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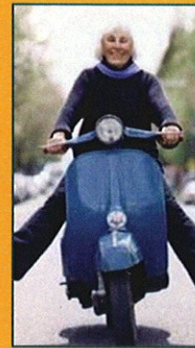
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THE CONSUMER'S GUIDE TO MEDICAID PLANNING AND DIVISION OF ASSETS

Do you qualify for financial assistance for
nursing home care?



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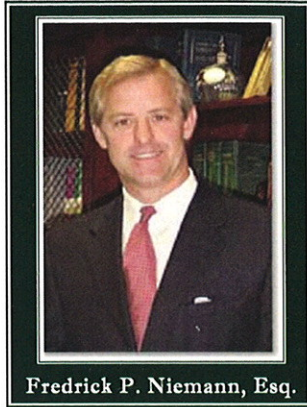
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Fredrick P. Niemann, Esq.

Message from Fredrick P. Niemann, Esq.

The decision to move a family member or a loved one into a nursing home is one of the most difficult decisions you can make.

Perhaps the move is being made because the family member 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, those involved are almost always under great stress. At times like these, it's 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 loved one.

This booklet is designed to help provide you with helpful information and answers to the most frequently asked questions that I deal with on a daily basis, as an Elder Law Attorney.

Your inquiries are always welcome at Hanlon Niemann, a client friendly office with kind, patient and compassionate professionals.

Don't wait until your situation becomes overwhelming. We are here to help you with all of your elder care and elder law planning needs.

Call me personally,
Fredrick P. Niemann, Esq.
 Attorney At Law

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Introduction

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. As we enter the 21st century, life expectancy has almost doubled. As a result, we face more challenges and transitions in our lives than those who came before us. One of the most difficult transitions people face is the change from independent living in their own home or apartment to living in a long term care facility or "nursing home." There are many reasons why this transition is so difficult. One is the loss of home...a home where the person lived for many years with a lifetime of memories. Another is the loss of independence. Still another is the loss of the level of privacy we enjoy at home, since nursing home living is often shared with a roommate. Most people who make the decision to move to a nursing home do so during a time of great stress. Some have been hospitalized after a stroke, some have fallen and broken a hip, still others have progressive dementia, like Alzheimer's disease, and can no longer be cared for in their own homes. Whatever the reason, the spouse or relative who helps a person transition into a nursing home during a time of stress faces the immediate dilemma of how to find the right nursing home. The task is no small one, and a huge sigh of relief can be heard when the right home is found and the loved one is moved into the nursing home. For many, the most difficult task is just beginning: How to cope with

nursing home bills that may total \$7,500 to \$11,000 per month or more?

How to Pay for Nursing Home Care

One of the things that concerns people most about nursing home care is how to pay for that care. There are basically four 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 the nursing home. Unfortunately, long term care insurance has only started to become popular in the last few 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 are required to use 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 between \$7,500 and \$11,000 per month in our area, few people can afford a long term stay in a nursing home.
- 3. Medicare.** This is the national health insurance program primarily for people 65 years of age and older, certain younger disabled people, and people with kidney failure. Medicare provides short term assistance

with nursing home costs, but only if you meet the strict qualification rules.

4. Medicaid. This is a federal and state funded and state administered medical benefit program which can pay for the cost of the nursing home if certain asset and income tests are met. Since the first two methods of private pay (i.e. using your own funds) and long term care insurance are self-explanatory, our discussion will concentrate on Medicare and Medicaid.

What About Medicare?

There is a great deal of confusion about Medicare and Medicaid. Medicare is the federally funded and state administered health insurance program primarily designed for older individuals (i.e. those over age 65). There are some limited long term care benefits that can be available under Medicare. In general, if you are enrolled in the traditional Medicare plan, and you've had a hospital stay of at least three days, and then you are admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care), Medicare may pay for a while. (If you are a Medicare Managed Care Plan beneficiary, a three day hospital stay may not be required to qualify.)

If you qualify, traditional Medicare may pay the full cost of the nursing home stay for the first 20 days and can continue to pay the cost of the nursing home stay for the next 80 days, but with a deductible that's nearly \$120 per day. Some Medicare supplement insurance

policies will pay the cost of that deductible. For Medicare Managed Care Plan enrollees, there is no deductible for days 21 through 100, as long as the strict qualifying rules continue to be met. So, in the best case scenario, the traditional Medicare or the Medicare Managed Care Plan may pay up to 100 days for each "spell of illness." In order to qualify for this 100 days of coverage, however, the nursing home resident must be receiving daily "skilled care" and generally must continue to "improve." (Note: Once the Medicare and Managed Care beneficiary has not received a Medicare covered level of care for 60 consecutive days, the beneficiary may again be eligible for the 100 days of skilled nursing coverage for the next spell of illness.) While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience, it usually falls far short of the 100 day maximum. Even if Medicare does cover the 100 day period, what then? What happens after the 100 days of coverage have been used? At that point, in either case you're back to one of the other alternatives... long term care insurance, paying the bills with your own assets, or qualifying for Medicaid.

What is Medicaid?

Medicaid is a benefits program which is primarily funded by the federal government and administered by each state. Sometimes the rules can vary from state to state. One primary benefit of Medicaid is that, unlike Medicare (which only pays for skilled nursing), the Medicaid program will pay for long term care in a

nursing home once you've qualified. Medicare does not pay for treatment for all diseases or conditions. For example, a long term stay in a nursing home may be caused by Alzheimer's or Parkinson's disease, and even though the patient receives medical care, the treatment will not be paid for by Medicare. These stays are called custodial nursing stays. Medicare does not pay for custodial nursing home stays. In that instance, you'll either have to pay privately (i.e. use long term care insurance or your own funds), or you'll have to qualify for Medicaid.

Why Seek Advice for Medicaid?

As life expectancies and long term care costs continue to rise, the challenge quickly becomes how to pay for these services. Many people cannot afford to pay \$7,500 to \$11,000 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, in our lifetime, Medicaid has become the long term care insurance of the middle class. But the eligibility to receive Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have. The reason for Medicaid planning is simple. First, you need to provide enough assets for the security of your loved ones -- they too may have a similar crisis. Second, the rules are extremely complicated and confusing. The result is that without planning and advice, many people spend more than they should and their family security is jeopardized.

Exempt Assets and Countable Assets: What Must Be Spent?

To qualify for Medicaid, applicants must pass some fairly strict tests on the amount of assets they 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 for the time being). In general, the following are the primary exempt assets:

- Home, (under certain conditions and as long as the equity is no greater than \$500,000, less if single and unmarried). The home must also be the principal place of residence. The nursing home resident is required to show some "intent to return home" even if this never actually takes place. If not, the home is subject to liquidation.
- Personal belongings and household goods.
- One car or truck.
- Burial spaces and certain related items for applicant and spouse.
- Up to \$1,500 designated as a burial fund for applicant and spouse.
- Irrevocable prepaid funeral contract.
- Value of life insurance if face value is \$1,500 or less. If it does exceed \$1,500 in total face amount, then the cash value in these policies is countable.

All other assets are generally non-exempt, and are countable. Basically, all money and property, and any item that can be valued and turned into cash, is a countable asset unless it is one of those assets listed above as exempt. This includes:

- Cash, savings, and checking accounts, credit union share and draft accounts.
- Certificates of deposit.
- U.S. Savings Bonds.
- Individual Retirement Accounts (IRA), Keogh plans (401K, 403B).
- Nursing home accounts.
- Prepaid funeral contracts which can be canceled.
- Trusts (depending on the terms of the trust).
- Real estate (other than the residence).
- More than one car.
- Boats or recreational vehicles.
- Stocks, bonds, or mutual funds.
- Land contracts or mortgages held on real estate sold.

While the Medicaid rules themselves are complicated and tricky, it's safe to say that a single person will qualify for Medicaid as long as she has only exempt assets plus a small amount of cash and/or money in the bank.

Some Common Questions

I've added my kids' names to our bank account. Do they still count?

Yes. The entire amount is counted unless you can prove some or all of the money was contributed by the other person who is on the account. This rule applies to cash assets such as:

- Savings and checking accounts
- Credit union share and draft accounts
- Certificates of deposit
- U.S. Savings Bonds

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's done just right. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In New Jersey, for example, money/assets given away during the three years prior to a Medicaid application creates a period of ineligibility. So even though the federal Gift Tax laws allow you to give away up to \$12,000 per year without gift tax consequences, those gifts could result in a period of ineligibility. In addition legislation enacted on February 8, 2006, will extend the look back period to five years (and in some ways the penalty period) and impose other harsh new penalties for gifts made after February 8, 2006. Giving under the new rules may be possible; however, it is critically important that you have the advice of an attorney well versed in these new rules.

Though some families do spend virtually all of their savings on nursing home care, Medicaid often does not

require it. There are a number of strategies which can be used to protect family financial security.

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 Act of 1988. It applies only to couples. The intent of the law was to change the eligibility requirements for Medicaid 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, the couple gathers all their countable assets together in a review. Exempt assets, discussed above, 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 to a maximum of approximately \$101,640. The other half of the countable assets must be "spent down" until less than \$2,000 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 allowance for the at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance. This permits the community spouse to keep a minimum monthly

income ranging from about \$1,650 to \$2,541. If the community spouse does not have at least \$1,869 in income, then he or she is allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance (i.e., up to at least \$1,869). The nursing home spouse's remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment. To illustrate, assume the at-home spouse receives \$800 per month in Social Security. Also assume that her needs are calculated to be the minimum of \$1,869. With her Social Security, she is \$1,069 short each month.

\$1,869 at-home spouse's monthly needs (as determined by formula)
\$ 800 at-home spouse's Social Security
\$1,069 short fall

In this case, the community spouse will receive \$1,069 (the shortfall amount) per month from the nursing home spouse's Social Security and the rest of the nursing home spouse's income will then go to pay for the cost of his care. This does not mean, however, that there are no planning alternatives which the couple can pursue. Consider the following case studies:

Case Study: Medicaid Planning for Married People

Ralph and Alice (names changed for this illustration) were high school sweethearts who lived in Colts Neck,

New Jersey their entire adult lives. Recently, Ralph and Alice celebrated their 51st anniversary. Alice, who has Alzheimer's, wandered away from home. Hours later she was found sitting on a street curb, talking incoherently. She was taken to a hospital and treated for dehydration. Ralph came to me after their family doctor told him he needs to place Alice in a nursing home. He told me they both grew up during the Depression and have always tried to save something every month. Their assets, totaling \$295,000, not including their house, are as follows:

Savings account.....	\$ 15,000
CDs.....	225,000
Money Market account.....	45,000
Checking account.....	10,000
Residence (no mortgage).....	600,000

Ralph gets Social Security and Pension checks totaling \$1,500 each month; Alice's check is \$450. His eyes fill with tears as he says, "At \$7,500 to the nursing home every month, our entire life savings will be gone in less than three years!" What's more, he's concerned he won't be able to pay her monthly nursing home bill because a neighbor told him that nursing home will be entitled to all of their Social Security checks. There is good news for Ralph and Alice. It's possible he will get to keep his income and most of their assets... and still have the state Medicaid program pay Alice's nursing home costs. While the process may take a little while, the end result will be worth it. To apply for Medicaid, he will have to go through the New Jersey Social

Services System (SSS). If he does things strictly according to the way SSS tells him, he will be able to keep more than half of their assets (or about \$101,500) plus he will keep his income and the house. But the results can actually be much better than the traditional spend-down, which everyone talks about. Ralph might be able to turn the spend down into an income stream for him that will increase his income and meet the Medicaid spend down virtually right away. In other words, if handled properly Alice may be eligible for Medicaid from the first month that she goes into the nursing home. Please note this will not work in every case. That's why it is important to have an Elder Law attorney guide you through the system and the Medicaid process to find the strategies that will be most beneficial in your situation. Get advice from someone who knows how to navigate the system.

This is possible because the law does not intend to impoverish one spouse because the other needs care in a nursing home. This is certainly an example where knowledge of the rules and how to apply them can be used to resolve problems. Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the state law.

Case Study: A Trust for a Disabled Child

I have many loving and devoted parents who have always taken care of their adult, incapacitated children. In one particular case, Elizabeth (fictitious name used to illustrate my point) is 45, has never worked, and has

never left home. She is “developmentally disabled” and receives SSI (Supplemental Security Income). Her parents have always worried about who would take care of her after they die. Some years ago, Elizabeth’s Dad was diagnosed with dementia. His health has deteriorated to the point that his wife can no longer take care of him. Now she has placed him in a nursing home and is paying \$7,000 per month out of savings. She is even more worried that there will not be any money left for the care of Elizabeth. Everyone is satisfied with the nursing home Dad is in. The facility has a Medicaid bed available if he were eligible. Medicaid would pay his bill. However, according to the information she got from the social worker, Dad is \$48,000 away from Medicaid eligibility. Mom wishes there was a way to save the \$48,000 for Elizabeth after she and Dad are gone. There is. Mom can consult an Elder Law attorney to set up a “special needs trust” with the \$48,000 to provide for Elizabeth. As soon as Mom transfers the money to the trust, Dad will be eligible for Medicaid. Elizabeth won’t lose her benefits, and her security is assured. Of course, all trusts must be reviewed for compliance with Medicaid rules. Also, failure to report assets is fraud, and when discovered, will cause loss of eligibility and repayment of benefits and perhaps even criminal penalties. Still, some people question making gifts before entering a nursing home.

I Heard I Can Give Away \$12,000 Per Year. Can I?

As discussed earlier, many people have heard of the federal Gift Tax provision that allows them to give

away \$12,000 per year without paying any gift taxes. What they do not know is that this refers to a Gift Tax exemption. It is not an absolute right where Medicaid is concerned. Having heard of the exemption, they wonder, “Can’t I give my assets away?” The answer is, maybe, but only if it’s done within the strict allowances of the law. So even though the federal Gift Tax law allows you to give away up to \$12,000 per year without incurring tax, those gifts could result in a Medicaid period of ineligibility for months. Still, some parents want to make gifts to their children before their life savings is all gone. Next, consider the following case study:

Case Study: Financial Gifts to Children

After her 73 year old husband, suffers a paralyzing stroke, Mom and her daughter, Elizabeth, need advice. Dark circles have formed under Mom’s eyes. Her hair is disheveled. Elizabeth holds her hand. “The doctor says Dad needs long-term care in a nursing home,” Mom says. “I have some money in savings, but not enough. I don’t want to lose my house and all our hard-earned money. I don’t know what to do. “Elizabeth has heard about Medicaid benefits for nursing homes, but doesn’t want her mother left destitute in order for Dad to qualify for them. Elizabeth wants to ensure that her father’s medical needs are met, but she also wants to preserve mom’s assets. “Can’t Mom just give her money to me as a gift?” she asks. “Can’t she give away \$12,000 a year? I could keep the money for her so she doesn’t lose it when Dad applies for Medicaid. “Elizabeth has

confused general estate and tax laws with the issue of asset transfers and Medicaid eligibility. A "gift" to a child in this case is actually a transfer, and Medicaid has very specific rules about transfers. At the time Dad applies for Medicaid, for gifts made prior to February 8, 2006, the state will "look back" three years to see if any gifts have been made. Gifts made after February 8, 2006 will be subject to a five year lookback. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or transfers for less than fair market value that are uncovered in the look-back period will cause a delay in Dad's eligibility for Medicaid. In addition to the changes in the lookback period from three to five years, the new law also states that the penalty period on asset transfers will not begin until the Medicaid applicant is in the nursing home and already spent down. This will frustrate the gifting plans of most people. So what can Mom and Dad do? They may be able to institute a gifting program, save a good portion of their estate, and still qualify for Medicaid. But they have to set it up just right. The new rules are very "nit-picky". You should consult a knowledgeable advisor on how this may be done.

Will I Lose My Home?

Many people who apply for medical assistance benefits to pay for nursing home care ask this question. For many, the home constitutes much or most of their life savings. Often, it's the only asset that a person has to pass on to his or her children. Under the Medicaid regulations, the home is an exempt asset (so long as

equity is less than \$500,000). This means that it is not taken into account when calculating eligibility for Medicaid. But in 1993, Congress passed a little-debated law that affects hundreds of thousands of families with a spouse or elderly parent in a nursing home. That law requires states to try to recover the value of Medicaid payments made to nursing home residents. Estate recovery does not take place until the recipient of the benefits dies (or until both spouses are deceased if it is a married couple). Then, federal law requires that states attempt to recover the benefits paid from the recipient's probate and in some cases non-probate estate. Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation. The non-probate assets include assets owned jointly or payable to a beneficiary.

About two-thirds of the nation's nursing home residents have their costs paid in part by Medicaid. Obviously, the Estate Recovery law affects many families. The asset most frequently caught in the Estate Recovery web is the home of the Medicaid recipient. A nursing home resident can often own a home and receive Medicaid benefits without having to sell the home. But upon death, if the home is part of the probate or non-probate estate, the state may seek to force the sale of the home in order to reimburse the state for the payments that were made. Since Medicaid rules are constantly changing, you will need assistance from someone knowledgeable about these rules.

Seeking Legal Assistance

As you can tell from our discussion of the Medicaid program, the legal, financial, and care planning issues facing the prospective nursing home resident and family can be particularly complex. If you or a family member needs nursing home care, it is clear that you need legal help. Where can you turn for that help? It is difficult for the consumer to be able to identify lawyers who have the training and experience required to provide guidance during this most difficult time. Generally, nursing home planning and Medicaid planning is an aspect of the services provided by Elder Law attorneys. Consumers must be cautious in choosing a lawyer and carefully investigate the lawyer's credentials. How do you find a law office that has the knowledge and experience you need? You may want to start with recommendations from friends who have received professional help with nursing home issues. Who did they use? Were they satisfied with the services they received? **Hospital social workers, Alzheimer and other support groups, accountants, and other financial professionals can also be good sources of recommendations.** In general, a lawyer who devotes a substantial part of his or her practice to nursing home planning should have more knowledge and experience to address the issues properly. Don't hesitate to ask the lawyer what percentage of his or her practice involves asset protection, estate, state, death and inheritance taxes and lifetime planning for seniors. Ask whether the lawyer is a member of any Elder Law planning organizations. Is the lawyer involved with committees

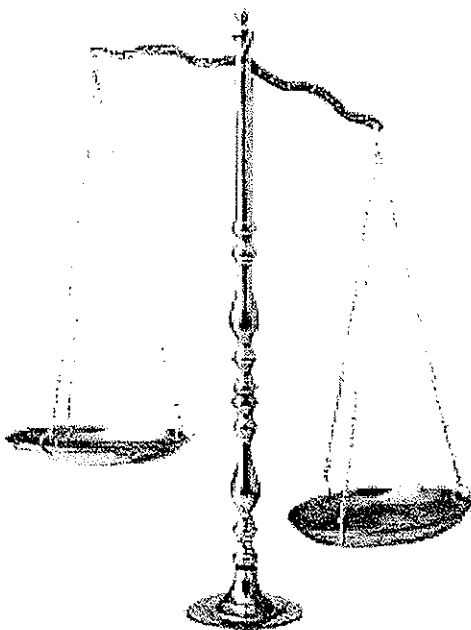
or local or state bar organizations? The leading national organization of Elder Law attorneys is the National Academy of Elder Law Attorneys (NAELA), 1604 North Country Club Road, Tucson, Arizona. While mere membership in the Academy is open to any lawyer and is no sure sign that the attorney is an experienced Elder Law practitioner, membership does at least show that the lawyer has some interest in the field. In addition, the Academy runs three-day educational sessions twice each year to help lawyers stay current on the latest aspects of elder law and nursing home planning. Attending these sessions takes time and commitment on the part of the lawyer and is a good sign that the lawyer is attempting to stay up to date on nursing home issues. You may want to look for an attorney who is a member of NAELA and has recently attended one or more of its educational sessions. In the end, follow your instincts and choose an attorney who knows this area of the law, who is committed to helping others, and who will listen to you and the unique wants and needs of you and your family.

Conclusion

Aging persons and their family members often face unique legal issues, including asset protection planning, state and federal death and inheritance tax planning, division of assets and Medicaid planning, property disposition, guardianship, conservatorship and legally important document preparation such as a Will, Trust, Durable Power of Attorney, Health Care Directive (also known as a Living Will).

If I can be of any help to you and your family, please call me personally at any time and visit me at our website at www.hnlawfirm.com. My phone number is 732-863-9900, extension "0".

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