

The Law Office of
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*Estate, Trust, Tax and
Long Term Care Planning*



**What is
Medicaid?**

What is long-term
care and what
does it cost?

**Medicaid
Long-Term
Care Program
and the HCBS
Program**

**Qualifying for
the Programs
Transfer Rules:
Period of
Ineligibility**

**What about a
spouse?
Community
Spouse Resource
Allowance**

**Medicaid
Assistance
Estate
Recovery
Program**

**Medicaid
Long-Term
Care**

Long-Term Care Medicaid: The Basics

Presented by Attorney Shauna C. Clemmer

What is Medicaid? What is Long-Term Care & What Does It Cost?

Medicaid: Joint federal and state program that helps with medical costs for some people with limited income and resources.

Long-Term Care: Long-term care is a range of services and supports you may need to meet your personal care needs, which may include the need for skilled nursing care (nursing home). Includes assistance with the basic personal tasks of everyday life, referred to for Medicaid purposes as "activities of daily living" (ADLs).

COST \$\$: Average cost of nursing home care in Colorado for 2021 is \$8,776.00.

The diagram consists of a large blue rounded rectangle on the left containing the text 'Medicaid Long-Term Care Program and Home and Community Based Services (HCBS) Program'. To its right are two overlapping grey circles. The top circle contains the text 'Medicaid Long-Term Care Program' and the bottom circle contains the text 'HCBS'. The circles overlap each other and the blue rectangle.

Medicaid Long-Term Care Program and Home and Community Based Services (HCBS) Program

**Medicaid
Long-Term
Care
Program**

HCBS

Medicaid Long-Term Care Program:
If a Medicaid recipient requires skilled nursing facility level of care (aka nursing home), Medicaid will pay for the costs of placement entirely, and Medicaid will pay for most physician services and the majority of prescriptions.

Home & Community Based Services (HCBS):

Medicaid program designed to keep people in their homes longer, thus avoiding placement in an assisted living or skilled nursing facility. Home Healthcare workers will come to the patient's home for a set number of hours per week, based on the recipient's needs.

HCBS Home Modification:

There is a \$14,000 lifetime Home Modification benefit (Yes! If you qualify they will pay you!) which can pay for home modifications that:

- 1. Are necessary to ensure the health, welfare, and safety of the Medicaid recipient; and
- 2. Enable the Medicaid recipient to function with greater independent in the home, and
- 3. Is required due to the Medicaid recipient's illness, impairment or disability; and
- 4. Prevents institutionalization of the Medicaid recipient.

**Qualifying for
the Programs**

**Medicaid
Eligibility**

**Transfer Rules:
Period of
Ineligibility**

**Transfer
Rules**

Medicaid Eligibility

Medicaid is a means-tested program. To be eligible for the Medicaid long-term care program or HCBS, an applicant must meet the following 5 eligibility requirements:

- **Residency:** Must be a resident of Colorado.
- **Medicaid Test - Functional Assessment:** Need nursing home level of care. Issues with 2 activities of daily living (ADLs). ADLs are: mobility, bathing, dressing, eating, toileting, transferring, and need for supervision.
- **Income:** Monthly income cannot exceed \$2,382 per month for 2021. If over this amount, may qualify for the use of an income cap trust (under average cost of care for the region). *If in skilled nursing facility, you keep \$91.35 and the rest goes to the facility.
- **Resource Eligibility:** Medicaid applicant cannot have over \$2,000 of nonexempt resources.

Medicaid Eligibility: Exempt Resources

Property that the applicant can keep and still qualify.

- **Primary Residence:** the home with an equity interest of \$603,000 or less (unlimited for couples).
- **Vehicle:** One vehicle if used to transport the individual or family member of the individual's household.
- **Personal Property:** clothing, furniture, household appliances, wedding and engagement rings and any items required by physical condition, i.e. prosthesis or wheelchair, of any value.
- **Life Insurance:** With a cash surrender value of \$1,500.
- **Burial insurance/Plan:** Irrevocable burial insurance is exempt. Revocable burial insurance is exempt to a maximum of \$1,500, but this exemption is reduced on a dollar for dollar basis to the extent that the person has life insurance that was exempt.

Medicaid Eligibility: Transfer Rules - the 5 year "look-back"

Transfer Rule: If an applicant has made a transfer without fair consideration during the look-back period (60 months or 5 years), Medicaid will impose a period of ineligibility (unless it is to a spouse). The period of ineligibility means Medicaid will not pay for your care during that period.

Transfer without fair consideration: A gift or some asset you have have given away and received less than fair market value in return. There are some exceptions to this rule, such as transfers to a spouse.

Period of ineligibility calculation: Divide the amount transferred without fair consideration by the average cost of nursing care in the state (\$8,776 for 2021). If the calculation is not a whole number, multiply the decimal point by 30 to determine the additional daily penalty. Example, if you gave your son \$100,000 to help a child purchase a house within the past five years, Medicaid would assess a penalty of 11 months and 12 days.

What are considered transfers?

- Gifts of cash, real property, cars etc.
- Failure to make an election in a decedent's estate
- Disclaimers or waivers of inherited assets
- Failure to exercise rights in divorce
- Transferring assets into an irrevocable entity which restricts access to assets
- Charitable contributions, including tithing
- Paying a family member for care-giving without a written agreement in place

Transfer Exceptions

There are some exceptions to the transfer rules as follows:

- 1) Transfers between spouses.
 - 2) Transfer of a home to:
 - a. The Medicaid recipient's child who is under 21, blind or permanently and totally disabled.
 - b. The recipient's sibling who has an equity interest in the home and who was residing in the home for at least one year immediately before the date that the individual becomes institutionalized.
 - c. A son or a daughter of such individual who was residing in the home for a period of at least two years immediately before the date the individual becomes institutionalized and who provided care to such individual by objective evidence (letter from a doctor), that permitted such individual to reside at home rather than in an institution.
 - 3) Transfers of assets into a Medicaid exempt Special Needs Trust or Pooled Trust, so long as the transfers are completed before the beneficiary reaches the age of 65; and transfers of income into a Medicaid exempt income trust.
 - 4) Transfers to purchase Medicaid friendly annuities payable to the Medicaid recipient or the community spouse if in compliance with Colorado annuity regulations.
- 10 CCR 2505-10 8.100.7.G(6)

Community Spouse Resource Allowance (CSRA)

As stated previously, to be eligible for Medicaid cannot have more than \$2,000 in assets. But in order not to leave a spouse of the Medicaid applicant destitute, Medicaid allows the spouse, who is referred to as the "community spouse," to retain what is called the Community Spouse Resource Allowance (CSRA).

CSRA: \$130,380 for 2021, beyond the resources the Medicaid spouse is permitted and remain eligible.

Not forever: The CSRA is snapshot in time. Therefore, if the community spouse accumulates resources after the CSRA is determined, it will not adversely affect the Medicaid spouse's ability to continue to qualify for Medicaid.

Minimum Monthly Maintenance Needs Allowances (MMMNA): Basic MMMNA for 2021 is \$2,155 and maximum is \$3,259.50

Medicaid Assistance Estate Recovery Program

Common Pitfalls & Planning Considerations

**Medical
Assistance
Estate
Recovery
Program**

**Common
Pitfalls
&
Planning
Considerations**

Medical Assistance Estate Recovery Program

The State of Colorado through its Medical Assistance Estate Recovery Program can seek recovery for the amount of medical assistance provided to an individual age 55 or older or provided to an institutionalized individual (which includes the receipt of HCBS). (Warning: Medicaid has tried to collect in estates of individuals who received MAGI Medicaid or Buy-In Program).

That means that when the Medicaid recipient dies, Medicaid is an interested party in that individual's probate estate because of the assistance provided to him or her. The probate estate only includes property that is titled in the deceased's name. The state will try to assert a lien against the individual's estate to obtain reimbursement for the assistance it provided to him or her. Normally, the estate's main asset will be the home.

However, the state cannot recover against any other owners of the property.

Common Pitfalls Between Estate Planning and Medicaid

Revocable Trusts

- Assets held in a revocable trust are not exempt for qualification purposes.
- If you suspect Medicaid in the future, do not use a revocable trust for your clients.

Beneficiary Deeds

- Property subject to a beneficiary deed is not exempt for Medicaid purposes.

Gifting

- Gifting of any type or value is subject to the look-back period.
- The IRS annual exclusion does not apply to the Medicaid look-back period.

I love you wills

- At the death of the community spouse all funds would pass to the institutionalized spouse. This is a missed planning opportunity.

Powers of Attorney without proper specific authority

- Documents lacking authority to gift, change beneficiary designations, sever joint accounts, transfer real estate can cause significant hurdles to Medicaid planning.

Adding co-owner to account or real estate

- This is considered a transfer.
- Sometimes convincing a joint owner to give the asset back is a challenge.

Planning Considerations and Preserving Assets

Paying for Care - How?

Health: Planning for now (crises) or planning for the possible future

Need documents to effectuate the plan and appoint fiduciaries in case of incapacity.

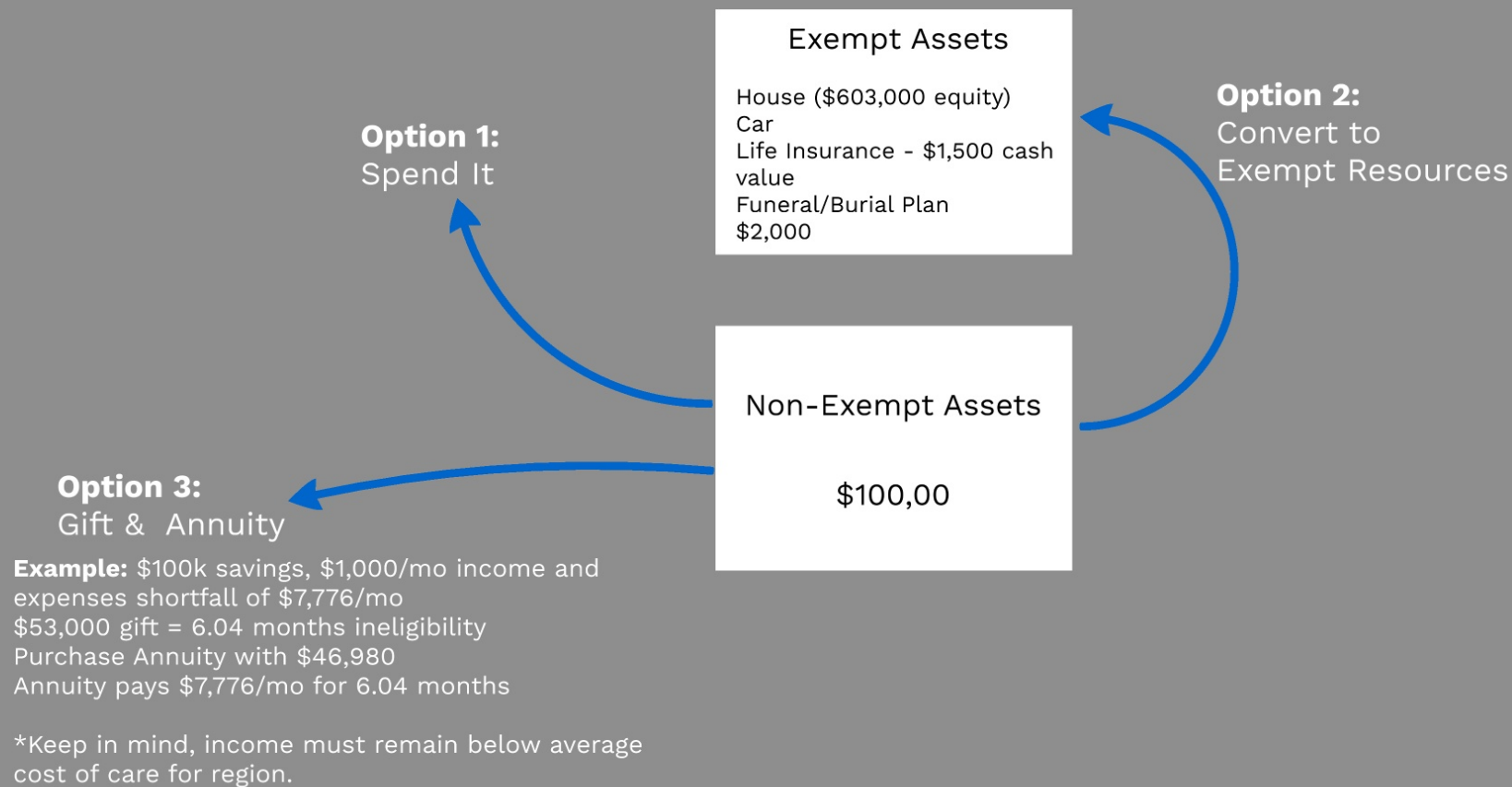
In Advance:

- Long-Term Care Insurance
- 5-Year Planning/Gifting - But watch for changes in the law!

Immediate:

- Medicaid Annuities - Gifting or Income for Spouse

Example: Crises Planning with Extra Assets



Medicaid Long-Term Care

This is an overview of the Medicaid Long-Term Care Medicaid Program and the Home and Community Base Services Program. The laws and regulations continue to change and if and when it comes time to apply, you want to make sure you know the current eligibility requirements. When you are considering how to pay for long-term care, there may be other options such as private pay, long term care insurance or veteran's benefits. Be sure to review all of your options to choose the one that best fits you or your loved one's situation and needs.

Thank you for joining us!

Thank you for tuning in to watch our virtual workshop today! We hope you've enjoyed it and found the information helpful! Explore the Special Reports available on our website to learn more about a variety of estate planning and long-term care planning topics.

Sign up for our email newsletter to receive news and information on upcoming workshops, helpful articles and more! If you have not already, please provide a mailing address by calling the office at (970) 243-8250, or by emailing it to holly@brownandbrownpc.com so we can send you a complimentary copy of our 2021 Long-Term Care Planning informational book!

Thank you again and we hope to see you soon!

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