Law Office of Inna Fershteyn

Protecting Your Assets From A Nursing Home

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Table Of Contents

How To Protect Assets From a Nursing Home	3
Checklist to Qualify For Medicaid	4
Process of Applying For Medicaid	5
Transferring Assets To Qualify For Medicaid	6
Top 5 Strategies For Protecting Your Assets From A Nursing Home	7
Common Medicaid Planning Mistakes	8
What Taxes Will I Pay When I Retire?	9
FAQs	10
Hire An Attorney	11

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How To Protect Assets From a Nursing Home

An Asset Protection Irrevocable Trust will preserve your assets when applying for Medicaid, and allow you to maintain wealth while still receiving medical coverage. It is important to note that assets that are transferred to a trust are still subject to the Medicaid Lookback period, which in NY State is 5 years. Similarly, Pooled Income Trust can protect your assets and keep monthly income above Medicaid allowable limits safe. Qualified Pooled Income Trusts are irrevocable: they cannot be changed or removed. They serve as holding areas for the applicant's excess income and protect this income from being taken by nursing homes.

Checklist to Qualify For Medicaid

1. The applicant must currently reside in the state in which they are applying for Medicaid and either be a U.S. citizen or a permanent legal resident of United States.
2. The applicant has to be over the age of 65 (inclusive), permanently blind or disabled, or a U.S. citizen (although some cases allow for a resident alien) in medical need of licensed nursing care. Additionally, the applicant must meet the risk assessment criteria for nursing home placement.
3. The applicant must receive no more than $825 per month as an individual, or $1,209 per month as a couple, from all combined income sources. The applicant’s asset limit must be under $2,000 if applying individually, or $3,000 if applying with a spouse. Note that **these numbers are specifically in reference to New York City residents at least 65 years of age.**
4. If the applicant has received or qualified for Social Security Income(SSI), they will generally be eligible for Medicaid. The individual must have a low income level, limited assets, and either have a disability or be at least 65 years old in order to be eligible for SSI.

Process of Applying For Medicaid

All communication with the Health and Human Services Commission (HHSC) must be documented in writing and saved, including phone calls between the applicant's representative and the caseworker. Once the application is filed, the caseworker has up to 45 days to review the application and determine an eligibility decision. During this 45-day period, be aware that the applicant must be in a "Medicaid-certified" bed for 30 days, before the application will be processed. Additionally, be ready to potentially privately pay the nursing home for a few months while the caseworker's determination is being made.

Gathering the required documents in support of all claims made on the medicaid application is a long process. Be prepared to provide items such as proof of identification and citizenship, Social Security cards, legal directives like a power of attorney or guardianship order, receipts for all income sources, several months of bank statements, proof of gifts or transfers, receipts for all bills being paid for the applicant by another person, deeds to real property, including oil, gas and mineral rights, medical bills, and life insurance and burial policies. The caseworker make request also request other information.

Transferring Assets To Qualify For Medicaid

You should always be aware of how taxes will affect your assets once they are passed down. Due to the federal estate tax exemption, the federal estate tax only applies to estates whose value is more than $11.18 million. Apart from federal taxes, an estate is also subject to state law taxes. Each state has different state taxes that change yearly. New York estate tax ranges from 3.06% to 16%, depending on the size of the estate. The tax threshold for New York is $5.25 million, meaning that if your estate is worth less than that, then you do not owe any taxes to the state. To identify the total tax amount you will need to pay to the state and federal government, you must know which taxable estate bracket you qualify under depending on how much the estate is worth. Another form of tax that is applied to an estate is inheritance tax. In New York State, there is no inheritance tax. There are only 6 states that have an inheritance tax, which is a tax imposed on certain beneficiaries who received property. New York also does not apply a gift tax. However, gifts made within three years of the descendants deaths are considered to be apart of the estate. Although New York does not have a gift tax, the federal government does. If a gift is worth more than $15,000 in 2018, then the federal gift tax applies. With a federal gift tax, there is also a gift tax exemption. This gives you a lifetime exclusion from the gift tax, worth up to $5,340.00.

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Top 5 Strategies for Protecting Your Assets From a Nursing Home

1 Asset Protection Trusts

Allows you to maintain your wealth, while receiving coverage.

2 Pooled Income Trusts

Protects your monthly income.

3 Medicaid Compliant Annuities

Serves as an insurance product that would payout the income.

4 Irrevocable Trusts

Transfer to trust when donor relinquishes control of assets.

5 Tranfer of Assets

Transfer of assets before 5-year look back provision runs.

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Top 5 Strategies For Protecting Your Assets From A Nursing Home

To ensure that your assets are protected from nursing home, it is crucial that you are well informed of the most highly recommended and legally suitable strategies for doing so. An attorney will guarantee that you are aware of the available options, the differences between each one, and which is most applicable to your case.

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Common Medicaid Planning Mistakes

1. **Taking too long to plan**

Although you can still plan when you are already in a nursing home, it will cost a large amount of money. It is best to start planning in advance to figure out which plan you may want to apply for, as well as considering which plans you would be eligible for. The goal is to choose a plan without acquiring penalties or at least avoid them to the best of your ability.

2. **Spending Down on the Wrong Things**

A Medicaid "spend down" is a financial strategy that is used when your income is higher than the Medicaid income limit. This requires those with higher incomes to spend a portion of their assets so that they will have a low enough income to qualify for Medicaid. This money should be spent on health care, medical-related costs, and accrued debt (mortgage, vehicle and/or credit card balances). Anything aside from these expenses, may result in a penalty and a period of ineligibility for the program.

3. **Giving Away Assets**

Some people give away their assets in the hopes of spending down, but this is not allowed due to the 5-year-lookback period. If you have given away assets as a gift or transferred them within a 5 year period, you may be penalized. If you do not disclose these transfers, you will lose eligibility for a period of time and will have to pay for your medical expenses on your own.

4. **Transfers Between Spouses**

If you want to transfer any assets between you and your spouse, there will be no penalties in regards to your Medicaid eligibility. You can transfer any assets to your spouse in their name, and they will be considered a 'community spouse.'

5. **Other Mistakes**

If within the 5-year-lookback period there has been spending down unrelated to medical or accrued debt, there may be a period of ineligibility and penalties.

What Taxes Will I Pay When I Retire?

Since pension accounts are funded with pre-tax income, the amount of annual pension income will be included on your tax return as taxable income each year. If this occurs, you can ask that taxes be withheld from the pension check directly. If some of the pension was funded with after-tax dollars then each year, a portion of the pension income will be taxable and a portion will not.

If you are over the age of 65, you most likely either have or are familiar with annuities, which are annual distributions of money paid to an individual, usually for the rest of their life. Unfortunately, financial products don't escape the wrath of taxation. If an annuity is owned by an IRA or other type of retirement account, then taxes on IRA withdrawals will apply to any annuity payments that the individual receives from the annuity. If the annuity was purchased with after tax dollars, then the tax rules that apply depend on what type of annuity the individual purchased.

Moving to a new house or community can also generate an unanticipated tax bill. Fortunately, if you decide to sell your property and you have lived in your primary residence for at least two of the five years prior to the sale, you may be eligible for exemption from taxes up to a certain percentage of the sale profits. Profits that are above a certain amount though will be subject to capital gains rates that often can go as high as 20%.

Frequently Asked Questions

If my spouse is going into a nursing home, can he transfer his assets to me and qualify for Medicaid?

No, it's considered a marital asset. You will have to create an Irrevocable Trust for the transfer to be accepted by nursing home. It is also in your spouse's best interest to gift other financial assets that may help him or her qualify for Medicaid.

How can I protect my house?

You do not need to give away or sell your home to qualify for Medicaid as it is considered exempt property. Generally, Medicaid will cover the costs for your long-term home care. However, it could still become an issue after the death of the recipient, as Medicaid could ask for reimbursement. To protect your house, you could put it into a trust, so that creditors will not be able to claim it, and eventually, it will be transferred to the designated beneficiary and not the government. You can also go the route of selling your house to your children and creating a life estate.

Can I transfer my assets to children just before I go into a nursing home and qualify for Medicaid?

No. transferring your assets right before going into a nursing home will make you ineligible for medicaid for the next 5 years. This is because Medicaid has a five-year look-back period, under which individuals who've made or received any asset transfers must wait until five years after the transaction to apply for Medicaid or face a penalty if they apply prior. When transferring your assets, you need to keep in mind that once you make a transfer, it cannot be reversed.

Do I need legal assistance?

The Medicaid planning process is complicated, and planning to live in a nursing home only makes the process more difficult and convoluted. You could try to organize a plan yourself, but it is very easy to make a mistake that could cost you your eligibility. Thus, it is important to seek professional help from an experienced Medicaid planning attorney who is familiar with the regulations surrounding the program and will be able to guide you in effectively protecting your assets.

Hire An Attorney

Law Office of Inna Fershteyn and Associates, P.C. understands that estate planning is personal. The best trust and estate lawyers in New York will work diligently to ensure that individual concerns are addressed and goals are met. With our extensive knowledge of trust and estate administration, we will work with you to develop a comprehensive estate plan and offer guidance to give you peace of mind as well as security for your family's future. For all asset protection help, call (718) 333–2394 or contact us here for an immediate consultation.