

FREE LEGAL ADVICE ABOUT LONG TERM CARE

As more of us plan for retirement, we should also plan for our long term care needs. “Long term care is something most people don’t even think about until they or a family member are in need of it,” says Robert Carowitz, Managing Attorney of the Legal Hotline for Michigan Seniors, an organization that provides free legal advice to Michigan residents age 60 or older. “Family members call us when their parent needs long term care, and they need answers. Usually, they haven’t been able to find any.”

For many seniors, Medicaid will eventually become the primary means of paying for long term care in a nursing home. But with the Medicaid budget swelling out of control, there may be changes in who can qualify for Medicaid, what assets can be kept and co-pays. Michigan may be forced to implement an estate recovery program, allowing the State to seek reimbursement from a benefit recipient’s estate for payments made to the nursing home by Medicaid on their behalf. Lawyers at the Hotline have been watching this situation very carefully to give callers current and reliable advice. As yet, there is still no estate recovery law in Michigan.

Qualifying for Medicaid can take time and is complicated. The laws and rules change frequently. A part of the Deficit Reduction Act, signed into law by the President in February of 2006, made a number of changes which affect eligibility for Medicaid. “Almost everyone calling us with questions about

Medicaid wants to know if the State will take their home if they have to go into a nursing facility,” says Carowitz. “One of the changes made by the Deficit Reduction Act provides that a homestead is exempt if its value is \$500,000 or less. In that case, it need not be sold and converted to cash in order to pay the monthly nursing home bill. It can be passed on to the next generation. Under the prior law, a homestead of any value was exempt.” Other technical concepts like spend-down and look-back periods can be very confusing and have serious implications if they are not understood and handled correctly. For example, gifts and transfers made before the “look-back” period are not considered when an application is made. Under the old law the look-back period was 3 years but the Deficit Reduction Act changed it to 5 years.

Over the last few years, seminars on “asset protection” to qualify for Medicaid have been heavily marketed to seniors. Often, as part of these seminars, the sale of annuities and trusts are promoted to seniors as a way of protecting their hard-earned assets. Such a strategy is frequently ill-advised. Seniors considering an annuity or trust should first call the Legal Hotline for dependable and objective advice. Kate White, Executive Director of Elder Law of Michigan, Inc., the organization that operates the Legal Hotline says, “As a non-profit publicly funded legal service organization, we can offer unbiased advice and information to seniors and their families. We’re here to promote and protect the rights of seniors and that includes helping them avoid costly mistakes that are dressed up as investments or unnecessary asset sheltering schemes.”

In assisting seniors and their family members with these questions we frequently observe the following planning errors that people make:

- **Failing to take advantage of Medicaid Myths** encountered by relying on information from family members or friends. Medicaid is a state program funded in part by the federal government. Each state has its own Medicaid rules and regulations; there are 51 Medicaid programs when you include the District of Columbia. Seniors and their families should consult with an experienced attorney familiar with the Medicaid program in the state in which the Medicaid application is to be filed.
- **Thinking it's too late to plan.** It is never too late to plan. It is possible to begin planning even after the senior has entered a nursing home. With proper planning it is possible to protect much of the person's assets, and improve the quality of their care.
- **Giving away assets too early.** These assets belong to the senior. Don't put the senior at risk by making premature gifts to family members. Premature gifts can also result in tax and Medicaid problems, particularly with the changes in the law because of the Deficit Reduction Act of 2005 (DRA).
- **Ignoring exempt transfers.** Some transfers do not result in periods of Medicaid ineligibility. These transfers include transfers to children with a disability, minor children, some caretaker children, some siblings, d(4)(A)

trusts for disabled persons under the age of 65, and d(4)(C)pooled trusts for disabled persons of any age.

- **Spousal protections.** These protections include maximizing the Community Spouse Resource Allowance by increasing countable resources prior to the “snapshot” (the date a person goes into a nursing home) date, and by purchasing exempt resources, such as a motor vehicle, home, or prepaid burial, or by converting countable resources to income.
- **Applying for Medicaid too early.** As a result of the DRA, applying for Medicaid within five years of making an uncompensated gift can result in a period of ineligibility that will start not when the gift is made, but when the senior is in the nursing home or on the waiver program with no funds available to pay for his or her care.
- **Applying for Medicaid too late.** Applying for Medicaid too late can result in spending funds that could have been protected by proper planning.
- **Failing to keep good records.** This is a critical issue in light of the DRA. An experienced Medicaid eligibility worker will examine thoroughly all Medicaid applications. The applicant should retain records to support all items listed on the application, document the applicant’s assets as of the date of entry into the nursing home, and verify the disposition of the applicant’s assets for the five years period prior to the filing of the application.
- **Not getting expert help.** Medicaid asset protection planning is complicated and ever changing. Most people will require this planning only once during

their lives. Because a great deal is at stake, it is wise to consult an experienced attorney when long term care is necessary. Often the Hotline can refer callers to attorneys who are experts in this area.

The Legal Hotline is staffed by a team of specialists on the legal problems of senior citizens and is open weekdays, from 9-5. Seniors can call (800) 347-5297 to set a time for a free telephone conference with a lawyer. If it turns out the caller needs to meet with a lawyer for further assistance and services, the Hotline may be able to refer them to a free legal services attorney or a trusted private attorney to assist them.