

# WHAT YOU NEED TO KNOW ABOUT MEDICAID PLANNING



Do you have a sick loved one?

Do you know someone in a Nursing Home?

Are you worried about losing all of your hard-earned assets?

**THIS GUIDE IS FOR YOU.**

Provided within is a brief look at the eligibility rules for Pennsylvania's Long-Term Care Medicaid benefits. It will hopefully dispel much of the confusion around Medicaid qualification. Our Estate Planning Workshops are a great place to get more detailed information and if you'd like, you can just call!

Let's get started ...



**Sechler Law Firm, LLC**  
Wills, Trusts & Elder Law

# WHAT ARE THE RULES FOR MEDICAID QUALIFICATION?

*This Guide has been prepared by the Sechler Law Firm, LLC, to educate families about Pennsylvania's Long Term Care Medical Assistance (Medicaid). This document is not intended to be inclusive of all of the complicated Medicaid laws, and is also not to be construed as legal advice. This information is for educational and information purposes only and readers are advised to seek legal counsel prior to making any decisions based on the information herein.*

## WHAT ARE THE RULES FOR MEDICAID QUALIFICATION?

Medicaid is a federal program that provides health coverage for people with limited assets and incomes. It covers the cost of nursing home care for those who meet the program's economic requirements for eligibility, and can also pay for care in your home!

Though it's a federal program, Medicaid is administered by the states. Federal law empowers each state to enforce Medicaid eligibility rules according to its own interpretation. This means that application of these rules can vary significantly from state to state and, in some states, from county to county. Qualification for care in your home is also different for qualifying for care in a nursing home.

Your Medicaid planning advisor can best help you determine how the rules apply to your specific circumstances in your specific locality. Before you get into the specifics, however, it's a good idea to familiarize yourself with the general federal guidelines for Medicaid qualification that apply everywhere.

### ASSETS vs. INCOME

A first key distinction in understanding Medicaid eligibility is that Medicaid has certain limitations for both assets and income. Medicaid treats assets differently than it does income.

### ASSETS

Generally speaking, assets fall into two categories: "countable" and "non-countable". To qualify for Medicaid benefits, a PA nursing home resident can have \$2,400.00 in countable assets. Some applicants may keep up to \$8,000.00. The spouse of a nursing home resident, or "community spouse": can retain between a minimum of \$24,180 and a maximum of \$120,900 (2017) of the couple's joint countable assets. (These amounts are adjusted annually for inflation.) You may be able to keep more than \$120,900 if you meet certain criteria.

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- All or part of applicant's principal residence (see "Some simple planning options")
- Personal possessions (furniture, clothing, jewelry, etc.)
- One motor vehicle (some limitations apply to unmarried people)
- Prepaid funeral plan for applicant, spouse or family members
- Small Life insurance Policies (up to a certain limit)
- "Other assets" needed to raise the community spouse's total income up to the statutory minimum

## ALLOWABLE INCOME

How much income are you allowed under Medicaid law? There are different answers for the "community spouse" and the individual who resides in a nursing home.

- PA Nursing home residents can only keep up to \$45 a month as a personal needs allowance - the rest of their income must go to help cover the cost of their care.
- If the resident is married, the community spouse can keep all of his or her own income. Depending on the family's monthly expenses, they can also keep some of the sick spouse's income, up to \$3,022.50 a month (in 2017).

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## ESTATE RECOVERY

What happens to a Medicaid recipient's estate when he or she passes away? Like so much else, that depends on whether they have properly planned to protect their assets.

When a Medicaid recipient dies, the state must attempt to recover the benefits paid to that individual from his or her estate - that is a requirement under federal Medicaid law. The Estate Recovery Program seeks to take away those assets that the Medicaid recipient was allowed to keep when they initially became eligible. This is where families will often lose the family home. It was exempted when the person became eligible for benefits, but when they pass away, the state will force the executor to sell the house to refund the monies to the State.

In PA, this claim is limited to the probate estate. Some states have expanded the scope of assets from which they can recover the cost of a Medicaid recipient's care. Trusts are often used to protect your assets both during your life and after your death. A qualified Medicaid Planning Attorney can advise you on the many types of trusts available.



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## THE 5 YEAR LOOK-BACK PERIOD

Medicaid's eligibility rules basically require you to go financially broke before you are eligible. So, many families decide to give their homes and other assets to their children, with the intention of protecting the assets. This is very risky.

When you apply for Medicaid, you must disclose any transfers in the last 5 years (60 months). If you have given away your assets, Medicaid will deny eligibility for long-term care benefits for a period of time called a "Penalty Period." The length of this time is dependent on the amount of the gift.

The resulting situation is an ugly one for the person needing care, as well as their family members. During the Penalty Period, the nursing home bill continues to accrue and there are no assets to pay the bill. Over the course of several months the nursing home bill could amount to tens of thousands of dollars of liability. Oftentimes in Pennsylvania, nursing homes are left with no other options but to sue adult children under Pennsylvania's Filial Responsibility Law.

There are several exceptions to these harsh rules. For example, you can give assets to disabled children (or to a trust for their benefit). There are also many other planning strategies available to you. Most of these strategies can only be implemented with the help of a qualified attorney.

For updated amounts and special exceptions, consult with your Medicaid Planning Attorney.

## MEDICAID CRISIS PLANNING

Do you have a loved one already in the nursing home? It's not too late to protect assets.

There are many strategies that can be used to protect assets. It is not uncommon for families to save more than half of their assets even after a nursing home admission. These strategies are not included in this guide as we are concerned that families may attempt them without the help of legal counsel. This is not self-help work.

If your loved one is in a Nursing Home, or is about to be admitted, call (724) 841-1393 RIGHT NOW for a free consultation.

# WHAT ARE THE RULES FOR MEDICAID QUALIFICATION?

## THINGS TO REMEMBER

### IT'S NEVER TOO LATE

Medicaid planning can begin anytime, even if your loved one is already living in a skilled care facility. But the sooner you plan, the more options you will have to protect what's important to you.

### YOU CAN KEEP YOUR HOME... MAYBE

If you're married, and you or your spouse needs to go into a nursing home, your home is exempt from Medicaid's calculation of what your contribution to the cost of care should be. If you are unmarried or widowed, and you go into a nursing home, your house may be exempt if you follow certain procedures. However, even though your house is safe while you reside in a nursing home, it will likely be lost to Medicaid's Estate Recovery Program after your death. Planning is key to preserving your home whether married, single or widowed.

### DON'T GIVE IT ALL AWAY

Since major changes to laws in 2006, "gifting" away your assets create unforeseen circumstances and can make you ineligible for Medicaid benefits for 5 years or more! Far from protecting yourself, you will be undermining your own security.

A Medicaid Trust, while still subject to many of the same rules, may provide a better transfer strategy. Be sure to consult with a Medicaid Planning Attorney prior to making any gifts.

### MIND THOSE SAFE HARBORS

Congress has created a number of "safe harbor" provisions for protecting your assets. These provisions exempt certain assets and allow some transfers to children, siblings, or trusts for their benefit, if you meet certain eligibility requirements.

### WATCH YOUR TIMING

Applying too early can mean a longer wait for Medicaid qualification than necessary, while applying too late can mean having to pay for months of care you may not have had to pay. Rule of thumb: Do not apply for Medicaid without a plan to ensure you qualify.

### GET THE RIGHT HELP

Medicaid planning is a complex matter. You need a lawyer's assistance to keep your assets safe. Be sure to find legal counsel who limits their practice to this area - someone with proven experience in Medicaid law. A nursing home or hospital that offers to file a Medicaid application for you has no obligation (and often is unable) to advise you on how to protect your assets. Only a qualified Medicaid Planning Attorney can provide you with the options you need to make an informed decision.

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## CONTACT US... WE CAN HELP.

### A Little About Sechler Law Firm, LLC

The Sechler Law Firm was founded to create estate plans for families and to help them plan for long term care. This is all we do. Our main office is Mars, PA, but we meet clients across Western PA. I am also licensed to practice in West Virginia.

**Attorney Tim Sechler** began practicing elder law after watching his grandfather lose a long battle to Alzheimer's Disease. He saw first hand how a family can lose substantial assets without proper planning. He now enjoys helping families avoid making similar mistakes.

Our firm offers free consultations to families we believe we can help. To request a free consultation or to schedule for one of our weekly workshops, visit [SechlerLawFirm.com](http://SechlerLawFirm.com), or call 724-841-1393.

# HERE'S WHAT TO DO NOW

1. Call Sechler Law Firm at (724) 841-1393
2. Attend a Free Workshop
3. Visit [www.SechlerLawFirm.com](http://www.SechlerLawFirm.com) for more info.

**While the law is complicated, working with a lawyer doesn't need to be.**

**At Sechler Law Firm, LLC, we strive to make planning easy.**

We believe in getting to know you and your personal goals and concerns.

We believe in providing great education to you on your planning options.

We believe in simple, flat fee pricing. No billable hours and ticking clocks.



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