LONG TERM CARE PLANNING:

Plan for the Future, Protect Family Assets & Medicaid Planning Strategies

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Frame & Frame Attorneys at Law have served the community for over 65 years by providing skilled, knowledgeable, and dedicated legal services for estate planning, probate, elder law, special needs planning, and guardianship.

Choosing the right attorney to represent you and your family, for these very personal matters, is an important decision. Often, these decisions affect very intimate aspects of you and your loved ones' lives. Our entire practice is focused on providing solutions that make your life easier.

We understand that you want someone who will listen to your story and address your concerns. Our experienced attorneys provide legal services with discretion, care, and compassion. This area of law is truly rewarding to each member of our team, since it provides us the opportunity to truly take the weight off your shoulders.

We believe in helping people with thoughtful planning, guidance during times of crises, and creating a clear path forward. By serving as your family's lawyer and trusted advisor, the attorneys at Frame & Frame can help you and your loved ones by charting a course for life's legal journeys. We hope this guide helps answer your questions, make more informed choices, and understand the legal options that are available to you.

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LONG TERM CARE PLANNING:

Plan for the Future, Protect Family Assets & Medicaid Planning Strategies

The glossary provided near the end of this guide will provide you with information on specific terms and phrases used throughout this guide, as part of the long-term care or Medicaid planning process.

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Introduction

You've worked your whole life to provide for your family and to save for your retirement. You've probably tried to plan for you and your spouse or partner to have a lifestyle you can enjoy as you grow older and perhaps, even provide a nest egg or legacy you can pass on to your children or grandchildren. But even the most well thought out plans may not be enough to prepare you for the unexpected costs and nuances associated with long-term care.

Many seniors of Maryland will end up relying on skilled nursing home care, or living in an independent or assisted senior living facility. For many, the biggest hurdle is giving up a part of their independence. For many others, simply being able to afford this type of care is questionable. This is a real and common fear for any older person to have, regardless of their income. After all, a nursing home stay can cost anywhere from $6,000 to $10,000 per month, or even more, depending on the level of care needed.

Spending one year in an average Maryland nursing home costs over twice as much as a year of tuition at Harvard. How is it even possible to afford this type of high-quality care without going bankrupt? Fortunately, there are ways to plan for long-term care, either in a nursing home or other assisted living facility, that do not require you to give up every hard-earned penny in your savings and retirement accounts. More importantly, you want to pass on as much of your assets as possible to your children, not the state of Maryland, or the nursing home. This guide will show you how!

Most importantly, you can rest assured that the estate planning and elder law attorneys at Frame & Frame will be available to answer any questions you and your family may have. At the conclusion of the process, you will all sleep better knowing that the weight is off your shoulders.

The Costs of Long Term Care

How Will I Pay for Long Term Care?

With long term care averaging approximately $9,673.00 per month in Maryland, it is important to have a plan for paying for those costs. Most families have the following options to *pay* for long term care:

- Your monthly income
- Your savings
- Use or purchase long term care insurance
- Rely on family
- Public benefits such as Medicaid
- Sell your home
- Implement a legal plan to protect your home and your savings; or
- A combination of all of the above

The Risks of Not Planning Ahead

As you can see, the costs for long-term care are substantial. Many families not only struggle to pay for these costs, but may even put the spouse or significant other at risk, along with family assets. You want to plan carefully to avoid:

- Running out of money for:
  - Yourself
  - Your spouse
  - Your family
- Leaving your home unprotected or at risk of foreclosure
- Risking the health of family or spousal caregivers
- Risking family assets
- Considerably impacting the lifestyle of your spouse or significant other

A Few Words for Adult Children with Senior Parents

As your parents mature into their senior years, the family dynamics are changing too. For so many years, they have nurtured and cared for you, and now the tables are beginning to turn. While this dynamic is constantly changing, there are conversations and considerations that can make these transitions easier for all family members involved. But, there are some pretty big questions that we commonly hear:

- **We can't afford $10,000/mo for long term care. How will my family pay for long-term care costs?**
- **Will mom or dad (the healthy or surviving spouse) have enough to live on?**
- **Will all of my parent's life savings (my inheritance) be spent on medical bills?**

These are important questions, but many families do not have these conversations until there is a health crisis. More importantly, many familiies don't understand that an estate plan does not typically address the specific concerns associated with long term care costs (refer to the checklist on page 11). An estate plan only addresses the estate or assets, after death. Long-term care planning ensures that the estate (and a person's life savings) is not completely exhausted by long-term care costs, while they are living. The good news is that there is a lot that can be done, years ahead of time, to ensure that the spouse, children, and assets are protected from the costs of long term care. That's why the conversation needs to start now.

An Estate Plan is Not A Long-Term Care Plan

- Most estate plans do not protect family wealth from the costs associated with significant health issues, medical bills, and/or long-term care services.
- A long-term care plan may help you qualify for Medicaid or prevent your family from becoming overwhelmed with nursing home costs and medical bills.
- Only an elder law attorney can properly advise you regarding long-term care strategies.

My Parents are Very Private or say they 'Have Things Handled'

Many seniors wish for their affairs to remain as private as possible and may avoid discussing finances or other matters with family members. Some parents truly believe they 'have things handled.' Perhaps they have a will, an estate plan, or even a trust and feel they have addressed these discreet matters. In some cases, this may be true. However, in the large majority of cases, it is not until there is a health crisis that the truth of the matter is revealed.

The costs associated with long-term care often force tough conversations about finances, family savings, and more. By this time, however, little can be done to correct the situation appropriately. For this reason, among others, it's important to begin the conversation long before a health crisis occurs.

Medicare Does Not Cover Long Term Care Costs

While no one wants to think about a critical health crisis or a long-term illness, the fact remains that, as we grow older, 7 out of 10 Americans, turning 65, will require some type of long term care. But, the costs of long-term care are not typically covered by Medicare or health insurance. We discuss the difference between *Medicare* and *Medicaid* later in this guide.

Since Medicare does not typically cover the costs associated with long-term care (currently averaging $10,000/mo), these costs are often shouldered by the family or their life-savings. This can be a tremendous burden on the spouse as well as the children.

Thinking 5 Years Ahead

Medicaid, unlike Medicare, **does** have provisions for long term care. However, not all people qualify for Medicaid. Utilizing sound legal strategies with proper pre-planning, many seniors can qualify and utilize important Medicaid benefits. This can be a complex process that requires a plan be implemented at least 5 years before a medical crisis. Since no one knows when a health crisis is going to occur, it's imperative to have these conversations well in advance of any health crisis. We explore the 5 Year Medicaid lookback requirement, timeline, and potential strategies later in this guide. Ideally, we suggest beginning these conversations and implementing planning strategies at age 60, or soon thereafter. Waiting to consider these circumstances may be very costly, put your family under financial duress, and add unnecessary stress during a health crisis.

Is The Children's Inheritance or Family Savings at Risk?

Many people think that an estate plan will protect their legacy or their children's inheritance, but this may not be the case, when you factor in how to pay for the costs of long-term care. Without preparation, family members may be forced to consider becoming the primary caregiver or the parent's entire life-savings may be spent to pay for services needed. This can place a person's entire wealth and intended inheritance, for their children, at risk. Often, these decisions are made hastily and without proper guidance. However, many of these circumstances can be avoided or minimized with proper planning.

Do Not Wait for a Crisis

The best thing you and your parents can do is to begin the conversations now - long before the potential for a health care crisis. The elder law attorney's at Frame & Frame can review your family's estate plan and determine your risks and possible solutions. You may be able to implement strategies now to help protect your family's life savings. In addition, you will all sleep better knowing that, in the event of a crisis, there is a plan in place that will protect everyone.

Estate Planning Vs. Long-Term Care Planning

Creating an estate plan or a will is not the same as long-term care or Medicaid planning and often, an estate plan does not include considerations for the family's wealth if there are significant health issues, medical bills, and/or long-term care services that are required. Unfortunately, a family's wealth and legacy can be quickly depleted by the costs of long-term care.

That is why it's important to work with an estate planning attorney that also specializes in elder law and can take an approach of addressing both needs, at the same time. Many people believe that if they have an estate plan and/or have access to Medicare, they are covered for long-term care. Quite honestly, nothing could be further from the truth. Both estate planning and long-term care planning are important, but they address different needs. Let's explore further.

Estate Planning

Very simply stated, estate planning helps to ensure that clients' wishes are carried out and plan for how best to protect and dispose of money and property, *after death*. Everyone needs a basic estate plan, which includes:

- Last Will and Testament and/or Revocable Trust
- Financial Power of Attorney
- Appointment of Healthcare Agent (Healthcare Power of Attorney)
- Advanced Directives (also known as a Living Will)

Estate planning reviews your wishes, *after your passing*. For estate planning, most people have several common goals and often address concerns regarding what happens after death, including:

- Burial or end-of-life wishes,
- Leaving a legacy for loved one
- Distribution of assets
- Avoiding the probate process
- Limiting estate and death taxes

Long Term Care or Medicaid Planning

While estate planning reviews your wishes, **after passing**, long-term care planning reviews your wishes, **as you age, before passing**. This important step is often overlooked in the basic estate planning process.

This is such an important component, since 7 out of 10 people will require some type of long term care in their lives. With the costs of long term care averaging $6,000-$10,000 per month you can see how these services can quickly exhaust an elderly person's life savings. More importantly, most long-term care costs are not covered by Medicare. So, some of the objectives of long-term planning include:

- Plan for incapacity and nursing home costs,
- Avoid spending entire life savings for nursing home care,
- Save the family home,
- Preserve assets to pass on to beneficiaries,
- Focus on care and costs while a person is alive, **before death.**

Long-term care planning often includes Medicaid planning - and is provided by elder law [vs. estate planning] attorneys that are educated in long-term care and Medicaid resources and requirements. This is a sub-specialty of estate-planning law. This type of planning helps clients plan ahead, in case of incapacity or the need for long-term or nursing home costs.

Planning for a 5 Year Look-Back

As you can see, long-term care planning and Medicaid planning, in particular, require foresight. Because, in order to qualify for Medicaid, your entire financial situation will be evaluated with a five-year lookback requirement. This can have important implications on the parent or senior, as well as their children and, on your overall estate plan. We discuss this, in further detail, later in this guide.

An Elder Law Attorney Can Help

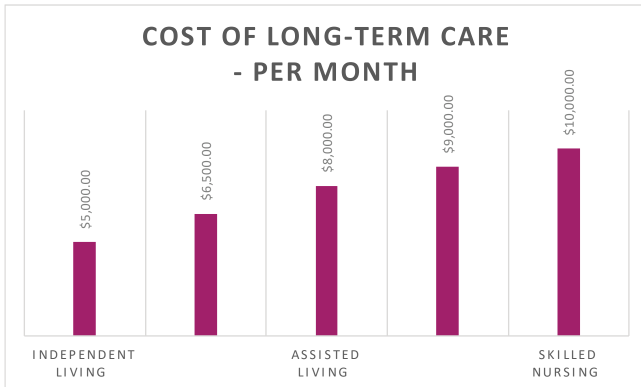
As you can see it's important to have a will or estate plan along with a long-term care plan. This can help you organize your estate, along with a comprehensive strategy to plan and pay for long-term care, and the important considerations if you want to qualify for Medicaid benefits. An experienced elder law attorney provides this invaluable guidance.

Next, let's discuss why it can be helpful and important to involve members of your family in this important planning process.

Services & Strategies	Estate Planning	Long Term Care Planning
Last Will and Testament and/or Revocable Trust	✓	
Financial Power of Attorney	✓	✓
Appointment of Health Care Agent (Healthcare Power of Attorney)	✓	✓
Advanced Directives	✓	✓
Distribute Assets Per Clients Wishes, After Death	✓	
Avoid the Probate Process	✓	
Limit Estate and Death Taxes	✓	
Focuses on What Happens AFTER Death	✓	
Protect Assets from Creditors, Predators, and Divorce	✓	✓
Prepare for the health care and special needs of someone who suffers from strokes, dementia, Alzheimers, etc.		✓
Avoid spending entire life savings on nursing home costs		✓
Protect the family home from creditors or debt reconciliation		✓
Protect life-savings or other assets, to pass on to beneficiaries		✓
Medicaid Planning so seniors can qualify for long-term care benefits		✓
Focus on what happens BEFORE death		✓
Estate Planning Attorney	✓	
Elder Law Attorney		✓

Why You Need Long-Term or Medicaid Planning

You might be wondering why you would need Long Term Care or Medicaid Planning? As we get older, more than 70% of seniors will require some form of long-term care. As discussed earlier, long-term care or Medicaid planning strategies address different challenges than estate planning. These planning strategies are best handled by an elder law attorney who understands the nuances of the Medicaid system, local and federal laws, and accessibility for long-term care options.



In short, care in a skilled nursing facility can be extremely expensive and many seniors to do not plan in advance for the costs associated with long-term care. The median cost of skilled nursing home care in Maryland is nearly $10,000 per month. And, unfortunately, the large majority of senior citizens will require long-term care at some point in their lifetime. These costs can quickly diminish a life time of savings.

Key Benefits of Medicaid or Long Term Care Planning

- Prevents you or your family from becoming overwhelmed with nursing home costs and medical bills,
- May provide a trust for the spouse or partner to continue their lifestyle,
- May provide you the ability to qualify for Medicaid services,
- Provides a way to preserve family assets and inheritance.

Thinking about the need for long-term care may be uncomfortable. Thinking about how you are going to pay for it can be even more unsettling. Fortunately, these issues can be addressed in ways that give security and peace of mind for your future and the future of those you love. A skilled knowledgeable long-term care planning attorney or elder law attorney can help you evaluate your options and prepare for your future care with the right set of tools, strategies, and legal instruments.

When thinking about long-term planning, your lawyer will specifically address your needs to implement a strategy that provides you access to long-term care and may help you qualify for additional assistance programs, via Medicaid. For long term care or Medicaid planning, common goals and concerns are:

- How to pay for long term care,
- How to provide for a spouse or partner and the lifestyle they're accustomed to,
- How to obtain long term care services while preserving family assets,
- Will you be eligible for Medicaid?
- Will your spouse or partner be burdened by large medical bills?
- Will your savings and/or family's inheritance have to be spent?
- Will there be anything left for your family?

Planning for a 5 Year Look Back

Long-term care planning and Medicaid planning, in particular, require foresight because, in order to qualify for Medicaid benefits, your entire financial situation will be evaluated with a five-year look-back requirement. This can have important implications on the parent or senior, as well as their children.

In order to qualify for Medicaid benefits, you will need to understand *Medicaid's resource limits*, sometimes called the "asset test." We discuss this in further detail later, but in short, many families will need to restructure their financial situation to qualify for Medicaid benefits. If pre-planning is done (typically 5 years prior to any requirement for services), you have a much better chance of:

- Qualifying for Medicaid services,
- Providing a trust for the spouse to utilize to continue their lifestyle,
- Preserve family assets and inheritance.

There are ways to do this that can allow you to protect some of your assets for your spouse or partner, as well as for your children and other loved ones. However, if you do nothing, you may not be able to protect some of your assets, and worse, you could be penalized if you transfer assets in a manner that is not allowed under Medicaid rules and potentially risk your entire life savings. This is why Medicaid planning is just as important for the senior as it is for the family.

Involving Family Members

For many people, your family, children, or even grandchildren may be involved with helping to make important decisions, as you get older. For those diagnosed with dementia, Alzheimer's or other disorder, this may require important planning long before any health crisis occurs. Not only will your family be tasked with helping you make sound health care decisions, but they will likely be responsible for financial matters to help ensure you get the care you need, and that your spouse or significant other is also protected adequately. This is why it is so important to include your family in the planning process. In addition, your attorney will serve as a long-term go-to resource, in the event of any crisis.

Without proper planning and guidance, many families, when faced with long-term care costs and Medicaid qualifications, will quickly try to reduce the parent's assets or net worth. This is often a mistake because the five year lookback requirement will take into account all gifts of money, assets, property, etc. made within the last five years. So, this is often **not** a viable solution and can have a serious impact on your ability to qualify for Medicaid benefits, your out-of-pocket costs, and obviously the amount that you will be responsible for paying towards your long-term care costs. This is again, where your attorney can be a valuable guide and resource.

For some people, there are no close family relatives. In this case, your elder law attorney will serve as your advocate and ensure your health and financial matters are handled appropriately.

Ultimately, the best approach is to have a long-term plan in place so that all family members understand your goals, your wishes, and your financial situation. Led by a competent attorney, this can make life a lot easier on you and your family.

Medicare vs. Medicaid

There are two types of government programs, specifically designed to assist seniors and/or lower income families. But, unbeknownst to many, these programs are not just for lower-income families. These programs are commonly confused, so it's important to understand the differences between Medicaid and Medicare.

MEDICARE

Most Americans are eligible to receive Medicare benefits when they turn 65. It is not based on financial need.

Medicare benefits provide low cost health coverage to seniors and certain disabled persons who qualify for services, but it does not cover all health care services.

Seniors may select additional benefits, by paying an additional monthly premium, for services like vision, dental, and hearing.

Medicare does not cover the costs of long term care.

MEDICAID

Medicaid is a federal and state health program offered in addition to Medicare.

Americans must qualify to receive Medicaid benefits based on their asset and income, age or disability, and residency or citizenship.

Medicaid helps to pay for services not covered by Medicare including:

- Hospitalization
- Physician and Outpatient Services
- Medicare Advantage Plan
- Prescription Drug Costs
- **LONG TERM CARE**

WHAT IS *Medicare*?

Think of Medicare as a health insurance policy provided for seniors, along with people under 65 who qualify because of certain disabilities. Most seniors have paid Medicare taxes on their earnings during their working careers. These taxes are usually deducted automatically from a paycheck, similar to Social Security contributions—so, if you paid these taxes over the years, you are automatically eligible for Medicare at age 65. Medicare covers anyone who qualifies, regardless of their income. But, it's important to remember that **Medicare does not cover the cost of long-term care services.**

Medicare Parts A, B, C, and D

Medicare has four parts, Parts A, B, C, and D. Each of these parts provide different benefits and seniors may select which Medicare programs they require. While some parts require payment of a monthly premium, similar to private health insurance, the program is not based on financial need.

Medicare Part A - Hospital Coverage

This part of the plan covers things like inpatient hospital stays, home health care, skilled nursing facility care, nursing home care (inpatient that's not custodial or long-term care) and hospice care, notably the cost of being in a medical facility.

Medicare Part B - Medical Coverage

This part of the plan covers things like doctor visits, outpatient services and diagnostic screenings. There is a monthly premium for Part B coverage. The 2020 monthly standard premium for Part B coverage is $144.60/mo, with the annual deductible set at $198. People who fall into a higher income range will have to pay income-related monthly adjustment amounts.

Medicare Part C - Medicare Advantage

This is an alternative to traditional Medicare coverage and these plans are offered by private health insurance companies. When you join a Medicare Advantage plan, you still have Medicare. This plan may also include some procedures not covered by Medicare such as hearing, vision, and dental.

Medicare Part D - Prescription Drug Coverage

Part D is only offered through private health plans. You are required to have it unless you have coverage from another source. Part D requires you to pay a monthly premium in most cases.

WHAT IS *Medicaid?*

Medicaid is a federal and state healthcare program. Many Maryland residents have heard that Medicaid is a program for low-income and otherwise needy individuals. While this is true, it is also a healthcare program for older adults that *helps to pay for the services not covered by Medicare:*

- Costs of hospitalization;
- Physician and other outpatient medical services (like doctor's visits, lab services, and medical equipment, for example);
- Medicare Advantage Plan; and
- Prescription drug costs.

There are more than 4.6 million seniors who currently benefit from Medicaid, especially when it comes to paying for long-term care. It is also important to note that Medicaid covers important costs that are typically not paid for by Medicare. *However, not everyone will qualify for Medicaid.*

If a senior does not qualify for Medicaid, they may rack up considerable medical bills or must find alternative ways to cover the costs associated with their care. These bills do not just disappear. In many cases, they will have to be reconciled out of the estate, during the probate process, upon their passing. So, this is another reason why it is important to consult an Elder Law attorney to implement a long-term care and Medicaid planning process.

What is Medicaid Planning?

As discussed earlier, Medicaid is a federal and state healthcare program that provides enhancements over the Medicare program. One of these enhancements is that Medicaid will cover the costs of services associated with long-term care. And, as you've seen, these costs can be substantial.

However, gaining access to these benefits can be a challenge. Not only must an applicant document a medical need, but you must also document and meet certain tests regarding your income, assets, and expenses.

Ideally, Medicaid Planning occurs before you need it - typically more than 5 years before you may require services. However, there are crisis strategies that can help those who have not created a plan ahead of time, but with fewer options.

Medicaid Planning, is quite simply, a process in which we consider these factors and structure your financial situation in a way that allows you and your spouse or significant other, to maximize the benefits you may be entitled to receive.

Why Are More People Considering Medicaid Planning?

Rising Cost of Healthcare: The U.S. spends well over $3 trillion on healthcare each year, with the cost of healthcare rising faster than the rate of inflation at 5.8 percent in 2015 alone, according to Morgan Stanley. In 1960, the cost of healthcare was just five percent of the national economy, while today it is 18 percent and by 2025 it is projected to be 20 percent, according to CNN Money.

Older Population: An aging population means that an increasing percent of the population will be living in assisted living, independent living, or nursing homes. Nowadays, just 15 percent of the population is over 65, but by 2060, 23 percent of the population will be, according to the Census Bureau. Nearly 100 million Americans will be over 65 by 2060, almost twice the number that currently are. While the average life expectancy has only recently stagnated in the U.S., advances in medicine are expected to keep people living longer than ever before in the future.

Getting older and facing extensive healthcare costs is an experience that many seniors in Maryland face. Hospital visits become more frequent and older adults often require more prescription medications. To be sure, elderly adults face specific legal issues surrounding Medicaid benefits and long-term care, often in nursing homes or assisted-living facilities in the state. Many Maryland residents worry that they could end up requiring care in a skilled nursing facility and that they will not have the financial wherewithal to pay for it.

It is extremely important to begin thinking about Medicaid planning long before you need to rely on these benefits to pay for care in a nursing home.

So, to summarize, when we talk about Medicaid Planning, we are talking about the process where we consider:

- Current & Projected Financial Situation
- Assets & Net Worth
- Current & Future Medical Benefits Options
- Medicaid Requirements & Eligibility
- Long Term Care Strategies
- Estate Planning, Powers of Attorney & Living Wills
- Spouse or Partner Lifestyle
- Trusts, Wills & Other Instruments Required
- Desired Legacy
- Planning Strategies
- Crisis Strategies

When a crisis occurs, there are a variety of crisis strategies that can improve your situation to allow you or your spouse access to important benefits, while also protecting your hard-earned assets. Your elder law attorney can serve as an invaluable guide for this process.

Crisis Strategies

While the best approach is to plan ahead, there are some circumstances where you or your spouse unexpectedly become ill and need to stay in a skilled nursing facility. In these cases, we can develop crisis strategies to improve your situation and maximize the benefits available to you.

The most important thing to remember is that an experienced elder law attorney can be an invaluable guide that can save you considerable time, money, and resources, especially during a time of crisis.

Qualifying for Long Term Care

In order to qualify for Maryland Long Term Care, there are certain requirements, including health, asset, and income requirements that must be met.

Residency and Citizenship:
The applicant must be a Maryland resident and be a U.S. citizen or have proper immigration status.

Age/Disability:
The applicant must be age 65 or older, or blind, or disabled. The applicant must meet certain medical requirements consistent with the level of care requested, generally needing daily assistance with at least 3 Activities of Daily Living (ADLs)

Asset Limits:
In order to qualify for Medicaid in Maryland, the applicant must prove they cannot afford their care with their personal assets and resources alone. There is an asset limit test, which determines how much money they are allowed to keep. There are two categories, countable assets, which are included in the asset limit test, and non-countable assets, which are assets that are exempt and not included in the asset limit calculation.

Countable assets in Maryland include bank accounts, bonds, stocks, annuities, trusts, retirement accounts, including IRAs and 401(k)s and life insurance policies. If you have enough assets available to , you are expected to use them for your care until they are spent down, at which time Medicaid will step in to cover the costs of care. Individuals are subject to different asset limits than married couples, and there are home equity limits

in place for homeowners seeking Medicaid.
Whenever a person applies for Medicaid, their spouse's assets are considered in the eligibility calculation. All of a couple's assets are considered, regardless of how they are titled. When a married person needs long-term care and their spouse is healthy and does not need such care, the healthy spouse is known as the "community spouse." A community spouse is entitled to keep a certain amount of the couple's assets without impacting their partner's Medicaid application. This is known as the CSRA or Community Spouse Resource Allowance. In Maryland, a community spouse can keep 50% of the value of total household assets up to $128,640 (as of 2020).

The asset limit for individuals in Maryland is $2,500. This means an unmarried senior in Maryland must not have more than $2,500 in non-exempt assets to qualify for Medicaid. Married couples who both require care are subject to a different limit, which allows $3,000 per person for the first six months of coverage, and $2,500 thereafter.
The person's primary home is exempt as long as the equity is less than or equal to $595,000.00 and the applicant intends to return home. Additionally, the primary residence is exempt, regardless of equity, if a spouse, child under age 21, or blind or disabled child of any age lives there. In this case, Medicaid does not count the primary home as an available asset. If the home has equity or more than $595,000, Medicaid will consider it an available asset and can require the applicant to liquidate it if they want to receive benefits. Additionally, Medicaid may place a lien on the home's proceeds if the owner sells it during or after their care period.

Other exempt assets may include:

- One vehicle of any value
- Personal effects and household goods
- Life insurance with no cash value
- Life insurance with cash value if the to-

tal face value of all such policies is less than or equal to $1,500.00
- Irrevocable burial contracts
- $1,500.00 designated for burial expenses (revocable burial contracts, burial savings accounts, or life insurance policies)
- One burial plot per family member

Income Limits:
A person's income is also taken into consideration when they apply for Medicaid. Before Medicaid can approve an individual for coverage, they must confirm the person cannot pay for their care entirely with their own personal resources. Maryland's Medicaid program does not have income caps in place, meaning all an individual's financial resources must be put toward their care before they will provide assistance.

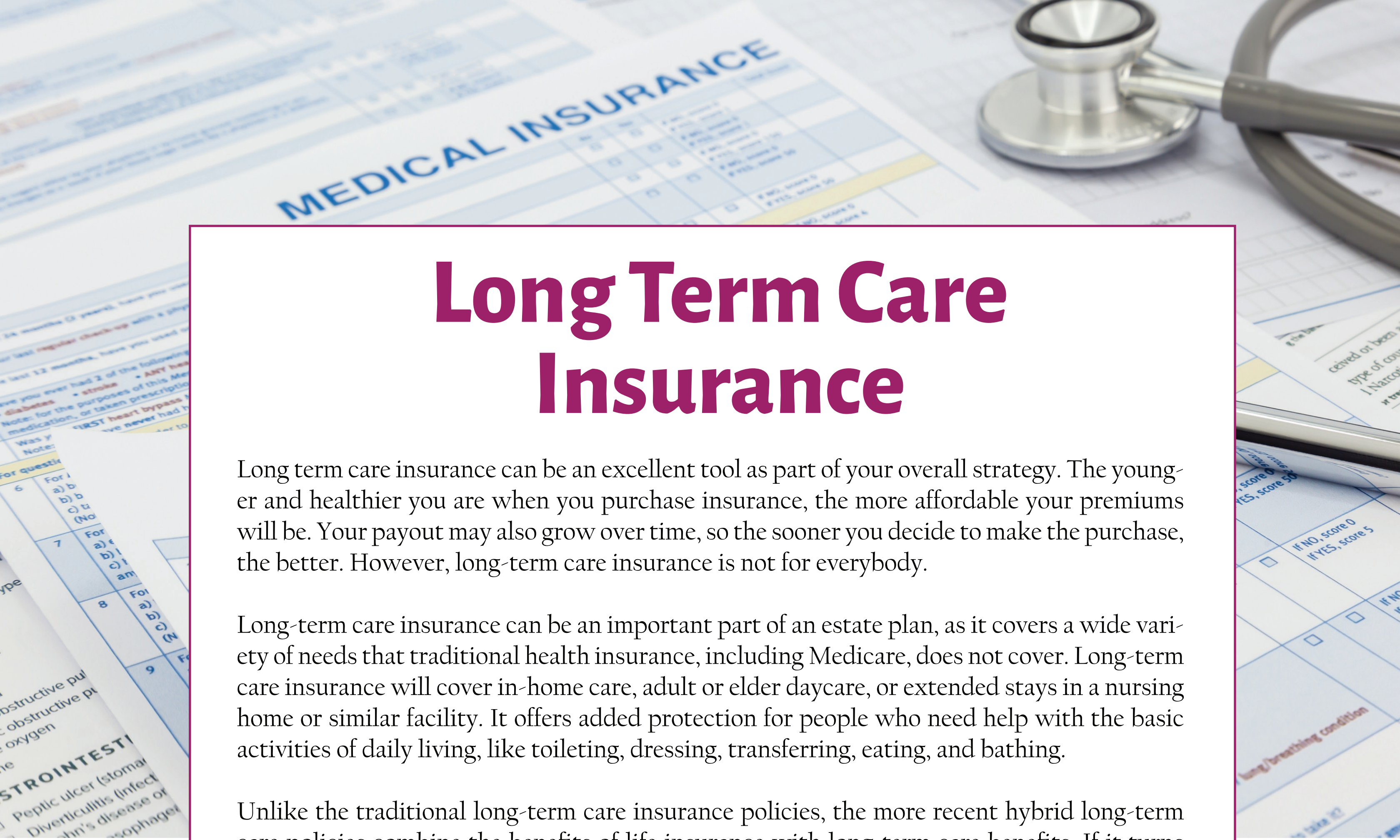
If the applicant is single and seeking care in a nursing home facility, the applicant's income (wages, Social Security benefits, pensions, veteran's benefits, annuities, IRAs, etc.) must be less than $350 per month. Income in excess of $350 can still qualify for Medicaid coverage if excess income is spent down to pay for care. There is also a personal needs allowance of $82/month to cover the person's personal needs, that is not factored into the total countable income.

Planning Strategies

- Purchase Long Term Care Insurance
- Create a Burial Savings Account of up to $1,500.00
- Purchase an Exempt Automobile
- Gifting Plus Annuity
- Gifting Plus Promissory Note
- Gifting Plus Partial Return
- Converting non-residential Real Estate into income producing property
- Purchase Annuity for Community Spouse – with requirements
- Make Exempt Transfer (any asset)
- Make Exempt Transfer to Sole Benefit Trust
- Make Exempt Transfer to a Pooled Trust
- Make Exempt Transfer to a Self-Settled Special Needs Trust
- Make Exempt transfer of home
- Purchase Prepaid Funeral Services Contract
- Make Exempt Renovations to the Home
- Transferring assets to an irrevocable trust

Unlike assets, which are considered jointly, Medicaid considers income individually, meaning a person cannot be denied benefits based on their partner's income. Spouses of married applicants are allotted a maximum monthly income allowance of up to $3216, as long as the spouse is not also receiving Medicaid benefits for long-term care. An applicant's spouse is also entitled to a Minimum Monthly Needs Allowance (MMMNA) of $2,114. If the spouse does not have an income of at least the MMMNA, the Medicaid applicant may transfer a portion of their income to the spouse without facing a penalty.

An effective long-term care strategy will likely incorporate many components for the ideal solution.



Long Term Care Insurance

Long term care insurance can be an excellent tool as part of your overall strategy. The younger and healthier you are when you purchase insurance, the more affordable your premiums will be. Your payout may also grow over time, so the sooner you decide to make the purchase, the better. However, long-term care insurance is not for everybody.

Long-term care insurance can be an important part of an estate plan, as it covers a wide variety of needs that traditional health insurance, including Medicare, does not cover. Long-term care insurance will cover in-home care, adult or elder daycare, or extended stays in a nursing home or similar facility. It offers added protection for people who need help with the basic activities of daily living, like toileting, dressing, transferring, eating, and bathing.

Unlike the traditional long-term care insurance policies, the more recent hybrid long-term care policies combine the benefits of life insurance with long-term care benefits. If it turns out that long-term care is not needed, the policy works much like a traditional life insurance policy, with a death benefit paid to beneficiaries upon the death of the insured.

There are many factors that go into the decision of whether to purchase long-term care insurance, and if so, how much to buy. As part of an overall estate plan, you should understand long-term care insurance and the role it may play in your long-term care planning. The benefits of long-term care insurance go beyond what your health insurance may cover by reimbursing you for services needed to help you maintain your lifestyle if age, injury, illness, or a cognitive impairment makes it challenging for you to take care of yourself. Long-term care may benefit:

- **Individuals** who may not have someone to care for them or significant assets to pay for these costs.
- **Families** who want to help protect their loved ones, lifestyle and assets.
- **Retirees** and Pre-retirees wanting to preserve the money they have worked so hard to save.
- **Individuals** who may not have someone to care for them or significant assets to pay for these cost.

An experienced attorney can provide you with a list of long-term care insurance providers.

Exploring Strategies

As discussed previously, there are many strategies that can be considered and ideally, planning strategies occur well in advance of any major health crisis. The strategy we recommend will depend on your situation, but typically falls into either a **Planning Strategy** or a **Crisis Strategy**:

PLANNING STRATEGY

Planning strategies are typically developed 5+ years before any major health crisis occurs. By planning ahead, we are able to create a strategy, to structure your assets so that, at any point in the future, you are well-positioned to quickly:

- Be in a position to access long-term care, if required,
- Receive the most benefits available to you,
- Preserve the most assets, and
- Provide a way for your spouse to continue living their lifestyle as well.

CRISIS STRATEGY

Crisis strategies are developed and implemented when pre-planning has not occurred, and we need to find ways to quickly help you obtain the benefits you need while preserving as many assets as possible for the spouse and any heirs.

A crisis strategy will generally provide far fewer benefits than if planning had occurred. However, a crisis strategy can provide significant benefits during a time of crisis.

IMPLEMENTING STRATEGIES

Following is an overview of some of the most common strategies that may be incorporated into a your long term care planning. Your plan is likely to incorporate a number of strategies, depending upon your unique situation.

Prepaid Funeral Services Contract

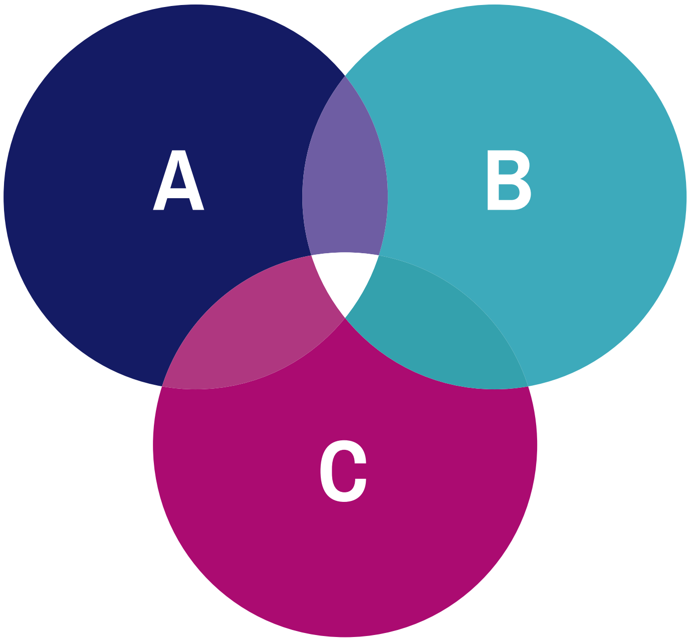
By purchasing a prepaid funeral contract, you can turn available assets into an exempt asset that won't affect your eligibility. In order for a prepaid funeral contract to be exempt from Medicaid asset rules, the contract must be irrevocable. That means you can't change it or cancel it once it is signed.

Exploring Strategies

Spousal Asset Transfers

When only one spouse of a married couple is applying for nursing home Medicaid, certain spousal protections apply to ensure the community spouse (the spouse who continues to live at home) does not become impoverished. In 2020, the community spouse (healthy spouse) is permitted up to $128,640 in countable assets, while the Medicaid applicant is only allowed an approximate $2,500. Each state is different and has different asset limits.

The amount of assets that the well spouse is able to retain, which includes mutually held assets, is called the Community Spouse Resource Allowance (CSRA). This allowance not only prevents the non-applicant spouse from having too little money from which to live, but can also effectively lower the applicant's resources, in an effort to qualify him or her for Medicaid.



Annuities

For married couples in which only one spouse is applying for nursing home Medicaid, a Medicaid-Complaint Annuity may be a great option. This strategy converts countable assets into non-countable income for the "healthy" spouse. In simple terms, a lump sum of money is paid to an insurance company, which in turn, will pay the healthy spouse a monthly payment. Annuities must be irrevocable (impossible to alter or terminate), must be immediate (payments start right away), and the monthly payments must not exceed the life expectancy of the healthy spouse. A typical annuity will not do the trick, as there are very specific rules governing these types of annuities in order to make them Medicaid-Compliant.

For single applicants, an annuity is also a possibility. However, the income generated from the annuity is counted towards Medicaid's income limit. Therefore, this is not always the best option.

Spend Down Excess Assets

There are several ways in which one is able to spend down assets in order to reach the Medicaid asset limit. Options include home modifications and improvements, such as adding a chair lift or putting on a new roof, purchasing medical devices that are uncovered by insurance, like dentures, and paying off one's mortgage or credit card debt. It's important to note, one may not give away assets or sell them for less than fair market value, as this may result in a period of Medicaid ineligibility. This is known as the Medicaid look-back rule, Maryland Medicaid will look back over

a period of 60-months preceding the date of the Medicaid application for any transfers or sales for less than fair market value, which could result in a penalty period before Medicaid benefits would begin.

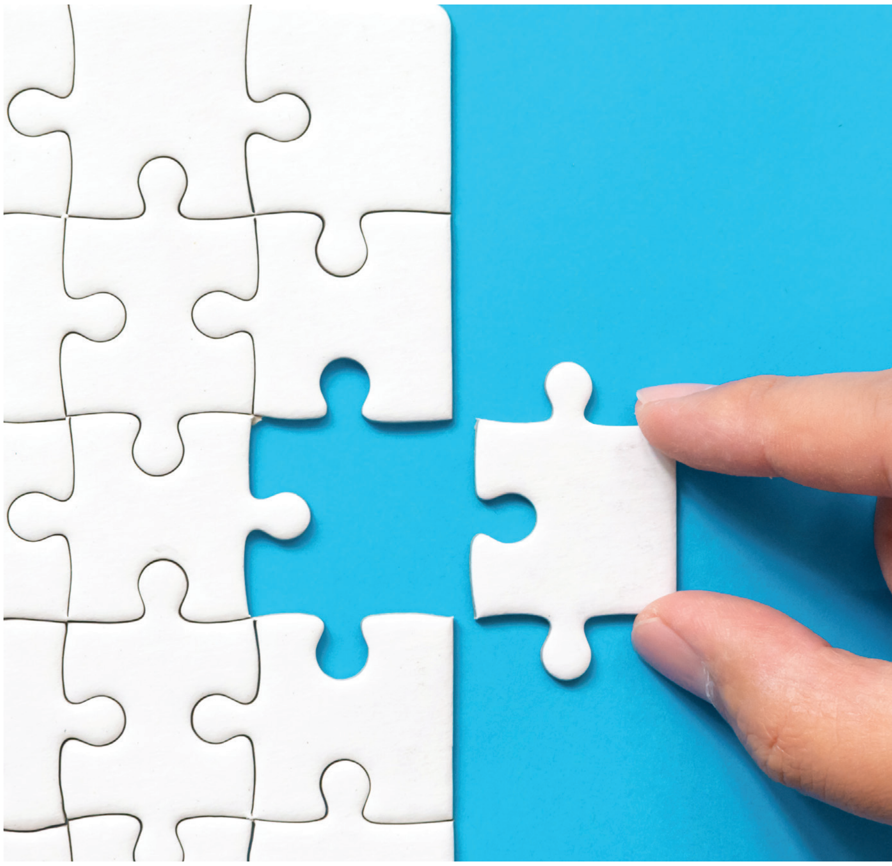
Medicaid Divorces

Put simply, a Medicaid divorce is the legal termination of a marriage of a couple in which only one spouse is applying for long-term care Medicaid. While this strategy is used to protect assets for the non-applicant spouse, it also lowers the countable assets of the applicant spouse. However, since the establishment of spousal asset transfers (discussed above), Medicaid divorces are not nearly as common as previously. This is because the spousal resource allowance allows the community spouse to retain a higher portion of the couple's assets, preventing spousal impoverishment. However, in the case where a couple has significant assets, generally over half a million dollars, a Medicaid divorce may still make sense. Getting a divorce may reserve a significantly greater amount of assets for the non-applicant spouse instead of using them towards the cost of long-term care. This strategy is complicated, depends on the divorce laws in the state in which one resides, and cannot be used in all states.

Asset Protection Trusts

An asset protection trust is a type of irrevocable trust that protects assets from being counted towards Medicaid's asset limit. These trusts also preserve assets for family and other loved ones as inheritance. Basically, assets are put into a trust and are no longer considered owned by the person who created the trust (the Medicaid applicant).

Exploring Strategies



While there is no limit as to the value of the assets that can be placed in this type of trust, a major shortcoming is that transfers to an asset protection trust would be a violation of Medicaid's look-back period. Therefore, these trusts should only be utilized well in advance of the need for long-term care Medicaid.

Gift & Partial Return Strategy

These strategies are gifting strategies intended to lower a Medicaid applicant's assets, while preserving assets for loved ones as an inheritance. This strategy violates Medicaid's look back period, resulting in Medicaid disqualification for a specific period of time (the penalty period). However, with advanced planning and correctly utilizing this strategy, the Medicaid applicant has the funds to pay for long-term care until the period of ineligibility is over. Very simply, the Medicaid applicant gives away his or her assets, for example to a child, who will then return half of those monies to the applicant to pay for the penalty period resulting from the transfer. The other strategy is to transfer half of the assets to family and then purchasing a Medicaid Compliant Annuity with the other half of their assets in order to create an income stream. The income from the annuity would then pay for the long-term care during the Medicaid penalty period. This strategy is very complicated and professional assistance is highly recommended.

NOTE: Several of these planning strategies may be used when creating a Long Term Care Plan. However, it is important to consult with an experienced elder law attorney, who is familiar with the Medicaid rules, prior to implementing these strategies. Incorrect implementation of the planning strategies can result in unknowingly violating Medicaid's look back period, resulting in Medicaid disqualification.

ePlan365™ Puts the Plan in Your Hand™

If an unexpected crisis or tragedy occurs, your loved ones will be focused on solving the challenges, making decisions, and dealing with the family's emotions.

There will likely be many questions and decisions to be made, depending upon the circumstances. The biggest question of all... "What's the plan?"

At Frame & Frame, we've helped people, for over 65 years, face the challenges and questions that arise. Today, we are one of the only estate planning firms that offers our clients a proprietary platform so that every decision, document, and resource is available to your loved ones **instantly**. Our **ePlan365™** puts the Plan in Your Hand.

The **ePlan365™** is a unique service we provide to clients that securely stores all of your documents and information in one easy place that you can access anytime, anywhere. The platform can store:

- Your will, trust, or estate documents,
- Your powers of attorney and health care directives,
- Your medical history, doctors, prescriptions, allergies, and medical images,
- Passwords and logins for all of your critical financial information so that your bills can be paid,
- Personal notes and letters to family members.

All of this important information is encrypted and protected with industry-leading technology and security and can only be accessed by the people you choose, for the crisis or events you choose.

Your family will only access the information you pre-determine. Most importantly, they won't have to spend time searching for or wondering what the plan is, because your **ePlan365™** provides all the answers.

Give your family all the information they need, at the moment they need it! Our **ePlan365™** *platform puts the Plan in Your Hand.*

Client Stories

Jan's Story
A Crisis Strategy

Overview: Jan needs immediate long-term care, but has not done any prior long-term care or Medicaid planning. With no plan in place, she would have to spend virtually all of her savings on long-term care before Medicaid will begin covering these costs.

Jan is 78 years old, a citizen of the United States, and a Maryland resident. Jan is a widow who recently sustained a stroke and will require long-term skilled nursing care. She is mentally competent but physically disabled. Therefore, she meets the **medical requirements** for Medicaid.

She is currently in a nursing home for rehabilitation following a 7 day hospital admission (paid for by Medicare). Jan's doctor believes she will live for many years but she is not expected to return home to live independently and would like to remain in the nursing home when rehabilitation is over. She does not have long term care insurance.

Jan has one daughter, Susan, who is very trustworthy. There are no disabled descendants or disabled spouses of descendants. Jan executed a durable financial power of attorney one year ago, which includes broad gifting powers. It names Susan as her agent and is effective immediately. Jan made no transfers for less than fair market value (gifts) in the last 5 years.

PERTINENT INFORMATION

Age 78

Social Security: $1,800/mo.

Nursing Home Cost: $9,300/mo

Assets:	
Checking	$ 10,000
Savings	$ 60,000
Brokerage	$130,000
Total:	**$200,000**
Countable Assets:	**$200,000**

Jan made no transfers for less than fair market value (gifts) in the last 5 years.

Jan's Story (Continued)

A crisis strategy for someone, without prior planning, who needs long-term care.

Summary: By implementing this strategy, Jan paid the full cost of the nursing home for only 12 months, after which Medicaid benefits picked up the difference between her income and the monthly cost of the nursing home, thereby saving $7,500/mo. after month 12. She was also able to immediately protect $108,000 to pass on to her daughter.

CREATING THE BEST STRATEGY

According to the Medicaid guidelines, Jan's social security income ($1800/mo) + her assets ($200,000) means that she would be required to pay $7500 per month for the first 26.4 months of long-term care before she would be eligible to receive Medicaid benefits. If she gave all of her countable assets to her daughter, this gift would result in a penalty for 21 months (1 month for every $9,673 [the penalty divisor in Maryland] gifted). This would mean that either Jan or her daughter would need to provide care and/or cover the costs of care, until the penalty period was satisfied and before Medicaid benefits would kick in. So, a crisis strategy plan was needed.

Step 1: Determine the Spend Down Amount

In order to be eligible for Medicaid, Jan cannot have more than $2,500 in assets. To calculate her spend-down amount, the $2,500 allowance is subtracted from her total assets of $200,000, leaving a total "spend down" of $197,500.

Step 2: Create a Plan

To implement a plan for Jan, we first had to calculate the **monthly income shortfall, the gift amount allowed,** the **penalty period,** and the **'burn rate'**. After reviewing these options, along with Medicaid guidelines, we recommended a **gift and partial return plan** as the best option for Jan's circumstances.

Step 3: Implement the Plan

Jan made a gift of $198,000 to her daughter, Susan. At this point, Jan applied for Medicaid with the understanding that there would be a penalty period assessed of 21 months. Susan was then required to pay back $90,000 to Jan (gift and partial return plan), which, in accordance with Medicaid guidelines, would recalculate the penalty period to 12 months. Jan used the $90,000 to pay the shortfall between the nursing home costs ($9300/mo) and her social security income ($1800/mo), for the first 12 months ($7500/mo). After 12 months, Medicaid benefits would kick in and Jan would only pay the nursing home her monthly income of $1800/mo.

Client Stories

Jack & Penny's Story:
A Planning Strategy

Overview: As they get older, Jack is beginning to show signs of cognitive memory loss and they would like to ensure he has access to long-term care while preserving assets for Penny's future care.

Jack and Penny are citizens of the United States, and Maryland residents. They have been married for 42 years. They have two adult children, and 4 grandchildren.

Jack is just starting to show signs of cognitive memory loss. They are worried because his mother died of Alzheimer and all of the family money was spent on her nursing home costs before she eventually passed. Jack and Penny are worried that, if Jack needs long-term care, Penny would not have adequate resources with which to live on. They want to able to maintain Penny's standard of living but also make sure that they can pay for nursing home care if Jack needs it in the future.

PERTINENT INFORMATION

Ages:	Jack, 82 & Penny, 78	
Social Security:	Jack	$1,800/mo.
	Penny	$1200/mo.
Nursing Home Cost:		$9,800/mo
Countable Assets:		**$375,000**
Penny's CSRS:		**$125,000**
Jack's Allowance		**$2,300**
"Spend Down"		***$247,700***

CREATING THE BEST STRATEGY

After Jack was diagnosed with early-onset Alzheimer's, Jack & Penny knew they would need some type of long-term care in the future. So, they immediately begin planning for this eventuality. We worked with them to create a strategy allowing them to spend-down their assets, in accordance with Medicaid guidelines, while consideration for providing Penny ample resources to care for herself. This strategy also allowed her to have the opportunity to leave money in her trust for her children, after she passes.

Without pre-planning, it is likely that Jack's admission into a long-term care program would have required the couple to exhaust their entire savings in approximately 19 months.

Jack & Penny's Story

A long-term care planning strategy to provide long-term care while preserving family assets.

Summary: By pre-planning, Jack and Penny were able to preserve much of their life savings, obtain Medicaid benefits for Jack (and potentially Penny), and create a protected trust. This allowed Penny to maintain her lifestyle for many years and leave any remaining funds to their children after they both pass on.

Step 1: Determine the Spend Down Amount

Under current Medicaid guidelines [2020], Penny was allowed to keep up to one-half of the couple's countable assets up to a maximum of $128,640, also known as the Community Spouse Resource Allowance (CSRA). Just to make sure that we didn't go over the allowances, Penny kept $125,000, and Jack kept $2,300 as his Individual Resource Allowance. Therefore, we determined that the spend-down amount in this situation was $247,700.

Step 2: Create a Plan

As part of the spend-down strategy, we recommended that Penny take care of some necessary expenses, in accordance with Medicaid guidelines. The itemized list for immediate spend-down included:

- Purchased pre-paid funeral plans for each spouse: $ 20,000
- Made repairs to the home to accommodate healthy spouse: $ 10,000
- Replaced their older vehicle: $ 30,000
- Transferred to an Irrevocable Asset Protection Trust: $187,700

Step 3: Implement the Plan

After Penny used funds to purchase the list above, we set up a trust and the balance of $187,700 was placed into an irrevocable asset protection trust. Since the transfer occurred at least 5 years prior to either spouse applying for Medicaid, the money in the trust was 100% protected and the couple was able to qualify for Medicaid (assuming they did not accumulate additional assets). The money in the trust can be used to cover their incidental expenses and upon the death of both of them, the monies in trust will pass down to their children and/or grandchildren and be completely protected from creditors, predators and divorce.

Glossary

Below are some of the terms used in long-term care and Medicaid planning strategies. This list is by no means all-inclusive, but provides insight into the various strategies and terms used throughout the process.

Allowed Gift Amount - The total original amount of the gift less the amount returned to the applicant equals the allowed gifted amount (the amount protected).

Annuity - An annuity is an insurance contract that provides regular income to the owner, in exchange for a lump sum investment.

Burn Rate - The amount of money that an applicant will "burn" through in one month of a plan. When dividing the spend-down amount by the burn rate, the resulting figure is the number of months the applicant can afford to privately pay throughout a penalty period.

Community Spouse - The spouse who remains at home or in an assisted living community and does not require Medicaid benefits.

Community Spouse Resource Allowance (CSRA) - The amount of countable assets the spouse is entitled to retain, in order for their spouse to obtain Medicaid benefits.

Countable Assets - The total assets (bank accounts, cash, stock, additional real estate beyond the primary residence, etc.) owned by the Medicaid applicant and/or spouse that the State Medicaid agency uses to determine financial eligibility for benefits.

Crisis Medicaid Planning - Financial and legal planning done to accelerate one's eligibility for Medicaid benefits, particularly when no previous long-term strategy or planning has been performed.

Durable Power of Attorney - A legal document that is executed when a person is of sound mind, that designates an individual to carry out legal and financial responsibilities, on behalf of another.

Gift - A gift is when any money, property, items, or other assets are conveyed to another person for less than they are worth.

Gift Tax Exclusion - An IRS regulation that allows an individual to give away a certain amount of money each year, without incurring a tax. This exclusion is NOT applicable when planning for Medicaid benefits.

Gift and Partial Return Plan - A planning strategy whereby the parent makes a gift to a child of the total spend-down amount, prior to applying for Medicaid. That gift triggers a penalty period which disqualified the parent for Medicaid benefits, as it is a transfer for less than fair market value. This is calculated by dividing the gift by the monthly penalty divisor (the "average cost" of nursing home care in Maryland). Consequently, parent is ineligible for Medicaid, during the penalty period. The child then pays a portion of the money and the parent uses the returned gift plus her income to pay the nursing home costs. When the parent makes the last payment, the penalty period expires, the parent is then qualified for Medicaid and the child keeps the balance of the gift.

Individual Resource Allowance - The amount of assets a Medicaid applicant can retain and still qualify for benefits, typically used for discretionary spending.

Institutionalized Spouse - The spouse who is in or requires nursing home facilities and is seeking Medicaid benefits.

Long Term Care - The care provided to an individual who is in need of daily assistance with basic functions of daily life. It includes eating, bathing, dressing, transferring, toileting, medication management, and assistance with prosthetic devices. 70% of individuals over the age of 65 will require some type of long-term care during their lifetime.

Look Back Period - The lookback period is the 5-year period in which a state's Medicaid agency will "look back" to determine if a Medicaid applicant has made any transfer of assets. If the individual and/or spouse has made any uncompensated transfers, and the transfers are not cured/returned, the applicant will be subject to a penalty period of ineligibility.

Medicaid - A state and federal government program intended for people with low income or limited resources. Provides payment for the majority of long-term care services required by elderly citizens.

Medicare - A program directed by the federal government that functions primarily as a health insurance program for people over age 65. Medicare benefits are intended for short-term services, when the medical condition is expected to improve, and acute care. In most cases, Medicare does not pay for long-term care services.

Medicaid Compliant Annuity (MCA) - A Medicaid Compliant Annuity (MCA) is a Single Premium Immediate Annuity (SPIA) with added restrictions to meet the requirements of the Deficit Reduction Act of 2005. The SPIA is irrevocable, non-assignable, provides equal monthly payments, and contains zero cash value. Additionally, the SPIA must be structured to be "actuarially sound" in accordance with each state's Medicaid manual, and must name the State Medicaid agency as primary remainder beneficiary (in most cases).

Medical Requirements for Medicaid - Aged (meaning over the age of 65), blind or otherwise disabled.

Monthly Maintenance Needs Allowance (MMNA) - The amount of monthly income to which a community spouse is entitled. If the community spouse's income does not meet his or her MMNA, he or she is entitled to a shifting of income from the institutionalized spouse.

Non-Countable Assets - Assets that the State Medicaid agency does not count when determining an applicant's financial eligibility such as: primary residence, personal property, one motor vehicle, prepaid burial plans, and life insurance policies with a face value of less than $1,500.

Monthly Income Shortfall - The monthly cost of the nursing home minus the applicant's available income

Partial Cure - If an ineligible gift has been made during the look-back period, the gift can be returned to the Medicaid applicant, and potentially reduce the penalty period and/or eligibility for Medicaid benefits.

Penalty period - the period of ineligibility imposed by the State Medicaid agency if uncompensated transfers have occurred within the lookback period. The length of the penalty period is based on the amount transferred and the state's specific divestment penalty divisor.

Pre-Planning - When someone plans for long-term care costs and/or their estate is structured to allow them to qualify for Medicaid benefits with consideration for assets, income, gifts, look-back period, etc.

Summary

As you can see, long-term care or Medicaid planning requires thoughtful strategy. The guidelines and parameters established by Medicaid are often confusing. There is no one-size-fits-all approach.

Pre-planning is obviously the best route to take in any situation, as it can provide the Medicaid applicant, community spouse, and the family, access to the most resources. Crisis planning is also effective, especially when the applicant and family are faced with a sudden illness or crisis.

Unfortunately, too often, well-intended family members and/or friends try to navigate this process without proper guidance and the implications can be costly. We have seen far too many cases where a large gift is made to try and accelerate the Medicaid application and benefits process, and only further delays an individual's ability to receive those benefits.

The ideal situation is to involve members of the family in the planning process so that there are no surprises, arguments, or hidden agendas to handle, during the middle of a health or financial crisis.

Rest assured, when you work with the elder law and estate planning attorney's at Frame and Frame, we will personally guide you through the entire process to achieve the best outcome for you and your family.

Navigating estate planning, long-term care planning, and Medicaid planning is not a DIY task. You need effective legal guidance for thoughtful planning to protect you, your family, and your legacy.

Plan Ahead Now!

Navigating estate planning, long-term care planning, and Medicaid planning is not a DIY task. You need effective legal guidance for thoughtful planning to protect you, your family, and your legacy.

SERVING 65+ YEARS OUR COMMUNITY

Contact the experienced attorneys at Frame & Frame today. We have been serving the legal needs of our community for over 65 years. We can offer you a path to take the weight off your shoulders and can even serve as a guide for your family, during times of crisis.

Take the first step and ensure your family is prepared for any eventuality.

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