

**MEDICAID ELIGIBILITY**  
**FOR NURSING HOME COSTS**

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A publication provided by  
Law Office of Leslie S. Madge, P.C.

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978-635-1100

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# WHAT YOU NEED TO KNOW ABOUT MEDICAID:

## ELIGIBILITY REQUIREMENTS

### HOW TO APPLY

#### I. INTRODUCTION

The prospect of long-term care in a nursing home is one of the most difficult and unpleasant experiences facing elders and their families, creating great stress and feelings of anxiety and guilt. In addition to making the very difficult decision that a nursing home placement has become necessary, the family is also faced with meeting the very high cost of that care.<sup>1</sup>

Most elders pay for their medical expenses (hospitalization, doctor's bills, drugs, etc.) through the federal Medicare program, supplemented by their chosen medigap policy. Medicare, however, does not pay for extended nursing home care. Nursing home residents are required to use their own resources in the payment of their care. Once these resources have been exhausted, then the joint federal-state welfare program, *Medicaid*, takes over the cost of nursing home care.<sup>2</sup>

#### II. ASSET LIMITATIONS

To qualify for Medicaid, a single individual cannot own more than \$2,000 in *countable assets* (bank accounts, stocks, bonds, vacation properties, etc.) A spouse can also keep one-half of the assets, up to \$95,100. In addition, the principal residence and an automobile can be retained, as well as certain other property, including personal property, a \$1,500 burial account, and life insurance up to \$1,500.

If the Medicaid applicant, or his spouse, is the beneficiary or grantor of a trust, complex rules apply. An experienced elder law attorney can advise whether the existence of the trust will pose a problem in qualifying for Medicaid, and if so, how best to proceed in order to receive benefits.

#### III. INCOME LIMITATIONS

The Medicaid recipient must turn over all his income to the nursing home, except for \$60 per month, which he keeps, as his *personal needs allowance*.

The income of the spouse is kept by her/him and is not paid to the nursing home. If the spouse's income is below Medicaid's spousal income amount, she/he is entitled to keep more income from the nursing home spouse, and sometimes more assets as well. Often, significant assets or income can be retained and still qualify for Medicaid; only an experienced elder law attorney can properly assess this issue and craft a plan to retain assets or income above the permitted Medicaid levels.

#### IV. SPEND-DOWN PROCESS

When an applicant has countable assets greater than \$2,000, or when the couple's combined countable assets are greater than the lesser of one-half or \$95,100, the excess may be "spent-down" on permitted expenditures. These include the payment of debt, pre-payment of funeral costs, purchase of an automobile, necessary repairs to the home and pre-payment of certain recurring expenses.

For couples, sometimes spending-down is not necessary. Only expert assistance from an elder law attorney experienced in these matters can determine whether spending-down can be avoided.

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<sup>1</sup> Nursing home care averages \$80,000 to \$120,000 per year in Massachusetts.

<sup>2</sup> Medicaid is also available to blind and disabled individuals who meet the eligibility guidelines.

## **V. TRANSFER RULES**

Medicaid reviews all financial records for the 36 months prior to application<sup>3</sup>. The purpose of this “look-back” period is to determine if any transfers were made which might then disqualify the applicant from receiving benefits. A disqualifying transfer will exist if, in this period, the applicant or spouse transferred a countable asset or the principal residence for less than fair market value.

Sometimes, a carefully planned program of disqualifying transfers can be of long-term benefit to the nursing home resident, his spouse and family. This should never be undertaken without the advice and assistance of an elder law attorney.

## **VI. ESTATE RECOVERY**

Medicaid has the right to recover money it paid on a recipient’s behalf for all benefits paid after age fifty-five. However, this recovery is limited to the recipient’s probate estate, after his death, and only after there is no surviving spouse, child under 18, or disabled child of any age.

A typical Medicaid recipient will have \$2,000 in assets plus his house. Without careful planning, after his death, the value of the house will have to be used to repay the Medicaid benefits received. An elder law attorney can advise how this repayment can be avoided.

## **VII. WHY YOU NEED AN ELDER LAW ATTORNEY**

The Medicaid application is often difficult and extremely time-consuming to complete. The supporting documents needed for a successful application are substantial and include extensive personal records as well as financial records for 36 months (60 months if trusts are involved).

The Medicaid rules are complex, numerous, sometimes confusing, and ever changing. An elder law attorney is best qualified to assess your eligibility status for Medicaid and to recommend one or more strategies to best preserve your resources.

## **VIII. WHAT IS A MEDICAID APPLICATION COMPANY AND CAN IT SUBSTITUTE FOR AN ELDER LAW ATTORNEY?**

The Medicaid application process is lengthy and cumbersome. In response to these issues, some nursing homes contract with private companies to prepare Medicaid applications for residents. These companies are *not* attorneys, and do not give legal advice. They merely assemble and file the actual Medicaid application.

Medicaid application companies usually provide their services at low or no charge to the Medicaid applicant, thus making their use very attractive to the family. However, these companies represent the nursing home, not the Medicaid applicant or his family. No attorney-client relationship exists. The Application Company shares this means that all financial information provided with its client, the nursing home.

If excess assets are discovered, the Application Company will inform the nursing home. Other, alternative ways of using the excess funds often exist, but the Application Company, since it does not provide legal advice, will not necessarily inform the family of this fact. This may mean that in some situations, residents will lose opportunities to preserve assets because they rely on the company to prepare the application instead of discussing the Medicaid application and all applicable Medicaid planning with an elder law attorney, where confidentiality is assured.

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<sup>3</sup> The look-back period for transfers relating to certain trusts is 60 months.

Because these application preparation companies cannot give legal advice, and are working for the nursing home, not you, it is always desirable to consult your own elder law attorney to determine what actions are in your own best interest. You should understand how important it is at this difficult decision-making time for you to have independent legal advice.

## **IX. WHAT IS THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS?**

The National Academy of Elder Law Attorneys, Inc (NAELA) is a non-profit association, which assists lawyers, bar organizations and others who work with older clients and their families. Established in 1987, the Academy provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with providing legal services to the elderly.

## **X. CHAPTER HISTORY**

Founded in 1992, the Massachusetts Chapter of NAELA has grown to include more than 250 elder law attorneys. Membership in the Chapter provides NAELA members with the opportunity to network with attorneys and other related professionals regarding Massachusetts's issues affecting the elderly in our state. The Chapter has participated in the public policy arena by drafting and promoting legislation relative to the Medicaid transfer rules, spousal impoverishment, estate recovery and by assisting in the development of regulations relative to nursing homes, Medicaid and estate recovery.

The Massachusetts Chapter seeks to be the foremost organization in the Commonwealth assisting lawyers to serve elders. In 1996, it became an affiliate of the Massachusetts Bar Association and presently sits on the Board of Delegates.

## **XI. HOW CAN I FIND AN ELDER LAW ATTORNEY?**

The Law Office of Leslie S. Madge, P.C. began in Littleton, Massachusetts, in 1992 by its founder, Leslie S. Madge, Esq. Since that time, the firm has grown in size, and now includes three attorneys in addition to a knowledgeable support staff.

The firm concentrates its practice in the areas of estate planning and elder law, including the fields of tax planning, estate administration, Medicaid planning and appeals, guardianship and real estate.

The Law Office of Leslie S. Madge, P.C. is uniquely qualified to assist individuals and their families through the often-stressful process of securing an appropriate nursing home placement and dealing with the financial details, which such an institutionalization will require. The firm's attorneys and staff are fully conversant with the Medicaid rules in dealing with the payment of nursing home expenses and can provide expert advice and assistance in qualifying for Medicaid benefits.