McGUIRE WOOD & BISSETTE LAW FIRM

SMART LEGAL

ELDER & SPECIAL NEEDS LAW

FREQUENTLY ASKED QUESTIONS
PAYING FOR LONG-TERM CARE

Q. WHAT IS ELDER LAW?

A. Elder Law is a unique practice area that encompasses and overlaps with various other fields of law. It is unique in that it is the only area of law whose focus is built not around a specific subject matter, but around the myriad of issues facing elderly and disabled such as Medicare matters, Medicaid planning and application, preservation of assets, tax planning, preparation of estate planning documents and powers of attorney in the event of disability, and guardianships.

OUR SERVICES INCLUDE:

- Planning & applying for Long-Term Care Medicaid Benefits
- Preparing powers of attorney and estate planning documents
- Guardianships
- Creating and administering special needs trusts for disabled loved ones
- Protecting assets for a surviving spouse or disabled child

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Q. WHAT LONG-TERM CARE DOES MEDICARE COVER?

A. Medicare may cover a maximum of 100 days in a skilled nursing facility after a 3-day inpatient hospitalization. The first 20 days may be 100% covered by Medicaid, but the remaining 80 days have a coinsurance of $209.50 per day in 2025, if the additional days are approved. Medicare will not pay room and board in an assisted living facility.

Q. HOW DO I PAY AFTER THE MEDICARE 100 DAY CAP?

A. After Medicare has paid its maximum benefit, continued payment options include:

1. Private out-of-pocket payment (from Genworth's Cost of Care Survey)
   ~$9,125/month for semi-private room
   ~$10,220/month for private room
2. Private long-term care insurance
3. Long-Term Care Medicaid

Q. WHAT ARE THE BASIC LONG-TERM CARE MEDICAID REQUIREMENTS?

A. An applicant must satisfy three basic tests to qualify for Long-Term Care Medicaid:

1. **MEDICAL NEED:** The applicant must be either (1) 65 years of age or older, (2) blind, or (3) disabled *and* in need of long-term care, as certified by a physician.
2. **INCOME REQUIREMENT:** The income rules can become complicated, but generally the applicant's income less allowable deductions must be lower than the cost of the nursing facility. Long-Term Care Medicaid recipients are provided a $70/month personal needs allowance.
3. **COUNTABLE RESOURCE/ASSET REQUIREMENT:** The countable resources for an applicant can be the most complicated aspect of the Medicaid program to understand. Please review our general overview of the requirements on the next page

Q. WHAT ARE THE LONG-TERM CARE MEDICAID RESOURCE REQUIREMENTS?

A. Generally, the person applying to receive Medicaid can have no more than $2,000 of countable assets. It is important to note that not all assets are countable. Examples of non-countable assets include:

- The applicant's principal residence and contiguous property, subject to a maximum equity value of $730,000;
- Household furnishings and other possessions such as jewelry;
- Your most valuable vehicle if used for the transport of the applicant or for a spouse;
- Certain burial arrangements such as prepaid funeral plans or insurance policies;
- Life insurance with no cash value or term life insurance policies;
- Certain non-homeplace real property if owned with a non-spouse as tenants-in-common;
- Assets held in specific kinds of trusts (revocable/living trusts owned by the applicant or spouse are COUNTABLE); and
- Certain types of annuities that must meet strict requirements (sometimes called Medicaid annuities).

Q. ARE THERE SPOUSAL PROTECTIONS FOR LONG-TERM CARE MEDICAID?

A. If the applicant is married, then the spouse still living at home (a/k/a the community spouse) who does not need benefits is subject to certain protections. For resources, the community spouse is provided with an allowance of the assets that the community spouse can keep in his or her name without impacting the applicant's benefits. In general terms, the countable assets on the "snapshot date" are divided in half—the community spouse can keep one half and the other half must be either (1) spent down, or (2) protected using Medicaid planning techniques. This community spouse resource allowance has a minimum amount of $31,584 and a cap of $157,920. For example, if a married couple had $500,000 of countable assets, ½ of that amount is $250,000. This exceeds the cap of $157,920. Thus, the community spouse is only able to keep $157,920 of countable assets in his or her individual name. In addition to resource protection, certain community spouses with low income may be provided an allowance from the applicant's income to pay for household expenses.

Q. ARE THERE ANY RESTRICTIONS ON TRANSFERS OR GIFTS?

A. As you may have heard, Long-Term Care Medicaid has a 60 month "look-back period." When applying for benefits, the county agency reviews the applicant's (and any spouse's) assets and transactions during the "look-back period" to ensure no assets were given away or transferred for less than fair market value to qualify for Medicaid. Any such gifts or transfers must be disclosed. If assets were given away, then (1) they may be returned to the applicant/spouse without any penalty; (2) the recipient may pay the applicant/spouse fair market value for the received asset; or (3) the applicant may be subject to a "penalty period," where the applicant does not receive Medicaid benefits. The penalty period is calculated based on the value of the uncompensated transfer. As with all Medicaid rules, there are some exceptions to such transfers. For example, gifts between spouses or to qualifying disabled adult children are not penalized.

Q. WHAT IS MEDICAID ESTATE RECOVERY?

A. After a Long-Term Care Medicaid recipient dies, his or her estate may be subject to estate recovery, whereby the State of North Carolina seeks reimbursement for Medicaid benefits paid during the applicant's lifetime. Medicaid estate recovery may reach assets such as a primary residence that was excluded while the applicant was living and other real property owned as tenants-in-common. In some cases, such as where the applicant is survived by a spouse or disabled child, Medicaid estate recovery may be waived or deferred.

Q. ARE THERE PROGRAMS TO PAY FOR ASSISTED LIVING FACILITY COSTS?

A. The State and County Special Assistance Program can provide assistance for low-income elderly or disabled individuals who live in adult care homes/rest homes, family care homes, and group homes. Some facilities have a Special Care Unit specifically for individuals with dementia or other cognitive issues. For this program, only the applicant's income and assets are evaluated for eligibility—not the spouse's income and assets. Recipients can have no more than $2,000 of countable assets and there is a 3 year "look-back period" for any sanctionable transfers of assets.