

The Law Office of
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*Estate, Trust, Tax and
Long Term Care Planning*



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SPECIAL REPORT - 2015 Medicaid Long Term Care Planning Guide -

Long term Care Sources of Payment

Private Pay

- ◆ \$7,249 average per month in skilled care statewide

Medicare

- ◆ Covers only medically necessary skilled nursing facility or home health care for a limited time per spell of illness
- ◆ Part A Hospital Insurance: no premium if more than 40 quarters worked; \$224 premium per month if 30-39 quarters worked; \$407 premium per month if less than 30 quarters
- ◆ Part B Medical Insurance; \$104.90 premium per month (may be higher if income exceeds \$85,000 for singles and \$170,000 for married couples). There is an annual deductible of \$146.90.
- ◆ Doesn't pay for custodial care
- ◆ 100% cost coverage first 20 days
- ◆ \$157.50 patient co-pay per day for days 21 through 100 for skilled nursing facility stay each benefit period (spell of illness)

Veterans Benefits

- ◆ Long term benefits generally provided only if you have a service connected disability
- ◆ VA facilities (or contracted facilities) and must be receiving VA benefits
- ◆ May provide some home health care
- ◆ Co-payments may apply

Long Term Care Insurance

- ◆ Coverage and cost depends upon policy terms
- ◆ Helps pay the cost of custodial care such as housing, bathing, eating and dressing
- ◆ Doesn't pay rehab costs

Medicaid

- ◆ State and Federal government program that generally pays for certain health services and nursing home care for older people with low incomes and limited assets.
- ◆ Provides financial assistance in varied amounts for care in skilled nursing, private home and alternate care facilities

Page 2 - SPECIAL REPORT - 2014 Medicaid Long Term Care Planning Guide -

◆ Five Criteria for Eligibility

- 1) Health- must pass a health screen with a ULTC 100.2 exam to demonstrate need for care
- 2) Residency- must be a Colorado Resident
- 3) Income- applicant income must be below \$2,199 per month; if it's above, but below the average cost of care in the region (\$6,845 for Mesa, Delta, Garfield and Montrose counties) an "income cap" trust can be established; long term care insurance benefits don't count as income; and applicant can keep \$77.25 of his or her income for personal needs
- 4) Personal Assets- program allows the applicant to keep certain limited assets such as an interest in a residence (with a value below \$552,000 for singles and unlimited for couples); \$2,000 of resources, such as cash; burial spaces and plans; life insurance policy with less than \$1,500 in cash value; an automobile used to transport the applicant and personal effects. All other assets are deemed to be "countable" and could cause the applicant to be ineligible for Medicaid benefits
- 5) Transfers prohibited- giving away assets will cause a period of ineligibility to exist during which Medicaid benefits will not be paid; all asset transfers within 5 years preceding the filing of an application will be counted, and the application should only be filed when the applicant is otherwise eligible for benefits

Protection for the Community Spouse (CS) Rules where Applicant is Married

Resources

- ◆ CS may keep a resource allowance (CSRA) of up to \$119,220
- ◆ Post-eligibility CS assets are treated separately from applicant

Income

- ◆ CS may keep up to a maximum of \$2,980.50 of the couple's income

Planning for the CS

- ◆ CS likely to need a new estate plan to protect his or her assets in the event he or she predeceases the institutionalized spouse (IS)
- ◆ CS should assess his or her own planning for long term care
- ◆ Consider post-eligibility gifting by CS
- ◆ CS can increase the MMMNA for a Utility Allowance of \$462 per month under some circumstances
- ◆ CS can increase the MMMNA for a Shelter Allowance of \$589.88 per month under some circumstances

Medicaid Planning Opportunities

- ◆ Disability (d4a) Trust-shelter assets of those disabled and under 65; disabled beneficiary is sole beneficiary during life, CDHCPF (Colorado agency who administers the Medicaid program) must be beneficiary on death of disabled applicant to extent of benefits paid
- ◆ Pooled Trust-Trusts for a group of beneficiaries who are disabled
- ◆ Conversion of Countable assets to Exempt assets; buying residence, burial plans, paying down a mortgage, etc.

Page 3 - SPECIAL REPORT
- 2014 Medicaid Long Term Care Planning Guide -

- ◆ Conversion of Countable assets to Income—purchase of Medicaid qualified annuity
- ◆ Gifting of assets can be effective provided they are properly structured and timed
- ◆ Trusts created by a third party for a disabled individual are not deemed countable
- ◆ Personal Service Contract can remove Countable assets and provide for care by caregiver

Estate Recovery Program

- ◆ Assets owned by applicant on death are subject to recovery in the applicant's estate to the extent of benefits received
- ◆ Avoiding Estate recovery requires careful planning but may be done through use of joint tenancy and payable on death accounts if properly structured

Mental Capacity

- ◆ Critical to do planning while individuals have mental capacity
- ◆ Only court can determine capacity
- ◆ Without capacity it may be necessary to involve a court in appointing a conservator or guardian

Advance Directives

- ◆ Financial power of attorney
- ◆ Medical power of attorney (health care proxy)
- ◆ Living will
- ◆ Do-not-resuscitate order
- ◆ Extremely important to have in place to be able to assist in planning

When not to consider Medicaid

- ◆ If you have sufficient assets to private pay
- ◆ If you don't like relying on public assistance
- ◆ If you are concerned with a potentially different level of care

Cautionary notes about Medicaid planning

- ◆ Rules are constantly changing and the rules today may not be the same as when you actually apply
- ◆ There may be tax implications to different planning techniques which you should consider
- ◆ The CDHCPF looks upon planning for public benefits under the Medicaid program with very critical eyes and will deny eligibility where at all possible. Because of this there is risk to undertaking Medicaid planning as there can be no guarantee you will be approved and thus your planning may be unsuccessful

Nursing Home Resident Rights

The US Department of Health and Human Services says it best on their website.

Your rights include:

- ◆ Respect: You have the right to be treated with dignity and respect

Page 4 - SPECIAL REPORT
- 2014 Medicaid Long Term Care Planning Guide -

- ◆ Services and Fees: You must be informed in writing about services and fees before you enter the nursing home
- ◆ Money: You have the right to manage your own money or to choose someone else you trust to do this for you
- ◆ Privacy: You have the right to privacy, and to keep and use your personal belongings and property as long as it doesn't interfere with the rights, health, or safety of others
- ◆ Medical Care: You have the right to be informed about your medical condition, medications, and to see your doctor. You also have the right to refuse medications and treatments.

For assistance with nursing home rights call your Nursing Home Ombudsman or ask the nursing home to contact him or her for you.