



# Medicaid/Medi-Cal Preplanning With Trusts

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**The Issue:** If you are worried about the high costs of long-term care and how it will affect your estate, this is the chapter for you. Seniors over the age of 65 have a 50% chance of needing a nursing home someday. The pressing question for most people is: “How can we afford to pay the nursing home without losing everything we own?” The second question is: “What can we do to plan ahead?”

**The Problem:** In the United States, care in a skilled nursing facility can run from \$2,500 to \$25,000 per month or more, depending on your location. The average stay in a nursing home is approximately three years. In certain cases, such as dementia, a stay of three to twenty years is not uncommon.

In California, the average cost of care in a nursing home is approximately \$5,500 per month, or \$66,000 annually. Three years of care is \$198,000. The greatest threat to your loved one’s hard-earned money is the high cost of nursing home care.

Planning ahead for such costs is prudent and wise. There are only four choices for paying for skilled nursing home care:

1. **Private Pay.** You can privately pay the nursing home by writing them a check once a month.
2. **Long-Term Care Insurance.** It is great if you have long-term care insurance, but even if you do, it does not always cover all your costs and it often has time limits. Moreover, you have to buy it before you need it.
3. **Medicare.** Medicare, in conjunction with your supplement, may pay for up to 100 days of coverage, as long as you continue to improve. If your condition plateaus, or if your health starts deteriorating, Medicare can stop paying for your stay at the nursing home within a week.
4. **The Medicaid/Medi-Cal Program.** Medicaid is a needs-based Federal entitlement program, implemented by the states, which provides funding for medical care for those who qualify. The California version of Medicaid is

called Medi-Cal. The Medicaid Program will pay for your stay in a nursing home and will cover most drug costs for those who qualify.

**The Solution:** If preservation of assets for your family is your goal, the Medicaid program is the only cost-effective way to pay for nursing home care. There are two important aspects of the Medicaid Program you must know in order to plan properly:

1. **Qualifying for Medicaid/Medi-Cal.** In order to qualify for Medicaid, you must meet a strict asset and income test. The numbers vary from state to state. However, in every state, there are assets that are exempt (not counted) when Medicaid determines whether you qualify. Also, Medicaid will look at the applicant's financial records for the past three to five years to find any "uncompensated transfers" (gifts). If they find gifts, they can calculate a penalty period during which they will not pay for the nursing home. The rules of Medicaid are complex. You need to hire an advocate, such as a qualified Elder Law attorney, who knows the rules and how to formulate a working strategy.
2. **The Medicaid Lien.** If your loved one qualifies for Medicaid, is receiving benefits during a stay in a nursing home, and owns assets that were "exempt" for qualification purposes, such assets may be subject to a Medicaid recovery lien upon his or her death. However, with knowledge of Medicaid rules, your Elder Law Attorney should know how to legally defeat the Medicaid lien and protect the assets from recovery.

## THE STAGES OF MEDICAID PLANNING

There are three stages to Medicaid planning:

### Stage One: Your Estate Plan

A professionally crafted estate plan is essential for Medicaid planning and should include the following documents:

- a. **Revocable Living Trust.** There are myriads of benefits to owning your property in a living trust, but such trusts are especially useful for purposes of Medicaid planning. A properly drafted living trust solves the problem of not being able to manage your assets if you become incapacitated. You can name a person who will act as trustee and manage the assets in the trust if you are unable to do so yourself. In order to be properly drafted, your trust must contain special language granting your trustee the powers necessary to implement Medicaid planning.
- b. **Financial Power of Attorney.** Equally important is the financial Power of Attorney, which also requires special language so your agent can implement Medicaid planning along with the trustee of your living trust (typically the same person).

- c. **Irrevocable Trust.** In the right circumstances, and in consultation with an Elder Law attorney, families with larger estates and trustworthy adult children may be able to utilize Irrevocable Trusts to achieve Medicaid eligibility.
- d. **Other Important Documents Every Estate Plan Should Have.** Every estate plan should also have a Pour Over Will, Advance Health Care Directive or Healthcare Power of Attorney (depending on the state), HIPAA Authorization, and a Living Will.

If you have the above documents in place, they are properly drafted, and you keep them current by reviewing them with your attorney every few years, you are ready for Stage Two, if necessary. Suppose you have prepared the above documents and are now faced with a crisis situation where you need to apply for Medicaid.

### **Stage Two: Spend Down and Application**

You will need to consult with an attorney in your state regarding the spend down process and how to fill out the Medicaid application. “Spend down” does not mean spending all your money until you hit the qualification limits. What it does mean is that you implement a plan to reposition assets within the rules of Medicaid in a legal, ethical, and moral manner. The Medicaid rules allow you to spend down your money by paying for any necessary medical needs you may have (i.e., new glasses, hearing aids, etc.). You can also spend money to fix your home. Because the home is exempt, you are turning a non-exempt resource (cash) into an exempt resource, the home. The opportunities for spending down in accordance with Medicaid rules are vast and vary from state to state. One very important purpose behind the rules is to ensure a “well-spouse” is not completely impoverished by spending down the “ill-spouse’s” assets.

For example, in California in 2008, the “well-spouse” is allowed to keep \$104,400 in assets, and \$2,610 in income. John Doe and Mary Doe are a married couple who has \$250,000 in assets, and a \$250,000 home. John Doe has developed Alzheimer’s disease and requires around-the-clock care in a skilled nursing facility. John has \$1,200 per month in income and Mary has \$700 per month in income. In order to qualify John for Medicaid, his assets must be spent down to \$2,000. Mary gets to keep \$104,400 in cash assets, plus the house, because it is an exempt asset. Now comes the fun part. John and Mary are “over-property” by \$146,000. That amount must be “spent down” or “repositioned” in order for John to qualify for Medicaid. A good attorney will notice that John and Mary’s income only totals \$1,900 per month. John can only keep \$35 per month in income and Mary is entitled to \$2,610 in income. Mary’s current income is only \$1,865 per month. Mary’s attorney can go to court and ask the court to increase the amount of assets Mary is allowed to keep from \$104,400 to an amount that, if invested conservatively, will produce an income stream that will bring Mary up to the limit of \$2,610 per month.

The question then becomes: How much money will it take to produce an income stream for Mary that will produce \$745 more in income? Often, the court will

award the entire estate to Mary without her having to spend down a dime (except for attorney fees, of course) so she can support herself. This is just one example of a planning opportunity existing within the rules of Medicaid.

Your attorney can fill out your Medicaid application for you and present it to the Medicaid office with evidence attached detailing asset repositioning you have done, along with a copy of the Medicaid rules authorizing such repositioning. A good attorney will determine whether further revocable trust planning is necessary. For example, it is necessary to ensure that the person who is going on Medicaid does not receive an inheritance unless it is in the form of a Special Needs Trust, designed to supplement but not replace Medicaid benefits.

### **Stage Three: Defeat of the Medicaid Lien**

Your attorney will best be able to advise you about how to avoid the Medicaid lien. The issue is very state-specific. If you have done the above planning, defeating the lien should not be a difficult task.

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*A “Trinity Asset Protection Plan™” designed by The Disability and Elder Law Firm will relieve your fear and uncertainties regarding disability, the high costs of long-term care, and death.*