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Legal Matters®

Elder Law
winter 2025

How to stay Medicaid eligible with money in the bank

Many people approaching their retirement years have saved for decades to provide themselves with security as they age. But just because you have money in your bank account doesn't necessarily mean you can't turn to Medicaid to cover your potential long-term care needs. However, you do need to engage in careful planning to protect your assets without compromising your Medicaid eligibility. Here are a few things to consider.

First, as of 2024, the general asset limit (think of it as an eligibility cap) for individuals applying for Medicaid to cover long-term care is $2,000. If married spouses are applying as a couple, the limit is $3,000. But it's important to remember that a lot of your assets likely don't count toward this limit because they are considered "exempt."

For example, as long as it's your primary residence, your home is exempt in most states up to a certain amount of equity. Similarly, the value of one car per household is exempt, as are personal and household possessions, burial plots and prepaid funeral arrangements.

On the other hand, assets that do count toward the eligibility cap would be things like cash, the value of your checking and savings accounts, stocks and bonds, additional vehicles and real estate that's not your primary residence, like vacation homes. Additionally, life insurance policies with cash value may count toward the asset limit.

What can you do if you have assets likely to exceed the limit?

One option may be to create a Medicaid Asset Protection Trust (MAPT). This is a trust that keeps your assets from being counted for Medicaid eligibility. The catch is that you need to create the trust and transfer your assets into it at least five years before you apply for Medicaid long term care benefits. If you end up needing Medicaid before this five-year "look back" period is up, a penalty might be applied before you get your benefits.

A MAPT is particularly useful if you have investment assets. Once they're transferred into the trust, you can't sell the investments. But

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Is a 'power of attorney' part of your estate plan?

A "power of attorney" (POA) is a legal mechanism that allows you to appoint another person to make medical, financial and legal decisions on your behalf. This can be a very important part of your estate plan.

But a POA isn't as simple as it looks. There are different types to choose from that vary in terms of the scope and length of the authority they provide. The most appropriate type for you will depend on your particular needs.

For example, a general power of attorney provides the agent –the person you have appointed to act in your place – with very broad powers, typically to handle business and financial matters. For example, the agent might be able to buy life insurance, make gifts, settle legal claims or employe professional health on your behalf.

A limited power of attorney, on the other hand, is meant for specific tasks or a limited amount of time and grants more narrow authority, usually for a particular transaction or event. For instance, if you are traveling abroad at the same time you're selling your home, you might give a limited power of attorney to someone you trust to handle the sale in your place.

Another type of POA is the durable power of attorney. Unlike other types, which are no longer valid if you become incapacitated, a durable power of attorney remains in place during your incapacitation, allowing your agent to make business and personal financial decisions in your place and sign legal documents for you. If you have been diagnosed with dementia, for example, but are not yet incapacitated, you might decide to execute a durable power of attorney, enabling an adult child or someone similar to make decisions for you as your condition advances.

Yet another option is a springing power of attorney, which comes into effect only under very specific circumstances, like becoming incapacitated. Activation usually requires at least one doctor to declare that you are incapacitated. This is a good option if you want to control your own affairs until you are absolutely unable make decisions for yourself. But it's important to remember that the need for a doctor to certify your incapacitation may result in delays before your agent can act.

It's also worth knowing that a POA typically has an endpoint, either when you revoke it yourself or pass away, or in the case of a limited POA, when your agent has achieved their goals.

To discuss how a POA might fit into your estate planning, contact an elder lawyer where you live.

Consider 'eldercaring coordination' to minimize disputes

If you are an aging parent and you are worried about conflict arising in your family over decisions related to your health care, finances and living arrangements, you should speak to an elder law attorney about the possibility of engaging an eldercaring coordinator. The same is true if you are a family member and you have the same concerns about a parent or other relative.

An eldercaring coordinator is a neutral third party – usually a social worker, counselor, nurse or gerontologist – who is enlisted to foster better communication among stakeholders to resolve conflicts over a senior's care while helping family members get a better handle on the implications of certain legal and financial decisions.

In order to do this effectively, the coordinator would first thoroughly assess the senior's situation, including their medical history, current health, level of physical and mental functioning and risks they face. They would also assess the senior's preferences regarding living arrangements, daily life, social interactions and medical treatments, as well as their existing support system. Additionally, they would look at relevant legal and financial concerns.

Through this assessment the coordinator can help identify care issues and help solve them, assist in arranging services such as in-home help, coordinate with health providers, provide support in a crisis and assist with transitions to a retirement home, assisted living or nursing home.

Interested in learning more? Talk to an elder law attorney today.

Available debt management options for senior citizens

Debt is no fun at any age. But it can hit especially hard for older individuals who expect to be enjoying a relaxing retirement and doing all the things they never had time for when they were working.

Unfortunately, credit card and other high-interest debt is a reality for many seniors.

In many cases, this is due to out-of-pocket health-care costs that aren't covered by Medicare or private insurance plans. This causes many older people to turn to credit cards with high interest rates, saddling them with debt that snowballs when they don't pay their monthly balances in full.

So, what types of options do you have if you run into this situation?

One option may be to meet with a credit counseling agency that would take a look at your finances and help you come up with strategies to manage your debt. If you're eligible, they might help you come up with a plan to pay off your debt over the next several years. They might also help you consolidate payments from all your credit cards into a single monthly payment, and they may even be able to help you work with creditors to reduce your monthly payment or interest rates.

Another option is to contact your credit card company and see if they might help you out. Some companies have programs to help customers who find themselves in a tough situation due to a medical emergency, job loss or death of a family member. They may also adjust the due date for your payments, helping you avoid late fees, although interest will still accrue and your credit score may be impacted by "missed" payments.

Additionally, you could consider transferring your balance from existing credit cards to one that offers a 0-percent APR for the first year. You would avoid a year's worth of interest charges, giving you breathing room to pay the debt off faster. But it's important to note that there could be a transfer fee.

As a last resort, bankruptcy may be an option. Although it would impact your ability to take out new loans, it would free you from your creditors and give you a fresh start.

An elder law attorney may be able to help you figure out the most appropriate option for the situation you're in.

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income that you receive from them won't count against Medicaid asset limits.

Another option may be the Community Spouse Resource Allowance. As long as your spouse isn't also applying for Medicaid to cover long-term care, Medicaid allows you to protect a certain portion of your assets as a couple to ensure the "community spouse," or non-Medicaid spouse, has enough to live on. Although the amount of the allowance varies from state to state, it will max out in most instances at $157,920 as of the start of 2025.

If you are considering this route to protect your assets, it's important to remember that you and your spouse need to keep your assets in separate accounts so Medicaid can tell which assets belong to the community spouse and which belong to the spouse seeking Medicaid.

Keeping assets separate also help the community spouse prove their assets are within the CSRA limit in your state, so as not to compromise the other spouse's Medicaid eligibility.

Of course, Medicaid planning can be extremely complicated, so the sooner you start planning, the better off you'll be. A local elder law attorney can help with this.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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Tips for tough conversations with aging parents

One of the most difficult aspects of having aging parents is the tough conversations you inevitably must have about driving, finances, legal issues, estate planning, living situations, and medical care.

These can be sensitive topics in any situation, but with aging parents they can be even more emotional because of what they represent in terms of the loss of independence.

Still, these conversations are critical to have, so here's a few tips for making them less contentious and more productive.

First, don't put them off. Initiate discussions about these issues as early as possible once your parents reach retirement age, so you already have a rapport and mutual openness about them by the time any decisions need to be made. Talk about them frequently to have a better sense of your parents' wishes and how they may change over time.

Additionally, spend time with your parents, making observations about how they're getting along in their daily life. Can they drive safely? Is their home free of hazards? Are they forgetting to turn off the stove or faucet? Can they safely go up and down the stairs? If you notice issues, it's helpful to collect data and research options for addressing them so you can have a more productive, evidence-based conversation with suggestions in hand.

Finally, be tactful and respectful in your communications. Don't put your parents on the defensive by saying "You need to stop driving" or "You have to move out of your home." Instead, use "I" statements, such as "I have noticed that..." or "I am worried about ..." And ask questions of them as well, such as "Is it getting difficult for you to ... ?" or "Would you feel better if ...?"

If you're dreading these conversations, you might also consider talking to an elder law attorney for additional advice on how to approach them.