

Can “THEY” Take My Home?

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Can “THEY” take my home if I have to go to a skilled nursing care facility? Can I give my home to my child(ren) now so “THEY” will not be able to take it later? What about giving away my other assets? What will be the result be if I add my child(ren) to my bank accounts?

Common fears and objectives

Many people that I advise regarding long term care and estate planning articulate a fear that “THEY,” meaning the State or other governmental entity, will take their home if they need to go to a skilled nursing care facility. People are further troubled that if they move to a nursing home, their home will not be available for their child(ren) to live in or to inherit. One client objective that I hear with relative frequency is the desire to secure the best means to transfer their home (and other assets) to their child(ren) so that the State will not take it. Another client objective that I hear regularly is the desire to ensure that the State will pay for the cost of skilled nursing care if and when medically needed and when financial assets have been depleted.

Whether realized or not, clients are seeking information on wealth preservation and the making of gifts prior to and in anticipation of receiving State funded financial assistance for the cost of skilled nursing care.

Misconception concerning the State "taking" one's home

Neither the State nor any other governmental entity "takes" a person's home when that person needs to move into a skilled nursing care facility. Moving from one's home does not trigger a change in ownership or reduction in one's rights to the home. A person may choose to retain their home or to sell it and use the proceeds to pay for skilled nursing care. Additionally, the sale of one's home is not a requirement or prerequisite to receiving State funded financial assistance to pay for the cost of skilled nursing care.

Medicaid in general

Medicaid is the State funded program which subsidizes the income of medically and financially qualified persons for the payment of skilled nursing care costs. Information is key to knowing when and what actions, including but not limited to, gifting, transferring real estate and adding a person to a bank account, will cause ineligibility to the receipt of the Medicaid assistance.

Gifts - generally; and in anticipation of Medicaid

Anytime during one's life, a person can make gifts of any amount to whoever they so choose. It is the timing of these gifts that is of importance if they desire or find it necessary for the State to subsidize their income to pay the cost of skilled nursing care.

When an application for Medicaid is filed, a review of the applicant, and their spouse, if applicable, will be completed by the County Assistance Office to determine when and what gifts and/or transfers for less than market value the applicant (and spouse) has made within the last five (5) years. If such activity has occurred within five (5) years of a Medicaid application and is in excess of the permitted amount, then Medicaid assistance will not be granted or will be delayed for a period of time. Additionally, if a person makes such gifts and/or transfers while receiving Medicaid, then the Medicaid assistance will end until the person is financially eligible to receive the assistance again.

Wealth preservation

Most people do not know for certain that in five (5) years they will need skilled nursing care. Additionally, they do not know when they will deplete their financial resources such that they need assistance to pay for the skilled nursing care. Some people's objective is to make sure that if they find themselves in that situation, they not only qualify for Medicaid but also preserve certain assets for their loved ones. There are ways to accomplish this objective by planning ahead.

If you are in good health now, don't mind relinquishing some of your assets now and desire the State to assist with the payment of the cost of your, or your spouse's skilled nursing care, there are many ways which you can transfer your assets to your children, or anyone else you choose, without impacting your receipt of Medicaid at a later time. You should just be aware of the consequences of your actions.

Gifts and/or transfers for less than market value, completed more than five (5) prior to a Medicaid application, will have no effect on the Medicaid application. However, such gifts and/or transfers may have other unintended consequences. The following are examples of actions people frequently contemplate:

- Action:** 100 % transfer for free or less than market value of one's house to their child(ren)
Consequences: Relinquish ownership to property; possible need for long term rental agreement if intending to remain living in the home
Other ramifications: Loss of homestead exemption and/or senior residential tax freeze; possible negative impact to child(ren) who now own the property when applying for financial aid for college bound children; possible adverse income tax consequences.
- Action:** Addition of child(ren) to the deed of the home
Consequences: Grant others rights to the property and/or relinquish your ownership rights to the property depending on the method of new titling
Other ramifications: Possibly subject home to child(ren)'s creditors and/or divorce settlement; possible adverse income tax and inheritance tax consequences.

3. **Action:** Addition of child(ren) to bank account(s) or investment account(s)
Consequence: Child(ren) now have an ownership interest in the assets in the account(s), even if it is agreed that the assets are still owned by the parents and the arrangement is for convenience sake only
Other ramifications: Child(ren) could deplete all assets in the account(s) at any time; negative impact to children regarding financial aid as provided in example 1 above; possible adverse income tax and inheritance tax consequences.

Medicaid "look-back" period

The same gifts and/or transfers as referenced above if made within five (5) years of a Medicaid application (known as the "Medicaid look-back period") will result in an ineligibility period to the desired Medicaid assistance. In other words, if the above actions take place within five (5) years of a Medicaid application, the applicant will be deemed ineligible for Medicaid assistance for a period of time that correlates to the value of the gift(s) and/or transfer(s) for less than market value that were completed by the applicant. Specifically, the State will add all gifts and/or transfers and divide by the average daily bed cost which will yield a number of days that one will not receive Medicaid assistance when they otherwise would be eligible for such assistance.

Additionally, many other financially related actions taking place within the Medicaid look-back period will result in an ineligibility period to Medicaid assistance. To determine in advance the ramifications of your proposed actions, it is best to consult with a lawyer who specializes in elder law to avoid unintended Medicaid ineligibility. Examples of these actions include, but are not limited to, the payment of someone else's debt (i.e. paying a child's credit card bill), assisting with the payment of college tuition and making of gifts valued at more than five hundred dollars (\$500) or more per month (i.e. holiday gifts given in one month).

Estate Recovery

Returning to the common fear that the State will "take" assets, it is important to be aware of Medicaid estate recovery, which is the repayment to the State from deceased person's probate estate for State assistance paid on behalf of the decedent for his or her skilled nursing care costs.

Pennsylvania law requires that the State review its records for each decedent over the age of 55 years for whom a probate estate has been filed. This is done to ascertain whether or not the State financially assisted the decedent during his or her lifetime by payment of skilled nursing care costs. If the State made such payments, a claim will result against the decedent's estate for repayment of such funds. If the decedent owned a home at his or her passing, the home will likely be among the estate assets from which the State will seek recovery. Some exceptions to use of the decedent's home to pay the estate recovery claim include, but are not limited to, situations where a surviving spouse, a disabled child or a Medicaid defined caregiver, live in the home. There are other situations where a home will be exempt from Medicaid estate recovery and one should always consult with a lawyer specializing in elder law to ascertain the law that applies to your situation.

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