

Medicaid Planning to Preserve the Primary Residence

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Medicaid is increasingly becoming a source of payment for the rising cost of nursing home care. Because a client's personal residence is typically the most valuable asset of his or her estate, Medicaid planning discussions should include the options available to preserve a primary residence for heirs while achieving Medicaid eligibility.

Medicaid Eligibility

With few limitations and exceptions, a Medicaid applicant's assets (resources) and those of his or her spouse are generally considered available to pay for nursing home care before Medicaid will cover the expense. Thus, the value of the primary residence may be a factor in determining Medicaid eligibility.

For example, if a spouse in need of nursing home care applies for Medicaid benefits while the other spouse continues to reside in the primary residence, the value of the residence is disregarded as a resource. But when the non-applicant spouse also needs Medicaid benefits, has passed away, or the residence is owned individually by the applicant, the residence can be considered a resource that affects Medicaid eligibility.



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Potential Planning Options

A client may consider conveying the primary residence to another person (often a child or children) while retaining life use of the property — known as a life estate — to remove the value of the residence from the applicant's available pool of resources. Rather than an outright gift of the residence to another, by retaining a life estate the client maintains control over the residence and has a place to live until nursing home care is needed.

Alternatively, the client can convey the residence to an irrevocable, income-only trust for the client's benefit. The client retains full use, occupancy and possession of the residence during life, and the value of the residence is removed from the applicant's available pool of resources. However, if the residence is ever sold, the sale proceeds must remain in the trust and the client will have access only to income generated within the trust.

Five-Year Lookback and Exceptions

After submission of an application for Medicaid, the client's financial transactions during the preceding five years are reviewed for gifts. Both the conveyance of a primary residence to a third party with a retained life estate, and a conveyance to an irrevocable, income-only trust, are considered a

gifting of assets. A gift within the five-year lookback can result in a penalty period. During the penalty period, Medicaid benefits are unavailable and the client remains responsible for the cost of nursing home care.

Although made during the five-year lookback, a conveyance of the primary residence will not result in a penalty period if made to:

- A spouse
- A certified blind or disabled child
- A sibling with an equity interest in the residence and who resided there for at least one year

- An adult caretaker child who resided in the residence for at least two years, and who provided care to the applicant permitting him or her to remain at home

Conclusion

Preserving the primary residence in the context of Medicaid planning is not necessarily risk-free. The client should be advised of and thoroughly understand potential income, real estate or estate taxes that may be associated with the options discussed in this article. However, preservation of a client's

primary residence can be achieved with proper planning in advance of a need for nursing home care.

Attorneys in the Phillips Lytle LLP Family Wealth Planning Group provide advice and guidance to corporate and individual executors and trustees, as well as beneficiaries regarding all aspects of estate and trust administration and litigation. Lucy M. Berkman, special counsel, can be reached at 716-504-5746 or lberkman@phillipslytle.com. Benjamin S. Cranston, attorney, can be reached at 716-847-7079 or bcranston@phillipslytle.com.



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