

Government Programs

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There are two government programs to consider in the context of long-term care, Medicare and Medicaid. After discussing Medicaid, I will also briefly consider Medicaid Planning.

Medicare and Medicare Supplement (Medigap) policies

I include Medicare Supplement policies along with Medicare because they primarily pay the deductibles and coinsurance's of Medicare and the services for which benefits are available are generally subject to the same requirements as for qualifying for benefits from Medicare. For Long Term Care, the most significant of these is that the care must be skilled care.

To have Medicare pay for any of your nursing home care, the nursing home admission must be preceded by a hospitalization of 3 days or more not counting the day of discharge. The nursing home admission must be within 30 days of the hospital discharge and must be for the same cause or a related cause. The nursing home must be a Medicare approved facility. The level of care required in the nursing home must meet Medicare's definition of skilled care. If you meet all of these requirements, Medicare pays 100% of the cost for the first 20 days and usually pays part of the cost for the next 80 days as long as the level of care remains skilled care. During that 80 days, if you meet Medicare's requirements for benefits many Medicare Supplement policies (specifically Plans C through J) will pay the balance of the cost. (Plans D,G,I, and J also pay some of the cost of at home recovery.) Generally neither Medicare nor Medicare Supplements pay anything beyond the first 100 days of nursing home confinement per period of care.

In my opinion, the most limiting requirement is that the level of care remains skilled care. The vast bulk of all long-term care (home or facility) is not skilled care. This is why the NAIC "Shoppers Guide to Long-Term Care" says, "Medicare, Medicare Supplement Insurance and the major medical health insurance you may have at work usually will not pay for long term care". Do not choose the elimination period in your LTC policy based on the assumption that Medicare will pay for the first 100 days of care.

For Medicare to pay for home care, the need for care must be intermittent (not continuous) and you must be home bound. You must also require skilled care.

Since most long-term care is not skilled care, do not depend on Medicare to pay for any of your long term care.

Medicaid

Medicaid does pay for long-term care. For the most part, it only pays for nursing home care, not home care, adult day care, or assisted living facility care.

Since Medicaid is a welfare program, you must meet certain requirements regarding assets and income to qualify for assistance from Medicaid. The requirements are different for single people than for married couples, so they will be discussed separately.

Some states, called "income cap states", determine your Medicaid eligibility based on your income. If your income exceeds a certain level, you are not eligible. To determine whether you live in an "income cap state", contact your state's Department of Elderly Affairs. Since most income cap states allow you to deduct the cost of long-term care services from your income before determining eligibility, very few will be impacted by this requirement (and those that would be affected should be able to afford to buy long-term care insurance). As a result, this discussion will generally be applicable even in income cap states.

A single person must spend essentially all of their assets and income paying for their own care before they become eligible for Medicaid. When they become eligible, Medicaid still requires that they spend nearly all of their income paying for their care with Medicaid paying the balance. Remember, Medicaid is a welfare program. It is intended to provide medical assistance to those who can't afford to pay for their own care.

For couples, Medicaid recognizes that it would be unfair to the healthy spouse to expect the couple to spend all of their assets paying for care and leaving nothing for the healthy spouse. As a result, a spousal asset allowance and spousal income allowance were established. These levels are periodically adjusted for inflation. Currently (in 2003) the asset allowance is \$90,660 and the income allowance is \$1,492.50 per month.

When one spouse requires care, all of the assets (other than a few exempt assets, mainly the primary residence in which the healthy spouse lives) either at them owns (directly or indirectly) are considered available to pay for care. Putting all of the assets in the name of the healthy spouse will not help. Given the number of second marriages, it is also important to note that, based on my understanding, a pre-nuptial agreement will also have no effect. (I'm not an attorney. If this is a concern to you, seek legal advice.)

Once all of the countable assets have been totaled up, the couple is expected to pay for the care themselves until they use up the greater of half of the assets, or all of the assets in excess of spousal asset allowance. Only after these assets have been spent, will Medicaid step in to help pay for the care.

Let's look at an example. We'll assume the couple has \$300,000 in countable assets (i.e. not including the value of the primary residence). Half of those assets are \$150,000. The excess over the spousal allowance is \$210,000. Since the greater is \$210,000, this is the amount that must be spent paying for care. When only the spousal asset allowance of \$90,660 remains, Medicaid will step in and help.

Let's consider a couple with \$100,000 in countable assets. Half of the countable assets is \$50,000. The excess over the spousal allowance is about \$10,000. The greater is \$50,000. This is what you must spend paying for your own care before Medicaid will step in and help.

Please note that these are over-simplified examples intended simply to give the big picture. You should speak with an agent who is familiar with your own state rules and perhaps also obtain legal advice.

You may have noticed that whenever I refer to qualifying for assistance from Medicaid I say "Medicaid will step in and help." I do so to emphasize that when you do qualify for Medicaid, the state doesn't simply step in and pay all of your bills. Any income of the Medicaid recipient must be spent to pay for his or her own care. Medicaid simply pays the shortfall (if any).

If you have a \$2000 per month pension plus social security and your care costs \$4500 per month, Medicaid only pays \$2500 per month. For a couple, an immediate question might be "what about the spouse's income?" The healthy spouse is not required to spend any of their own income paying for the care of the Medicaid recipient. In the previous example, if the spouse had a \$2500 per month income (combined household income of \$4500) you do not end up paying the full cost of care with no help from Medicaid. You still only have to use the Medicaid recipient's income to pay for care.

What if the spouse has little or no income? I'm glad you asked. If the spouse's income is below the spousal income allowance, it is possible to keep some of the Medicaid recipient's income to bring the spouse's income up to the spousal income allowance. The last time I checked, in many states that spousal income allowance was about \$1492.50 per month. You should check with a local agent or perhaps your state Office of Elderly Affairs to determine what it is currently in your state.

From this we see that the spouse can keep the greater of either their own income or the spousal income allowance.

In our previous example, assuming the spousal income allowance was \$1492.50 per month, the spouse's income of \$2500 per month was the larger amount so that is what they keep. Had the spouse's income been \$500 per month, the spousal income allowance of \$1492.50 per month would have been larger so the spouse would have kept \$1492.50 per month.

Any couple contemplating the risk of having Medicaid pay for their long-term care should carefully consider what impact this would have on the standard of living of the healthy spouse.

Made a few copies of the worksheet at the back of this article and work through the financial impact of paying for your own care until you qualify for Medicaid. Couples need to consider not only the "assets at risk", but also the spouse's standard of living.

Medicaid Planning

The crux of Medicaid Planning is an individual or a couple who have assets which could have paid for their care who choose to give those assets away in order to have Medicaid (i.e. taxpayers) pay for their long-term care needs. Whether people who choose to do this should be taken out and horsewhipped is for you to decide. I'm not going to comment on the morality of Medicaid Planning.

Let's consider though some of the practical consequences of Medicaid Planning. Some of the concerns are the same for individuals and for couples. First, Medicaid usually only pays for care in a nursing home. Where would you rather be if you need care? You probably said "at home". If Medicaid is paying for part or all of your care, this is not likely to be an option. Where would you least like to receive care? Perhaps you said a nursing home. If Medicaid is paying for part or all of your care, that is where you are almost certain to be.

Medicaid will place you in the first available bed with a reasonable distance from your home. Which Nursing home in your area do you think is most likely to have an available bed? The nicest or something else?

I indicated at the start that Medicaid Planning typically involves giving away assets during your lifetime prior to your need for care. While I am not an accountant, and you should certainly seek professional help if you are considering Medicaid Planning, including the advice of an accountant, it is my understanding that there is a difference in tax treatment for assets which are given away during life and assets transferred at death. The difference is in the cost basis the person who receives the gift will have when they sell the asset. If the gift is made during your lifetime, the recipient of the gift has the same cost basis in the asset as you did. If the asset passes at death, they have a cost basis equal to the value of the asset when you died.

Let's consider an example. Let's suppose you decided to give your home to one of your children. Let's further suppose you paid \$10,000 for your home 40 years ago and it is now worth \$210,000. If you give your house to one of your children, who later sold it for \$210,000. they would have to pay taxes on the difference between their cost basis (\$10,000. for a lifetime gift) and the sale value, on \$200,000. Assuming a capital gains tax rate of 20%, that means paying \$40,000 in taxes. If you had kept the house in your name until you died, your child's cost basis would have been \$210,000 and they would have saved \$40,000 in taxes. Many of you will find that long-term care insurance costs less than \$40,000!

The same situation could exist with other assets that you own. Don't forget to calculate the hidden costs of Medicaid Planning.

In case you haven't guessed yet, I'm not a big fan of Medicaid Planning. Perhaps the biggest reason though is the impact Medicaid qualification has on the standard of living of the spouse as we discussed in the previous section. If you plan to divest assets and qualify for Medicaid, I

hope you've also considered whether your spouse can live on \$1492.50. per month (or your state spousal income allowance) and if not, that your spouse has sufficient personal income not to have a substantially reduced standard of living while Medicaid pays for your care. It is also important to recognize that making gifts disqualifies you from Medicaid eligibility for a period of time. If you have made gifts within 36 months of qualifying for Medicaid (60 months when the gift involves trusts), you will be ineligible for assistance from Medicaid for the length of time the gift could have paid for your care, counting from the date of the gift, even if this is a longer period of time than 36 (or 60) months.

The Federal Government has made it clear they don't like Medicaid Planning. Given the strain Medicaid is currently putting on state budgets, I suspect they concur. Two of the most recent ways they indicated this were to criminalize Medicaid Planning (later repealed) and to mandate estate recovery, converting some Medicaid assistance into a loan that must be repaid before your estate is settled.

You might well be asking whether there is any way to address the spouse standard of living problem while still having Medicaid pay for your care. Some financial advisors, noting that income to the spouse does not have to be spent to pay for the Medicaid recipient's care, have recommended the use of immediate annuities. With an "immediate annuity", you pay an insurance company a large sum of money and they promise to pay an income to a specific person, in this case the healthy spouse, for a rest of their life. As long as the promise to pay the income does not extend beyond the life expectancy of the healthy spouse. There is no gift and thus no Medicaid ineligibility.

So what's the problem? When the healthy spouse dies, the income stops. Congratulations, you've just disinherited the kids.

If there is no other option, if you've waited too long and are no longer insurable, this is a better solution than nothing, but I doubt if it's what anyone would consider an attractive solution if any other was available.

You should be very cautious of planning on the use of immediate annuities as a part of Medicaid Planning in the future. Many states have either significantly restricted their use or appear to be planning to do so.

In my opinion, it would not be unreasonable for the states to adopt the position that any income from an immediate annuity which was purchased by assets which would otherwise have been spent to pay for care will be deemed available to pay for care and Medicaid benefits reduced by that amount. In that case, there would be little benefit from an immediate annuity.

Medicare Qualification: "Assets at Risk"

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List all of your assets

For couples, include any assets owned directly or indirectly by either spouse.

Assets		
Checking Account	\$	
Savings Account	\$	
Certificates of Deposit (CD's)	\$	
Other bank accounts	\$	
Cash Value of Life Insurance	\$	
Annuities	\$	
Treasury Securities	\$	
Money Market Accounts	\$	
Mutual Funds	\$	
Stocks	\$	
Bonds	\$	
IRAs	\$	
401(k)s	\$	
Other Retirement Accounts	\$	
Real Estate (not residence)	\$	
Business	\$	
Other	\$	
Other	\$	
Other	\$	
Total	\$	(line 20)
Primary Residence	\$	(line 21)
Add Lines 20 & 21	\$	(line 22)
Countable Assets		
if single, line 22		
if married line 20	\$	(line 23)
Asset Allowance		
if single, enter 0		
if married, enter \$90,000	\$	(line 24)
Subtract line 24 from line 23	\$	(line 25)
If married, divide line 23 by 2	\$	(line 26)
Enter the larger line 25 or line 26	\$	(line 27)
Assets at Risk:		
If single, enter line 25		
If married, enter line 27	\$	

Medicaid Qualification: "Income at Risk"

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If you are single, essentially all of your income is "at risk".
(It must be spent to pay for your care.)

Your Income	\$	(line 1)
Spouse's Income	\$	(line 2)
Total Household Income	\$	(line 3)
Interest From Assets (enter zero if all interest is reinvested)	\$	(line 4)
Current Standard of Living (add line 3 and line 4)	\$	(line 5)
Spousal Income Allowance Enter \$1492.50 or current number obtained from your state department of elderly affairs	\$	(line 6)
Your Standard of Living (if your spouse qualifies for Medicaid) Enter the greater of line 1 or line 6	\$	(line 7)
Your Spouse's Standard of Living (if you qualify for Medicaid) Enter the greater of line 2 or line 6	\$	(line 8)
Your Standard of Living Compared to your current standard of living Divide line 7 by line 5 and multiply by 100	%	(line 9)
Your Spouse's Standard of Living Compared to your current standard of living Divide line 8 by line 5 and multiply by 100	%	(line 10)

Would you find it difficult to live on the amount on line 8?
Don't you think your spouse will too?

Medicaid Qualification: "Impact on Survivor"
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Your Survivor Income		
after your spouse's death	\$	(line 1)
Your Spouse's Survivor Income		
after your death	\$	(line 2)
Medicaid Asset Allowance		
From "Assets at Risk"		
the smaller of line 24 or line 26	\$	(line 3)
Projected interest Rate		
What rate of interest to assume		
you earn on your assets	%	(line 4)
Earned Interest		
line 3 times line 4 divided by 100	\$	(line 5)
Your Total Survivor Income		
line 1 plus line 5	\$	(line 6)
Spouse's Total Survivor Income		
line 2 plus line 5	\$	(line 7)
Current Standard of Living		
From "Income at Risk" line 5	\$	(line 8)
Your Total Survivor Income		
compared to current standard of living		
(divide line 6 by line 8 and multiply by 100)	%	(line 9)
Spouse's Total Survivor Income		
compared to current standard of living		
(divide line 7 by line 9 and multiply by 100)	%	(line 10)

Not intended to provide legal or accounting advice. Long Term Care is a complicated subject. It takes time to consider the implications of many of the options available. In addition to any necessary legal or accounting advice from the appropriate professional you should discuss your financial situation and objectives regarding long term care with a knowledgeable agent.