

The Top 10 Medicaid Mistakes and How to Avoid Them

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Anyone dealing with a spouse or aging parent with long term medical needs knows how difficult it can be to obtain quality health care for that person while watching one's life-savings become depleted. It is heart breaking and stress inducing at a time when the focus should be on providing comfort and care for the elderly individual. The Medicaid program, although difficult to navigate, can provide some relief. And depleting one's life-savings to zero is not required under the law.

Medicaid is a long term care program for the low income senior based on federal law, but interpreted and administered by the individual states. There are many programs for persons 65 years or older (or disabled) under the Medicaid laws, however, the focus of this article is on nursing home Medicaid rules and how to avoid the mistakes so often resulting in unnecessary loss of assets and forced ineligibility.

To offer some background, Medicaid has basic eligibility requirements which include being age 65 or older; disabled as demonstrated by the need for long term care; and under \$2,000 of personal assets. In an effort to assist you in avoiding the most common mistakes, here are the top 10 Medicaid mistakes and some pointers on how you can avoid them.

1. Failing to pre-plan. Most people do not consider the possible need for long term care at a time when they are healthy and young. But pre-planning is the surest way to avoid the possibility of losing a life-time of savings to the costs of long term care. If you are young enough and can qualify, a long-term-care insurance plan should be considered and purchased. Pre-planning using trust tools and annuities are most effective if done at least 5 years (called the "look back period") prior to the need of nursing home care. We cannot look into a crystal ball and know for certain when such care will be necessary, but the sooner such plans are in place, the better the chances the look-back period will expire.
2. Thinking it's too late to plan. Although it is preferable to plan ahead while you are physically and mentally healthy, it is never too late to plan. As noted above, the most effective pre-planning occurs 5 years prior to needing nursing home Medicaid. However, even after a senior has moved into a nursing home there are opportunities to protect some of the family's life-savings through trust and annuity planning which will pay for the periods of ineligibility and get the senior qualified for Medicaid as soon as possible. This is especially important if there is a spouse who remains living at home. Do not wait until your assets are completely depleted before seeking counsel.
3. Giving away assets without considering the consequences. First, it is your life-savings, your home, and your decision. However, make sure you take care of yourself first. Don't put your security at risk by putting your assets in the hands of your children without seeking counsel before such a gift is made. Gifts, which Medicaid classifies as uncompensated transfers, can result in difficult tax problems and can create Medicaid ineligibility for a long period of time. Proper planning can avoid the taxes and protect Medicaid eligibility.
4. Ignoring safe harbors created by Congress. Not all gifts result in Medicaid ineligibility. Congress has specifically exempted transfers to disabled children, caretaker children, certain siblings, and monies put into trust for anyone who is disabled and under age 65. Additionally they have exempted transfers into trusts that are designed to "pay-back" the state if under age 65; and pooled-disability trusts. However the laws are complicated, and provided you follow the explicit rules, gifts of these types will not render you ineligible for Medicaid benefits.
5. Failing to take advantage of protections specifically granted to the spouse of a nursing home resident. In passing specific safe harbor rules for spouses of nursing home residents, Congress showed it had no

intention of requiring the spouse of a nursing home resident to become completely impoverished. The basic rules as applied in Illinois require a spouse of a nursing home resident can only have personal assets not to exceed \$109,560 and monthly income not in excess of \$2,739. In certain circumstances, however, the law provides the opportunity to petition for an increase in the community resource allowance and/or an increase in the spousal income allowance; and allowing a spouse to refuse to cooperate with a Medicaid application's requirement to disclose a spouse's assets. The proper use of these rules in the proper circumstances can allow the spouse of the nursing home resident to live comfortably for many years.

6. Not taking advantage of the allowable spend-down rules. This is especially important for the spouse remaining at home. Paying off debt, making needed repairs and upgrades to the residence, purchasing pre-paid funeral plans, and purchasing a new automobile are just a few. Whatever goods or services are purchased must be done at fair market value. Anything that benefits the stay at home spouse will also, by its nature, benefit the nursing home spouse.
7. Applying for Medicaid too early. The timing of a Medicaid application is crucial. If you intend your life-savings should be used for your long term care needs, make an application right away and spend down such savings on your nursing home costs. You will be eligible as soon as your assets are depleted. However, if you intend your life-savings should be used to protect your stay at home spouse, or other family members, proper planning must take place and transfers or spend downs must be done PRIOR to an application being filed.
8. Applying for Medicaid too late. This is especially important for those individuals with spouses still living at home. With proper planning, the nursing home spouse can be eligible for Medicaid benefits before the assets are spent to such an extent that the stay at home spouse cannot afford to live independently.
9. Failing to be aware of the estate recovery rules. Although Medicaid rules specifically exempt a person's homestead for Medicaid eligibility, there is expanded estate recovery upon the death of a Medicaid recipient. This means Medicaid payments made on behalf of the nursing home resident shall attach to any real estate owned by the resident at the time of his or her death. With proper planning during the life-time of the nursing home resident, this important asset may be protected.
10. Not getting qualified expert help. This is a complicated field most people only deal with once or twice in their life-time. Considering the monthly cost of nursing home care ranges from \$5,000 to the \$10,000+ each month, there is a lot at stake. It is penny wise and pound foolish not to spend the money to consult with a professional who makes his or her living guiding clients through the process. Qualifying for Medicaid is tricky and a competent Elder Law professional should be consulted prior to making such application.

The information contained herein is not intended to provide legal advice. Every situation is unique. A competent Elder Law Attorney should be consulted to discuss individual concerns.