect your assets. Make sure that any law firm you engage to assist you with your Medicaid planning has experience in myriad issues that govern this bureaucracy; it is preferable to seek the advice of a firm that has dedicated its practice to Elder Law issues. After all, would you ask your family doctor to perform complicated brain surgery?

Always consider your option to purchase long-term care insurance. Often, an annual premium for a couple is less than the cost of one month in a nursing home and certainly less than 24 hour care in your own home. In fact, with proper planning, long term care insurance may be the only way you can afford to remain in your home if you were to need daily nursing care.