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Using Estate Planning Tools to Become Medicaid Eligible

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Long-term care (nursing home) costs are significant. In Pennsylvania, the average monthly cost of a private room in a nursing home facility for 2024 was nearly $13,000, or $156,000 annually. Especially for retirees on a fixed income, this amount could wipe out all or most of one's lifetime savings. Medicaid, a federal program providing public health insurance for people with low income, can be an important asset protection tool for those who qualify. It is the principal source of long-term care coverage in the United States. Here, we explore how estate planning tools can help one become eligible for Medicaid.

Why Estate Planning Matters for Medicaid

A number of rules and requirements must be met to become eligible for Medicaid to pay for one's long-term care. They include requirements pertaining to an applicant's categorization, citizenship, state of residence, health status, and financial status. Among the most important of these requirements are those pertaining to an individual's medical condition and financial circumstances (more on Medicaid Planning).

One of the biggest factors affecting *financial* Medicaid eligibility is the 5-year look-back period, which is the period of time over which the agency that administers Medicaid (the Department of Human Services or DHS in Pennsylvania) reviews transfers made by the applicant. Transfers (including gifts) for less than adequate consideration (i.e., less than the fair value of the transferred assets) trigger a period of ineligibility for Medicaid (more on these topics in our article: *Look-Back Period vs. Period of Ineligibility*). Therefore, simply spending down assets and/or giving your loved ones gifts is not an efficient or effective method to achieve financial Medicaid eligibility.

What can make a difference is using estate planning and other tools to expedite financial Medicaid eligibility. Knox Law's elder law group works to understand each client's individual circumstances to determine which tools will be the most helpful. Our team also offers guidance on applying for Medicaid and provides comprehensive services.

Key Estate Planning Strategies to Qualify for Medicaid

There are several techniques to help with financial eligibility for Medicaid. The best solution is to speak to an experienced elder law attorney, who can help you safely and effectively implement the best strategy for your individual situation.

These strategies include, but are not limited to:

- Asset depletion and spend down
- Conversion of countable assets to excluded assets
- Asset transfer strategies
- Maximizing retirement assets of community spouse, for married couple

- Family caregiver contracts
- Long-term care insurance
- Trust planning
- Medicaid-Compliant annuities

Not all of these techniques will work for every client; however, they offer options to consider when determining the best path forward.

Spend-Down and Transfer Strategies

One technique for accelerating an applicant's qualification for Medicaid and/or preserving family assets is to **spend down one's countable assets** (those that would be counted toward the Medicaid resource eligibility limits). The best way to do this is to convert (some) countable assets into non-countable (or exempt) resources. In most instances, this involves purchasing non-countable assets.

Since the applicant typically expends cash (a countable resource) and in return receives full value (in the form of a non-countable asset), no transfer penalty is triggered by the exchange.

There are a number of ways to convert countable assets into non-countable form. Some examples include:

- Purchasing a new or more expensive personal residence
- Making home improvements or repairs to an existing personal residence
- Buying (and/or trading in an existing motor vehicle for) a more expensive motor vehicle
- Purchasing household goods and/or home furnishings
- Purchasing joint or life estate interest in child's home

Asset transfer strategies can also be implemented if the circumstances allow. For example, in Pennsylvania, assets may be transferred freely between spouses without triggering a Medicaid penalty. Maximizing the retirement assets of the community spouse (the non-resident spouse) can be a helpful strategy. The community spouse's retirement assets are typically treated as exempt, or non-countable, for Medicaid purposes.

Many of these strategies require a specific technique in order to comply with regulations and achieve the desired result. An experienced elder law attorney can determine the best path forward to expedite Medicaid eligibility while minimizing penalties and other negative outcomes.

Family Caregiver Contracts

Another technique for spending down assets to accelerate qualification is through the use of a **Family Caregiver Contract**.

A Family Caregiver Contract is an agreement between a parent and another family member (typically an adult child) whereby the other family member agrees to provide personal care services to the parent in exchange for stated compensation. Because the caregiver is providing services, the amount paid to him/her is not considered a transfer subject to penalty, provided that the services rendered to the elderly parent are "fair value" for the amounts received by the caregiver.

Family Caregiver Contracts are potentially subject to abuse, and therefore, they raise various issues, including the value of services provided, documentation, form of payment, and taxes. These matters are described in detail in our related article here.

Long-Term Care Insurance

Regular health insurance does not cover long-term care costs, and Medicare will only cover limited amounts of skilled nursing care. A long-term care insurance policy can help cover costs of care for covered medical conditions, and for services provided in the policyholder's home, an assisted living facility, or a nursing home.

However, while this type of insurance was popular 15-20 years ago, it is now more of a niche planning tool for specific client situations. There are less insurers selling this type of insurance due to underpricing, longer life expectancy, and rising care costs. Many older policyholders have experienced multiple rate increases over the years. Some insurers have moved to hybrid policies (life insurance or annuities with long-term care riders) or short-term care policies. An elder law attorney or trusted insurance professional can help determine if long-term care insurance makes sense for you or your family members.

Trust Planning

A trust is a legal arrangement that separates the ownership and benefits of assets. The trustee holds legal title and manages the assets according to the trust agreement, while the beneficiaries hold equitable ownership - meaning they benefit from the assets. In some cases, individuals may serve as both trustee and beneficiary, depending on the circumstances and planning goals.

Knox Law’s Elder Law group has experience with and utilizes a variety of trusts that can achieve our clients’ asset protection and elder law goals. One commonly used trust is an **irrevocable trust**. Because irrevocable trusts cannot be altered after creation, assets placed in them are generally excluded from Medicaid’s resource calculations (as long as the trust is drafted correctly and complies with Pennsylvania’s Medicaid rules).

We also have experience with Special Needs Trusts, which are a type of trust designed to provide for the needs of an individual with special needs and which can help those individuals stay eligible for public assistance.

Using trusts for long-term care planning, asset transfers, and/or special needs has many advantages beyond protection of your assets, including flexibility, centralized decision-making, and tax benefits. Our team can educate you and your family about your options and the many reasons to use trusts.

Annuities

Medicaid?compliant annuities can be a helpful asset?restructuring tool in Pennsylvania for individuals or married couples seeking Medicaid eligibility. A Medicaid?qualifying annuity can convert excess assets into a stream of income, reducing countable resources and helping the applicant meet Medicaid’s eligibility thresholds. For married couples, the income stream is payable to the community spouse (the spouse who remains at home).

To be considered Medicaid?compliant in Pennsylvania, an annuity must satisfy several stringent requirements established by state policy. These strict rules ensure that the annuity is not used to shelter assets improperly while still allowing families a lawful method of meeting financial criteria. The annuity must be:

- Irrevocable and non?assignable
- Actuarially sound
- Structured to provide equal monthly payments without deferral or balloon amounts
- Created such that the Commonwealth of Pennsylvania is named as the primary remainder beneficiary for at least the amount of Medical Assistance paid on behalf of the Medicaid recipient

Medicaid?compliant annuities are especially useful when a family is significantly over the asset limit but prefers not to exhaust savings on nursing home costs during the spend?down period. By purchasing a properly structured annuity, families convert surplus assets into income in a manner consistent with Pennsylvania law while preserving resources for the spouse at home. However, because the rules are highly technical and because improperly structured annuities can trigger transfer penalties under the state’s five?year look?back period, working with an experienced elder law attorney is critical.

When to Start Medicaid Planning

While the best planning occurs before an individual needs long-term care or enters a nursing home (and thus considers applying for Medicaid), our team can help at any time.

Pre-Planning

No one can predict the future, but if you think you or a loved one will need long-term care or assisted living in the future, our Elder Law attorneys can help develop a comprehensive estate plan to achieve your legacy goals.

For those nearing or entering retirement, it is a good opportunity to re-evaluate your estate plan and recognize the implications of any gifts to your loved ones (which can affect future Medicaid eligibility). We can also help assess the benefits of long-term care insurance. Overall, the sooner you start to plan, the more assets can be preserved.

Crisis Planning

Even when an individual is already in a nursing home or assisted living center (or about to be), our Elder Law attorneys can advise on smart ways to transfer assets and use other estate planning tools to effectively qualify for Medicaid and/or pay nursing home costs. We often recommend Medicaid Compliant Annuities, or DRA-Compliant Annuities, for crisis planning.

Crisis planning can still preserve a significant amount of assets for a client’s spouse or other loved ones - it is never too late to plan.

Work With a Trusted Elder Law or Medicaid Planning Attorney

These planning strategies require a comprehensive evaluation of a client’s financial situation. Our elder law group can help you select the best tools for your circumstances and timeline, whether that is down the road or more immediately in the near future.

The most efficient planning meeting at our law office requires clients to bring their financial information, existing estate planning documents, insurance policies, legal documents, and more. See our full list of recommended items to bring to an elder law appointment.

If you are ready to learn more, please contact us for a complimentary consultation.

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Kathryn A. Penick concentrates her practice on elder law and estate planning & administration. She helps clients protect their assets through estate planning, trust planning, and tax planning, prioritizing each client's legacy goals.

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