

TEXAS LONG-TERM CARE AND MEDICAID PLANNING

By Including A Medicaid Plan In Your Comprehensive Estate Plan You Can Ensure that Both You and Your Loved Ones Will Be Protected in the Event You Ever Need Long-Term Care



STEPHEN A. MENDEL

Houston Texas Estate Planning Attorney



The life expectancy of an American has increased significantly over the last century. For many of us, this means we stand a good chance of living into our 80s, 90s, or even longer. The longer you live, however, the greater the odds that you will spend time in a long-term care facility at some point. A stay in a long-term care facility can wipe out a lifetime of hard work and saving if it has to be paid out of pocket.

Qualifying for the Medicaid program may alleviate the financial burden of long-term care costs; however, without careful planning you may be forced to spend your hard earned money in order to become eligible for Medicaid. Medicaid planning may be the solution.

LONG-TERM CARE COSTS

Living longer increases the chance that you will need long-term care. Although advances in medicine and technology have increased our life expectancy in America, they have yet to find a cure for diseases such as Alzheimer's or figure out a way to stop the natural aging process. Statistics tell us that one in three seniors will die with Alzheimer's or another age related dementia disease. In 2013, Alzheimer's alone will cost the United States over \$200 billion. By 2050, experts predict that as many as 27 million people will need long-term care in the United States.



Unfortunately, most people don't properly plan for long-term care. Most private health insurance policies do not cover any of the costs associated with long-term care.

Although a long-term care insurance policy can be purchased, most

people either do not think to do so or cannot afford one. Given the high cost of long-term care this can present a serious problem. In Texas, the average annual cost of home care in 2013 was \$41,184. The cost of a year in an assisted living facility in 2013 was \$40,035, on average, while a year in a nursing home cost about \$61,320 for a private room. With the average length of stay in a long-term care facility at just over two years, it is easy to

see how a life's worth of investing and saving can be quickly diminished if the need for long-term care arises.

THE MEDICARE PROGRAM

If you are planning on the Medicare program to cover the majority of your healthcare expenses during your golden years, you need to rethink that strategy. Medicare is a federally funded health insurance program for people 65 years of age and older. Most people are automatically enrolled in Medicare parts A and B when they turn 65. While Medicare does cover a variety of healthcare related expenses, one thing it does not cover is the cost of long-term care, such as a nursing home.



THE TEXAS MEDICAID PROGRAM

The Medicaid program is primarily funded by the federal government. Many states provide secondary funding. Because the individual states administer the Medicaid program, there are differences in eligibility criteria as well as

available benefits from one state to the next. One similarity, however, among all state Medicaid programs is that the programs have resource and/or income limits. Medicare is an entitlement program, meaning anyone over the age of 65 is entitled to participate in the program with little or no regard to income or assets. Medicaid, on the other hand, is a means test program. A means test program is one in which recipients must prove their eligibility for benefits.



In Texas, as is the case in most states, there are numerous different categories under which an individual may qualify for Medicaid benefits. Each category has slightly different eligibility requirements and benefits. For example, in Texas there is a Medicaid category for individuals aged 65 and older or who are disabled. There is also a specific category for long-term care needs.

An applicant applying for Medicaid in Texas cannot have countable resources valued at over \$2,000 to qualify for Medicaid. Certain assets are excluded from your "countable resources", including your

homestead, a vehicle, life insurance up to a face value of \$1,500, burial spaces and burial funds up to \$1,500. Despite these exclusions, it is easy to see how the average individual who has worked, saved, and invested during his or her lifetime may be denied Medicaid benefits because of the resources limit. For example, a \$2,500 IRA would exceed the resources limit.

Transferring assets and then applying for Medicaid benefits is not an option. If you suddenly find that you or your spouse need to qualify for Medicaid benefits in order to cover the cost of long-term care, you cannot simply transfer assets into someone else's name to ensure that your countable resources do not exceed the resources limit. The reason for this is that the Medicaid



program has a five-year "look back" period. Any asset transfers made during the "look back" period will be considered when you apply for Medicaid. In other words, if you owned a vacation home with a current market value of \$50,000 and you transferred ownership to an adult child during the 5-year "look back" period, the Medicaid program may essentially ignore that transfer and count the \$50,000 of equity you had in the property as a countable resource.

If your countable resources exceed the Medicaid resource limit you may be required to "spend down" your resources until they are below the \$2,000 limit. In simple terms, this basically means that you have to spend everything you saved before you will qualify for Medicaid benefits.

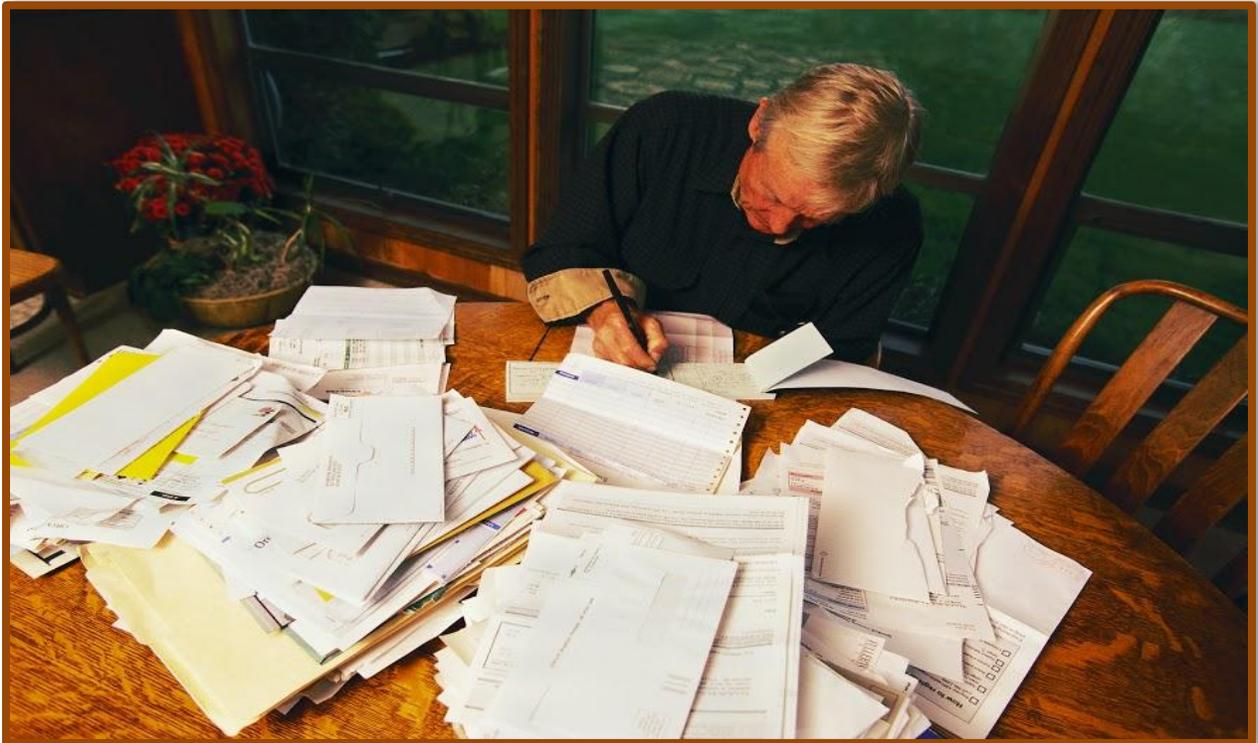
WHAT IS MEDICAID PLANNING?

Clearly, being required to spend your life savings before becoming eligible for assistance with long-term care costs through the Medicaid program is not what anyone



wants to do. Medicaid planning as part of your overall estate plan can potentially prevent this unwanted outcome. Although everyone's Medicaid plan is unique, the purpose behind any Medicaid plan is to protect your assets and your life savings while still putting you in a position to be eligible for Medicaid benefits should you have need for those benefits in the future.

IS MEDICAID PLANNING LEGAL?



One concern many people have is whether or not Medicaid planning is legal. Many years ago the federal government attempted to make it illegal to transfer assets in anticipation of applying for Medicaid; however, those laws were later repealed. The bottom line is that when done properly, with the assistance of an experienced estate planning or elder law attorney, Medicaid planning is perfectly legal.

It is important to understand that while creating a Medicaid plan is perfectly legal, it should be accomplished with the advice and assistance of your estate planning or elder law attorney. Navigating the complex federal laws and Medicaid eligibility requirements can be difficult, and so it is essential to understand the laws and eligibility requirements to ensure that your Medicaid plan is legal and that it will accomplish the intended goal.

Each Medicaid plan is as unique as the individual creating the plan; however, there are some common strategies utilized in Medicaid planning.

- **Exchanging assets** – exchanging a countable resource for an exempted resource can help. For example, if you have \$50,000 in a savings account it is a countable resource; however, if you use that \$50,000 to pay off the mortgage on your home it will likely be exempted from countable resources because the value of your homestead is exempt.
- **Irrevocable Trust** – only assets that you own are counted. Assets transferred to an irrevocable trust are no longer owned by you and, therefore, do not count.
- **Spousal Impoverishment Law** – by law a healthy spouse must be protected from becoming impoverished. This means your spouse is entitled to keep a portion of your countable assets and income.

The key to Medicaid planning is to start early and consult with an experienced attorney. The laws are complex and subject to change; however, by including a Medicaid plan in your comprehensive estate plan you can ensure that both you and your loved ones will be protected in the event you ever need long-term care.

Texas Health and Human Services, [Medicaid for the Elderly and People with Disabilities Handbook](#)

Genworth, [Cost of Long-Term Care Across the Nation](#)

American Association of Long-Term Care Insurance, [Long-Term Care Statistics](#)

Alz.org, [Alzheimer's Fact and Figures](#)

About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

The Mendel Law Firm, LP
1155 Dairy Ashford
Suite 104
Houston, TX 77079
Phone: (281) 759-3213
Fax: (281) 759-3214
www.mendellawfirm.com