

ELDER LAW TODAY



THE FIELDS LAW FIRM, P.A. – SPECIALIZING IN ELDER AND DISABILITY LAW

110 Liberty Drive, Suite 202 • Clemson, SC 29631 • Phone: (864) 653-4090
33 Market Point Drive • Greenville, SC • Phone: (864) 232-2916

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Commonly Asked Medicaid Questions

Elder Law Attorneys assist individuals and families in developing estate plans to avoid depleting their assets should they become incapacitated and need long term care. For those individuals who are already in a nursing home, elder law attorneys help them qualify for Medicaid benefits while maximizing the amount of money they are able to keep.

Due to the large volume of calls we receive from caregivers and other family members asking questions about Medicaid for their loved ones, we decided to make this the topic of this article. These are some of the most frequently asked questions.

Q: Once I qualify for Medicaid, will the quality of care I receive be sub-standard?

A: No. It is illegal for a facility to discriminate against someone receiving Medicaid benefits. By law, Medicaid patients are to receive the same level of care as private-pay residents.

Q: Is a married couple always required to spend down one-half of their assets before qualifying for Medicaid?

A: Not always. In fact, often times couples have over \$100,000 and qualify for Medicaid benefits without spending a penny. Although there are income and asset criteria a couple must meet before one of them qualifies for benefits, federal and state laws were written to protect individuals from becoming impoverished if their spouse needs nursing home care.

Medicaid planning is like tax planning in that legislation has provided legal exceptions to the general rules that, with good advice from a knowledgeable professional, can save Medicaid applicants and their families thousands of dollars.

Q: Is it true that under current Medicaid laws, a parent cannot make financial gifts to their children once they have entered the nursing home?

A: No. In fact, a proper gifting program is a great Medicaid planning technique. At the time an applicant applies for Medicaid, the state will “look back” 5 years to see if any gifts have been made. Any financial gifts or transfers for less than fair market value during the five year look back may cause a delay in an applicant’s eligibility. A proper gifting program requires calculating the penalties *prior* to making gifts.

Q: Is \$11,000 per year the maximum an individual can give away if they are going to apply for Medicaid?

A: No. The \$11,000 per year gift people ask about when discussing Medicaid Planning is a *tax law* figure and not relevant with respect to Medicaid’s specific asset transfer rules. The maximum monetary figure Medicaid applicants need to concern themselves with is the “penalty divisor” for their state. The penalty divisor is the state assessed average cost for nursing home care by which the state assesses Medicaid penalties. The penalty divisor is \$3,942 in South Carolina.

Q: A Medicaid applicant’s house is considered “exempt” under Medicaid laws. Can an applicant give their house away without incurring penalties?

A: No. Any assets which are given away (personal property or real property) are considered gifts. If an applicant gives their house away, the state will assess a penalty based on the fair market value of the house at the time it was transferred.

Q: Once my spouse is approved for Medicaid, can I gift my assets away?

A: It depends on your state’s laws. Currently, in South Carolina, once the “institutionalized” spouse has been approved for Medicaid, the “community” spouse’s assets are no longer a part of the ongoing continuing eligibility and therefore the community spouse could make gifts of their assets. In some other states, however, any gifts made by the community spouse would incur penalty which may result in the termination of Medicaid benefits for their spouse.

There are a number of steps a Medicaid applicant can take to preserve their assets, ranging from gifting strategies, personal care contracts, raising the Community Spouse Resource Allowance, etc... What you need to remember is that the laws are constantly changing and the planning your neighbor did for their mother six months ago may not be proper for your mother tomorrow. Consult a knowledgeable elder law attorney for advice.

The Fields Law Firm offers in-service training on topics related to elder law and Medicaid planning.

Elder Law Today is written by Jackson E. Fields, Jr., Attorney at Law. This newsletter is published as a service of the Fields Law Firm, P.A. This information is for general informational purposes only and does not constitute legal advice. For specific questions, you should consult a qualified elder law attorney.