

Medicaid Myths

I have to dispose of all my resources to get Medicaid.

This is not true. Individuals and married couples are permitted to own some property and still qualify for Medicaid. Examples of exempt resources include one vehicle, personal property and household furnishings, burial spaces, pre-paid funerals, life estates in real property, trade or business property essential to self-support, and assets that cannot be converted to cash. For married couples, the family residence is exempt if the healthy spouse is still living there. For a single individual, his or her residence may be exempt for some period of time.

I can't give away anything and qualify for Medicaid.

This is not true. However, this is a complicated area of the law and readers should consult with an experienced Elder Law attorney before they transfer their assets. Although transfers between spouses are exempt, transfers to persons other than spouses usually subject the donor to penalties that result in periods of ineligibility for Medicaid. Generally, the more money or property a person gives away, the longer he or she will be ineligible for Medicaid. There are some exemptions to this rule.

If I give my assets away, I won't be eligible for Medicaid for five years.

Medicaid will look back at gifts made within five (5) years. The five (5) year period is really a "reporting" period. When a person applies for Medicaid, the application asks if the person has made any transfers to other persons within the five (5) years preceding the application (or made transfers to a trust within the five (5) years preceding the application). If a transfer has taken place during the lookback period, then divestment penalties for the asset transfers may be imposed. The rules in this area are changing, and before any gifting or transfer of assets is done, the

applicant or his/her family should consult with an elder law attorney.

I can only spend down my assets on medical or nursing home bills.

This is not true. Nursing home administrators and social services caseworkers are not permitted to give legal advice, and they don't. Unfortunately, they and well-meaning friends and neighbors can lead clients to believe that only nursing home and medical bills can be paid while spending down to qualify for Medicaid. One reason nursing homes may want clients to believe this myth is because the private pay rates for nursing home residency are more than the Medicaid rates. Clients should seek advice from experienced Elder Law attorneys in order to spend the excess resources in ways that most benefit the client and their families, and, in particular, can provide a spouse remaining at home with a good quality of life.

Once I am in a nursing home, it is too late to start Medicaid Planning.

It is never too late or too early to begin Medicaid Planning. In those cases where planning was not done before the person entered a nursing home, assets may still be protected. With proper planning, under current law, it is possible to save from 40% to 100% of the institutionalized individual's assets.

If I put all of my money in my spouse's name, then I will be eligible for Medicaid.

This is incorrect. Assets of both the spouse and the applicant are counted in determining financial eligibility.

I can keep all of my property when my spouse gets Medicaid.

This is not true. When a married person applies for Medicaid, the assets of both spouses are considered. If the non-applicant

spouse does not provide information about his or her assets, then the Medicaid application can be denied.

My power of attorney authorizes my agent to do Medicaid planning for me.

Most general durable powers of attorney do not include several provisions that are necessary for Medicaid planning. The authority to make gifts is probably the most important power that should be included in a power of attorney for Medicaid planning purposes. Under DC, Virginia and Maryland law, an agent can make gifts using a power of attorney only if a gifting power is specifically included in the document; a broad general grant of authority is *not* sufficient. The Department of Social Services closely reviews powers of attorney, and it will look for this gifting provision when reviewing transfers for less than fair market value made by agents. Other important provisions that should be in a power of attorney include a waiver of the self-dealing prohibition (so that agents, particularly spouses, can make gifts to themselves), and the authority to pay compensation to the agent. Older general durable powers of attorney often include Social Security numbers for the principal and/or the agent. In order to help avoid identity theft, powers of attorney should not include either the principal's or the agent's Social Security number. Furthermore, documents with Social Security numbers generally will not be accepted for filing in local courts.

If my assets are owned by a living trust, they are protected from nursing homes.

Assets owned by a living trust are vulnerable to nursing homes costs and are counted when determining financial eligibility. However, other types of trusts may be used to protect assets.

I can only give away \$14,000 per year under the Medicaid rules.

This is not a Medicaid rule, but a federal tax rule. The federal gift tax rule permits persons to give up to \$14,000 per year per donee

without filing a federal gift tax return. If gifts are made that exceed this limit, a gift tax return must be filed, but normally gift taxes are not owed because of the lifetime gift tax credit. Gifts made as part of Medicaid planning may well exceed the \$14,000 per year per donee limit, and a gift tax return may have to be filed.

I do not need to disclose assets to Medicaid if I am not reporting income from those assets on my income tax return.

Following this advice could actually subject the applicant to criminal penalties for failure to disclose all assets. All assets must be disclosed, including annuities and savings bonds that do not produce current income. It is also important to disclose assets such as real property and accounts located in other states or countries.

All of my income must be used for my spouse's nursing home bill.

The treatment of a couple's income by Medicaid is complicated. Unlike resources, the Medicaid rules of income follow the "name on the check" rule: that is, each spouse's income is considered separate property.

All of my spouse's income must be used to pay for nursing home care.

Again, this is not true. The institutionalized spouse is entitled to at least \$40 per month in a personal needs allowance. The institutionalized spouse can also pay for medical expenses not covered by Medicaid, including health insurance premiums for Medicare and private health insurance.

In some cases, the community spouse is entitled to share in some or all of the institutionalized spouse's income. The institutionalized spouse may contribute income to the community spouse to raise that spouse's income to the Minimum Monthly Maintenance Needs Allowance (MMMNA). This allowance is currently \$2,030.00, with a maximum allowance of \$3,022.50.

Once I enter a nursing home as private pay, I have to wait until a Medicaid bed is available before I can qualify for Medicaid.

This is incorrect. You may be told this because private pay patients pay nursing homes more than the state does for Medicaid patients. Also, when someone enters a nursing home they cannot be discharged because they change from private pay to Medicaid. However, if you plan to start as a private pay patient, be sure to ask if the facility accepts Medicaid.

The rules that applied to my friend will also apply to me.

Medicaid rules change frequently, and the rules also vary from state to state. There may also be facts about the friend's situation that the client does not know, and these facts may result in implementing different strategies than those that apply to the client's situation.

I don't need any help.

The Medicaid laws and regulations are complicated and subject to change. Timing is important. Because private payment rates are higher than Medicaid rates, the nursing home has no incentive to assist clients in protecting assets. The filing of a Medicaid application is comparable to filing an income tax return that will be audited. Individuals should consult an experienced Elder Law attorney in order to avoid mistakes in Medicaid asset protection planning.