Protecting Your Assets from Nursing Home Expenses

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Who pays for nursing home care?
It depends what you mean by nursing home. MediCARE is federal healthcare insurance that workers pay into and become eligible for at age 65, which includes coverage for short-term “skilled nursing facilities.” MedicAID is a state-administered medical assistance program for the poor that helps with long-term care facilities. The two safety-nets are very different.¹

Medicare will cover limited “medically necessary”² care in a “skilled nursing facility” or in your home if you need short-term skilled care for an illness or injury and you meet certain conditions. A skilled nursing facility provides “medically necessary” professional services from nurses, physical and occupational therapists, speech pathologists and audiologists up to 100 days.

For example, if you are admitted from a hospital after a “qualified” three-night stay, Medicare covers a “skilled nursing” facility for the first 20 days with no copay. After that, in 2019, you will have a daily co-pay of $170.50 for days 21-100. A Medicare Advantage plan may help. Blue Cross Blue Shield of RI plans have co-pays of $130-160 for days 21-45, so you could be out of pocket almost $4,000.00. The good news is that BCBS plans pay everything days 46-100. After 100 days, you pay all of it. Don’t worry too much; few people need skilled nursing that long. By then they need long-term care.

Long-term care usually isn’t “medically necessary” care. Instead, most long-term care is help with basic personal tasks of everyday life, such as dressing, bathing, walking, or taking medications. If an individual cannot afford to pay for long-term care and has very few assets or income, Medicaid is supposed to kick in. Medicaid rules are complex and vary from state to state, and as with every rule, there are some exceptions. Consult an expert before you take any action.

How much does a long-term care facility cost today in Rhode Island?
The average in 2018 was $99,648 a year. For most people, when money runs out, Medicaid will pay, but it is meant to help poor people.

¹ This article is intended to briefly describe Medicare and Medicaid eligibility rules. It is not intended as legal advice.
² The phrases in quotation marks are terms Medicare uses and may not mean what you assume they do.
Who qualifies for Medicaid in Rhode Island?
The poor. You can only have $4,000 in assets in your name. All your income—Social Security, a retirement plan, even a promissory note—goes toward the long-term care facility costs. Medicaid picks up the difference. The recipient may keep only $50 per month for “personal needs.”

What can my spouse keep?
In 2019, the spouse who is not in a long-term care facility (the “community spouse”) may keep 50% of the assets up to $126,420. Your home, car, personal effects, and the principal in a retirement plan don’t count, but any required minimum distributions from the plan go to the long-term care facility. If the countable assets are less than $25,284, the community spouse may keep it all. All assets held by you or your spouse or jointly are counted; prenuptial or postnuptial agreements don’t matter.

Your spouse can also keep all his or her own income. In 2019 if your spouse’s income falls below $2,057.50 a month, you may give your spouse a portion of your income to supplement his or her needs without penalty, but only up to $3,160.50.

What about my house?
If your home equity is more than $585,000.00, it is a countable asset, and you may be denied eligibility.

If you are eligible, Medicaid will put a lien on your real estate so that when it is sold, Medicaid is reimbursed. Medicaid won’t evict your spouse, disabled or minor children living in your primary residence.

What happens when I die?
Medicaid has the right to recoup any money it paid from the “probate estate” of the deceased, with some exceptions for hardship. Minimizing the probate estate is essential. If you have a large life insurance policy, an irrevocable life insurance trust may protect the proceeds.

How can I shelter some of my assets?
Buy a “Partner Qualified” long-term care policy when you are younger. Medicaid will let you keep assets equal to the amount of care the policy covers, up to $250,000.

If you haven’t done that or can’t afford the premiums now, the suggestions below work well if they were done **60 months before you need a long-term care facility**, Otherwise, Medicaid will “look back” and consider them assets. So, if you or a loved one has been diagnosed with a chronic disorder such as Parkinson’s, ALS, multiple sclerosis or Alzheimer’s, it is imperative to act immediately.

Sixty months before you enter a long-term care facility, you can

✓ Change your home’s deed to a life estate and name your loved ones as “remaindermen”; however, there will be a penalty if the property is sold before you die.
✓ Make an irrevocable life insurance trust the beneficiary of your life insurance.
Shelter your money through an *irrevocable* Medicaid trust, that provides your loved ones with income while you're in the long-term care facility. The beneficiaries can't touch the principal until you die. Nice beneficiaries will use that income to provide extras for you like entertainment or travel or clothing.

It is best to get the advice of an experienced attorney early. Don’t wait until you are heading for a long-term care facility.

If you transferred property into irrevocable Medicaid trust within five years, you can still get Medicaid assistance, but there is a disqualification period. The state has a complicated formula for calculating the disqualification period, but some assets in the trust may still be protected.

**What if I don’t have 5 years?**
You can spend down anything over $4,000 to pay debts or buy a funeral plot. Your spouse can spend down anything over $126,420 to pay off debts and the mortgage, do home repairs and improvements, even buy a new home, car, or furniture. Your spouse can also buy “a single premium immediate irrevocable annuity,” which provides an income stream. It’s best to buy it from an insurer that understands the strict rules about this type of annuity. The catch is that, with a couple of rare exceptions, if your spouse doesn’t outlive the term of the annuity contract, the remainder goes to Medicaid.

If you are worried about long-term care facility costs, careful planning now will give you peace of mind and save some of your nest egg for your heirs.

For more information about how to protect your estate, please contact Zona Douthit at 401.272.1400 or zdouthit@shslawfirm.com.