

## MEDICAID MYTHS AND REALITIES

Many people want to know when Medicaid will cover nursing home costs that can run \$75,000 a year or more. Not many people can pay those costs from regular income, so it doesn't take long to lose all one's savings. Long term care insurance is too expensive for many older people or not practical at certain ages. A person already ill may be uninsurable.

Folks ask friends and neighbors how to get Medicaid to pay for nursing home care. Few lawyers know this constantly changing area of the law. It is a complicated one and should be handled only by an attorney who knows Medicaid law and studies to remain current on it.

Some common "myths" can get one into trouble. Some are partially correct, but most of the time they are just plain wrong. This article does not go into detail. Consult with an elder law attorney about your own situation.

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### 1. **Myth: "I have to give away everything I own to get Medicaid."**

**Reality:** Basically, a person is permitted to own some assets and still be eligible for Medicaid. The trick comes in knowing what is "countable" and what is "non-countable" under Medicaid rules. For a married couple non-countable property includes, for example, the marital home that is occupied by the healthy spouse. Whether you are married or not, certain types of prepaid burial contracts are non-countable. There are many types of "non-countable" property. The bottom line is you don't need to be completely without assets you be eligible for Medicaid.

### 2. **Myth: I can't give anything away and get Medicaid."**

**Reality:** The Medicaid rules provide that a person is disqualified for giving away property in some cases. But, a lot depends on what is given away, to whom and when. So again, it's complicated. Some asset transfers are not penalized under the Medicaid rules. Consult with an elder law attorney who knows the law.

### 3. **Myth: "I have to wait 3 years after giving anything away to get Medicaid."**

**Reality:** The disqualification isn't always 3 years long and sometimes there is no disqualification at all. It is true that there is a 3-year "lookback" for some asset transfers under the Medicaid rules. This means that the Medicaid agency will look back at all transfers of property, including sales for less than fair market value. For some transfers, the "lookback" period actually goes back 5 years. However the rules penalizing transfers do not apply to all transfers. See #2 above.

**4. Myth: "I can keep all our marital property and my inherited property when my spouse gets Medicaid."**

**Reality:** When a married person applies for Medicaid, assets in either or both spouse's name are considered by the Medicaid agency. However, some assets won't be "countable" and you may keep some as an asset allowance if your spouse enters the nursing home. See #1 above.

**5. Myth: "If I put property in my spouse's name, I will be eligible for Medicaid."**

**Reality:** Assets are counted, regardless of which spouse's name they are in. However, the healthy spouse will be given several months to re-title assets from the name of the spouse in the nursing home into the name of the healthy spouse. The Medicaid agency explains these rules when the sick spouse gets into the Medicaid program.

**6. Myth: "Medicare will cover my nursing home bill."**

**Reality:** Medicare covers only a small amount of the nursing home care provided in this country. Many older people are surprised to learn this. In general, there are 20 days of full coverage if you go into the nursing home after at least three days in the hospital and are getting skilled care (not intermediate level care). Then, if you still need skilled care, you can get up to 80 days of partial coverage from Medicare. After that, you will either pay out of pocket or get Medicaid, unless you have private long term care insurance.

**7. Myth: "If I enter a nursing home as a private pay resident, I must use my assets before I can get Medicaid."**

**Reality:** You are not required to use your assets to private pay for nursing home care. However, some nursing homes may try to make you believe that you have to do this. They are paid less under the Medicaid program than they collect from private pay patients. Some people seek advice from an elder law attorney to find out how they can become Medicaid eligible before having spent a significant part of their assets on the private pay rate.

**8. Myth: "I can only 'spend down' my assets on medical or nursing home bills."**

**Reality:** See #7 above. Nursing homes may tell you that you have to spend your savings on the private pay rate before applying for Medicaid, but this is not true. In fact, it's against the law for them to tell you that.

**9. Myth: "My power of attorney automatically has the power to take property out of my name if I ever need Medicaid."**

**Reality:** Your best tool to be able to plan for Medicaid eligibility, should you ever need it, it to sign a general, durable power of attorney that includes a "gifting" power. Your agent under the power of attorney will only be able to re-title your assets if your power of attorney contains a "power to make gifts." Most powers of attorney don't contain this, so you may want to ask an elder law attorney to add it. The court procedures to transfer assets without a "gifting power" can be expensive and time consuming and may not allow the type of asset protection that many people would like to accomplish.

Without a "gifting power" your agent is generally limited to spending your money on your bills and selling your assets to generate cash and to pay your bills. A "gifting power" is recommended for people who want to become eligible for Medicaid and not be limited to the "non-countable" assets allowed under that program.

**10. Myth: "All property transfers will cause me to be disqualified from Medicaid."**

**Reality:** Not all transfers of property will cause a person to become ineligible for Medicaid. See #2 above.

**11. Myth: "I can only give away \$10, 000 per year under Medicaid rules."**

**Reality:** This is a rule under federal and estate gift tax law, not under Medicaid law. (Actually, the amount has changed to \$12,000). In 2007, this federal law only applies to people who have over \$2 million in assets. People who would pay federal estate tax should not worry about getting Medicaid. In North Carolina a person can give away up to \$100,000 during his lifetime without paying any gift tax. Right now North Carolina Medicaid law disqualifies a person from getting Medicaid for one month for every \$4,800 given away, in most circumstances. This disqualification starts the month of the transfer. So, if my grandmother gives me \$10,000 in May, she will be ineligible for Medicaid for two months --- for May and June. On the July 1 the "penalty" or "disqualification period" is over.

**12. Myth: "My income may have to be used to pay my spouse's nursing home bill."**

**Reality:** This is not true in North Carolina or the majority of states.

**13. Myth: "All of my spouse's income must be used to pay the bill if my spouse is on Medicaid in a nursing home."**

**Reality:** The law allows you to keep a portion of your spouse's income if your income is below certain limits. In addition to this allowance, you may be entitled to a greater allowance if the cost of maintaining your home exceeds a certain amount or if a state hearing officer or judge orders a greater allowance.

**14. Myth: "I can hide my assets and get eligible for Medicaid."**

**Reality:** Intentional misrepresentation in a Medicaid application is a crime and can be costly. The IRS shares information concerning income or assets you have with the county department of social services. You or whoever applied may have to pay back Medicaid to avoid prosecution.

**15. Myth: "Medicaid rules that applied to my neighbor when he went into a nursing home will also apply to me."**

**Reality:** Medicaid rules change; so don't count on the law that applied to your neighbor still applying to you. Also, there may have been facts about your neighbor's situation that you just don't know. It's best to have your situation analyzed by a competent elder law attorney.