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Estate Planning Matters

Commonly Asked Medicaid Questions

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Q: Once I qualify for Medicaid, will the quality of care I receive be substandard?

A: No. It is illegal for a facility to discriminate against someone receiving Medicaid benefits. By law, Medicaid patients are to receive the same level of care as private-pay residents.

Q: Is a married couple always required to spend down one-half of their assets before qualifying for Medicaid?

A: Not always. In fact, often times couples have over \$100,000 and qualify for Medicaid benefits without spending a penny. Although there are income and asset criteria a couple must meet before one of them qualifies for benefits, federal and state laws were written to protect individuals from becoming impoverished if their spouse needs nursing home care.

Medicaid planning is like tax planning in that legislation has provided legal exceptions to the general rules that, with good advice from a knowledgeable professional, can save Medicaid applicants and their families thousands of dollars.



Q: Under current Medicaid laws, can a parent make financial gifts to their children before they have entered the nursing home?

A: Yes. In fact, a proper gifting program is a great Medicaid planning technique. At the time an applicant applies for Medicaid, the state will “look back” 5 years to see if any gifts have been made. Any financial gifts or transfers for less than fair market value during the five year look back may cause a delay in an applicant’s eligibility. A proper gifting program requires calculating the penalties *prior* to making gifts.

Q: Is \$12,000 per year the maximum an individual can give away if they are going to apply for Medicaid?

A: No. The \$12,000 per year gift people ask about when discussing Medicaid Planning is a tax law figure and not relevant with respect to Medicaid’s specific asset transfer rules. The maximum monetary figure Medicaid applicants need to concern themselves with is the “penalty divisor” for their state. The penalty divisor is the state assessed average cost for nursing home care by which the state assesses Medicaid penalties. The penalty divisor is \$4,800 for North Carolina.

Q: A Medicaid applicant’s house is considered “exempt” under Medicaid laws. Can an applicant give their house away without incurring penalties?

A: No. Any assets which are given away (personal property or real property) are considered gifts. If an applicant gives their house away, the state will assess a penalty based on the fair market value of the house at the time it was transferred.

There are a number of steps a Medicaid applicant can take to preserve their assets, ranging from gifting strategies, private annuities, raising the Community Spouse Resource Allowance, etc... What you need to remember is that the laws are constantly changing and the planning your neighbor did for their mother six months ago may not be proper for your mother tomorrow. Consult a knowledgeable elder law attorney for accurate, up-to-date advice.

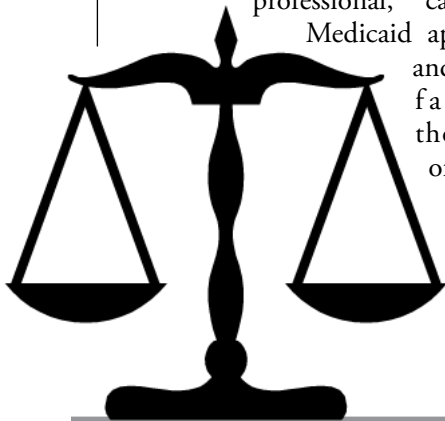


Jason Sutton, an Elder Law Attorney, is a member of the National Academy of Elder Law Attorneys, the North Carolina Bar Association, and the American Bar Association.

He advises seniors on methods, procedures, and techniques to legally preserve and protect their estate.

This is achieved by minimizing their estate tax burden, protecting their assets from high costs associated with estate administration and protecting their life savings and their family home from the cost of nursing home care.

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