

MEDICAID BASICS: CUTTING THROUGH THE MYTHS

Medicare does not cover the cost of extended nursing home care. Therefore, if you or a loved one is facing a prolonged nursing home stay, other payment options must be considered. Most people entering nursing homes today do not have long term care insurance. Since private payment averages \$80,000 a year in our area, most residents are forced to turn to Medicaid at some point. It is important to know the facts since there are many misconceptions about the program.

Ten Common Myths

1) I will have to spend everything I have and sell all my property to qualify

You don't have to be completely destitute to qualify for Medicaid. While the limit for "countable" assets is very low (\$2,000), there are many assets that are considered excluded. These include a car, personal belongings and some life insurance or a burial plot. If you have a spouse or dependent children, then the house they live in and other property is protected (See #3 below).

2) I can only "spend down" my assets on medical and nursing home bills

In fact, attorneys specializing in elder law can often give valuable advice about buying non-countable assets which can benefit you or your spouse, for instance, pre-paying for burial arrangements and making home repairs. In addition, you may be able to make certain transfers to family members.

3) My spouse will become impoverished or we will have to get divorced for me to qualify

While all assets held by either spouse are considered available for Medicaid purposes, Medicaid does offer some protections for spouses (as well as dependent children, who remain in the community). Spouses are entitled to retain as much as ½ of the couple's assets up to a capped amount (approximately \$100,000). In addition, spouses may continue to live in the couple's home. In some cases, elder law attorneys may be able to advise couples on ways to protect even more resources.

4) I will have to pay my income to pay for my spouse's care in a nursing home

In New Jersey, all income in the name of the community spouse is protected for his/her use. In addition, the healthy spouse may be entitled to some of their spouse's income if needed for their support. The spousal allowance can be as much as \$2,500 a month depending on the healthy spouse's maintenance costs.

5) A nursing home can hold me responsible for the cost of my parent's cost of care

Only spouses are personally responsible for the cost of care in a nursing home, subject to the Medicaid rules. Adult children should *never* be asked to sign for personal responsibility for payment. They may, however, be asked to sign as power-of-attorney, but their liability must be limited to their parent's funds.

6) I can give away all my money and qualify for Medicaid

Medicaid imposes penalties for certain transfers, depending on what is given away, to whom and when. When you apply for Medicaid they will look at all transfers and gifts for the previous three years to five depending on the date and type of transfer. If the gift incurs a penalty, the amount of the transfer will determine the how long it is (see #7 below).

7) I have to wait three years to apply for Medicaid if I have made any gifts or transfers

Again, not all transfers incur a penalty. However, the “look-back” period was recently extended to five years and it is applied in such a way as to make transfers during the five years very difficult. Therefore, if you are considering making transfers, it is best to consult an attorney as soon as possible.

8) I can only make gifts of \$10,000 a year

This amount, which was recently raised to \$11,000, refers to the federal estate and gift tax limit. It is not relevant for Medicaid purposes and it is not unusual for individuals to make transfers in excess of \$10,000. Such a transfer would result in a period of ineligibility of no more than two months.

9) My power-of-attorney can make gifts for me if I ever need Medicaid

Most general powers-of-attorney do not include a gifting provision (or limit it to \$11,000 gift tax limit). This is problematic because under a recently decided New Jersey case, an agent under a power-of-attorney without a specific gifting power is not allowed to make transfers for Medicaid purposes.

10) Money in a joint bank account (or at least half of it) is “safe” from Medicaid

Many individuals add a family member to a bank account for convenience assuming that this will also insulate at least half of the funds from nursing home costs. This is not true. New Jersey will assume that all of the funds in a joint bank account belong to the nursing home resident if he/she has unrestricted access to the funds.

It is important to be well-informed when facing long-term care costs. Medicaid is a complex and ever-changing area of the law, so few lawyers are comfortable giving advice on this area. It is important to consult an attorney with significant experience in the field. The National Academy of Elder Law (naela.com) can assist consumers in locating an attorney specializing in elder law.