



Myths of Medicaid: Expending All Assets before Obtaining Medicaid Assistance Is Not Required

-by Jeffery D. Stinson, CELA*

The Medicaid program finances nursing home care for more than two-thirds of Indiana's nursing home residents, including most middle-class residents of nursing homes who have lengthy stays. While it is true that an individual's resources (assets in Medicaid jargon) cannot exceed a maximum threshold, that individual is not required to expend their entire life savings on long-term care prior to obtaining Medicaid assistance. Often some or all of the individual's savings can be protected by proper legal planning while ensuring access to valuable long-term care benefits under the Medicaid program. This is typically done through investment in exempt resources or through strategic transfers of assets.

Exempt Asset Planning

Not all resources count under the Medicaid program. Consequently, one method to protect assets is to convert assets that currently count under the Medicaid program to assets that do not count under the Medicaid program.

For a simple illustration of this concept, consider John, age 81, who has been admitted to a nursing facility with Parkinson's-related dementia. John has \$70,000 from a combination of a checking account, savings account, and certificates of deposit. John's grandson is in need of a home. John purchases a modest home with his checking, savings, and CDs. He then rents it to his grandson at fair market rent.

Rental real estate that collects rent in excess of its expenses and is rented at fair market value is an exempt resource under the Medicaid program. By converting his countable resources under the Medicaid program (checking, savings, CDs) to an exempt resource (rental real estate), John is now below the countable resource threshold for the Medicaid program and qualifies for Medicaid benefits. In addition, John continues to own an asset, the real estate. If John has a need not met by his Medicaid benefits, he can access the equity in this real estate to meet that need.

Transfer Planning

Another method to protect assets is to transfer assets out of the individual's name to meet the Medicaid maximum resource limit.

A person who gives away an asset (or sells it for less than it is worth) may be determined to be ineligible for Medicaid coverage for nursing home or equivalent Home & Community Based Services (HCBS) for a period of time. Although Medicaid law discourages individuals from certain transfers of assets to meet the maximum

resource limit, a portion of an individual's savings can be protected through a penalizable transfer while the remainder of the savings is used to pay for care through the period of ineligibility ("penalty period").

In addition, some transfers are exempt from penalty. Here is a list of the types of transfers that do not cause a penalty:

- Transfers of most common household goods and personal effects
- Transfers of certain property used in a trade or business
- Monies loaned in exchange for a Medicaid compliant promissory note
- Transfer to a spouse
- Transfer to a disabled child
- Transfer to a trust for the sole benefit of a disabled person under age 65.
- Transfers to certain special needs trusts or a pooled trust
- Certain transfers of the home:
 - to a child under age 21,
 - to a child residing in the home for at least two years before the person becomes institutionalized and who provided care which allowed the person to live at home rather than an institution,
 - to a sibling with an equity interest in the home who resided in the home for at least one year before the person becomes institutionalized.
- Purchase of a life estate in another's home if purchaser resides in the home for one year.
- Payment for the fair value of services from a family member but only if there is a previously made care agreement.
- Other transfers may also be exempt based on the intent for making the transfer.

Let's re-visit the example of John above to illustrate how transfers of assets can protect assets while obtaining Medicaid benefits. In addition to his \$70,000 in bank accounts, John also owns a home. John's incapacity was so severe that he could have been in a nursing facility three years ago. However, John's son moved in with John three years ago. With the care provided by John's son, John was able to live at home outside of the nursing facility for the last three years. However, recent decline in John's health resulted in his son's inability to continue to care for him at home.

After John's admission to a nursing facility, John transfers his home to his son. Medicaid applies no penalty to a transfer of a home to a child if that child lived with and cared for the Medicaid applicant for a period of at least two years.

John also transfers half of his savings to an irrevocable trust for the benefit of his son. The private pay rate at John's nursing home is \$5,000 per month. He uses the remainder of his savings to purchase an immediate annuity that pays him seven monthly payments of \$5,000 per month. John then applies for Medicaid. Medicaid imposes a penalty period of 7 months for the transfer of his partial cash savings to his son. This results in John's inability to receive assistance with his nursing home bill from Medicaid for 7 months. However, the annuity he purchased with the remainder of his savings assists with the payment of his nursing facility bill during this penalty period. At the end of the 7 month penalty period, Medicaid covered nursing home benefits begin. The result is John protects his home and half his cash savings by making transfers to his son and trust for his son.

Obtaining Medicaid never requires complete impoverishment by the applicant. However, appropriate legal planning is required to protect assets. If you or someone you know want to access Medicaid benefits while protecting assets, please contact us to schedule an appointment at 317-622-8181.

**Certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation.*

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