Introduction to Medicaid

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make.

Whatever the reason; those involved are always under great stress. Along with the concern for the family member there can be feelings of guilt or inadequacy when you can no longer physically provide for the needs of your wife or husband and require professional assistance.

It can occur because the family member can no longer care for himself or herself due to progressive diseases like Parkinson's and Alzheimer's or a more sudden condition such as a stroke or heart attack.

At times like these it is important that you take a moment and realize there are things you can do and professionals you can turn to. Good information is available and you can make the right choices for you and your loved one.

This brief information booklet is designed to assist you with information and answers to questions which we as attorneys deal with regularly.

We have compiled this information based on the law and our experience. As the care provider for a disabled loved one we hope you will find it useful as well.

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THIS BOOKLET IS INTENDED TO PROVIDE GENERAL INFORMATION REGARDING MEDICAID LONG TERM CARE BENEFITS. IT IS NOT INTENDED AS LEGAL ADVICE AS LAWS CHANGE AND EACH INDIVIDUAL'S SITUATION IS DIFFERENT. PLEASE CONSULT A QUALIFIED ATTORNEY IN YOUR AREA FOR ASSISTANCE REGARDING THE PROPER ACTIONS TO BE TAKEN IN YOUR PERSONAL MEDICAID SITUATION.

Americans are living longer than ever before. At the turn of the 20th century, life expectancy was about 47 years. As we enter the 21st century, life expectancy has almost doubled. As a result we face more challenges and transitions in our lives and those who came before us.

It is difficult and extremely stressful for someone facing the change from independent living in their own home or apartment to living in a long-term care facility or nursing home.

It is a loss of one's comfortable home environment with a lifetime of memories and a loss of independence. Additionally, there is the decrease in personal privacy, since nursing home living is often shared with a roommate.

Those making the decision to move to a nursing home due so during a time of great stress. Some were hospitalized after a stroke, some have fallen and broken a hip and others have progressive dementia, like Alzheimer's disease and can no longer be cared for in their homes.

Whatever the reason, the spouse or relative who helps a person transition into a nursing home during a time of stress, faces the immediate dilemma of finding the right nursing home. The task is no small one, and a huge sigh of relief can be heard when the right home is found and the loved one is moved into the nursing home. For many, the most difficult task is just beginning; **How to cope with nursing home bills that may total $3000-$5000 per month or more?**

How to Pay for a Nursing Home

People's biggest fear about nursing home care is how to pay for it. There are basically three ways that you can pay the cost of a nursing home:

1. **Long-Term Care Insurance:** if you are fortunate enough to have this type of coverage it may go a long way toward paying the cost of nursing home care. Unfortunately, long-term care insurance has only recently become popular and most people facing a nursing home stay do not have this coverage.

2. **Pay with Your Own Funds:** This is the method most people start with. Quite simply it means paying for the cost of a nursing home out of your own pocket. Unfortunately with nursing home bills averaging around $4000-$5000 per month in this area, few people can afford a long-term stay. Statistics show that 90% of Texas nursing home residents will exhaust their resources and reach the poverty level after only 26 weeks of care, 78% of all Texas nursing home residents including those who have not yet exhausted their resources are qualified for Medicaid. For most people, the time they can postpone Medicaid eligibility by paying privately is at best very short and the cost is their entire savings.

3. **Medicaid:** Medicaid is a program in which most of the funding is provided by the federal government and the administration is handled by the state. The state administration determines whether or not a person meets the asset and income tests to be eligible for Medicaid.

Methods one and two, long-term care insurance and paying with your own funds need limited explanation our concentration will be on explaining the process under Medicaid and Medicare.

What about Medicare?

There is a great deal of confusion about Medicaid and Medicare.

Medicare is the federally funded health insurance program designed for older individuals (Those over age 65). There is a limited long-term care component to Medicare. Generally, if you've had a hospital stay of at least three days and you need to go into a skilled nursing facility, for rehabilitation or convalescence, and Medicare may pay for a period of time.

Typically, Medicare pays the cost of the nursing home stay for the first 20 days and will in some cases continue to pay the cost of the nursing home stay for the next 80 days, but with a deductible that's nearly $100 per day. Oftentimes you're Medicare supplement will pay the cost of that deductible. So in the best case scenario, Medicare may pay up to 100 days. In order to qualify for these 100 days of coverage, the nursing home resident generally must continue to improve.

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, experience tells us that it often fall short of the 100 day period. Even if Medicare does cover the 100 day period, what then? What happens after the 100 days of coverage have been used?

At that point you’re back to one of the other alternatives long-term care insurance, paying with your own assets or Medicaid eligibility.

What is Medicaid?

Medicaid is a benefit program funded by the federal government and administered by the states. Because it is administered at the state level Medicaid rules and their interpretation can vary from state to state. One of the primary benefits of Medicaid is that, unlike Medicare which only pays for skilled nursing, the Medicaid program will pay for long-term custodial care in a nursing home.

Custodial care refers to assistance with the activities of daily living. Activities like dressing, bathing, poor living, meal preparation and so on are considered the activities of daily living. The inability to manage these activities on your own results in the need to move to a nursing home.

Why Plan for Medicaid?

As life expectancies and long-term care costs continue to rise, the challenge quickly becomes how to pay for care. Many cannot afford $4000 or more per month for the cost of a nursing home. Those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, Medicaid is there to help. In fact, in our lifetime Medicaid has become the long-term care insurance of the middle-class.

However, to be eligible for Medicaid benefits requires that you meet certain tests based on the amount of income and assets you own. The reason for Medicaid planning is simple: You plan so that if you need it, you will be eligible to receive Medicaid benefits.

There are two test for Medicaid eligibility, an income test and a asset test. In other words your income must be below a certain amount each month **and** your "assets" must be below a certain amount, currently $2,000.00. (Assets included are countable assets, some assets are exempt for purposes of determining eligibility.)

Exempt & Countable Assets
What Can I Keep? What is at Risk?

To qualify for Medicaid, there are some strict tests on the assets you can keep. To understand how Medicaid works, we will first review what are known as Exempt Assets and Non-exempt Assets (or countable) assets. Exempt Assets are those which Medicaid will not take into account when determining whether you exceed the maximum allowable levels. In Texas, the following are the primary Exempt Assets:

Personal Residence (up to $500,000) **-** Your home must be the principal place of residence. Although a person is in a nursing home the home must remain classified as the primary residence. Because of this the nursing home resident may be required to show "intent to return home" even if this never takes place.

Household and Personal Belongings such as furniture, appliances, jewelry and clothing.

One Automobile for your personal use.

Burial Plot for you and your spouse.

Cash Value of Life Insurance policies as long as the face value of the policies added together does not exceed $1,500.00. If it does exceed $1,500.00 in total face amount then the cash value of these policies is countable.

Certain other specialized resources may be an exception but would require a case by case determination.

Additionally, if you are married assets can be divided between the nursing home spouse and the non-nursing home spouse.

Therefore, if you are married the first step is determining eligibility involves a concept called Division of Assets.

Can't I just give My Assets Away?

You may be asking yourself the question, Can't I just give my assets away? The answer is maybe, but only if it's done right. There are severe penalties for people who simply give away their assets to create Medicaid eligibility. Gifting assets to family members to create eligibility can delay coverage and create a penalty period restricting benefits.

The first concept is that gifts exempt for IRS gift tax purposes, $12,000 per year, are not exempt under Medicaid. In the state of Texas, gifts can create a waiting period where the number of days of the penalty period equals the amount of the gift divided by $117.08, the current daily rate. So even though the federal gift tax law allows you to give away up to $12,000.00 per year without gift tax consequences, these gifts could result in a period of ineligibility in Texas of approximately four months.

In the case of a single individual who will ultimately become eligible for Medicaid, the objective is to qualify as soon as possible. This may preserve at least a portion of their assets for the benefit of their family or used to provide care that is not covered by Medicaid.

Case Study No. 1
Medicaid Planning for Single People
Caring for an Aging Parent

Betty Johnson feels worn out. Four years ago her father died and for the past three years she's been caring for her aging mother.

At first, it was little things: grocery shopping, trips to the doctor, help with her medication, and things like that. But as her mom's health deteriorated, Betty's burden has increased. The last six months have been very difficult and Betty had to move her Mom to a nursing home. Her mother couldn't take care of herself at home anymore.

Betty thought her job would be easier once the nursing staff took over but it hasn't turned out that way. As the oldest daughter, Betty still feels responsible, even though technically someone else is now responsible for mom's care. Betty feels like she needs to be there so she visits her Mother six days a week.

Betty is running herself ragged and Mom is running out of money. Mom has about $50,000.00 left and at $4,000.00 per month for the nursing home, Betty knows Mom's money won't last long.

Who will be there to pay for Moms nursing home once the money runs out? Sure, Betty has heard Medicaid will cover the nursing home, but she's also heard Medicaid won't cover everything. She is not sure where to turn.

Betty is quite distraught. "Is there anything else I can do?" Yes, there are steps she can take.

Perhaps, given Betty's high level of involvement a personal care contact should be considered. Betty and her mom can enter into a formal agreement where Betty becomes her Mom's care manager. Even though, Mom is in the nursing home, if done properly, Mom can pay Betty for her care management services.

For example, if Betty spends 1 ½ hours a day caring for Mom, that's nine hours a week (six days per week 1.5 hours per visit). Mom can agree to pay Betty $10 per hour or $90 per week for her care management services, which would not be considered a gift.

This is just one example of the type of planning that can be done. There are actually a number of strategies which may be helpful. With any Medicaid planning, it's especially important to seek the assistance of a knowledgeable attorney.

Medicaid Planning for Married Couples
Division of Assets

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988.

It applies only to couples. The intent of the law was to change the eligibility requirements of Medicaid in situations where one spouse needs nursing home care while the other at-home spouse remains in the community. The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets the couple gathers all of their countable assets together for a review by a Medicaid caseworker. The exempt assets which we discussed earlier are not counted.

The countable assets are then divided in two, with the at-home or community spouse allowed to keep a minimum of $19,908.00 or one half of all countable assts up to $99,540.00. The other half of the countable assets must be “spent-down” or reduced to under $2,000.00 to make the impoverished spouse eligible for Medicaid assistance in Texas.

The amount of the countable assets which at-home spouse get to keep is called the Community Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance. This permits the community or at-home spouse to keep a minimum monthly income currently $2,488.50 in Texas.

If the community spouse does not have at least $2,488.50 in income then he or she is allowed to reallocate or take some of the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance.

The nursing home spouse’s remaining income goes to the nursing home. This avoids the need for the at home spouse to dip into savings each month, which would result in a gradual impoverishment.

To illustrate, let’s assume the at-home spouse receives $800.00 per month in Social Security. Let’s also assume that her needs are calculated to be the minimum of $2,488.50. With her Social Security she is $700.00 short each month.

$2,488.50	at home spouse’s monthly needs
$ 800.00	at home spouse’s Social Security short
$1,588.50	short fall

In this case, the shortfall amount is allocated from the nursing home spouse to the community or at-home spouse who will receive the (the short fall amount) per month from the nursing home spouse's Social Security. The remainder after the allocations from the nursing home spouse's income will go to pay for the cost of the nursing home spouse's care.

In addition to reallocating income there are other planning alternatives which a couple or a single individual may be able to pursue. Consider the following Case studies:

Case Study No. 2
Can Financial Gifts to Children
Protect Your Assets from Medicaid?

After her 73 year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter Jane need advice. Dark circles develop under Mildred's eyes and her hair is disheveled. Jane holds her hand. The doctor says "Harold needs long-term care in a nursing home" Mildred says. "I have some money in savings but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do".

Jane has heard about Medicaid benefits for nursing home but doesn't want to leave her mother destitute in order for her father to qualify for them. Jane wants to ensure that her father's medical needs are met but she also wants to preserve her mother's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away $12,000.00 a year?" I could keep the money for her so she doesn't lose it when Dad applies for Medicaid".

Jane has confused general estate and tax laws with the issue of asset transfers for purposes of Medicaid eligibility. A "gift" to a child in this case is actually a transfer and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, the state will "look back" three years to see if any gifts were made. The state won't let you just give away your money or property in order to qualify for benefits. Any gifts or transfers for less than fair market value which are uncovered in the look-back period will cause delay in Harold's eligibility for Medicaid.

In Texas, every $3,549.00 gift creates a 30 day period of ineligibility. So, if Harold and Mildred give their daughter $12,000.00, Harold will be ineligible for Texas Medicaid benefits for approximately 4 months. So what can Harold and Mildred do? They can institute a gifting program, saving a portion of their estate and still qualify for Medicaid. But they have to set it up right. The rules are very strict. Generally, if done properly you can save about ½ of the assets this way. You should consult a knowledgeable attorney on how to set this up.

Case Study No. 3
Medicaid Planning for Married Couples

John and Susan were High School sweethearts who have lived in Katy, Texas their whole lives. Two weeks ago John and Susan celebrated their 51st Wedding anniversary. Yesterday, John who has Alzheimer's wandered away from his home. Hours later, thankfully, he was found; however, he was found sitting on a street curb, talking incoherently. He was taken to a hospital where he is being treated for dehydration.

Susan comes to see you after their family doctor tells her she needs to place John in a nursing home. She tells you they grew up during the depression and have always tried to save each month. Their assets not including their house are as follows:

Savings Account	$35,000.00
CD's	$65,000.00
Money Market Account	$17,000.00
Checking Account	$ 3,000.00

John gets a Social Security check for $800.00 each month; Susan's check is $300.00. At $3,500.00 to the nursing home each month their entire life savings will be gone in less than 3 years. She's afraid she won't be able to pay her monthly bills, because a neighbor told her that the nursing home will be entitled to all of John's Social Security check.

There is potentially good news for Susan. It's possible she may get to keep everything – all of their assets and all their income – and still have the state Medicaid program pay John's nursing home costs. While the process may take a little while, the outcome will be well worth it.

Susan can apply for Medicaid for John and based on the standard division of property can preserve $99,540.00 of their assets for herself, the at-home or community spouse.

In addition to the division of assets because Susan's monthly income is below the Minimum Monthly Maintenance Needs

Allowance, she may allocate a portion of her husbands monthly income to her needs and since that is still insufficient to reach the allowed $2,488.50 per month may increase the Protected Resource Amount above the $99,540.00 cap and retain additional assets to compensate for the income shortfall.

Texas follows the "Income First" Rule, which means Susan must use her income and John's income to meet the MMMNA before she can use assets to generate the income to meet her monthly expenses. Based on a 5% rate of interest, their entire savings, plus their Social Security will still not generate enough income to bring her up to the current allowable minimum monthly income of $2,488.50. Therefore, if she does it properly, **Susan will be entitled to keep their entire savings, and there will be no spend down, and Medicaid will pay for John's nursing home**.

The challenge is that this cannot be accomplished at the case worker level.   It can only be done on an appeal.   So she will have to get advice from someone who knows how to navigate the system. But with proper advice she'll be able to avoid the spend-down and keep everything she and John have worked so hard for.

This is possible because the law does not intend to impoverish one spouse because the other needs care in a nursing home. This is certainly an example where knowledge of the rules and how to apply them can be used to resolve Susan's problem.

Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the state law.

Case Study No. 4
A Trust for a Disabled Child

Joan and Mike have always taken care of their daughter, Elizabeth. She is 45, has never worked and has never left home. She is "developmentally disabled" and receives SSI (Supplemental Social Security Income). They have always worried about who would take care of her after they die. Some years ago, Mike was diagnosed with dementia. His health has deteriorated to the point that Joan can no longer take care of him. Now she has placed Mike in a nursing home and is paying $4,000.00 per month out of savings. Joan is even more worried that there will not be any money left for the care of Elizabeth.

Joan is satisfied with the nursing home Mike is in. The facility has a Medicaid bed available that Mike could have if he were eligible. Medicaid would pay his bill. However, according to the information she got from the social worker Mike is $40,000.00 away from Medicaid availability. Joan wishes there was a way to save the $40,000.00 for Elizabeth after she and Mike are gone. There is.

Joan can consult an attorney to use all or a portion of the $40,000.00 set up a “special needs trust” with the $40,000.00 to provide for Elizabeth. As soon as she does, Mike will be eligible for Medicaid. Elizabeth won’t lose her benefits and her social security is assured. Of course, all trusts must be reviewed for compliance with Medicaid rules and compliance with social security disability rules.

Will I Lose My Home?

Many people who apply for Medicaid benefits to pay for nursing home costs ask this question. For many, the home constitutes much or most of their life savings. Often it is all the couple has to pass on to their children.

Under Medicaid the home is an exempt asset up to $500,000.00. This means its value is not taken into account to determine eligibility. But under a change made in 1993 (the Omnibus Budget Reconciliation Act of 1993) states are required to set up an Estate Recovery Unit to seek recovery of all Medicaid payments. Because the home is the single largest asset which the couple can keep, while still qualifying for Medicaid it is also the main target of estate recovery in most states.

Here’s how the process works. While the at-home or community spouse is living in the home, it remains an exempt asset. But after the deaths of both the community spouse and the nursing home spouse, the Estate Recovery laws allow the state to demand repayment from the probate estate. Under OBRA-93, the states have broad authority to seek payment for Medicaid services rendered from virtually any property owned by the Medicaid recipient.

Estate recovery doesn’t take place until the recipient of the benefits dies. Then, federal law requires states initially to attempt to recover benefits paid from the recipient’s

probate estate. Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation. Some states believe the federal law permits them to go even further and recover from non-probate assets. Including assets owned jointly or payable to a beneficiary.

About 2/3 of the nation's nursing home residents have their costs paid in part by Medicaid. Obviously, the Estate Recovery law affects many families.

The asset most frequently caught in the estate recovery web is the home of the Medicaid Beneficiary. They can remain in the home without having to sell it. But upon death, if the home is part of the probate estate, the state may seek to force the sale of the home in order to reimburse the state for the payments that were made.

Since Medicaid rules are constantly changing you will need assistance from someone knowledgeable about these rules to assist you in protecting your homestead.

Legal Assistance

Aging persons and their family members face many unique legal issues. As you can tell from our discussion of the Medicaid program, the legal, financial, 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, it is clear that you need expert legal help. Where can you go for help? It is difficult for the consumer to be able to identify lawyers who have the training and experience required to provide expert guidance during this most difficult time.

Generally nursing home planning and Medicaid planning is an aspect of the services provided by Estate Planning attorneys. Consumers must be cautious in choosing a lawyer. Carefully investigate the lawyer's credentials.

How do you find a law office that has the knowledge and experience you need? You may want to start with references from friends who have received professional help with nursing home issues. Who did they use? Were they satisfied? Hospital social workers, Alzheimer's and other support groups, Accountants and other financial professionals can be good sources of recommendations.

In general, a lawyer focusing a substantial part of his or her practice to nursing home planning should have more knowledge and experience to address the issues properly.

There is no correct answer, but there is a good chance that a law office focused on this area is likely to be more up to date and knowledgeable than an office which helps with one or two placements a year. Is the lawyer involved with any committees or local or state bar organizations that have to do with nursing home planning? If the lawyer lectures to the public, you might want to try to attend one of the seminars. This should be helpful in deciding if this is the lawyer for you.