

Contact information: Aviv S Bliwas
Questions? Call 717-761-4864

www.Bliwas.com

Going Broke In a Nursing Home?

*Medicaid Planning
as the Solution.*



Aviv S. Bliwas

Special Report on Medicaid Planning

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Introduction

In the [2010 Census](#), there were over 40 million people in the United States aged 65 or older.

That's an amazing feat of medical progress, especially when you consider the fact that a little over a century ago, in 1900, there were only slightly more than 3 million people in that age range. Even more impressive – according to the [Pew Research Center](#), 20 percent of the population in this country will be at least 65 years old by the year 2050.

If you are about to enter your Golden Years or have an aging parent or relative, this news is both a cause for celebration and trepidation. It's fantastic that people are living longer, but frightening because that means a greater need for care and more money to pay for it.

Unfortunately, many aging adults and younger caregivers know very little about how to gain access to the kind of care that's going to be needed – or even what *will* be needed. They are under the impression that things will just be taken care of for them, and they don't need to worry about it.

Who's going to be doing this caretaking? Medicare and Medicaid, of course. But most people don't really

understand either program and tend to lump them together, which is a big mistake.

The Difference between Medicare and Medicaid

There are two main distinctions between Medicare and Medicaid. The first one involves who the plan is for, and the second details what is – and isn't – covered.

Medicare is medical insurance from the federal government designed to care for anyone who is 65 or older in our country. In addition to this, it also covers some people under 65 who have certain disabilities, as well as anyone in End-Stage Renal Disease. But if you're at least 65, it doesn't matter how much money is in your bank accounts or what preexisting conditions you have – automatic Medicare eligibility is granted to you.

Benefits for Medicare depend on which Medicare Part you have – A, B, or D. Many people have more than one. Part A is known as hospital insurance and covers home health care, skilled nursing home care up to 100 days (not custodial care), hospice, and inpatient hospital care. Part B is insurance for your primary care physician and other doctors, as well as preventive care, durable medical equipment, outpatient care, and home health services. Part D covers prescription drugs.

The eligibility requirements for **Medicaid** are much stricter. They're determined by individual states, with many states offering additional benefits over what the federal government mandates. We'll cover the specific qualifications and benefits in Pennsylvania later, but what it boils down to is this: to receive Medicaid, you have to meet the definition of low-income in your state along with requirements for residency, citizenship, and immigration status. Nationally, Medicaid and CHIP provide coverage to roughly 60 million people, including seniors, children, parents, pregnant women, and people with disabilities.

Where Medicaid is concerned, there are two categories of benefits: Mandatory and Optional.

The Mandatory benefits are the minimum benefits required by the federal government. Every state has to offer them, and they include things like inpatient and outpatient hospital services, EPSDT services, lab and x-ray services, family planning, transportation to medical care, and nurse midwife services.

Optional benefits are offered at the discretion of the state, and different states offer different services. These can include such benefits as dental services, case management, optometry services, podiatry services, occupational and physical therapy, and prescription drug coverage. In the state of Pennsylvania, two examples of

optional benefits that are offered include limited prescription and dental coverage.

If it seems like there's a bit of overlap between the two programs, you're not wrong. In fact, oftentimes they work in conjunction to provide coverage in a particular area, with Medicare generally covering the bulk of the cost and Medicaid picking up the rest. But that's not always the case. There are a number of benefits important to aging seniors that you can only get through Medicaid.

Why Many Aging Seniors Rely On Medicaid

There's an unfortunate truth about living longer. While some people enjoy good health well into their later years, many older Americans slowly deteriorate over a long period of time. When they can no longer handle all of the tasks of everyday life on their own, they require what's known as long term care.

What is long term care? The Federal government defines it as "assistance with the basic personal tasks of everyday life, sometimes called Activities of Daily Living (ADLs)," and most often what it means is that the person in question needs a home health aide, a nursing home, or an assisted living facility. That way, trained medical professionals will be able to help them move, eat, dress, bath, go to the bathroom, manage their medication, and more – or less, depending on the individual's need.

You may think that this won't ever happen to you or your loved one, but the statistics tell a different tale. Of the roughly 40 million Americans 65 or older in 2000, 9 million of them required long term care. That's almost 25 percent of the population, and you can bet that number goes up the older you get. In fact, it's estimated that 40 percent of people who reach the age of 65 will have to go into a nursing home eventually.

This type of care isn't cheap, either. Pennsylvania average costs range from \$56/day at an adult day health care center to \$286/day for a private room in a skilled nursing homes. One year in a Pennsylvania nursing home costs upwards of \$8,500/month or \$100,000/year. And while Medicare does cover home health care and 100 days of nursing home care, there's a huge caveat – it does not cover long term care.

In order to get Medicare to pay for these services, you have to be able to show that you have the ability to get better and are actively working to do so. That doesn't work for aging seniors in decline. At best, seniors receiving long term care might be able to get Medicare to cover the cost of their stay in a nursing facility or in-home health for 100 days. After that, if they haven't gotten better, they're out of luck.

Medicaid, on the other hand, will pay for long term care – but only if you qualify.

How Do You Qualify for Medicaid

Traditionally, in order to qualify for Medicaid and enjoy long term care benefits, you have to pass two tests: the Medical Test and the Asset Test.

The Affordable Care Act is bringing changes to this process for some, but the requirements that have been in place for years still apply to the elderly. The actual financial limits may change, but not the process.

Because of that, it's important to understand what the tests mean.

Medical Test – This test is pretty straightforward. It relates to the definition of long term care previously mentioned. In order to receive Medicaid, an individual has to be able to demonstrate that they need help with two or more “activities of daily living.”

Typically, this means getting a doctor to sign off on the fact that someone can no longer care for themselves without assistance. There are very specific things that a person must show that they need help with, such as:

- Bathing
- Eating (the act of chewing and swallowing)
- Feeding (setting food up and getting it to one's mouth)
- Dressing

- Incontinence
- Using the toilet
- Personal hygiene
- Mobility

Asset Test – As you'll see below when we get into different kinds of assets and what can be counted against you and what can't, this is a lot more complicated than it's going to sound here. That being said, for a single person to be eligible for long term care on Medicaid, they generally must have less than \$2,400 in countable assets.

Rules and limits differ if the individual that needs help is married and their spouse is healthy. There are specific [spousal impoverishment laws](#) in place to protect the well spouse and ensure they still have enough money to continue living in the community.

Different Kinds of Assets

As mentioned above, all assets are not created equal, and there are several different categories of assets defined by the Pennsylvania state Medicaid program. When your assets are calculated, they will fall into one of two groups: Available Assets or Exempt Assets.

Available Assets

Also known as Countable Assets, these are the assets that count “against” someone when they apply for Medicaid. In order to receive long term care, an individual can have no more than \$2,400 in Available Assets.

The types of things that fall into this category include:

- Savings accounts
- Checking accounts
- Real property (excluding your primary residence)
- Secondary motor vehicles (for people who own more than one automobile)
- Stocks
- Bonds
- CDs

Those who have more than \$2,400 in Available Assets may still be able to qualify, but typically they have to undertake a “spend down” process. This is where they relieve themselves of any assets that would place them over the limit. There are a number of ways to do this, and many complicated rules and restrictions that govern the process.

Later on, we’ll discuss how you can get the most value out of a “spend down” if you are required to go through one.

Exempt Assets

This is the first of two categories of assets that will not count towards your Medicaid eligibility. These include:

- **\$2,400** in cash, real property, or stocks.
- **The individual's primary residence** – But only if it is believed that the recipient will be returning to live at home or they have a spouse, child under 21, disabled child over 21, or sibling who is part owner of the house and has lived there for a minimum of a year and will continue to do so.
Additionally, the Pennsylvania minimum protection allows for someone to keep a primary residence with equity of up to \$543,000 and still utilize this exemption.
- **Personal items.** Such as clothes, jewelry, and so on.
- **Household items deemed “essential”.** Such as appliances, furniture, and so on.
- **One automobile of any value.**
- **Burial funds.**

- **Burial plots.**
- **Term life insurance.** Life insurance with a cash surrender value can also be exempt, but only if the total cash value for all policies combined is for less than \$1,500, which essentially means that most policies are not exempt.
- **Long term care insurance policy** – If you have one of these policies covering part of your nursing home costs, that monetary value won't be counted as an asset.

How to Protect Your Assets

Now that you know the different categories of assets out there, as defined by Medicaid, it's time to learn how you can protect the assets that you have and still maintain your eligibility.

This last part is incredibly important, because it is possible for someone to violate Medicaid eligibility rules by incorrectly reallocating assets. Anyone looking to protect their money and property should consult with an experienced elder care lawyer before making any monetary decisions that could impact their ability to qualify for Medicaid.

Conversions

One of the best things that you can do to protect your assets is convert them so that something that otherwise would be counted against you moves to the exempt category.

Here are several ways that you can convert your money without being penalized:

- **Pay friends and family for “services”** – Medicaid rules allow applicants to pay people for services rendered. The definition is quite broad, and can include things like transportation, home repair, housekeeping, and more. This is a great way to make sure that an applicant’s money goes where they want it to. Just be sure to create a written agreement and keep careful records in case there are questions during the Medicaid application process.
- **Annuity for a spouse** – Transferring assets to an applicant’s spouse does little good, since their combined assets will be counted towards eligibility. However, it is still possible to essentially give assets to the applicant’s spouse by converting them to an annuity, with income to the spouse. Since spousal income does not need to be spent towards care,

this protects assets. However the annuity must comply with extremely stringent Medicaid rules governing annuities.

“Spend Downs”

If you or your loved one is required to “spend down” assets in order to qualify for Medicaid, it’s important that you do it the right way. This means not only divesting assets in ways that are approved by Pennsylvania Medicaid, but also making use of the “spend down” so the money isn’t going to waste.

Here are some of the most useful ways to get down to the asset limit.

- **Use the money on a home** – Since a primary residence is an exempt asset, putting money into a home can be a smart strategy. You can use assets to pay down your mortgage or make home improvements.
- **Buy things you need** – Remember, furniture, appliances, clothing, and other essential items are not counted as assets in most cases. If there’s anything of that nature that you need, make sure that you purchase it before applying for Medicaid.

One big purchase people can make is a new car. Unlike in many other states that cap the motor vehicle value limit at \$4,500 – or less! – Pennsylvania allows you to keep one car of any value. Using this exception wisely can be a way to protect a sizable amount of your assets.

It is also smart to get a burial plot for the applicant if they don't already have one, and set up burial funds with the maximum amount allowed by the Medicaid rules of Pennsylvania.

- **Pay off debts** – This was touched on briefly above when we mentioned paying off the mortgage on a house, but it goes further than that. Any legitimate debt, such as credit card bills, car payments, utilities, medical bills, taxes, rent, and so on, can be paid by the applicant during a “spend down.” This way, applicants can affectively “clean the slate” before going on Medicaid and lower or remove many financial obligations for themselves or their spouse.

Medicaid-Approved Annuities

Above we mention the possibility of an applicant getting an annuity for their spouse as a way to convert Countable

Assets, but this process is a lot easier said than done. It won't do to just set up any old annuity and expect that you'll be in the clear. Medicaid has very specific rules governing how applicants can and can't use annuities, and violating them can ruin your eligibility chances.

Among other things annuities must:

- Be actuarially sound
- Begin payments immediately
- Have payments made in equal installments

However, if this process isn't overseen by a legal expert and a mistake is made, the applicant could face a lengthy penalty period during which Medicaid won't cover their long term care or be forced to liquidate an annuity for a financial loss.

Transfer Your House Correctly

We've already described how an applicant can transfer their house to their spouse or other designated relatives once they're getting ready to apply for Medicaid.

This strategy avoids another potential problem involved in Medicaid planning. Generally speaking, a person's home is their most valuable asset, and many states have enacted

rules that allow Medicaid to put a lien on an individual's house when they start receiving Medicaid.

What does that mean? This lien won't prevent an applicant's spouse or other qualified family members from keeping the house as long as they reside in it, even if the house was never transferred. But if the home is sold, it will prevent them from making any money off of it. And when they pass away, the state is allowed to take possession of the Medicaid recipient's house and sell it to recoup the money that was spent on their care.

Transferring a home to one of the exempt categories of relatives avoids estate recovery. However, if you don't have a qualified relative to transfer the home to, or prefer to do something else with the home you have to plan ahead.

More on that in a bit. First, let's talk about some of the potential options available to you.

- **Give the house as a gift** – If an applicant gives their home to someone they trust (a sibling, a child, a valued friend), there will be no way for the state to place a lien on it because it won't be one of the applicant's assets anymore. Drawbacks to this plan include potential consequences involving the gift tax law and capital gains taxes. Additionally, not owning the house anymore means that they will be at the mercy of the person they gifted it to. What

happens if that person faces extreme financial hardship?

- **Create a life estate** – This is a potential answer to the above question. In this scenario, the applicant gives their home to loved ones but sets aside what's known as a life estate. Basically, it grants them the legal right to stay in their house for the rest of their life, so they don't have to worry about it being sold or taken away. A life estate should be used in conjunction with another option, it is not usually a stand-alone option.
- **Set up an income-only irrevocable trust** – Some states have expanded the definition of estate to allow them to collect on this trust after you die. Thankfully, though, Pennsylvania is not one of them, so this can be a good method to protect an applicant's home. Transferring their house into an income-only irrevocable trust effectively removes it from an applicant's estate, but still allows them to live there and collect any income that the trust generates.
- **Create a special power of appointment** – This method is interesting because it completely protects an applicant's home from being claimed by the state while still providing them with the

possibility of more protection than gifting the house outright.

The idea behind using a special power of appointment is that it allows someone to transfer ownership of their house to another person initially, but also gives them the ability to give the property to a different person later, either in life or after they pass away. It's a bit of a buffer if an applicant is worried that the initial person they transfer their property to may run into financial difficulty or attempt to cheat them out of their place of residence. Even this method isn't perfect though – no matter who the applicant transfers ownership to, they lose the legal right to live in the house.

Before trying any of these methods, you should consult a legal professional who is familiar with all of the Pennsylvania state laws on the matter. There may be other options available to you, and you need to understand the repercussions involved in any action that you take.

Don't Let the Deficit Reduction Act Hurt You

Speaking of repercussions, it's time that we delve more deeply into a subject that's only been mentioned in passing so far: the Deficit Reduction Act of 2005 and the 5-Year Look-Back Rule.

In the last section, you might have noticed that we said all of those strategies for gifting or transferring an applicant's home should happen at least 60 months – or five years – before they apply for Medicaid. Why? Because when someone applies for Medicaid, states have the right to look back into their finances to ensure that they aren't just giving away assets, so they'll be eligible for assistance.

How does the 5-Year Rule work? Basically, if someone who applies for Medicaid has given away any money or assets in the five years preceding their application, the state can penalize them for their actions. They do this by withholding Medicaid for a specific number of months. The higher the monetary value of the assets that were incorrectly given away or transferred, the longer this penalty will last. They calculate the length of the penalty by adding up the total of the gifted assets and dividing that by the average monthly or daily cost of nursing home care in the state. For example, if someone gifted or transferred \$50,000 in assets within the 5-year look-back period and the average daily cost of nursing home care in the Pennsylvania is currently \$288.21/day, they would face a penalty period of 174 days (almost six months).

Six months may not seem like that long of a time period, but when someone is in need of expensive long term care, it can feel like a lifetime. The solution to this problem is twofold, and the first part is easy: if someone is going to be applying for Medicaid within the next five years, they

shouldn't give away any of their assets. Even small gifts can come back to bite you, so it's better to just not do it.

Unfortunately, it's not always enough for an applicant to simply get rid of assets more than five years before applying to Medicaid. In order to avoid state scrutiny – and penalties – gifting and donating also need to be done in the right way. That means working with an elder law expert to learn what is and isn't acceptable where Medicaid is concerned, and create a plan so that the application process goes smoothly when the time finally comes.

Traditional Estate Plans vs. Medicaid Planning

Most people don't think a whole lot about aging and dying. We tend to believe that it's enough to create a will and update it every once in a while when a life-changing event like getting married or having a child occurs.

Then there's the group that's a little more focused on their future and their finances. They may have purchased life insurance, looked into trusts, and possibly even sat down with a professional to put together a true estate plan.

When it comes to planning for Medicaid, both of these groups are in trouble. Why? Because Medicaid planning

requires you to focus on different goals than those that are common to most estate plans. In fact, some of the things that people are told to do in traditional estate planning can actually harm your chances when applying for Medicaid.

How Traditional Estate Planning Hurts Medicaid Eligibility

The reason that traditional estate plans can negatively impact your ability to qualify for Medicaid is because they are focused on different goals. In a traditional estate plan, you are typically looking to do the following:

- Create a strong Will
- Set up a living trust that's revocable
- Assign statutory power of attorney both for property and healthcare
- Include asset protection from creditors and others for your beneficiaries
- Work to minimize the effect of federal and state taxes, including the estate tax
- Avoid probate to that the extent that you are able
- Designate money to go to charitable causes

It's not that these actions aren't valid or useful for someone, but if an individual ends up needing help from Medicaid, they skip over a number of important points. Moreover, some of them can actually hurt your chances.

For example, Medicaid still considers revocable trusts to be part of a person's assets. If you or a loved one has a lot of assets in a revocable trust when applying for Medicaid, the value of that trust will be negatively counted and could hurt eligibility. On the positive side, because the trust is revocable, it's possible to end it and set up a trust that won't count towards Medicaid – as long as you do it at least five years prior to applying.

Use the Right Tools to Plan for Long Term Care

At this point, hopefully it's clear that there are very specific things one needs to do to properly plan for long term care and a likely need for Medicaid. In order to qualify and avoid incurring penalties, you not only need to utilize the correct tools, but also ensure that the language is specific enough to say and do exactly what you intend.

Here are some potential tools that are worth looking into:

- **First-party Special Needs Trusts** – Another name for these kinds of trusts is “Self-Funded SNT” because it involves creating a trust with the Medicaid applicant's own money. Since special needs trusts are established and protected by federal law, a Medicaid applicant can't be penalized for putting their assets into one –

provided it's set up correctly. Most often, this type of trust is used when someone is already receiving Medicaid and gets money from a court settlement or inheritance. However, these trusts are only allowed in very specific circumstances:

- the beneficiary has to be under 65 and disabled
- they must be created by a court, guardian, parent, or grandparent
- any money that the Pennsylvania Medicaid program spends on the beneficiary will be repaid
- the trustee has to be given complete discretion in deciding whether or not to use resources of the SNT to pay the beneficiary

In 2005, Act 42 in our state changed things to require beneficiaries to satisfy any and all claims and liens to the Department for repayment of Cash Assistance and MA before they can set up a Self-Funded SNT. The rules surrounding this change are complicated, so it's best to consult with a legal professional about your specific situation.

- **Third-party Special Needs Trusts** – The difference between first-party and third-party trusts is that only other people (not the beneficiary) are allowed to contribute their assets in a Third-party trust.

Because the assets are not owned by the beneficiary, the state also has no claim over this kind of trust. The only stipulations are that the trustee isn't required to use the trust to assist the Medicaid recipient, the beneficiary can never receive cash from the trust, and care must be taken to ensure that any benefits the recipient gets don't render him or her ineligible for Medicaid by counting as Available Assets, and that it follows SSI and MA rules.

What's interesting about this kind of trust is that, so long as it's set up early enough and done the right way, an individual could potentially pass assets to another person and then benefit from the trust (set up with assets that were originally theirs) without incurring penalties.

- **Pooled Trusts** – Also known as a (d)(4)(C) Trust, the main benefit of this type of trust is that it can be created without incurring penalties even if the applicant is over 65 and within the five year look-back window. Pooled trusts are run by nonprofits that take assets from multiple individuals and put it all together into a “master trust.”

In order to ensure that each individual's money stays separate, this master trust is divided into

“sub-trusts.” When the Medicaid recipient passes away, any money left over goes to the nonprofit

DIY Planning Can Cost You Tens of Thousands

The bottom line with all of these strategies is that they are complicated and confusing, and even making a small mistake can end up hurting your Medicaid eligibility. With penalties that can end up draining your savings to the tune of roughly \$8,000-\$10,000 per month, doing it yourself and hoping you get it right just isn't worth it.

Seek out the help of an experienced elder law attorney or a financial planner who focuses on issues related to aging, and do so long before you or your loved one believes they are going to be in need of long term care.

At the very least, you want to start planning for Medicaid five years before applying, but ideally even earlier than that. However, if you or your loved ones didn't plan in advance and now you are confronted with the crisis of someone needing nursing care or already being in nursing care, it may not be too late to save some assets. You might be worried about the cost of such services, but not utilizing them is almost guaranteed to cost you more in the long run. At the very least, you owe it to yourself and your

family to try the free initial consultation offered by many Medicaid planning professionals. That way you can get a sense of the cost – both for their services and in what could happen if you don't get their help.



Aviv Bliwas

20 Erford Road, Suite 304
Lemoyne, PA 17043

Ph: 717.761.4864

Fax: 717.761.4879

www.bliwas.com

aviv@bliwas.com