HOW TO PROTECT YOUR FAMILY'S HARD-EARNED ASSETS FROM THE HIGH COSTS OF NURSING HOMES:

A GUIDE TO LONG TERM CARE IN KENTUCKY

BY ELDER LAW ATTORNEY
WILLIAM CLAUSON

INTRODUCTION

HOW TO PROTECT YOUR FAMILY'S HARD-EARNED ASSETS FROM THE HIGH COSTS OF NURSING HOME

A GUIDE TO LONG TERM CARE IN KENTUCKY

“Here to help"

At Clauson Law Office, Elder Law Attorney Will Clauson specializes in helping families navigate through the decisions they face in later life. Through our Medicaid planning, we help families protect what they have spent a lifetime to build from the potentially devastating costs of nursing homes and long-term care. Through estate planning, we create and help administer wills and living trusts. We probate estates and help our clients achieve asset protection.

William Clauson, Attorney, graduated from the University of Louisville School of Law. He received his Bachelor’s Degree from Vanderbilt University. Will concentrates his practice specifically in the areas of Medicaid planning, estate planning, probate and trust administration.

Email me at will@clausonlawoffice.com

PREPLANNING FOR LONG TERM CARE

You want to protect those who are closest and dearest to you. You want assurance that those who cared and sacrificed for you are protected during their time of need. You also want to protect yourself and plan for your own future care. This two-part series will help explain how to preplan for future long-term care needs of you and your loved ones and how to plan in a crisis for immediate needs. Be sure to pick up the book that applies to your current situation. We want to help you help your family!

This book is for those interested in preplanning for long-term care needs. See our ***crisis planning book*** if your loved one will be requiring nursing home care soon

Provided here is a brief look at different options to plan for long-term care with an emphasis on Medicaid planning. This basic overview of options available is designed to dispel much of the confusion regarding long-term care planning and offer planning techniques to ensure your family can protect as much of your hard-earned assets as the law allows and enable you to receive the care you need without losing everything!

If you are reading this book, chances are you are reaching your golden years or you have an aging loved one and are considering what impact future potential healthcare costs could have on your family. Because there is a good chance you or your family member might need long-term care services at some point during your lifetime, it is important to explore the options available so you can plan ahead. Waiting until long-term care is actually needed may limit the options available to you.

This book focuses primarily on preplanning for long-term care. You may be just “checking things out.” Like a routine visit to your doctor’s office, everything is fine right now, but you want a current evaluation so you can be proactive and ward off any surprises in the future. With pre-planning, there are more options. There is less stress involved and planning costs are usually lower. Crisis-planning is much different. Crisis planning is like emergency room planning. You have a heart attack and you need help now. This type of planning is usually very fast paced, with fewer options, and usually much higher cost. The stress is higher because the family is almost always ill-prepared and confused, not knowing what to expect. Planning can be done in either situation; but, pre-planning is usually easier on the family.


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Why should I be concerned about Long-Term Care?

Long-term care is generally required when you can no longer take care of yourself and you need help with performing everyday activities, such as bathing, dressing, eating, transferring from bed or chair, or walking.

This is more permanent care than you might receive in the hospital to recover from a sickness or injury. This care could be needed because of a chronic illness, disability, Alzheimer's disease, or age.

Consider these indicators:

- **Age**: as people get older, their likelihood of needing help with performing daily tasks increases
- **Living Alone**: those that live alone are more likely to need assistance with daily living than those living with a spouse, partner, or other family member
- **Gender:** women will more likely require long-term care than men because women usually live longer
- **Lifestyle:** poor diet and little exercise can increase your risk of needing long-term care
- **Genetics:** looking at your family's medical history can indicate if you have a greater likelihood of needing long-term care As our population continues to age, it is important to realize that most of us will require long-term care.

Ask yourself these questions:

- Who would I turn to for help with my care?
- Are my family members close by and available? Are they physically and financially capable of helping me?
- What if I become the caregiver for someone else?

The need for long-term care affects the whole family. Seriously evaluate your options. If staying with family is not feasible for you, pre-planning becomes critical.

Typically there are three ways to pay for long term care:

- **Self pay**
- **Long Term Care Insurance**
- **Government Programs**

Self pay or private pay is exactly what it says. You or your family are responsible to the entire cost of the nursing home. In Kentucky as of 2020 the average monthly cost for a nursing home is over $6,000 a month and the average stay is around two and a half years. For the average family paying $6,000 a month would quickly deplete hard-earned savings. A lifetime's worth of work could be taken in a few years. For all but a few families this option can spell ruin.

Long term care insurance is a private policy available from many insurance agents. Long term care insurance will pay for a portion and possibly all of the nursing home bill each month. Although not cheap, generally the yearly cost of long term care insurance is about the same as one month in the nursing home. Typically long term care insurance policies will also pay for in home care.

Medicare is a federal program that pays for hospitalization and other health care. Medicare will pay for 20 days of nursing home care at 100% and 80 more days with a copay requirements. Once a person has reached 100 days of nursing home care, Medicare stops paying and the patient is then entirely responsible for paying for care.

Medicaid is a federal program administered by the states. Medicaid will pay the costs of long term care if you meet the financial and medical eligibility requirements.

Many people may experience all three options of paying for long term care. With proper planning these options can be used to maximize the savings to your loved ones.

8 Common Myths about Medicaid

Medicaid's nursing home laws have become increasingly complex over the years. So, it's no wonder there are many myths and inaccuracies that exist. Knowing the truth about these myths is the key to getting the assistance that you and your loved one may need. Here are some of the common Medicaid misconceptions, however there are many more. If you have a question about Medicaid contact us.

Myth #1: Perhaps the most prevalent Medicaid myth relates to the applicant's home. "My next door neighbor told me that if I enter a nursing home, then I must sell my home or give it to the state or nursing home in order to qualify for Medicaid."

FACT: Assuming that the home must be given to the state or immediately sold can be a costly error. A careful analysis of the laws is recommended to determine what course of action should be taken and whether the home can be protected.

Myth #2: "Medicaid's 5 year look back rule states that if I give anything away during the 5 years prior to filing a Medicaid application, then I must wait out the full 5 years before I can apply for Medicaid."

FACT: Medicaid's rules do penalize many transfers and the agency will examine your financial records, however, that does not mean you must wait a full five years before qualifying for benefits.

Myth #3: "Medicare will pay for my nursing home care."

FACT: Medicare will pay for up to 100 days of acute skilled care at a nursing home.

Myth #4: “My child’s name is on my certificate of deposit, so at least ½ of my money is protected in their name.”

FACT: Your child has to prove that they contributed money into the account, otherwise, all of the money will be considered to be the applicants.

Myth #5: “If I give away assets to family members, then I won’t qualify for Medicaid.”

FACT: It is true that some transfers of property or assets will disqualify you from obtaining Medicaid. The value of the assets transferred determines how long you will be disqualified. However, certain transfers won’t disqualify you. Whether or not you become disqualified depends on who receives the asset, when it was transferred and the type of property that you are transferring.

Myth #6: “The Medicaid rules that applied to my neighbor will also apply to me.”

FACT: Whether this is true depends on a number of factors. For instance, when your neighbor applied is critically important. The Medicaid laws in Kentucky do change from year to year, so what worked for your neighbor may not work for you.

Myth #7: “The Medicaid office can just give me the paperwork and help me through the application process.”

FACT: Those who work in the Medicaid office will process your application, but they do not have lawyers on staff to represent you and they will not offer legal advice.

Myth #8: “My father is already in nursing home so there’s nothing we can do now.”

FACT: It’s true that a family can wait longer than they should to contact an elder law attorney, but a good plan may be established even after entering a nursing home.

How Can I Qualify for Medicaid Benefits?

In order to qualify for Medicaid benefits , an individual must pass three tests:

✓ **Health Test**
✓ **Income Test**
✓ **Asset Test**

Health Test – An individual must meet the "medical necessity" requirement. Usually, this means the individual needs chronic or ongoing care and cannot perform at least three activities of daily living (bathing, dressing, transferring from bed or chair, walking, eating, and toilet use).

The person must also meet national and Kentucky residency requirements, be age 65 or older, or be disabled or blind. Once a person becomes physically qualified, then he or she must become financially qualified.

Income Test – In Kentucky, the income cap (the maximum gross income a person can earn) for individuals applying for Medicaid is $2,349 a month. If the individual applying for Medicaid is married, the healthy spouse ("community spouse") can have unlimited income (but at least $2,155.00 a month) without affecting the Medicaid applicant's eligibility.

Asset Test – In Kentucky, a Medicaid applicant can have up to $2,000 in countable resources and qualify for Medicaid. If the Medicaid applicant is married, the community spouse is allowed to protect a minimum of $25,728 and a maximum of $128,640 of the couple's joint countable assets. Under certain situations, this amount can be even more.

The income and asset limits for Medicaid qualification are adjusted annually to reflect inflation.

All numbers in this book represent values as authorized under Kentucky law as of January 1, 2020.

COUNTABLE AND NON-COUNTABLE RESOURCES

Under the federal Medicaid rules, assets fall into two categories:

Countable Resources and **Non-Countable Resources**.

Countable Resources are assets that are considered in determining Medicaid eligibility. They consist of assets that could be readily converted to cash in order to pay for cost of care.

Examples include:
- Bank and Investment Accounts
- Stocks & Bonds
- Life Insurance Policies over a certain amount
- Real estate, excluding the homestead

Non-Countable Resources are assets that are not counted in determining Medicaid eligibility.

Examples include:
- Homestead (if certain requirements are met)
- One automobile
- Prepaid funeral plan for Medicaid applicant, spouse or immediate family members
- Life Insurance with certain cash limits
- Household goods and personal effects (furniture, clothing, jewelry, etc. with certain limitations)
- IRAs (with certain limitations)

TRANSFERRING ASSETS TO QUALIFY FOR MEDICAID

So, if an individual can't have more than $2,000 in assets (money or property), how do you qualify for Medicaid? One answer is to transfer assets to others. However, Medicaid puts restrictions on people making gifts to qualify for Medicaid benefits. This is commonly known as the "look back period." This look back period is 60 months. Once an application is made for Medicaid, the Medicaid office will review all transfers made 60 months prior to making the application. Any transfer made will then be categorized as either compensated or uncompensated. Compensated tranfers are allowable. However, uncompensated transfers will cause a penalty for Medicaid eligibiltiy.

For example if Mark, who has applied for Medicaid sells his boat to his neighbor Todd for $10,000 and the boat has a retail value of $10,000 this will be considered a compensated transfer and no penalty would be assessed. However, if Mark sells the same boat to his son for $2,000 then Mark would be assessed a penalty for the $8,000 portion of the transfer that was uncompensated.

In Kentucky, the amount of the uncompensated transfer is divided by the penalty divisor. The penalty divisor in currently $199.46 a day. In the example with the Mark what if instead of an uncompensated transfer of $8,000, he transferred his paid for home worth $100,000. The uncompensated amount would be divided by the divisor to arrive at the number of days that Mark would be ineligible for Medicaid. $100,000 divided by $199.46 is a little more than 501. This is the lenght of the penalty period in days. If Mark applied for Medicaid and was otherwise eligible, he would have to wait 17 months (501 days) before Medicaid would cover his nursing home expenses.

What Do I Need to Do Now to Qualify Later?

There are numerous strategies available to qualify for Medicaid benefits.

Let's explore a few of the options available.

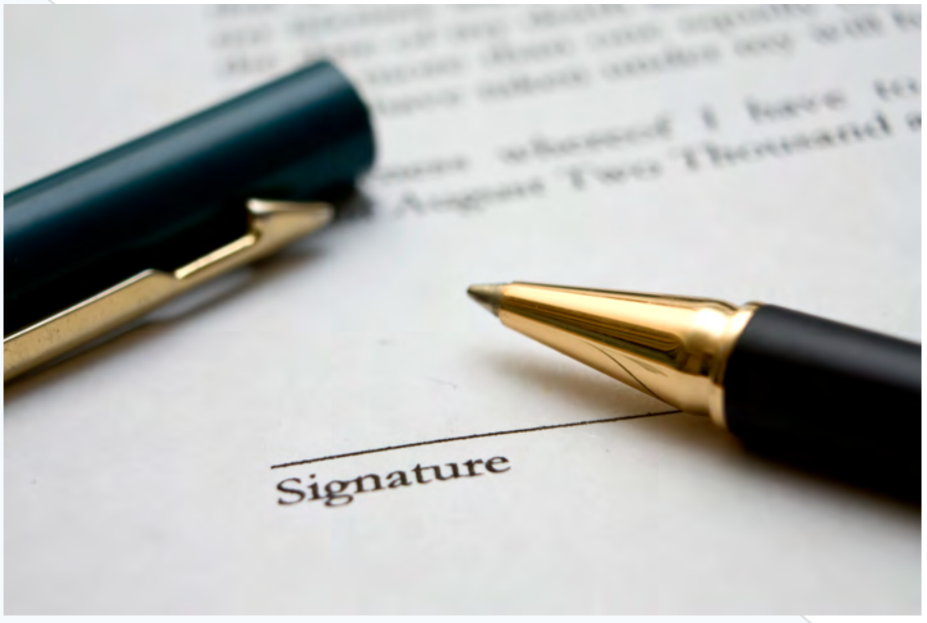
Problem: You have too much income!

Solution: It may be advisable to transfer the source of the income to the community spouse. Medicaid adheres to the "name on the check" rule. If the Medicaid applicant's name is not on the asset or income stream, it is presumed to be out of the Medicaid applicant's estate for calculating Medicaid eligibility.

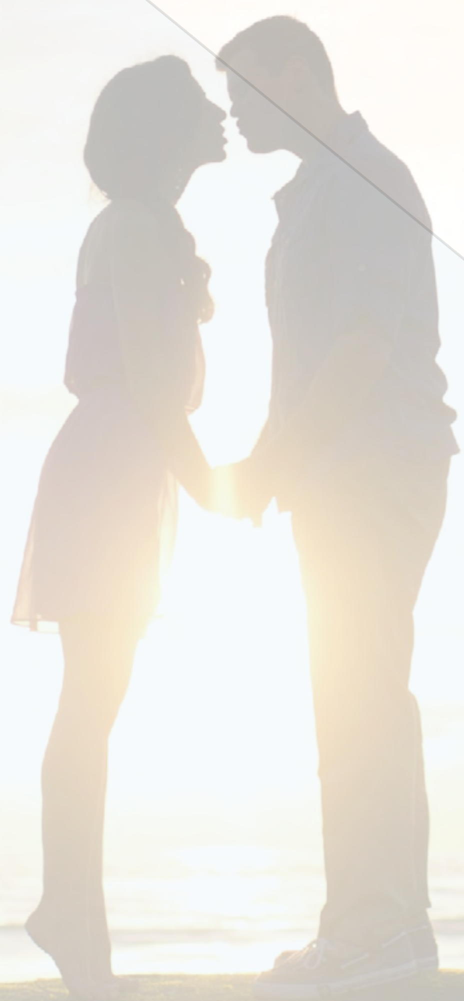
Problem: You have too many assets!

Solution: Certain types of trusts can protect your assets and help you to qualify for Medicaid. The key to using these trusts is timing. The sooner you plan, the more you can save. Here is what a trust can do for you and how it may work:

Protect your assets. When your assets are too high to qualify for Medicaid, you could give your assets away to reach the required limits. But, there are no assurances that the person to whom you gave the gift would be able to keep it. If the recipient had poor



spending habits, got divorced, had lawsuits or other creditors, the assets you gave away could be lost. The use of a Medicaid Asset Protection Trust can not only protect What if you don’t financially qualify for Medicaid? Is there something you can do? Most likely, yes! are the assets from loss, but can also remove them from your estate.



Qualify for Medicaid Benefits. Transferring your assets to a Medicaid Asset Protection Trust can start the penalty clock at the time of the transfer. For example, let’s say you have an estate worth $600,000 that you want to protect for your children instead of spending it on nursing home expenses. You can preserve these assets by creating and funding a Medicaid Asset Protection Trust. If you can avoid the nursing home for the next 60 months, the trust’s assets will not be considered when you apply for Medicaid benefits because the transfers will have occurred outside the 60 month look-back window. Medicaid coverage could then begin immediately if the Medicaid applicant was otherwise eligible. The $600,000 estate is protected by the trust.

If a nursing home was needed before 60 months had passed from the date you transferred assets to the trust, you could pay your own way with insurance or private pay and delay the application for Medicaid benefits until 60 months had passed. Then, when you applied for benefits, Medicaid would not see the transfer that had been made over 60 months ago. The Medicaid Asset Protection Trust is a wonderful tool that can protect assets and help you qualify for benefits while making sure your family gets to keep the assets.

There is no “one size fits all” strategy to position your assets to financially qualify for Medicaid benefits. Each case is different because all families’ goals and needs are different. The strategies offered in this book are just a sampling of the tools open to you. We encourage you to consider the planning options available because the key to protecting assets from long-term care costs is proper planning. The more you know about how to get the help and protection you deserve, the better you will be able to look out for your family’s best interests. The sooner you begin planning, the fewer surprises there will be. Get the right help. Contact us today to determine how we can help your family.

How Do I Get Started?

CLAUSON LAW OFFICE

210 E UNION STREET

P.O. BOX 310

MUNFORDVILLE, KY 42765

(270) 524-4529

will@clausonlawoffice.com

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MEMBER