



1209 W. Tokay Street Suite 10 Lodi, CA 95240 Tel: (209) 368.7503

How to Preserve Your Estate When You or a Loved One Must Enter a Nursing Home

How will we pay for the cost of Long-Term Care?

With rare exceptions, Medicare does not pay for the cost of long-term care. At most, it will pay for only a portion of your stay. Long-term care insurance can be expensive and it may be difficult to qualify. Medi-Cal is a government program that will help you pay the cost of a nursing home once you qualify.

If we own a home, can we qualify for the Medi-Cal Program?

Yes? A residence of any value is an “exempt” asset provided that the spouse lives in it or the nursing home resident intends to return to it. This means that its value is not included when determining your eligibility for Medi-Cal.

Other than our exempt residence, can any assets be preserved if a person is in a nursing home?

Under new law, the spouse who is still living at home can keep \$115,920 while the nursing home resident is receiving Medi-Cal benefits. If a court order allows it, even more can be kept in some cases.

Can our cash and other liquid assets be divided between two spouses?

No longer can such assets be divided so as to protect half of the money. The “at-home” spouse can keep \$115,920 (Jan 1, 2013). Everything beyond that amount, whether you consider it separate property of community property, must be spent on long-term care or otherwise exhausted (unless available planning steps are taken to avoid such losses).

Is it a good idea to transfer assets to other family members “just in case” nursing home care is ever required?

Transferring assets out of your estate is a step that should be taken only with great caution. There are potentially harmful tax implications involved. In addition, Medi-Cal rules impose restrictions. More importantly, one must consider how comfortable he or she will be with the loss of control and the loss of access to money that was earned over a lifetime. In other words, asset preservation steps should be taken only if the individual feels very comfortable with the idea and with the options that are apparently available.

Can the residence be given away?

California law currently allows transfer of the residence to anyone with no impact on the Medi-Cal eligibility. One must be cautious in considering this approach. No action should be taken before consulting an attorney who is knowledgeable about Medi-Cal rules and regulations, tax and other implications involved in such a transfer. This is particularly important since the California policy which permits such transfers is in transition.

Can other assets be given away?

The institutionalized spouse can give any amount of money to the at-home spouse, keeping in mind, the \$115,920 limit on the amount of money that he/she can keep. Money given to anyone else will invoke the no-transfer rules. These rules provide that Medi-Cal will be denied for the lesser of 36 months or the number of months the gifted assets would have paid for nursing home care at the rate of \$7,000 per month.

Can money be put into a trust to protect it from nursing home bills such that my spouse or I can still qualify for Medi-Cal?

In some cases, an irrevocable (unchangeable) trust can be used. For example, money can be transferred into a trust that will allow the income to go back to the creator of the trust. After 36 months, the existence of that trust will not interfere with Medi-Cal eligibility. Money cannot be transferred into a trust on one day and immediately result in the protection of those assets. Creating a trust for this purpose is very complicated and must be done with great care.

When does the “New Law” go into effect?

The new law, with its \$115,920 (adjusted annually for inflation cost of living allowance) limit on assets, applies to individuals who entered a nursing home after September 30, 1989 and apply for Medi-Cal after January 1, 1990. If a person entered a nursing home before that date, the old law (which allows the community spouse to keep half of the community property assets and all of his/her separate property) would control. The date of entry is critical.

How much income can the “at-home” spouse keep when the other is receiving Medi-Cal?

The at-home spouse can receive the greater of all money that arrives in his or her name (the “name on the check rule”) or \$2,898 per month. In some cases, special permission to keep more than \$2,898 per month can be granted.

Can I get reliable information from the Medi-Cal office?

A Medi-Cal office will give you basic information about the program but will not explain all of the asset preservation strategies that are available. We would be more than happy to assist you in understanding these very complicated and continually developing areas of law.

For more information, please call (209) 368-7503