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LAW GROUP

# MEDICAID PLANNING TODAY

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Volume 2, Issue 5



Member National Academy  
of Elder Law Attorneys

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## MEDICAID ELIGIBILITY PLANNING AND THE NEW RULES (Or, Why Consulting an Elder Law Attorney Is More Important Than Ever)

The goal of the changes made to the Medicaid eligibility rules as part of the Deficit Reduction Act of 2005 was to make it more difficult for elder law attorneys to assist current and prospective nursing home residents in protecting their assets. Congress was apparently reacting to rumors and charges (which were proven to be completely false in a study done by the Kaiser Family Foundation) that, with the help of crafty elder law attorneys, "millionaires" were "hiding assets" to qualify for Medicaid.

That has never been the case. The typical clients of elder law attorneys have been widows, widowers and couples of modest means struggling with the difficult question of how to pay for long-term care without having to lose their entire life savings. Their goals and desires, and those of family members assisting them in the planning, have been no different from those of any other senior or family. They want first to assure that the elder's (and, if married, the elder's spouse's) lifetime needs can be met, and then, if and to the extent possible, to enable the elder(s) to leave some of their hard-earned savings to their loved ones.

The only reason that nursing home residents must struggle to achieve those goals is that they have had the great misfortune to be afflicted with "the wrong disease," one requiring long-term care in a nursing home – which Medicare does not pay for – rather than shorter-term (but in many cases, just as expensive) hospital or other medical care that Medicare does pay for.

Moreover, "Medicaid eligibility planning," as practiced by ethical elder law attorneys, has never

been about "hiding assets" or doing anything else outside the rules.

It has been about finding ways, within the rules, of helping to best assure that a senior will be able to receive good quality long-term care, to have funds available to supplement the meager \$30.00 per month a nursing home resident is permitted to keep to pay for everything in life the nursing home does not provide, and to maintain the dignity of being able to leave behind, for her or his loved ones, at least some of the savings that she or he accumulated through a lifetime of hard work, savings, and "doing without."

Changing the eligibility rules did nothing to change the dilemma often faced by elders and their families, nor did it in any way change the reasons why many of them have chosen to enlist the aid of an elder law attorney in confronting that dilemma. In fact, since the harsh new rules are expected to result in a substantial increase in the number of Medicaid applications that will be denied, people facing this problem will need, now more than ever, to consult with a good elder law attorney.

**So, the question is raised: is Medicaid eligibility planning still a wise investment for an individual or family confronting the challenge of paying for long-term care?**

**The answer is a definite and resounding "Yes!"**

Before discussing how planning will help, let's first clear up what has become a very common misunderstanding.

Just because the "look-back" period for gifts and other transfers has been increased from three years to five, that does **not** mean that planning can only be effectively done more than five years before someone enters a nursing home. What was true before remains true now: anyone who is already in, or may need to enter, a nursing home, and who still has some assets left to protect, can benefit from Medicaid eligibility planning.

So, how can Medicaid eligibility planning, as guided by a good elder law attorney, help? Here are several ways.

**Avoiding costly errors.** We often describe the process of establishing eligibility for Medicaid long-term care benefits as being a sort of warped, high-stakes game of "Mother May I?" Things that seem like they should be okay can cause big problems, and things that are okay if done way can cause problems if they are done in a slightly different way. Under the new rules, "the game starts" five years before an elder would need to apply for benefits. If you don't know the rules, you generally lose.

**Doing what the rules allow.** In many cases, part of the problem is that elders own too many of the types of assets the rules will not permit them to have, and do not own other assets the rules would let them keep. In many cases, couples have more assets than the rules allow, but less income than the non-nursing home spouse would be able to keep. Those types of concerns can be very successfully addressed through timely planning, but once it's too late, they can't.

**Protecting the home.** For most seniors, the home is their biggest investment. Many who apply for Medicaid are lulled into a false sense of security by being told that their residence is "exempt." That's a dangerously misleading half-truth. True, an elder does not need to sell his or her home to become eligible, but the following things are also true (at least if steps are not taken to avoid them): (a) the Medicaid agency can and will place a lien against the property for any benefits paid, so it's like taking out a mortgage no one mentioned; (b) when the elder later dies, the Medicaid agency can and will go after the residence through "estate recovery" proceedings; and (c) there's no chance that the \$30.00 monthly income the elder is allowed to keep will be enough

to pay real estate taxes, homeowner's insurance, maintenance, repairs and utilities. Wise planning can address those concerns.

### **Gifting still works, if very carefully done.**

Under the old rules, potential problems caused by gifting often resolved themselves naturally before the Medicaid application was filed. Under the new rules, any gift (even a birthday gift or a donation to charity) made within five years prior to application will cause a period of ineligibility for benefits. Even so, gifting can remain an important means of protecting assets, if very carefully done. We liken the process to firefighters setting "back fires" to help fight forest fires: you sacrifice some to protect the rest. But as a firefighter might say, "Don't try this at home."

**Having and using all of the tools.** Medicaid planning is a very personal process, and it is also constantly evolving. A good elder law attorney can often identify planning techniques that would help a particular client but not most others. Further, by keeping close track of changes in the law and new planning techniques being developed in response to those changes, he or she can give the client the benefit of every available legal means of protecting assets.

### ***In Service Training Available:***

The Coulson Law Group offers in-service training on topics related to:

- \* Medicaid Eligibility and the Deficit Reduction Act of 2005
- \* An Introduction to Medicaid Planning and Division of Assets
- \* Guardianship/Conservatorship and Powers of Attorney
- \* Other Elder Law Issues

We can cater presentations to meet your time requirements. For more information contact our Director of Community Education and Outreach, Beth Frame, at (314) 567-9292 or (618) 659-9292.

Medicaid Planning Today is written by the attorneys of The Coulson Law Group, Wesley J. Coulson and Joseph Ilges, and is published as a service of The Coulson Law Group, 1001 Craig Road, Suite 224, St. Louis, Missouri 63146; 107 Southpointe Drive, Suite 2, Edwardsville, Illinois 62025. This is for general informational purposes only and does not constitute legal advice. For specific questions, you should consult a qualified attorney.

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