



Medi-Cal Planning Basics Rod S. Hormell, CSA, CWPP, CAPP

Unfortunately, many nursing home residents end up exhausting their assets on long-term care. But it doesn't have to be that way. The best time to plan for the possibility of nursing home care is when you're still healthy. By doing so, you may be able to pay for your long-term care and protect assets for your loved ones. How? Through Medicaid planning (Medi-Cal in California). You worked hard all of your life to pay off your mortgage and build a retirement fund. You expected to live off your savings in the comfort of your own home, and you planned to leave something to your kids at the appropriate time. Suddenly, the unthinkable happens--you suffer a stroke at age 70 and must spend the rest of your years in a nursing home. What will happen to your life savings?

Eligibility for Medi-Cal depends on your state's asset and income-level requirements

Medi-Cal is a joint federal-state program that provides medical assistance to various low-income individuals, including those who are aged (i.e., 65 or older), disabled, or blind. It is the single largest payer of nursing home bills in America and is the last resort for people who have no other way to finance their long-term care. Although Medi-Cal eligibility rules vary from state to state, federal minimum standards and guidelines must be observed.

In addition to you meeting your state's medical and functional criteria for nursing home care, your assets and monthly income must each fall below certain levels if you are to qualify for Medi-Cal. However, several assets (which may include your family home) and a certain amount of income may be exempt or not counted.

Medi-Cal planning can help you meet your state's requirements

To determine whether you qualify for Medi-Cal, your state may count only the income and assets that are legally available to you for paying bills. Medi-Cal planning helps you devise ways of making your assets and income inaccessible. Over the years, attorneys have developed several strategies to rearrange finances and legally shelter assets from the state. These strategies--and the Medi-Cal rules themselves--can be complicated, especially since the passage of the Deficit Reduction Act of 2005, which significantly tightened restrictions on Medi-Cal planning.

Along with qualifying you for Medi-Cal benefits, Medi-Cal planning seeks to accomplish the following goals:

- Sheltering your countable assets
- Preserving assets for your loved ones
- Providing for your healthy spouse (if you're married)

Let's look at these in turn.

One way to shelter countable assets is to exchange them for exempt assets.

Countable assets are those that are not exempt by state law or otherwise made inaccessible to the state for Medi-Cal purposes. The total value of your countable assets (together with your countable income) will determine your eligibility for Medi-Cal. Under federal guidelines, each state compiles a list of exempt assets. Usually, this list includes such items as the family home (regardless of value), prepaid burial plots and contracts, one automobile, and term life insurance.

Through Medi-Cal planning, you can rearrange your finances so that countable assets are exchanged for exempt assets or otherwise made inaccessible to the state. For example, instead of spending your savings solely on nursing home bills, you can pay off the mortgage on your family home, make home improvements and repairs, pay off your debts, purchase a car for your healthy spouse, and prepay burial expenses.

There are many other ways to shelter countable assets. Give me a call for more information on such options currently available to you and your family.

Irrevocable trusts can help you leave something for your loved ones.

Why not simply liquidate all of your assets to pay for your nursing home care? After all, Medi-Cal will eventually kick in (in most states) once you've exhausted your personal resources. The reason is simple: You want to assist your loved ones financially. You want to be able to leave something to them, rather than to strangers.

There are many ways to protect assets for your loved ones. One way is to use an irrevocable trust. (It's irrevocable in the sense that you can't later change its terms or decide to end it.) Property placed in an irrevocable trust will be excluded from your financial picture, for Medi-Cal purposes. If you name a proper beneficiary, the principal that you deposit into the trust (and possibly any income generated) will be sheltered from the state and can be preserved for your heirs. Typically, though, the trust must be in place and funded for a specific period of time (60 months) for this strategy to be an effective Medi-Cal planning tool.

If you're married, an annuity can help you provide for your healthy spouse

Nursing homes are expensive. If you must go to one, will your spouse have enough money to live on? With a little planning, the answer is yes. Here's how Medi-Cal affects a married couple. A couple's assets are pooled together when the state is considering the

eligibility of one spouse for Medi-Cal. The healthy spouse is entitled to keep approximately \$100,000 or a spousal resource allowance that generally amounts to one-half of the assets. This may not amount to much money over the long term.

A healthy spouse may want to use jointly owned, countable assets to buy a single premium immediate annuity to benefit himself or herself. Converting countable assets into an income stream is a plus because each spouse is entitled to keep all of his or her own income, in contrast to the pooling of assets. By purchasing an immediate annuity in this manner, the institutionalized spouse can more easily qualify for Medi-Cal, and the healthy spouse can enjoy a higher standard of living.

Be aware, however, that for annuities purchased on February 8, 2006 and thereafter (the date of enactment of the Deficit Reduction Act of 2005), the state must be named as the remainder beneficiary of the annuity after your spouse or a minor or disabled child.

Beware of certain Medi-Cal planning risks

Medi-Cal planning is not without certain risks and drawbacks. In particular, you should be aware of look-back periods, possible disqualification for Medi-Cal, and estate recoveries.

When you apply for Medi-Cal, the state has the right to review, or look back, at your finances (and those of your spouse) for a period of months before the date you applied for assistance. In general, a 60-month look-back period exists for transfers of countable assets for less than fair market value (for transfers made prior to February 8, 2006, there's a look-back period of 60 months for transfers into an irrevocable trust and a look-back period of 36 months for all other transfers). Transfers of countable assets for less than fair market value made during the look-back period will usually result in a waiting period before you can start to collect Medi-Cal. So, for example, if you give your house to your kids the year before you enter a nursing home, you'll be ineligible for Medi-Cal for quite some time. (A mathematical formula is used.)

Note: Some states must amend their laws to implement the changes to Medi-Cal under the Deficit Reduction Act of 2005. In these states, the date the new rules will go into effect may be different than the federal enactment date of February 8, 2006

Also, you should know that Medicaid planning is more effective in some states than in others. In addition, federal law encourages states to seek reimbursement from Medicaid recipients for Medicaid payments made on their behalf. This means that your state may be able to place a lien on your property while you are alive, or seek reimbursement from your estate after you die.

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Medi-Cal and Nursing Home Care

As you enter your 60s and 70s, health may become more of an issue than it once was, and your thoughts may turn to the future. Who will take care of you when you can no longer care for yourself? If you must enter a nursing home, how will you pay for it? By learning as much as you can about Medi-Cal right now and planning appropriately, you may be able to resolve these issues and create a more secure future.

Nursing homes provide different levels of long-term care

You may need to enter a nursing home if you become physically or mentally incapacitated and can no longer care for yourself properly. If the services of an in-home caregiver are inadequate or unavailable, or if you require around-the-clock care, entry into a nursing home on a long-term basis may be your only option.

A nursing home is a state-licensed facility that may provide skilled nursing care, intermediate care, and/or custodial care.

- **Skilled care:** This around-the-clock care, ordered by a physician and performed by skilled medical personnel, is designed to treat a medical condition.
- **Intermediate care:** This involves occasional nursing and rehabilitative care provided by registered nurses and certain other medical personnel under the supervision of a physician.
- **Custodial care:** This type of care is designed to help you perform the activities of daily living (e.g., bathing, eating, and dressing). It can be provided by someone without professional medical skills but is supervised by a physician.

Medi-Cal can help you pay for nursing home care

Medicare (Part A), Medigap insurance, and Medi-Cal can each provide some assistance in paying for long-term care. However, Medicare and Medigap provide only short-term coverage for skilled care at nursing homes--only a certain number of days per year are covered. Also, they do not provide coverage for intermediate and custodial care in nursing homes.

In contrast, Medi-Cal (in most states) will pay for skilled care and intermediate care in nursing homes, and for custodial care at home. The bottom line is that most nursing home residents are left with only three alternatives for paying their nursing home bills: Medi-Cal, their own assets (e.g., cash, investments), and long-term care insurance (LTCI).

Although an LTCI policy may be an ideal solution, you may not be able to purchase such a policy later in life if you're uninsurable for health reasons, or if you find the premiums too high. If you don't want to spend your life savings on nursing home bills and can't

afford LTCI premiums, qualifying for Medi-Cal may be your best bet. With proper planning, you may be able to qualify for Medi-Cal, protect your healthy spouse (if you have one), and even leave some assets to your loved ones after you're gone.

You must satisfy several requirements to qualify for Medi-Cal

Medi-Cal is a joint federal-state program that provides medical assistance to various low-income people, including those who are aged (i.e., 65 or older), disabled, or blind. It can pay for a number of costs, including hospital bills, physician services, and long-term care. Medi-Cal is the single largest payer of nursing home bills in America and is the last resort for people who have no other way to finance their long-term care. Although the eligibility rules vary from state to state, federal minimum standards and guidelines must be observed.

In addition to you meeting your state's medical and functional criteria for nursing home care, your assets and monthly income must each fall below certain limits if you are to qualify for Medi-Cal. However, several assets (which may include your family home) and a certain amount of income may be exempt or not counted.

Although many people are ineligible for Medi-Cal when they first enter a nursing home, several states allow elders to enter and then spend down their income and assets on nursing home bills to become eligible. This can be a great advantage. On the downside, though, you may have to kiss your life savings good-bye.

That's where Medi-Cal planning comes in. In determining your eligibility for Medi-Cal, a state may count only the income and assets that are legally available to you for paying bills. You can make assets unavailable by giving them away or by holding them in certain trusts. However, in some cases, such transfers may create a period of ineligibility before you can collect Medi-Cal. So, to engage in proper Medi-Cal planning, you should consult an experienced elder law attorney.

Choosing the right nursing home takes research

Because nursing homes have long waiting lists, you should research the nursing homes in your area before an emergency arises. If you plan on using Medi-Cal to pay for your nursing home care, make sure that the facility you select accepts Medi-Cal--not all nursing homes do. Many others restrict the number of Medi-Cal "beds" in the nursing home (some states, however, prohibit this). Also, be aware that if Medi-Cal will be paying for your nursing home care, you will not be entitled to a private room.

You should consider several factors when choosing a nursing home. These include:

- **Level of medical care:** Some homes provide mainly custodial care. If you think that you may need skilled nursing care in the future, don't choose a home that offers only custodial care.
- **Cost of care:** You will pay less at some facilities than at others. Compare the cost of each facility with the quality of care and the services provided.
- **Recreational opportunities:** Consider whether the nursing home organizes outside or in-house recreational activities for its residents.
- **Appearance of grounds and facilities:** The nursing home should be clean and well maintained. A bad smell is one sign of a poor-quality nursing home.

- Resident/staff ratio and interaction: Determine if the resident/staff ratio meets or exceeds state and federal requirements. Also, notice how staff members treat residents.

When you find a nursing home that you like, you should find out if a bed will be available for you, or if you can add your name to a waiting list. And remember, Medi-Cal planning should be done well before the need for a nursing home arises.

For more information on how to evaluate a nursing home, contact your state department of elder services or this office.



Medi-Cal Liens and Estate Recoveries (A General Discussion)

What are Medi-Cal liens and estate recoveries?

Federal law encourages states to seek reimbursement from Medi-Cal recipients for Medi-Cal payments made on their behalf. There are two types of cost-recovery actions against the assets of Medi-Cal recipients: 1) real or personal property liens, and 2) recovery from decedent's estate.

A Medi-Cal lien is a form of attachment against your property that signifies that someone else has certain rights or interests in your property. A lien makes it impossible for you to sell or refinance your property without the state's knowledge and opportunity to collect. While federal law allows a lien to be placed on your home at the time you become a permanent resident of a nursing home, not all states have adopted such provisions.

Along with the use of lifetime liens, your state may be able to seek reimbursement from your estate after you die. For Medi-Cal purposes, the word "estate" has traditionally been construed as your probate estate; that is, property which passes under your will, not by beneficiary designation or operation of law. Therefore, assets held jointly with other people, assets held in trust, and assets held subject to a life estate, for example, would escape a Medi-Cal lien (because they were not part of your probate estate). Since 1993, however, states have had the option to expand the definition of estate to include all nonprobate assets as well (to the extent of your legal interest in such assets at the moment before your death). Thus, nonprobate assets may not be completely sheltered in certain states.

When may a lifetime lien be imposed?

If you're a Medi-Cal recipient, your state can (at its option) attach a lien to your real or personal property (while you're alive) in certain limited situations:

- If a court judgment has proclaimed that Medi-Cal benefits were paid to you incorrectly; or

- If, after notice and a hearing, the state has determined that you cannot reasonably be expected to be discharged from your nursing home (or other institution). In this case, however, the state may impose a lien on your real property only.

Despite the foregoing rules, no lien may be imposed on your real property while you're alive if any of the following people is lawfully residing in your home:

- Your spouse
- Your child under age 21 (or your blind or permanently and totally disabled child of any age)
- Your sibling who has resided in the home for a period of one year immediately preceding your date of institutionalization

Caution: If you're a Medi-Cal recipient living in a nursing home and there is a sale of your house during your lifetime, the state can immediately recover its benefits out of the sale proceeds (assuming there's a lien on the house). However, recovery is limited to that portion of the proceeds attributable to your ownership share. Therefore, if you hold title to the home jointly with your daughter, the state would be entitled to recover only one-half of the proceeds at the time of the sale.

In some states, the purchase of an older "qualified" long-term care insurance policy (i.e., purchased prior to OBRA '93) will protect the house from the imposition of a Medi-Cal lien when you become eligible for Medi-Cal benefits. Thus, some people were able to purchase the minimum coverage necessary to qualify for this protection against the Medi-Cal lien. For more information about long-term care insurance, see Long-Term Care Insurance as a Medi-Cal Planning Tool.

When may an estate recovery occur?

After you die, the state is able to seek reimbursement from your estate, bearing in mind that estate could mean simply your probate estate or could have an expanded definition. Call your state Medi-Cal office if you are unclear about the treatment and standard practice in your state.

The state cannot enforce a lien or attempt estate recovery procedures until after the death of your surviving spouse (if any) and only if you have no surviving children under age 21 (or blind or permanently and totally disabled children). In addition, if a lien on your house already exists, no estate recovery may be made while any one of the following individuals is lawfully residing in your home:

- Your sibling who was residing in the home for a period of one year immediately preceding the date of your institutionalization; or
- Your son or daughter who was residing in the home for a period of at least two years before the date of institutionalization and who provided care to you during that period such that your institutionalization was prevented.

Example(s): George was a Medi-Cal recipient who died at age 80 in a nursing home. The state had paid a total of \$200,000 in Medi-Cal benefits on his behalf. George owned a house jointly with his wife, Martha, and Martha continues to reside there. However, George's state has adopted an expanded definition of estate, which includes jointly owned property.

When George died, the state placed a lien on the family house. The state cannot force a sale of the house while Martha is alive, but when she dies, the state can force a sale of the home and apply one-half of the proceeds toward its recovery of the \$200,000 Medi-Cal benefits it paid to George. Also, the state can collect immediately if Martha decides to sell or refinance the house at any time.

Caution: Your assets and funds that are exempt for purposes of determining Medi-Cal eligibility are not exempt from recovery proceedings. Exempt assets are those that do not affect your eligibility for Medi-Cal. Each state composes a list of exempt assets, which may include such items as one automobile and household furnishings. Therefore, the state can require the sale of any personal property of the estate to satisfy the Medi-Cal claim.

Example(s): Assume George is a Medi-Cal recipient who dies while living in a nursing home. George owns one automobile (which his family used to visit him), a gold necklace and an expensive watch. After his death, the state is entitled to force a sale of the car and personal effects in order to recover part of the Medi-Cal benefits paid on George's behalf over the years.

For more information about exempt property, see Purchase of Exempt Assets.

However, in a few states, full estate recovery will not apply to individuals who had purchased long-term care insurance. Specifically, California, Connecticut, Indiana, Iowa, and New York adopted plans that allow individuals who purchased long-term care insurance to shelter a portion of their assets from the state. Federal law, in 1993, prohibited additional states from creating similar programs.

Tip: A significant limit on the state's power to go after assets is that it can only go after assets in your name at death, not assets in your spouse's name. Also, as mentioned before, the state can only go after nonprobate assets to the extent of your legal interest in such assets at the time of your death. Therefore, if you transfer assets into an irrevocable income-only trust, retaining only the right to receive income from the trust, then the state would be entitled to collect only the present value of your income interest at the moment of your death. If you own a piece of property jointly with someone else, the state (if it adopts the expanded definition of estate) will be able to reach one-half the value of the property.

How can I avoid liens and estate recoveries?

First of all, it's useful to summarize the rules:

- The state cannot place a lifetime lien on your property while certain people reside there, such as your spouse
- Any property in your probate estate can be reachable by the state to recover Medi-Cal benefits
- If you have probate assets and you leave a surviving spouse (or the applicable categories of children), the state may file a lien against the property in your probate estate but cannot recover any money immediately
- Property that passes outside of probate, on the other hand, will not be reachable by the state unless the state has adopted the expanded definition of estate

- If the state has adopted the expanded definition of estate, then the state may recover against your nonprobate assets, but only to the extent of your legal share of that property

Since there is clearly an advantage to avoiding probate, you should plan accordingly before you need to enter a nursing home. You can avoid probate by using such tools as joint tenancy (i.e., joint ownership with rights of survivorship), irrevocable trusts, and gifts of property with a reserved life estate. A life estate is a planning tool that enables you to transfer ownership of your house while still giving you the right to live there during your lifetime.

Example(s): Ronald transfers his home to his two children, Nancy and Pattie, reserving a life estate for himself. At the time of the transfer, Ronald's life estate is worth 48 percent of the value of the home. Ten years later, after Ronald dies in a nursing home as a Medi-Cal recipient, the state seeks to recover from his estate. At his death, however, Ronald's life estate is worth only 30 percent of the value of the home. Consequently, that's all the state can collect.

Of course, if you anticipate entering a nursing home soon and don't have time to engage in sophisticated planning, you should consider transferring your home to your healthy spouse's name alone. The healthy spouse can then create a will, naming the children (or anyone other than the institutionalized spouse) as beneficiaries. For more information about spousal transfers, see *Protecting At-Home Spouse*.

For more information about life estates, see *Transfer Subject to Life Estate*. For more information about trusts as Medi-Cal-planning tools, see *Medi-Cal Qualifying Trusts*.

Tip: There are hardship exceptions to the estate recovery rules. Undue hardship might exist, for example, when the estate subject to recovery is the sole income-producing asset of the survivors and the income is limited (e.g., a family farm or other business). States must develop hardship exception criteria but may conclude that undue hardship does not exist if a Medi-Cal applicant created the hardship by resorting to estate planning methods to divest assets in order to avoid estate recovery. It is important, therefore, to know your state's policy regarding hardship exceptions.

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