
Frequently Asked Questions in Medicaid Planning

Question 1: How much do nursing homes cost?

According to a recent survey, the average length of stay in a nursing home is two and a half years. Nursing home costs average \$70,000 a year, with an average cost per stay of \$170,000. Some facilities in the Durham area exceed \$10,000/month, for a total stay almost \$200,000.

Question 2: Will Medicare pay for my nursing home costs?

No. Medicare does not pay the expenses of long-term care incurred for day care at adult centers, home care by relatives or employed caretakers, and nursing home care.

Medicare is health insurance and pays only limited benefits for skilled nursing care.

Question 3: What government program will pay for my nursing home costs?

Medicaid pays for most nursing home care. Medicaid is a federal and state medical program for persons who meet certain asset and income levels. Some veterans are entitled to veterans benefits to pay for their nursing home care.

Question 4: How can I avoid being impoverished by the high cost of nursing home care?

The answer usually depends upon your marital status, and whether you are already in the nursing home or you anticipate a lengthy stay in the nursing home. There are ways to reduce the devastating cost of long-term care.

First, it is almost never a good idea for people who aren't facing a lengthy stay in the nursing home to give away assets. This creates possible sanctions that might exceed your ability to pay.

Second, plan ahead. If you can plan more than 5 years in advance of need, that will be better, but, even if it is too late for that, see an Elder Law attorney to find out how we can help.

Question 5: If my spouse is going into a nursing home, can he or she transfer all of his or her assets to me and qualify for Medicaid?

Probably not. To determine the eligibility of the spouse who is going into the nursing home to receive Medicaid (the "institutional spouse"), all of the non-exempt assets held by the husband or wife are added together and then the total divided equally between the spouses.

Of the half attributed to the spouse going into the nursing home, that spouse is disqualified from receiving Medicaid until his or her share of the assets are reduced to \$2000.

The spouse outside of the nursing home (the “Community spouse”) can retain half of otherwise non-excludible assets, up to a maximum (of around \$120,000, an amount that changes annually), plus the residence, plus some personal property, burial reserve, automobile, and other miscellaneous items.

It is important to understand that under North Carolina law:

- **A spouse has responsibility for the other spouse’s nursing home costs. This means that the income and resources of both spouses are considered when the spouse in the nursing home applies or considers applying for Medicaid nursing home benefits, and**
- **If the married couple has “countable” assets in excess of about \$26,000, some portion of those excess assets are at risk for the nursing home spouse’s nursing home expenses, and**
- **A prenuptial agreement saying that the healthy spouse does not have to pay for the nursing home care of her institutionalized spouse is not enforceable when an application for Medicaid is made.**
- **Assets can be transferred from one spouse to another, but we utilize other methods to help maximize what the Community spouse can retain.**

Question 6: How much income can I make and qualify for Medicaid?

Any person with medical need can qualify for Medicaid in North Carolina. Income is not a bar that prevents access to Medicaid for skilled nursing. There are limits to income for Special Assistance, which generally is used to pay for care in Assisted Living and memory care.

The Community spouse does not have any income limits, and in some cases may be able to keep some or all of the other spouse’s income while in skilled nursing.

Question 7: Can I transfer my assets to my children just before I go into a nursing home and still qualify for Medicaid?

Probably not. Under the 5 year Lookback, eligibility for Medicaid may be denied if the person going into the nursing home transferred assets for less than fair market value within 5 years, or 60 months, before his application for Medicaid benefits.

Don’t give away assets unless it is part of a comprehensive plan prepared in conjunction with an Elder Law attorney.

Question 8: If I am in the nursing home, is it too late to save assets and qualify for Medicaid?

No, it’s never too late. Depending upon a person’s circumstances, it may be legally possible for you to protect most of your assets and still qualify for Medicaid.

Question 9: Should I use a trust to protect my assets?

It depends. If we utilize an irrevocable trust for Medicaid planning, assets are transferred to a trust for the benefit of lifetime beneficiaries, but you lose control of those assets. This has benefits and drawbacks which we explain to you. Only the income that the money or property in the trust earns can be distributed to you. The trustee of your trust must not have any discretion to distribute trust principal to you; otherwise the principal will be considered a resource for Medicaid purposes. But, it does protect your assets completely if done more than five years in advance of needing Medicaid.

If we utilize a revocable trust (or "Living Trust"), you retain control of the assets now, at your incapacity, and after your death. However, this trust does nothing to protect assets for Medicaid planning.

A trust can be more desirable than an outright transfer to a child because:

- **You may have a bad relationship now or in the future with: 1) your child or 2) your son-in-law or daughter-in-law**
- **Your child may: 1) get divorced, 2) have creditors or go bankrupt, 3) invest your assets unwisely, 4) spend all of your assets during your life, or 5) spend all of your assets as soon as you die.**

Question 10: Are there other ways to protect my assets?

Yes. The Medicaid law does not penalize you for spending your assets, only for giving them away. For example, you can make fair market value purchases to benefit yourself or your spouse, such as for home repairs and improvements or a burial plan.

Question 11: How can I protect my house?

The Medicaid applicant may retain a principal residence. The homestead is exempt property. After the Medicaid recipient's death, however, the house can be sold and Medicaid must be reimbursed unless there is a surviving spouse.

North Carolina allows a so-called 1% deed, which is essentially a deed with unequal ownership by the parties. We also may suggest a transfer or sale of the residence to the children with the parent reserving a "life estate". Although the value of the life estate might still be at risk during the applicant's life, these are planning possibilities available to protect the life estate.

An unusual and interesting approach is the Lady Bird deed, which gives a life estate to another person, but holds the right to change the plan and "un-give" that life estate. Some attorneys use this, and others do not ... It is not a common practice in North Carolina.

Question 12: Isn't it wrong to hide assets in order to qualify for Medicaid?

Yes! Hiding assets in order to qualify for Medicaid is a crime. That's not what elder law attorneys who help their clients become Medicaid-eligible do. We must disclose all transactions to Medicaid.

It is not illegal to structure one's assets in an effort to qualify for Medicaid nursing home benefits. Elder law attorneys advise their clients on the Medicaid law and what can and cannot be done legally within the law. Some people, however, may believe it is wrong to do legal Medicaid planning. That's a different issue.

Question 13: Can I rely on what you have written here about Medicaid law?

No ... it would be foolish for anyone to do so. We've posted some frequently asked questions about how to protect assets from being spent on nursing home care. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state; and it changes over time. Unfortunate and costly mistakes can be made if you do not know what you are doing.

Question 14: Should I hire an attorney to help me?

Yes. You could try to figure this out for yourself, but if you make a mistake or overlook a strategy that results in your having to pay more to the nursing home than you should have, you could have used the money you lost to the nursing home to pay an attorney to help you. Remember: professional help is expensive, but mistakes cost more.

Question 15: How do I find an attorney to help me?

Well, you found us! If you'd like local opinions, administrators of nursing homes and assisted-living facilities may be able to give you referrals. The National Academy of Elder Law Attorneys website is a good source for referrals.

Just make sure you consult an experienced elder law attorney who knows this stuff.