Free Special Report

(Updated for Deficit Reduction Act of 2005 Changes)

WHAT YOU NEED TO KNOW TO PROTECT YOUR LIFE SAVINGS

ARE YOU WORRIED THAT YOUR HARD EARNED ASSETS MAY NOT PASS TO YOUR LOVED ONES? IF NOT, ... YOU SHOULD BE! BUT ALL IS NOT LOST IF YOU KNOW YOUR RIGHTS WITHIN THE LAW AND PLAN PROPERLY.

THE PROBLEM

Since the turn of the century the average life expectancy has increased from age 47 to age 84 for females and age 80 for males. As a result, the number of persons in need of nursing home care and other long term care services has increased dramatically... and its not cheap! The monthly cost of nursing home care in Massachusetts often exceeds $14,000.

BUT WHO PAYS?

There are three methods either alone or in conjunction with each other to finance your long term care needs:

1. **You**: That's right, get out your checkbook.

2. **Long Term Care Insurance**: Like any insurance protection, you pay an annual premium based upon your age, health, level of protection and other factors to provide a monthly benefit paid by the insurance company if long term care services are needed.

3. **The Government**: Long term care services are paid for under the medicaid system if you are otherwise eligible. Medicaid is a federal program administered by each state individually. In Massachusetts, the medicaid system is administered by the Division of Medical Assistance (the "DMA") The program is now referred to as the MassHealth program. Seventy Percent of all long term

care services are paid for by this system.

To become medicaid eligible you literally have to spend your life savings to qualify. That includes, bank accounts, certificates of deposit, stocks, mutual funds, bonds, retirement/IRA accounts, cash values of life insurance policies and more! **What about my home?** Your home is protected as long as you, your spouse, or a minor/disabled child reside there.

However, the **DMA has the authority to place a lien on your residence** in certain circumstances prior to your death and after your death on all property included in your probate estate. The purpose of these liens is to allow the DMA to secure reimbursement for medicaid benefits (e.g. nursing home or other long term care costs) paid on your behalf. The pre-death lien may prevent the sale of your home while you're alive unless the sale proceeds are first used to repay the benefits received. This lien can only be placed if you are in a nursing home, your spouse does not reside there and it is determined by the DMA that you reasonably cannot be expected to return home. The post-death lien attaches to your probate assets and prevents the distribution of those assets to your heirs or designated beneficiaries without first repaying the DMA. Probate assets are those assets owned by you individually and which pass pursuant to your Will or through the probate laws if you do not have a Will. Often, the amount of the medicaid lien far exceeds the value of the probate assets. As a result, no probate assets are available to pass to your heirs and the family home, if not exempt, is sold to pay the DMA.

CAN I PROTECT MY ASSETS OR THOSE OF A LOVED ONE? YOU CAN, BUT YOU HAVE TO UNDERSTAND THE SYSTEM AND THE LEGAL RIGHTS AVAILABLE TO YOU. THIS IS NOT ALWAYS EASY IN LIGHT OF THE COMPLICATED AND CONTINUALLY CHANGING LAWS.

In the next few pages I have set forth some common questions designed to help you understand the medicaid system and your rights thereunder:

QUESTIONS:

1. **How is medicaid different from medicare?**

ANSWER: It is natural that medicare and medicaid are easily confused since they sound the same and both relate to health care.

The easiest way to distinguish between them is that:

a. Medicare is the national health insurance for people 65 and older, or disabled. Medicare covers such services as:
- inpatient/outpatient hospital care
- testing, x-rays, etc.
- home health care, <u>short</u> stays in nursing homes or other skilled nursing facility.

b. Medicaid deals with long term care services required due to chronic illness & general medical care for low income, blind or disabled individuals. Medicaid is administered in Massachusetts by the Division of Medical Assistance ("DMA"). Long term care services covered by medicaid include:
- nursing home care, home health benefits, adult day programs, home delivered meals, respite care and other services.

Unlike medicare, just because you reach age 65 does not make you eligible to receive medicaid benefits. To be eligible, you must have a medical need as well as a financial need.

2. **What does it take to qualify?**

ANSWER: A medicaid applicant must be screened to determine if they are medically eligible. This means that they require at least one skilled service on a daily basis, or, at least three of a less skilled group of services, one of which must be a nursing service. Typically, it is a nursing home or other agency which initiates the request for screening.

3. **What are the financial requirements to qualify?**

ANSWER: Financially, a person must meet a stringent asset test. In order to qualify, **an applicant is only allowed $2,000 in countable assets**.

4. **What is the difference between countable assets and non-countable assets?**

ANSWER: When you apply for medicaid, to the extent your countable assets exceed the asset limit, $2,000, you will have to spend the excess before becoming eligible. I will give you a list of the non-countable assets, everything else is countable and counts towards the limits.

Non-Countable:

- life insurance up to a total face value or cash value of $1,500 or less.
- a burial account of $1,500 or less, plus accumulated interest (typically, a passbook savings bank funeral account).
- irrevocable trust account for burial and funeral.
- a burial plot.
- assets considered inaccessible:
  For example, stock of an incapacitated individual who has no guardian or power of attorney who can access the asset. Also, assets held in certain types of trusts can be inaccessible.
- a car with an equity value of $4,500 or less unless special circumstances are met.
- business assets used for the production of income.
- pensions set aside by an employer.
- the home if it is inhabited by a medicaid recipient, spouse or any a child who is under 21 or disabled, or by a sibling who has an equity interest in the home for at least a year, child who cared for parent in home for at least two years enabling parent to remain out of nursing home or dependent relative or joint owner who will lose house if home is sold. Home is also not countable if the individual intends to return home (such a determination is often made by the DMA) or if the applicant has long term care insurance on the date of admission

that meets certain state requirements.

If it is determined that a home is countable, then, the medicaid applicant will be required to sell the home in order to pay for nursing home care or will not be eligible for benefits.

Countable: Everything else, e.g. stocks, bonds, bank accounts, mutual funds, IRAs, land, vacation homes, boats, etc. are subject to the "spend down".

5. **Does that mean that so long as a person's assets are in their healthy spouse's name, the assets won't be countable?**

ANSWER: Definitely not, that would be too easy and there is certainly nothing easy about these rules. When one spouse applies for medicaid, the assets of both spouses are used to determine if they meet the eligibility test with the following exception; The applicant is not in a nursing home, and:

a. Is age 60, blind or disabled.
b. Nursing home care would be approved.
c. Is receiving at lest one skilled service.

However, even if the applicant is in a nursing home, the "community spouse", or spouse not in a nursing home, is allowed to keep countable assets up to a maximum of $130,380 (2021)(referred to as the Community Spousal Resource Allowance or "C.S.R.A"). The remainder of countable assets must be spent before the applicant will be eligible. With respect to income, all of the applicant's income must be used for nursing home care, except for the $72.80 per month personal needs allowance & supplemental health insurance costs. The community spouse can retain all of his or her income. In addition, if community spouse can show a need for all or a portion of the applicant's income/assets, then an adjustment can be made so that their income meets a minimum level between $2,177 and $3,259(2021).

6. **What about the situation where a person is divorced or if their spouse has predeceased them and they have assets such as bank accounts, stocks, or real property in joint names with a child or other relative?**

ANSWER: Many people often transfer their assets to joint accounts with children or other family members when they get older as a means to avoid probate and protect their savings. The way the rules are written it depends on exactly what type of asset you are talking about.

Bank accounts, cd's, money market accounts, and other similar accounts, are treated as if owned 100% by the medicaid applicant. This presumption can be overcome if proof can be provided that all or a portion of the funds were contributed by the other joint owner.

Other types of joint assets such as real estate, stocks, bonds and mutual funds are deemed to be owned in proportion to the number of owners. For example, if you own stock or a vacation home jointly with a child, then it is deemed 50% owned by the applicant and 50% owned by the other person provided ownership in the % has been in please for 5 years or more.

7. **Why can't people just transfer their assets to family members or make other gifts so that they will qualify for medicaid ?**

ANSWER: That is precisely what people were doing for years, and still do to a certain extent. Such transfers were perceived to be a significant abuse of the system. As a result, legislative changes were made and continue to be made to restrict these types of transfers. **On February 8, 2006** President Bush signed the Deficit Reduction Act into law which made significant and far reaching changes to the medicaid laws. Now, like the old law, if a person gives away an asset or sells an asset for less than it's fair market value prior to applying for medicaid, then such person will be ineligible to receive benefits for a period of time depending on the value of the assets given away. The duration of the ineligibility is referred to as the "disqualification period". **The disqualification period does not begin to run until the applicant enters the nursing home <u>and</u> is otherwise eligible for benefits- that is when all their assets are spent down (under the old law, the period began to run from the date of the gift). This eliminates most gifting unless gifts are made more than 5 years in advance prior to applying.** The 5 years is referred to as the look back period. It is the number of years prior to filing an application that financial information, including gifts and other transfers must be disclosed to the DMA. The new law increased the look back period from 3 years to five years along with many other changes designed to make it difficult for people to protect their assets.

8. **How do they determine the disqualification period ?**

ANSWER: For every $11,000(2021) in value that is transferred, the ineligibility period equals one month or, to put it in terms of days it is one day for every $354 given away.

9. **If a parent made a $22,000 gift to a child to make a down payment on a house, will that gift disqualify the parent for about 2 months from receiving medicaid benefits?**

ANSWER: If the gift was made 5 years ago, it is outside the look back period therefore, it would not be reported. If the gift was made within 5 years and medicaid is applied for the penalty would be imposed. This would require depleting the community spouse's CSRA, return of the gift or borrowing money so the nursing home could be paid during the disqualification period.

10. **Is it a no win situation for the average person to hold on to the assets they worked so hard for during their lives in the hopes they could be passed on to their children?**

ANSWER: Unfortunately, the way the laws are designed it is the middle class individuals as always who get the short end of the stick. People with few assets are going to be eligible for medicaid. Wealthy individuals can make all of the transfers they want and can afford to wait out the 5 year look back period or can afford long term care insurance.

The pitfall for people arises from not knowing when to apply for medicaid. People are often encouraged by personnel at the nursing home or other agencies to apply for medicaid without knowing the full circumstances of an applicant's history or the impact of new laws. Not only is the medicaid application confusing and time consuming to prepare, applying too early or too late may cost thousands of dollars. So when you combine the complicated eligibility and disqualification rules with the tedious application process, you have a recipe for

disaster.

Although the laws are complicated and always changing, there is plenty of sound planning that can be done to protect one's assets. However, the time to start planning is now. It is better to plan before the onset of a chronic illness which makes planning that much more difficult, although not impossible.

11. What types of things can the average person do to protect their assets?

ANSWER: There are a number of things that can be done from the simple to the complex depending on the age, financial condition and other circumstances of each case. Basic options available are as follows:

The purchase of certain non-countable assets

- small life insurance policies.
- a burial account with $1,500 or less.
- prepaid burial contract.
- purchase of a motor vehicle or the making of improvements or repairs to one's residence.
- prepaying real estate taxes, home owners insurance, utilities and other home related expenses.
- the purchase of home furnishings.
- purchase of commercial or private annuities to provide a stream of income to the non-institutionalized spouse (Subject to new law restrictions).
- there is also the use of transfers of the home or other assets using certain methods (self canceling installment notes), various uses of trusts (qualified personal residence trust).
- transfer of the home while reserving a life estate or special testamentary power of appointment.
- transfer of bank account type funds to jointly owned stock, bond or mutual fund accounts owned with children or other family members.
- establish an early gifting program to your heirs.

Many of these methods can be very complicated and suffice it to say, you should not engage in any of these transfers without first consulting an advisor who is knowledgeable in such matters and can take your specific circumstances into account.

12. **What are the benefits of long term care insurance?**

ANSWER: Long term care insurance ("LTCI") is used for the purpose of financing services needed as a result of chronic or prolonged illnesses. Coverage can include a range of services such as nursing home care, home health care, assisted living arrangements, adult day care and other services depending on the policy purchased. Like any insurance policy, LTCI policies are numerous and complicated. Therefore, great care should be given to determine the exact services covered, the amount and duration of the benefit, deductibles and other provisions. The vital question is whether you can afford the premiums without substantially affecting your standard of living. Many children contribute to their parents' LTCI premiums because ultimately LTCI protects the amount of assets available for distribution to heirs. Also if certain requirements are met, a portion of LTCI premiums are deductible as medical expenses and the home can be exempt from the DMA lien.

13. **Where can I get additional information on long term care insurance?**

ANSWER: Contact the Division of Insurance at (617)521-7794 and ask them to send you a copy of a guide called "Your Options for Financing Long Term Care." You can also call the National Association of Insurance Commissioners at (816)842-3600 and ask them to send you the "Shopper's Guide to Long Term Care Insurance" or go to www.naic.org Click on Products, then Publications.

CAN I HELP YOU ?

OF COURSE I CAN! I WOULD NOT HAVE PREPARED THIS INFORMATIVE REPORT IF I COULDN'T. I HAVE HELPED MANY PEOPLE JUST LIKE YOU SINCE 1991. I AM DEDICATED TO PROTECTING MY CLIENTS' HOMES AND SAVINGS.

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