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## Paying for Nursing Home Care

### A Summary of Georgia's Medicaid Rules

Nursing home care is expensive. In Georgia, it costs between \$5,000 and \$7,500 per month. At this rate, you could wipe out your savings in no time.

### So how do people pay for nursing home care?

Some people think Medicare will pay the bills. That notion is based on incorrect information. While Medicare might pay for up to 100 days, there is no guarantee that it will pay for *any* of your nursing home stay; *even if it does, after the 100<sup>th</sup> day, you're on your own.*

Medicaid is the principal government program that pays for nursing home care. More than 80% of Georgia nursing home residents are on Medicaid at any given time. Because of its significance, the remainder of this memo concerns Medicaid eligibility.

### Categorical eligibility

Most applicants will meet the categorical requirements, but they are worth mentioning. You must be a U.S. Citizen or a legally admitted alien. You must be a Georgia resident, or be from a resident Georgia has an agreement with (most contiguous states qualify). You must have a valid Social Security Number. You must be admitted to a facility that accepts Medicaid. You must meet the

length of stay requirements, which generally means you must be institutionalized for 30 or more days. Finally, you will not get Medicaid unless you apply for it.

### Medical eligibility

Medicaid will not pay for nursing home care unless a doctor says you need nursing home care. Even if you are unable to care for yourself, you must prove that nursing home care is medically necessary. Usually, the health care provider will complete a form (called a DMA-6) which documents your needs. Thus far, there have not been a significant number of cases in Georgia where the Department of Community Health argued that someone was medically ineligible after a DMA-6 was properly completed.

### Financial Eligibility

Georgia Medicaid only covers individuals who meet certain financial criteria. The Department of Community Health establishes the eligibility criteria, consistent with federal guidelines. Eligibility is actually reviewed by the Department of Family and Children's Services (DFCS) in the County where the nursing home is located. Because eligibility is determined by examining both income and assets, we will examine them separately.

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### Income Eligibility

First, you should keep in mind that Medicaid is a cost share program. Unless income is exempt, it must be contributed toward the nursing home bill, with Medicaid paying the balance of the bill.

Georgia now has an income cap for Medicaid applicants who seek help paying the nursing home bill. The income cap is adjusted annually, and is three times the monthly rate paid to Supplemental Security Income (SSI) beneficiaries. In 2009, the SSI rate is \$674 per month, so the income cap for nursing home Medicaid is \$2,022 per month. If your income exceeds \$2,021, then you are not eligible for nursing home Medicaid.

If your monthly income is too high, we can fix that problem by using what is commonly known as a *Miller Trust*. The legal name for this device is a Qualified Income Trust (a QIT). After income is placed in the QIT, it can only be spent as directed by the Medicaid program.

Regardless of whether your income is above or below the income cap, there are generally four (and only four) allowed uses of income once you are on nursing home Medicaid. First, each resident is allowed to keep a \$50 per month personal needs allowance, which increases to \$90 per month for Veterans. Second, if the applicant has a spouse who is not living in a nursing home, then some income may be diverted to support the healthier spouse. This income diversion is known as a Minimum Monthly Maintenance Needs Allowance. The calculation of this allowance is beyond the scope of these materials, but suffice it to say, if the healthier spouse's

monthly income is less than \$2,739 (in 2009), then he or she can keep enough of the sicker spouse's income to bring the healthier spouse up to that level. The third way of using funds is to pay for health care expenses not covered by Medicaid. This includes replacement eye glasses, replacement dentures, some dental work, replacement hearing aids and other items. Expenses of this sort must be reported to the caseworker and approved before they are allowed. Finally, all remaining income is paid toward the nursing home bill.

### Asset Eligibility

When someone applies for nursing home Medicaid, all of their assets are either countable or are exempt. More simply put, unless an asset is exempt, it is counted when determining whether you are poor enough (according to Medicaid) to qualify.

A single nursing home resident is allowed to keep \$2,000 in countable assets. Having even \$1 over the limit will result in a denial of eligibility. All excess assets must be spent (or otherwise used) before eligibility is approved. This spending process is called "spend-down."

Not all assets count toward eligibility. The following assets are generally exempt:

- Your home and contiguous land (up to \$500,000 in equity);
- Your household goods, such as furniture and dishes;
- Your personal items such as clothing and jewelry
- Your car;
- Prepaid burial contracts, burial savings and life insurance, so long as the cumulative value of this

category does not exceed \$10,000;  
and

- Property you cannot sell so long as you are making a *bona fide* effort to get it sold.

Although there are other exemptions, these are the primary ones for most applicants.

*Additional protection for the healthy spouse*

The healthy spouse of a nursing home resident (known as a “Community Spouse”) is entitled to additional protection under the federal anti-impoverishment statute. This protection, which extends for as long as the Community Spouse is not in a nursing home, allows the Community Spouse to keep additional countable assets that would otherwise be countable and subject to spend-down. This allowance is known as a Community Spouse Resource Allowance.

In 2009, the Community Spouse Resource Allowance is \$109,560. Your spouse may or may not be able to keep additional assets, but the potential for doing so increases with appropriate planning.

**Can you give your property away?**

Yes you can. *HOWEVER, if you do, then you may be denied Medicaid eligibility.* This means you will have to pay the nursing home bill out-of-pocket. Since nursing home care can cost well over \$5,000 per month, you may be jumping from the frying pan into the fire if you try to just give things away.

Gifts (and “sweetheart deals”) trigger what Medicaid calls a transfer penalty. Essentially, the Medicaid program looks

back over the five year period prior to your Medicaid application to see if you’ve given away property that you could have used to pay for your own care.<sup>1</sup> If you made any gifts, then the caseworker will calculate how much (how many months of) nursing home care you gave away. For a period of time roughly equal to the amount of care you gave away, you will be denied Medicaid.

**Examples of transfers that trigger a penalty**

- Giving away money;
- Deeding away real estate;
- Removing your name from a deed;
- Adding another person’s name to a deed;
- Transferring assets to an irrevocable trust that fails to name you as a beneficiary;
- Selling property for less than its worth;
- Purchasing an annuity that (1) fails to pay out all principal and interest during your lifetime or (2) fails to name the State of Georgia as your remainder beneficiary.

Essentially, any action that places assets beyond your reach could trigger a transfer penalty.

The biggest problem with transfers is that the penalty doesn’t start until you desperately need help. In 2006, Congress changed the law so that the penalty does not start until you apply for Medicaid AND you are otherwise eligible for Medicaid (categorically, medically and financially, *see above*). This means that the timing of your application becomes critical if you have made any gifts and

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<sup>1</sup> The rules changed on February 8, 2006. Gifts made prior to that date are treated differently.

you should not apply for Medicaid without first speaking with someone who is qualified to explain the rules to you and fight for the benefits you are entitled to receive.

There are a limited number of exceptions to the transfer penalty rules. However, for them to apply, you must dot every “I” and cross every “T”. Most of the exemptions apply to transfers between spouses and transfers for the benefit of someone who is disabled. If you have questions about exempt transfers, you should speak with a qualified Elder Law Attorney.

### **Estate Recovery**

The State treats the payments it makes for nursing home care (and home care) as a loan. When you die, the State wants its money back.

Federal law prohibits the State from filing an estate recovery claim before you and your spouse are deceased. Therefore, you don’t have to worry about the State taking your home while you’re still living in it. There are also instances where estate recovery must be deferred, such as when you have a surviving child who is blind, disabled or under the age of 21. These deferrals are limited, though, and it’s often a good idea to get an Elder Law Attorney involved if you think you’re entitled to a deferral.

In addition, if your estate is worth less than \$25,000 when you die, then the State of Georgia will waive estate recovery. This, however, is not an exemption amount; if your estate is worth even \$1 over \$25,000, then the State will seek collection of its *entire claim*, up to the full value of your estate.

If the pursuit of estate recovery would cause your heirs to become eligible for public benefits such as Medicaid or Supplemental Security Income (SSI), then your heirs may be entitled to a hardship waiver. Hardship waivers are rarely granted, though, so you may want assistance if this applies to you.

If an estate recovery claim is filed, it will be in your probate estate. After you die, any property that must be re-titled for the benefit of your heirs passes through the probate process. Creditors get paid before heirs, and the State of Georgia will likely be your largest creditor. You should assume that the average estate recovery claim will be about \$40,000 to \$50,000 for each year you were in a nursing home. To some extent, the size of the claim will depend on your monthly income; remember, since you must apply your income toward the nursing home bill, the larger your income is, the lower your estate recovery bill becomes.

### **Planning**

An Elder Law Attorney will usually be qualified to help you plan to qualify for Medicaid more quickly and protect your assets. Planning, though, is complicated and the rules change frequently. You should only seek help from someone who understands the law and how to get you the benefits you’re entitled to receive.

*This memorandum is not legal advice since it is not designed to address your specific facts and circumstances. You should seek legal advice from a qualified attorney who understands Medicaid eligibility. David L. McGuffey is a Certified Elder Law Attorney, admitted to practice law in Georgia and Tennessee. We assist families with a wide range of issues including, but not limited to, Medicaid Planning.*