

Preserving Your Assets While Qualifying for Medicaid Benefits

By Karen S. Timko, CELA
September 2021

Did you know that an elder law attorney can help you protect your assets while your spouse applies and becomes eligible for Medicaid benefits? Medicaid is the Federal and State jointly funded program that helps pay the cost of nursing home level care for applicants. In Pennsylvania, Medicaid will pay the costs associated with nursing home level care provided in a nursing home or in the applicant's home. Unfortunately, in Pennsylvania, Medicaid will not pay for care received in a personal care home or an assisted living facility. Therefore, when seeking Medicaid benefits, it is of paramount importance if your spouse is relocating to a facility, that you confirm that the facility is a nursing home and not a personal care home or assisted living facility.

Medicaid provides a huge financial benefit because it will pay the difference between an applicant's monthly income and the cost of care in a nursing home, which can be over \$11,000 per month in Pennsylvania. Medicaid payments to caregivers for an applicant living at home can be paid through the Medicaid Home and Community Based Services Waiver program and these payments can total as much as nursing home costs.

As a Medicaid applicant, your spouse must qualify both medically and financially in order to receive Medicaid benefits. The medical eligibility determination is made by your spouse's physician in conjunction with a county social worker. Once it is formally determined that your spouse is in need of nursing home level of care, an elder law attorney can assist you in attaining financial eligibility for Medicaid benefits.

In determining your spouse's financial eligibility for Medicaid benefits, all of your assets are considered whether owned jointly or individually. Your assets include all bank and investment accounts, US Savings Bonds, annuities, retirement accounts, real estate, motor vehicles and the cash value of all life insurance policies. Although Medicaid reviews all of your assets, it exempts certain assets from consideration in the determination of eligibility for Medicaid benefits. Once your assets are totaled, your exempt assets are deducted, which include your home, one motor vehicle, a portion of the cash value of your and your spouse's life insurance policies as well as your retirement account, regardless of its value. Your spouse's retirement account is not exempt from consideration by Medicaid. Once all of the exempt assets are deducted, your total remaining assets are divided in half and you, as the spouse of the Medicaid applicant, may keep one-half of the remaining assets, up to \$130,380 in 2021. The other one-half of your combined remaining assets is assigned to your spouse. Your spouse may keep either \$2,400 or \$8,000 and qualify for Medicaid benefits,

depending upon the amount of your spouse's monthly income. For example, assume you and your spouse have \$250,000 in remaining assets after the value of your house, automobile and your retirement account are deducted. One-half of \$250,000 is \$125,000. As the spouse of a Medicaid applicant, you may keep \$125,000. Your spouse may keep \$8,000. Adding these together totals \$133,000 in remaining assets you both may keep. Subtracting \$250,000 minus \$133,000 leaves \$117,000 of remaining assets. This remaining balance of your spouse's one-half of your assets must be spent down or converted to exempt assets in order to qualify for Medicaid benefits.

Your elder law attorney will continue to assist you in the next step of the Medicaid application process which is the spend-down of assets or conversion to exempt assets. There are multiple options in this process, including but not limited to, paying any debt you may have and prepaying for your funerals. You also have the option to purchase a special Medicaid compliant single premium immediate annuity. Purchasing this annuity converts your excess assets to a stream of income payable to you each month as the spouse of the applicant. Because this annuity balance is an income stream, it is not counted in the determination of your spouse's eligibility for Medicaid benefits, so long as the annuity meets the strict Medicaid requirements. Your elder law attorney will guide you through the special rules that apply to these spend-down and conversion to exempt assets planning techniques to maximize the preservation of your assets. Once your assets have been reduced to your asset limit through the methods set forth above, your spouse will be eligible for Medicaid benefits.

It is important to note that once your spouse is medically and financially eligible for Medicaid benefits, the county will examine all of your financial records to determine if either of you have made gifts or transferred assets without compensation in excess of \$500 per month in the five years directly before applying for Medicaid benefits. If you have made such gifts or transfers you will incur a penalty period during which your spouse must privately pay for care. This penalty can be cured by having the transferred assets returned to you. If the property cannot be returned to you, you must privately pay for your spouse's care until the penalty has expired. The penalty is assessed at \$364.90 per day in 2021, which totals approximately \$11,000 per month. For example, if you have gifted \$11,000, you will incur a one-month penalty period during which your spouse must privately pay for care. Once the penalty period has expired, your spouse will be eligible for Medicaid benefits.

Applying for Medicaid benefits is a complex process but with the assistance of a certified elder law attorney, your spouse can receive Medicaid benefits while preserving your assets.