

Stop the Spend-Down!

Texas Medicaid

For Married Couples

Learn:

The Limits of Medicare

Medicaid Division of Assets

Miller Trusts

Annuities

Protections for the At Home Spouse

Who is Behind This Book

And

“Why Should I Listen to You?”

I want to first thank you for requesting this book. I think that the information I give you here will help you in your quest to pay for costly nursing home care. I have written this book so that consumers could have good, solid information before hiring an attorney or dealing with the Health and Human Services Commission or the nursing home accounts receivable collectors. Not everyone needs a lawyer. I truly believe, however, that you should have this valuable information right now, for free, before you are pressured into reactionary decisions during a time of crisis.

My name is Rich Shea and I have been helping families solve nursing home issues since 1999. Over the years I have helped preserve millions of dollars in assets. You can find out more about me at my website <http://TexasTitle19.com>.

I realize that you are rightfully concerned about getting the best medical care for your spouse during this difficult time. It is natural to also worry about how you will survive the devastating nursing home costs that average over \$5,000 every month. I can help solve that riddle. Your case is important and it will be personally handled by me – not a paralegal or a junior associate. While each case is different, and past results cannot be used to predict future success, I can tell you that I have been privileged to help my clients and their families protect millions of dollars from nursing home costs.

Fewer Cases – More Time For You

I am “different.”

I don't rely on a high volume of cases. I don't claim to handle every type of law under the sun. I don't want to. I don't need to.

Each year I accept a limited number of Medicaid asset protection cases from the hundreds of people who ask me to represent them. I am not a TV advertising law firm based on churning out cases constantly. I do not have a catchy nick-name or a jingle. I do not charge clients an attorney's fee and then have a paralegal do most of the work. Fewer cases means more time for you and, I believe, better results overall.

Since 1999 I have represented families seeking asset protection from chronic medical costs as well as obtaining Medicaid and other government benefits. Most of the cases are referred to me by former satisfied clients and by other attorneys.

Sometimes the best advice you can get about your goals is that your goals are unachievable within the bounds of the law. If that is true in my opinion, I will tell you. I'll also tell you when I think you don't need an attorney or if a different attorney is a better fit for you. But if your case passes my test and I accept it, you can be assured that you will receive my personal attention. I will aggressively represent you, keep you up to date on what is happening in your case, and give you my advice when difficult decisions have to be made.

I will fully explain all fees and costs to you before I start working on your case. Together, we will decide on the best strategy for your matter.

Richard L. Shea

Myths

- *You can make small or large gifts to family members within five years of applying for benefits and still qualify for Medicaid benefits without penalties.*
- *You will lose everything before your spouse can receive Medicaid benefits.*
- *You can make gifts within five years of applying for benefits and just not tell anyone; or the State of Texas will not find out.*
- *You can make gifts of real estate, or cash, or stock, without creating a penalty as long as they are “small”.*
- *If you have a joint account with a family member or someone else and you simply remove your name from the account that is not a transfer resulting in a penalty.*
- *If you receive a gift from a family member that applies for Medicaid within five years, you are not liable to reimburse the State of Texas if you’ve spent the money.*
- *Representatives from the nursing home or rehabilitation facility are qualified and willing to provide you with asset protection advice.*
- *What your friend did will automatically work for you.*
- *This is too complicated, there is nothing you can do to protect your rights and make the process easier on your family.*
- *It does not matter when you decide to begin asset protection.*
- *You have no choice but to spend your life savings on nursing home bills and leave nothing for your family.*
- *All lawyers who advertise as an “Elder Law Attorney” have the same experience, skills, and qualifications to handle your unique case.*

Take a Deep Breath

The decision to move a spouse into a nursing home is one of the most difficult decisions you can make. Perhaps the move is being made because your spouse can no longer care for him or herself...or perhaps the person has a progressive disease like Alzheimer's...or has had a stroke or heart attack.

No matter the reason, the family is almost always under great stress.

At times like these, it is important that you pause, take a deep breath and understand there are things you can do. Good information is available and you can make the right choices for you and your spouse.

This book is designed to help provide you with information and answers to the questions which I, as an attorney, deal with on a regular basis. It is important to remember that each situation is unique and there is not one solution for everyone. That is why it is important to have a legal advocate help protect your interests in your situation. This material is not intended as legal advice and it is not a substitute for legal advice.

My clients have found it helpful, and I hope you will find it useful as well.

You Are at War – But It's a War That Can Be Won

The day your spouse required prolonged nursing home care you entered a war zone. The federal government and the State of Texas have declared war on middle class families that can't afford adequate long term care insurance and need the help that Medicaid can provide. They have waged the war in legislative bodies, in administrative hearings, in state and federal courts throughout the United States. The last major attack was the Deficit Reduction Act of 2005. Its effects are still being felt to this day as Texas only recently proposed regulations to implement the DRA. They have been successful in making it near impossible for spouses to protect themselves in a situation like yours without a plan. The sooner you start the better your chances are, do nothing and they win.

TexasTitle19.com

How to Pay for the Nursing Home Without Going Broke

One of the things that concerns people most about nursing home care is how to pay for that care. You want the best for your spouse; however, you also have to survive.

There are basically three ways that you can pay the cost of a nursing home:

1. Long Term Care Insurance – If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of a nursing home. Unfortunately, long term care insurance has only started to become popular in recent years and most people facing a nursing home stay do not have this coverage.
2. Pay with Your Own Funds – This is the method many people choose at first. Quite simply, it means paying for the cost of a nursing home out of your own pocket. Unfortunately, with nursing home bills averaging over \$5,000.00 per month in Texas, few people can afford a long term stay in a nursing home.
3. Medicaid – This is a primarily federally-funded and state-administered program which pays for the cost of the nursing home if certain asset and income tests are met.

Since the first two methods, (long term care insurance and paying with your own funds) are self-explanatory; we will concentrate on Medicaid and Medicare.

What About Medicare?

There is a great deal of confusion about Medicare and Medicaid.

Medicare is the federally-funded health insurance program primarily designed for older individuals (i.e. those over age 65). There is a limited long term care component to Medicare. In general, if you have had a hospital stay of at least three days, and then you need to go into a skilled nursing facility (often for rehabilitation), and then Medicare may pay for a while.

Typically, in that circumstance, Medicare will pay the full cost of the nursing home stay for the first 20 days and will continue to pay the cost of the nursing home stay for the next 80 days, but with a deductible that is currently \$137.50 per day in 2010. Often times your Medicare supplement will pay the cost of that deductible. So in the best case scenario, Medicare may pay up to 100 days. In order to qualify for these 100 days of coverage, however, the nursing home resident generally must continue to “improve.”

While it is never possible to predict at the outset how long Medicare will cover the rehabilitation, it may fall far short of the 100 day standard. But even if Medicare does cover the 100 day period, what then? **What happens after the 100 days of coverage has been used?**

At that point, you are back to one of the other alternatives...long term care insurance, paying the bills with your own assets, or Medicaid.

What is Medicaid?

Medicaid is a benefits program which is primarily funded by the federal government and administered by each state. So the Medicaid rules vary from state to state.

One of the primary benefits of Medicaid is that, unlike Medicare which only pays for skilled nursing, the Medicaid program will pay for long term custodial care in a nursing home.

Custodial care refers to assistance with the activities of daily living (i.e., activities like dressing, bathing, toileting, preparing meals and so on). The inability of some older persons to manage these activities on their own often results in the needs to move to a nursing home.

Why Plan for Medicaid?

As life expectancies and long term care costs continue to rise, the challenge quickly becomes how to pay for long term care services. Many people cannot afford to pay \$5,000.00 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medicaid program is there to help. In fact, Medicaid has become the long term care insurance of the middle class. But the eligibility to received Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have available. The reason for Medicaid planning is simple...you plan so that if you need it, you will be eligible to receive Medicaid benefits.

The Deficit Reduction Act of 2005 severely limited the previously adequate opportunities for "crisis planning" (asset protection planning begun when one spouse has already entered a nursing home). In addition to prohibiting previously proven strategies, the look-back period was extended to five years. The message is clear, ***if you want to protect yourself you have to start early***. You do still have options even in a crisis situation; however they are very few and nowhere near as effective as early-bird planning.

Miller Trusts: Are You Income Eligible?

A Medicaid recipient cannot have more than \$2,022 per month in income. If you are over this limit then your application will be denied. Fortunately there is a solution for Medicaid applicants that receive too much in the form of Social Security or pensions but not enough to cover the cost of long term care. That solution is the Miller Trust.

The Miller Trust is a specific type of trust that receives a Medicaid applicant's income and then distributes it out to the Medicaid applicant, the nursing home, and the applicant's spouse at home. This unique trust allows people with \$2,023 per month in income or even \$4,022 per month in income to satisfy the income eligibility test for Medicaid benefits.

The Miller Trust only works with income. It is not designed for and provides absolutely no protection for assets and resources.

Exempt Assets and Countable Assets: What Can You Keep and What is at Risk?

To qualify for Medicaid, you must pass some fairly strict tests on the amount of assets you can keep.

To understand how Medicaid works, we first need to review what are known as exempt and non-exempt (or countable) assets.

Exempt assets are those which Medicaid will not take into account (at least initially for the time being). The following are the primary exempt assets:

- The Home, up to a certain amount of equity, in many situations. The home must be the principal place of residence and the resident will be required to show some "intent to return home" even if this never actually takes place.
- Household and personal belongings such as furniture, appliances, jewelry, and clothing.
- One Car, there may be some limitation on value depending on your unique situation.
- Burial Plot for you and your spouse.
- Cash Value of Life Insurance policies as long as the face value of all of the policies added together does not exceed \$1,500.00. If it does exceed \$1,500.00, then the cash value in these policies is countable.
- Cash (i.e., a small checking or savings account) not to exceed \$2,000.00.

All other assets which are not exempt (i.e., not listed above) are countable. This includes checking accounts, savings accounts, CDs, money market accounts, stocks, mutual funds, bonds, IRAs, pensions, 401Ks, 403Bs, and additional vehicles and so on. Basically, all money and property, and any item that can be valued and converted to cash, is a countable asset unless it is one of those assets listed above as exempt.

Does this mean all of your other assets must be sacrificed before your spouse can receive Medicaid benefits? In many cases the answer is, no. You can claim special protections under the law as a spouse to prevent your impoverishment.

The Health and Human Services Commission won't help you here. They represent the State of Texas and have no interest in paying more benefits to your spouse when you could be paying the nursing home. The nursing home most likely won't help either. They want to be paid and the fact of the matter is they get paid more from private pay patients. We pay the retail nursing home cost of more than \$5,000.00 every month, but the State of Texas pays a nursing home the "wholesale" rate of a whole lot less than \$5,000.00 every month. With the State of Texas and the nursing home on the opposite side of the table, who is sitting next to you? It is especially important to seek the assistance of a knowledgeable Elder Law attorney with any Medicaid planning because the rules can be very unforgiving, even if you make an innocent mistake.

Medicaid Eligibility & Trusts

There is a lot of confusion about Medicaid eligibility and trusts. There are many varieties of trusts. We will discuss the two most common.

Revocable Trusts

A revocable trust created by the Medicaid applicant with their own assets provides **zero** asset protection. All of the property owned by the revocable trust is “deemed” as available to the Medicaid applicant because they have the right to dissolve the trust and have the property returned to them.

Irrevocable Trusts

Irrevocable trusts are gaining popularity in Texas after a long and dark history. There are opportunities in certain cases where an irrevocable trust is an option worth considering. An irrevocable trust for Medicaid protection must be precisely drafted to comply with the latest administrative decisions in order for it to work as intended. Be sure to discuss this sophisticated technique with your attorney and if it makes sense in your case.

Division of Assets: Medicaid Planning for Married Couples

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988. It applies only to married couples. The intent of the law was to change the eligibility requirements for Medicaid in situations where one spouse needs nursing home care while the other spouse remains in the community (i.e., at home). The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets situation, the couple gathers all of their countable assets together in a review. Yes, all of their assets. ***Putting all of the assets in the healthy spouse's name does not change the outcome in the division of assets process.*** The exempt assets which we discussed earlier are not counted.

The countable assets are then divided in two, with the at-home or community spouse allowed to keep one-half of all countable assets, up to a maximum of \$109,560.00 in 2010. The other half of the countable assets must be “spent down” until less than \$2,000.00 remains. The amount of the countable assets which the at-home spouse gets to keep is called the Community Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the at-home spouse. This is called the Minimum Monthly Needs Allowance. This permits the community spouse to keep a minimum monthly income ranging from \$1,821.25 to \$2,739.00 for fiscal year 2009-2010 in Texas.

If the community spouse does not have at least \$1,821.25 in monthly income, then (in certain circumstances) he or she may be allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Needs Allowance (i.e., up to at least \$1,821.25 and

possibly \$2,739.00). The nursing home spouse's remaining income goes to the nursing home, except for a personal needs allowance that is currently \$60.00 per month. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment.

How do you take advantage of these protections? You have to argue before the Health and Human Services Commission that you qualify for these protections and prove certain critical values. In many cases, this is only resolved in a hearing before an Administrative Law Judge. Your attorney can help you successfully navigate your case through the Health and Human Services Commission and protect your rights throughout the process.

Once again, this does not mean that there are not other planning alternatives which a couple can pursue. In some cases, the at-home spouse may be entitled to keep more than half of the couple's assets or more than the \$109,560.00 ceiling in order to generate sufficient income to meet her Minimum Monthly Needs Allowance. Proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the governing law at the time. It is important to seek the assistance of a knowledgeable Elder Law attorney in order to protect your rights and your savings.

Can't I Just Give My Assets Away?

Many people wonder, can't I give my assets away? The answer is, maybe, but ***only if it is done right***. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In Texas, every \$3,926.40 given away in fiscal year 2010 and during the look back period creates a one month period of ineligibility. So even though federal Gift Tax laws allow you to give away up to \$12,000.00 per year without gift tax consequences, those gifts do result in a period of ineligibility for Texas Medicaid benefits.

Will I Lose My Home?

Many people who apply for Medicaid benefits to pay for nursing home costs ask this question. For many, the home constitutes much or most of their life savings. Often it is all a married couple has to pass on to their children.

For a nursing home resident with an at-home spouse, the home is an exempt asset up to a certain value. This means that its value is not taken into account when calculating eligibility for Medicaid benefits. But under a change made in 1993 (Omnibus Budget Reconciliation Act of 1993), states are required to set up an Estate Recovery Unit to seek recovery of all Medicaid payments from the estates of those who receive Medicaid benefits. Because the home is the single largest asset which a couple can keep while still qualifying for Medicaid, it is also the main target of estate recovery in most states.

Here is how the process works. While the community spouse (i.e., at home spouse) is living in the home, it remains an exempt asset as long as it is within acceptable valuation limits. But after the death of both the community spouse and the nursing home spouse, the Estate Recovery laws allow the State to demand repayment of benefits paid to or on behalf of the nursing home spouse. Under OBRA-93, the states have broad authority to seek repayment for Medicaid services rendered from virtually any property owned by the Medicaid recipient.

Fortunately, there are ways to protect your property. The solutions can range from re-titling assets to

selling or even gifting them. Since the Medicaid rules are constantly changing, you will need to seek help from an experienced Elder Law attorney to help you with your planning.

Annuities and You

Annuities are complicated assets. An annuity can be treated as either income or an asset depending on the particular annuity involved and the terms of the annuity contract. The key role annuities play in a Medicaid situation is converting resources which would otherwise have to be spent down into income which the spouse at home can enjoy some benefit from. In order to accomplish this goal, very specific requirements must be met. If the transaction surrounding the annuity does not meet the requirements of the HHSC and federal law then you risk the entire transfer causing a penalty which is exactly what you are trying to avoid.

The bottom line with annuities is take a look at them if you still have assets at risk for long term care expenses after other techniques have been exhausted; and if it is appropriate, be sure you have someone that knows the rules advising you through the process or you could end up being worse off than if you did nothing.

TexasTitle19.com

In Conclusion - Seeking Legal Help

As you can see, there are a number of strategies that you can use to qualify for Medicaid and still preserve some or all of the estate you have spent your lifetime building.

These strategies are legal and have been used by countless others over the years. Please be advised, however, that Medicaid planning requires a great deal of knowledge of the ins and outs of the system. I am an experienced Medicaid attorney. I know the rules and can advise you accordingly.

I am committed to helping you find the right nursing home, get the best care, and paying for it without losing your life savings. If you need legal assistance, please call The Shea Law Firm at (832) 426-3913.

Now that you have learned some of the basic protections available to you as the spouse of a future Medicaid recipient, **use this knowledge to protect your rights**. Time is not on your side at this point. I take my clients through a rigorous asset protection analysis not only during the application process but **before** we even apply for benefits. I can help you avoid unnecessary impoverishment but you must take the first step.

I do not pretend to have a magic solution for your case, and I'd be suspicious of anyone who did. It takes an investment of time on your part to complete the asset protection process. This is an outline of the steps we will go through when you work with me:

1. Inventory of Assets
2. Initial Division of Assets
3. Calculation of MMNA
4. Income & CSRA Scenarios
5. Examine additional investment in Exempt Assets
6. Review Existing Penalties/Consider Efficient Penalties
7. Finalize Asset Protection Plan
8. Submit Medicaid Application
9. Negotiate with the HHSC case worker
10. Represent you at the Administrative Hearing

*Please note this Guide is updated once per calendar year. During each year and between updates regulations are subject to creation and modification and new case law decisions may impact certain information contained herein. You can find the latest Medicaid news and information at <http://TexasTitle19.com>.

This publication is designed to provide accurate and authoritative educational information in regard to the subject matter covered. It is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service within this document. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.