

California Medi-Cal Planning for Long-Term Care in a Skilled Nursing Facility

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This brief synopsis is to provide a basic understanding of Medi-Cal planning for long-term care in a skilled nursing facility. It is not an exhaustive treatment of the subject. For more detailed information, obtain the counsel and assistance of an attorney by calling for an appointment.

Medi-Cal is California's version of the Medicaid program. The Medicaid/Medi-Cal program is a federal program that is administered at the state level. The Department of Health Care Services ("DHCS") administers California's Medi-Cal program. The Centers for Medicare and Medicaid Services ("CMS") provides federal oversight.

Medi-Cal benefits are available to pay for the costs of various types of care. The scope of this document is limited to only Medi-Cal benefits to pay for the cost of long-term care in a skilled nursing facility.

Important Foundational Information

Medi-Cal benefits are available to pay the cost of long-term care only in certain skilled nursing facilities. Specifically, Medi-Cal benefits are available to pay the cost of long-term care only in skilled nursing facilities that have agreed to accept Medi-Cal

benefits as payment by entering into a contract with the State of California. Not all California skilled nursing facilities have entered into such a contract with the State of California, and accordingly, not all skilled nursing facilities accept Medi-Cal benefits as payment. Accordingly, if one desires to receive Medi-Cal benefits to pay for long-term care, then the first step is to ensure that the intended skilled nursing facility accepts Medi-Cal benefits.

The Medicaid/Medi-Cal program technically is a poverty program designed to provide medical care to disabled and indigent people. The definition of indigence for Medi-Cal purposes, however, often allows one to retain substantial assets while simultaneously receiving Medi-Cal benefits for long-term care in a skilled nursing facility. The advance planning discussed below is critical to maintaining substantial assets while simultaneously receiving Medi-Cal benefits for long-term care in a skilled nursing facility.

Eligibility for Medi-Cal Benefits for Long-Term Care in a Skilled Nursing Facility

To receive Medi-Cal benefits to pay for the cost of long-term care in a skilled nursing facility, one must satisfy all of the following eligibility requirements:

1. Be a United States citizen (or United States national or legal immigrant);
2. Be a California resident;
3. Be either “categorically” eligible or “medically needy”;
4. Satisfy the resource (*i.e.*, asset) eligibility requirements; and
5. Satisfy the income eligibility requirements.

“Categorically” Eligible or “Medically Needy”

One is “categorically” eligible if he or she receives public benefits (*e.g.*, Supplemental Security Income (“SSI”)). One is essentially “medically needy” if he or she is aged (*i.e.*, age 65 years or older), blind, or disabled.

Resource Eligibility

One can qualify for Medi-Cal benefits to pay for the cost of long-term care in a skilled nursing facility only if he or she has no more than \$2000.00 total of non-exempt assets and available assets. An individual's ownership of exempt and unavailable assets will not cause Medi-Cal benefits ineligibility even if the value of such exempt and unavailable assets totals more than \$2000.00.

Medi-Cal laws designate many types of assets as exempt from consideration. Exempt assets include the principal residence (if certain criteria are satisfied) and a vehicle, among other assets.

Similarly, an individual's unavailable assets are not considered for the purpose of determining Medi-Cal eligibility. Unavailable assets are assets over which one lacks the right, power, or authority to liquidate. Unavailable assets also are an individual's retirement accounts in pay status (if certain criteria are satisfied).

As discussed in more detail below, advance planning opportunities exist to maximize the assets that one may retain while qualifying to receive Medi-Cal benefits to pay for long-term care in a skilled nursing facility. Further, if the Medi-Cal benefits recipient is married and his or her spouse does not receive care in a skilled nursing facility, then the spouse may retain up to all of their combined assets.

Income Eligibility

Unlike many other states, California law does not prevent anybody, based on income, from receiving Medi-Cal benefits. Rather, monthly Medi-Cal benefits are reduced by the amount of the Medi-Cal benefits recipient's monthly income that exceeds \$35.00.

The Medi-Cal program is a gap-filler. It pays the difference between the monthly cost of skilled nursing long-term care and the monthly income of the Medi-Cal benefits recipient (less \$35.00). Generally, the Medi-Cal benefits recipient retains \$35.00 per

month of his or her income, pays the balance of income to the skilled nursing facility as his or her “share of cost”,¹ and then the Medi-Cal program pays the monthly difference.

To illustrate, assume that an individual receives long-term care in a skilled nursing facility that accepts Medi-Cal benefits, the monthly cost of such care is \$7000.00, and the Medi-Cal benefits recipient’s monthly income consists only of \$1000.00 of regular Social Security retirement benefits. In such a case, the Medi-Cal program will pay \$6035.00 per month to the skilled nursing facility, the Medi-Cal benefits recipient will retain \$35.00 per month of his or her \$1000.00 monthly Social Security income, and he or she will pay the \$965.00 balance of monthly income to the skilled nursing facility as his or her “share of cost” (*i.e.*, $\$1000.00 - \$35.00 = \$965.00$; and $\$7000.00 - \$965.00 = \$6035.00$).

As discussed in more detail below, if the Medi-Cal benefits recipient is married and his or her spouse does not receive care in a skilled nursing facility, then the spouse may retain up to all of the income of the Medi-Cal benefits recipient. This fact may result in the Medi-Cal program paying more of the cost of the Medi-Cal benefits recipient’s skilled nursing facility long-term care.

Medi-Cal Estate Recovery

The Medi-Cal program is a loan program. The DHCS records all Medi-Cal payments made for each Medi-Cal benefits recipient. The DHCS is authorized to obtain reimbursement from the Medi-Cal benefits recipient’s Estate after death.²

¹ With few narrow limited exceptions of federal payments to American Indians, reparation payments, and payments to victims of crime, all of the Medi-Cal benefits recipient’s earned and unearned income (less the \$35.00 per month that he or she retains) is paid to the skilled nursing facility as his or her “share of cost.”

² If the deceased Medi-Cal benefits recipient is survived by a spouse, then the DHCS may not seek reimbursement until the death of the surviving spouse.

As a practical matter, the DHCS is not able to effect any such reimbursement in many cases because the Medi-Cal program is a poverty program, as discussed above, and

As discussed in more detail below, an advance planning opportunity exists that may allow the Medi-Cal benefits recipient to remove his or her principal residence from the reach of the DHCS. This advance planning opportunity enables the Medi-Cal benefits recipient to leave such asset as an inheritance on death.

Advance Planning for Medi-Cal Benefits Eligibility
for Long-Term Care in a Skilled Nursing Facility

Medi-Cal advance planning is critical to maximize the assets that one may retain while qualifying to receive Medi-Cal benefits to pay for long-term care in a skilled nursing facility. Medi-Cal advance planning also may enable a Medi-Cal benefits recipient to leave his or her principal residence as an inheritance on death instead of leaving it as a source of reimbursement to the State of California. One should engage in such planning before applying for Medi-Cal benefits. Such advance planning may include the following:

1. Spending down assets, converting non-exempt assets to exempt assets, or transferring assets to others³ to hasten eligibility to receive Medi-Cal benefits to pay for long-term care in a skilled nursing facility;
2. Establishing an irrevocable living trust that may enable a Medi-Cal benefits recipient to leave his or her principal residence as an inheritance on death instead of leaving it as a source of reimbursement to the State of California; and
3. Establishing a special needs trust to enable one to leave an inheritance to a Medi-Cal benefits recipient to supplement, but not to supplant, his or her Medi-Cal benefits.

accordingly, there is no Estate from which the DHCS can recover on the death of the Medi-Cal benefits recipient.

³ A federal law was enacted during 2006 that provides severe penalties for certain transfers of assets away from a prospective applicant for Medi-Cal benefits for long-term care in a skilled nursing facility. Further, as discussed in more detail below, such transfers of assets often are not consistent with the best interests of the prospective applicant for Medi-Cal benefits for long-term care in a skilled nursing facility.

If married, then additional Medi-Cal advance planning opportunities exist. Specifically, the spouse of a Medi-Cal benefits recipient (*i.e.*, the “community spouse”) is entitled to maintain specific amounts of income and assets in addition to the \$35.00 per month income and the \$2000.00 of non-exempt and available assets that the Medi-Cal benefits recipient may retain. Further, procedures exist for increasing such amounts of income and assets if necessary to support the community spouse.

Medi-Cal planning and estate planning are not the same. Even if it includes a Revocable Living Trust, an Estate Plan generally is not designed to maximize the amounts of income and assets that one may retain while receiving Medi-Cal benefits to pay for long-term care in a skilled nursing facility. Further, an Estate Plan generally is not designed to enable a Medi-Cal benefits recipient to leave his or her house as an inheritance on death instead of leaving them as a source of repayment to the State of California. In short, a traditional Estate Plan could cause disastrous Medi-Cal consequences.

Obtain the counsel of an elder law attorney before engaging in Medi-Cal advance planning. The unwary easily may run afoul of Medi-Cal laws. Failure to engage properly in Medi-Cal advance planning could result in unnecessary dissipation or complete loss of assets. In addition, it could result in long periods of ineligibility for receiving Medi-Cal benefits. Please call for an appointment.

Important Caution Against Transfers of Assets

Transfers of assets to hasten Medi-Cal benefits eligibility may result in severe penalties leveled against a prospective applicant for Medi-Cal benefits for long-term care in a skilled nursing facility.

Perhaps more importantly, such transfers of assets often are not consistent with the best interests of the prospective Medi-Cal benefits applicant. The recipient of such transferred assets may promise to hold the assets for the benefit of the prospective Medi-Cal benefits applicant; however, such a promise is not binding, and the recipient of such transferred assets may breach the promise. Further detrimental to the prospective Medi-

Cal benefits applicant, the assets that he or she transfers to another person will be susceptible to loss if the recipient loses a lawsuit, files a Bankruptcy case, or is married and becomes divorced, among other things.

Application for Medi-Cal Benefits for Long-Term Care
in a Skilled Nursing Facility

The application for Medi-Cal benefits for long-term care in a skilled nursing facility consists of more than a dozen documents. It is lengthy and complicated, and it contains potential pitfalls for the unwary. Accordingly, obtain the counsel and assistance of an elder law attorney before completing and submitting the application for Medi-Cal benefits for long-term care in a skilled nursing facility. Please call for an appointment.

Death of Medi-Cal Benefits Recipient

Medi-Cal law requires that certain specific tasks be performed after the death of a Medi-Cal benefits recipient. For example, the DHCS must receive notice of the death of a Medi-Cal benefits recipient within 90 days of such death. Obtain the counsel and assistance of an elder law attorney regarding the death of a Medi-Cal benefits recipient. Please call for an appointment.

Attorney Assistance Recommended

Because Medi-Cal law is complicated and the penalties are severe, one should obtain the counsel and assistance of an attorney before engaging in any activity related to Medi-Cal benefits. Please call for a consultation.

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