



## Questions and Answers About Protecting Your Assets from the Nursing Home

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### ***1.Q. How much do nursing homes cost?***

A. According to a recent survey, the average length of stay in a nursing home is two and a half years. Nursing home costs average \$70,000 a year, with an average cost per stay of \$170,000.

### ***2.Q. Will Medicare pay for my nursing home costs?***

A. No. Medicare does not pay the expenses of long-term care incurred for day care at adult centers, home care by relatives or employed caretakers, and nursing home care. Medicare pays limited benefits for skilled nursing care only.

### ***3.Q. What government program will pay for my nursing home costs?***

A. In the United States, the government program that pays for most nursing home care is Medicaid, which is a federal and state medical program for persons who meet certain asset and income levels. Some veterans are entitled to veterans benefits to pay for their nursing home care.

### ***4.Q. How can I avoid being impoverished by the high cost of nursing home care?***

A. The answer usually depends upon your marital status, and whether you are already in the nursing home or you anticipate a lengthy stay in the nursing home. It is almost never a good idea for people who aren't facing a lengthy stay in the nursing home to give away assets.

### ***5.Q. If my spouse is going into a nursing home, can he or she transfer all of his or her assets to me and qualify for Medicaid?***

A. Probably not. To determine the eligibility of the spouse who is going into the nursing home to receive Medicaid, all of the non-exempt assets held by the husband or wife are added together and then the total divided equally between the spouses. Of the half attributed to the spouse going into the nursing home, that spouse is disqualified from receiving Medicaid until his or her share of the assets are reduced to \$2,000.

The spouse outside of the nursing home can retain half of otherwise non-excludible assets, up to a maximum (of around \$100,000, an amount that changes annually), plus the residence, plus some personal property, plus burial reserve, plus automobile, and other miscellaneous items.

It is important to understand that under Michigan law:

1. A spouse is charged with legal responsibility for the other spouse's nursing home costs. This means that the income and resources of both spouses are considered when the spouse in the nursing home applies or considers applying for Medicaid nursing home benefits, and
2. If the married couple has "countable" assets in excess of about \$19,000, some portion of those excess assets are at risk for the nursing home spouse's nursing home expenses, and
3. A prenuptial agreement saying that the healthy spouse does not have to pay for the nursing home care of her institutionalized spouse is not enforceable when an application for Medicaid is made.

***6.Q. How much income can I make and qualify for Medicaid?***

A. Any person over 64 whose net income is less than approximately \$5,549 a month can qualify. Persons with more than this amount can also qualify depending upon their nursing home costs. Income must be paid to the nursing home.

The spouse of an individual who has established his or her eligibility for Medicaid is entitled to a monthly income not to exceed about \$2,300 per month.

(Note: The dollar amounts on this Web page can and usually do change annually. You should not rely on these figures in your planning until you have verified the current figures.)

***7.Q. Can I transfer my assets to my children just before I go into a nursing home and still qualify for Medicaid?***

A. Probably not. Under the 60-month Lookback Rule, eligibility for Medicaid may be denied if the person going into the nursing home transferred assets for less than fair market value within 60 months before his application for Medicaid benefits.

And be very careful about giving away assets: once you have given away your assets, you cannot get them back by legal action. Don't rely on your children to "do the right thing" and hold the assets for you in case you need

them. See Question 11 below and our ["Pitfalls of Giving Away Your Home"](#) for some good reasons why you should *not* give away your assets.

**8.Q. If I am in the nursing home, is it too late to give away my assets and qualify for Medicaid?**

A. No, it's never too late. In fact, depending upon a person's circumstances, it may be legally possible for him or her to give away all assets and qualify for Medicaid immediately.

**9.Q. Should I use a trust to protect my assets?**

A. Assets are usually transferred to children or other family members either outright or to a trust for your benefit. A trust can be more desirable than an outright transfer to a child because:

a) You may have a bad relationship now or in the future with:

1) your child or 2) your son-in-law or daughter-in-law

b) Your child may:

1) get divorced, 2) have creditors or go bankrupt, 3) invest your assets unwisely, 4) spend all of your assets during your life, or 5) spend all of your assets as soon as you die.

There are problems with the trust, however. You do not have access to the money in the trust. At most, only the income that the money or property in the trust earns can be distributed to you. The trustee of your trust must not have *any* discretion to distribute trust principal to you; otherwise the principal will be considered a resource for Medicaid purposes.

**10.Q. Are there other ways to protect my assets?**

A. Yes. The Medicaid law does not penalize you for spending your assets, only for giving them away. See our ["Myths About Medicaid"](#) for more information about Medicaid's transfer-of-assets rules. For example, you can make fair market value purchases to benefit yourself or your spouse, such as for home repairs and improvements or a burial plan.

**11.Q. How can I protect my house?**

A. The Medicaid applicant may retain a principal residence. The homestead is exempt property. After the Medicaid recipient's death, however, the house can be sold and Medicaid reimbursed unless there is a surviving spouse. Maybe a transfer or sale of the residence to the children with the parent reserving a life estate is advisable. Although the value of the life estate might still be at risk during the applicant's life, there are certain planning possibilities available to protect the life estate. Again, the key word is *maybe*. See our ["Pitfalls of Giving Away Your Home"](#) for some good reasons why you should *not* give away your home and other assets.

**12.Q. *Isn't it wrong to hide assets in order to qualify for Medicaid?***

A. Hiding assets in order to qualify for Medicaid is a crime. That's not what elder law attorneys do. (If we did, we'd all be in jail as accessories to criminals.) The cardinal rule is full disclosure to the government's Medicaid agency.

It is not illegal to structure one's assets in an effort to qualify for Medicaid nursing home benefits. Elder law attorneys advise their clients on the Medicaid law and what can and cannot be done legally within the law.

**13.Q. *Can I rely on what you have written here about Medicaid law?***

A. No--and, to be honest, we think it would be foolish for anyone to do so. We've only posted this Web page to help answer some frequently asked questions about how to protect assets from being spent on nursing home care. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state; and it changes over time. *Unfortunate and costly mistakes can be made if you do not know what you are doing.*

**14.Q. *Should I hire an attorney to help me?***

A. Yes. You could try to figure this out for yourself, but if you make a mistake or overlook a strategy that results in your having to pay more to the nursing home than you should have, you could have used the money you lost to the nursing home to pay an attorney to help you. Remember: professional help is expensive, but mistakes cost more.

**15.Q. *How do I find an attorney to help me?***

A. Obviously, the attorneys here at the Elder Law Practice can help -- but we practice in Michigan only. The rules and how they are applied differ in other states. Ask around. Administrators of nursing homes and assisted-living facilities may be able to give you referrals. The Web site of the National Academy of Elder Law Attorneys contains a membership directory, at <http://www.naela.org/Applications/ConsumerDirectory/index.cfm>.

Just make sure you consult an experienced elder law attorney who knows this stuff. Believe it or not, our clients regularly tell us about other lawyers who give out misinformation about the Medicaid program. See our "[Myths About Medicaid](#)".