

# THE MEDICAID MAZE

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How much do you know about Medicaid? Like most people, your answer is probably not a lot. Medicaid is a convoluted government program that requires expert assistance to help guide you and your loved ones through the often long and unnecessarily difficult process. Today, we are going to take a closer look at Medicaid to assist you in developing a base knowledge of the many issues and strategies you may face when entering the nursing home.

## MEDICAID 101

Americans are living longer today than they have historically. In 2000, 35 million Americans were 65 or older. By 2030, 70 million Americans will be 65 or older. At least 10% of these Americans will have a chronic health condition. Further, at least 10% will be affected by Alzheimer's disease (50% for Americans 85 and older). If the standard retirement age remains 65 (and Americans live longer), then people will need income and assets to support them longer in life.

Maximizing Retirement Income – the legal, financial, & tax planning related to retirement income is essential – especially if you consider many of you will be living for 20 - 30 years or more past retirement. This area of planning requires knowledge about Medicaid, Veteran's Benefits, Social Security, Pension Planning, and of course Tax Planning.

There are generally 3 options to consider when looking at how to pay for the nursing home: 1. Private Pay, 2. Insurance, and/or 3. Public Benefits (like Medicaid). Few of us can afford to Private Pay, which leaves us asking for other options. Further, Long-Term Care Insurance is becoming more expensive with fewer coverage areas. Many public benefits (such as: Medicaid – Title XIX, Medicare, Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Housing, Veteran Benefits, and Other Benefits (i.e., Food, Travel, Railroad...)) are available depending on a number of factors. Although other programs exist, today's focus is on Medicaid.

Medicaid coverage is more expansive than Medicare or private insurance. It provides supplemental benefits (such as personal care attendants). Eligibility can differ among states and even counties. Medicaid is also tied to SSI in many States (South Dakota included). Medicaid may help cover costs associated with: Hospitals & Clinics (Inpatient & Outpatient); Physicians, Nurses, Dentists, Vision, Pediatrics; Laboratory & X-Ray; *Long Term Care (Nursing Home)*; Prescription Medication; Medical Supplies, Equipment, & Appliances (such as Wheelchairs, Hearing Aids, Prosthetic Eyes); and Non-Emergency Medical Transportation.

You have to meet strict eligibility requirements to qualify for Medicaid.

- You have to be a US Citizen, Permanent Resident, or Qualified Illegal Immigrant.
- You can also qualify if you are a pregnant women (regardless of citizenship status)
- SSI Recipients may qualify
- Children may qualify
- Blind, Disabled, or anyone over the age of 65 may qualify
- You have to be a resident of the state you are applying in to qualify – This can be a BIG ISSUE
- You also have to meet strict INCOME, RESOURCE, and TRANSFER LIMITATIONS



One of the easiest ways to be disqualified from Medicaid is to fail the resource, income, or transfer limitations test. To qualify for Medicaid, your resources (assets) cannot exceed \$2,000. To determine the value of your resources, we look at what assets are countable and what assets are excluded.

COUNTABLE	RESOURCES:	
Cash	Bank Accounts	Savings Bonds
Stocks	Land	IRS/401(k)
Life Insurance	Personal Property	Vehicles
Anything that can be sold for cash	Anything that can be used for food	Anything that can be used for housing

EXCLUDED	RESOURCES:	
1 Home (<\$560k)*	1 Vehicle	Household Goods
Personal Effects	Burial Effects	Irr. Prepaid Burial Plan
Life Insurance (Face Value \$1,500 or less)	Joint Ownership in Residence	Real Property Unable to Sell
Food Stamps	School Lunch Programs	Grants, Scholarships, Fellowships
Assets in Special Needs Trust*	Assets in an Irrevocable Trust*	

You must also pass the income limitation to qualify for Medicaid. If you are single, you can only receive \$2,199 a month in income to be eligible. Income is any item an individual receives in cash or in-kind that can be used to meet needs for food or shelter. This includes social security, pensions, and retirement accounts. The following income is "excluded" and does not count towards your income limitation:

- \$60 of unearned income & \$75 earned income monthly
- Other items if not food or shelter & cannot be used to obtain food or shelter
- Certain Medical & Social Services
- Food & Shelter received during medical confinement
- Personal Services performed for an individual
- Income Tax refunds
- Rebates & Refunds
- Loan Proceeds

**CAUTION:** an item may not be countable income, but if held past the month's end, it could become a countable resource!

What if you have a living spouse?

Then, the Community Spouse Resource Allowance applies as follows:

1. Total Resources (value of the couples combined resources as of the day the spouse entered the facility)
2. Countable Resources (assets owned by either spouse, jointly or separately)
3. Resources for Each Spouse:

To determine the amount of resources that can be protected for the spouse at home, the amount of your countable resources as a couple is totaled.

50% of the total resources or \$24,180, whichever is greater, can be protected for the spouse at home.

However, if 50% of the resources are more than \$120,900, only \$120,900 can be protected for the spouse at home.



If you pass the income and resource limitation, the next step is determining if you made a disqualifying transfer. You will be ineligible for benefits if you transferred assets in the previous 5 years prior to submitting your application. Transfers include gifts from you and any sales you made at less than fair market value. This is often where people try to be less than honest on their application. **THEY WILL FIND OUT.** Further, the state has the option (and will) go after any remaining assets in your estate to recover costs for any medical assistance provided to you. As you can see, if you do not plan for an eventual stay in the nursing home, it is a headache for you, your spouse, and your heirs.

## "SPENDDOWN" STRATEGIES

What if you know you will need to apply for Medicaid eventually, but you do not qualify now? There are options you have with proper legal guidance that may afford you and your loved ones a more comfortable lifestyle while helping you qualify for Medicaid at the same time. This process is sometimes referred to as the Spenddown Process.

### 14 ways to spend down your assets prior to applying for Medicaid:\*

1. **Update Your Estate Plan** (Healthcare & Property POAs, Guardianship and Conservatorship Nominations, Will, Trust, Living Will, and Organ Donation Declaration)
  2. **Plan your Funeral** (Spend \$5,400 max on an irrevocable prepaid contract; and an unlimited amount on a "Burial Trust" (casket, grave lining, etc.). One plot per spouse is allowed as well)
  3. **See the Dentist** (Medicaid ≠ Good Dental Coverage; dentures get stolen in the nursing home. Also, think about arranging to pay the bill up front)
  4. **Get an Eye Exam** (Buy Spare Glasses, Contact Lenses, etc.)
  5. **Check Your Feet, Skin, & Ears** (Medicaid=Basics Only with Little to No Choice in Doctor. It is time to upgrade! Hearing Aids, Wheelchair, Voice Adapter, Ventilator...)
  6. **Transfer Assets to Child on SSI/SSDI\***
  7. **Transfer home** to a sibling that lived with you for past 12 months and has their name on the deed
  8. **Transfer home to caretaker child** that lived with you for at least 24 months\*
  9. **Transfer Assets to Supplemental Needs Trust** (SNT) or Pooled Trust Account (State Gets When Pass still).
  10. **Prepay for Legal Work for Medicaid Assistance** (Don't Fill out the Application Yourself...BIG ISSUES)
  11. **Prepay for Personal Services** (Set up a contract for care providers or someone who can run your errands, take you to doctor, visit you...)
  12. **BUY BUY BUY!** (Your Budget on Title 19 = LIMITING. Make Yourself Comfortable. New TV, VCR, DVD, Tape/CD player, Computer, prepaid cable/internet service, Magazine/Newspaper Subscriptions, Slippers, Robes, Clothing, Lotions, Kleenex, Chapstick, Toothpaste...)
- If you are married, you may also consider:
13. **Home Improvement** (do not increase the value of your home over \$560,000 though--New Roof, New Siding, New Furnace, Payoff Mortgage, New Windows, New Carpet, New Kitchen, Add a Deck...)
  14. **Upgrade your Vehicle** (Buy that Cadillac!)

**ALWAYS** seek qualified legal advice prior to acting on any advice or strategy contained in this Article. There are many exceptions and further limitations. This Article is meant to give you a general understanding of Medicaid and potential options for you and your loved ones. It does not provide specific legal advice.

TRANSFERS/  
GIFTS = **BIG  
PROBLEMS**  
RULES NEED  
TO BE  
FOLLOWED  
EXACTLY!

\* = additional  
limitations and  
rules apply.

No "Spenddown" strategy should be taken without first developing a detailed and well thought out plan with your qualified attorney as the rules are complex and without guidance most people end up disqualifying themselves or their loved ones.

## PLANNING TECHNIQUES

When is it too early to start planning? Never. You will have more options and **BETTER** options if you plan early. The 5 year look back period and the estate claw back provisions are next to impossible to avoid without proper pre-planning. Various strategies may be utilized to help you plan for preserving your estate and ensuring you are able to maintain a certain standard of living.

### Special Needs Trust

You may be able to set up a Special (Supplemental) Needs Trust with your own assets. This may allow you to qualify for Medicaid immediately, but also requires you to pay back any unused assets at your death to the State for reimbursement. This is usually set up when you cannot satisfy the 5 year lookback requirement.

### Irrevocable Income Only Trust / Miller Trust

This is a very powerful tool. This allows you to fund a trust with your own assets without requiring you to reimburse the State at your death, allowing you to pass your assets onto your loved ones. This is usually set up when we have time to satisfy the 5 year lookback requirement.

### Pooled Trust

Transfer assets into a trust in exchange for a monthly income. This transfer is exempt from the 5 year lookback and is not a countable assets. These trusts are generally managed by non-profits and provide for your supplemental needs only (goods and services that improve your quality of life, but are not covered on your government program--over the counter medicine, nursing care, private room upgrades, vacations, entertainment, etc.). The remaining funds in this trust at your death typically go back to the State.

### Modern Half-a-Loaf Strategy

This strategy has you transfer a portion of your assets to your beneficiaries immediately (around 40-60%). Then, you purchase a Medicaid Annuity for the remainder value of your Countable Assets. The 5 year lookback period still applies, but the annuity should pay you enough to cover your care during that time. The annuity is designed to end when the 5 year penalty period ends and as such it is not countable income either. This strategy is best used with an income only trust and allows you to pass on a substantial portion of your assets to your loved ones and not the State in a protected and tax-efficient manner.

One of the most common questions people have is how to protect their home. Many people will use outdated strategies that do not provide good protection or accomplish their goals such as using a life estate deed or just transferring the home directly to a child. What if your child gets divorced, sued, or passes away before you? Now your house is part of their estate and subject to their creditors. Do not fall for these old planning methods—use a trust to transfer your property and **PROTECT** your legacy.

Medicaid is not something you can understand in a day or by reading one article. The laws and regulations are too interwoven and complex. However, it is easy to understand that you will need help to get through this process and ensure you and your loved ones are protected. Don't leave your loved ones scrambling to care for you with no plan in place. Discuss your Medicaid Planning options with your qualified estate planning and elder law attorney. **Protect your family and yourself.**

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## FAILING TO PLAN IS PLANNING TO FAIL



Lindsay M. Harris leads the firm's Estate Planning & Probate, Elder Law, and Business & Corporate Law Practice Groups.

To find more information about how she can help protect your family and your business, read her articles at [SwierLaw.com](http://SwierLaw.com) or call today to schedule a free initial consultation. 605-275-5669