

# 15 MYTHS

## Medicaid Nursing Home Benefits in Maine

No one chooses to live in a nursing home, but some older Mainers eventually need care in a nursing home setting. For many, this means not only the loss of personal autonomy but also the depletion of assets to pay for the needed care. The median annual rate of nursing home care in Maine is \$113,150 for a semi-private room. According to the Cost of Care Survey for 2018 conducted by Genworth Financial, the median daily rate in Maine is \$310 for a semi-private room and \$332 for a private room.

Elder law attorneys provide advice to individuals seeking to obtain long-term care benefits without spending down all of their assets in the process. They offer legitimate strategies to pay for care in nursing homes, in residential care facilities, and at home. Some strategies involve hastening eligibility for Medicaid benefits, but that can be difficult as Medicaid law is complex and changes frequently. This article highlights some of those changes and dispels certain myths about the Medicaid nursing home benefit.<sup>1</sup>

### Myth 1: Medicare Will Cover My Nursing Home Bill

**The Truth:** Medicare pays for only a small amount of the nursing home care provided in the United States. In general, Medicare covers the full cost of the first twenty days in a skilled nursing facility if the individual is admitted following at least a three-day hospital stay and is receiving skilled care as opposed to custodial care. Medicare will cover a portion of the cost of the facility for up to eighty more days; the deductible for 2019 was \$170.50 per day, which is sometimes covered by Medigap insurance. When the Medicare coverage ceases, the patient must pay out of pocket unless he or she has adequate long-term care insurance or qualifies for government benefits under the Medicaid program. In Maine, the Medicaid program is called MaineCare, and it is administered by the Department of Health and Human Services (DHHS).

### Myth 2: I Have to Give Away Everything I Own to Get Medicaid

**The Truth:** Certain assets are non-countable or exempt and are typically not considered when an individual applies for MaineCare benefits. Such assets include the following: the individual's primary residence located in Maine with a value of \$750,000 or less (as of 2019); one motor vehicle; personal belongings and household furnishings; up to \$12,000 in a mortuary trust; \$2,000 and an additional \$8,000 in an interest-bearing account. There are also other, less common categories of exempt assets. An elder law attorney can determine which of your assets can be preserved and which must be spent on long-term care.

### Myth 3: If I Put My Property in My Spouse's Name, I Will Be Eligible for Medicaid

**The Truth:** This is not true when an individual is applying for nursing home benefits. All of the couple's countable assets are considered, regardless of how they are titled. After an application for Medicaid nursing home benefits is filed, the community spouse has twelve months to re-title assets from the name of the spouse in the nursing home ("the institutionalized spouse").

This is because after the application is filed, only the institutionalized spouse's assets are counted. In many cases, however, it is best to transfer assets to the community spouse before the application is even filed. The rules are different for residential care and nursing services in the home.

### Myth 4: I Can Keep All of Our Marital Property and My Inherited Property When My Spouse Gets Medicaid

**The Truth:** When a married person applies for MaineCare nursing home benefits, DHHS considers assets in the name of either spouse or in the joint names of both spouses (his, hers, or theirs). In addition to the exempt assets, a spouse who remains at home can keep the Community Spouse Resource Allowance, which is \$126,420 as of 2019. In certain cases, the allowance for the community spouse can be increased. The rules are different for residential care and nursing services in the home.

### Myth 5: If I Enter a Nursing Home as a Private Pay Resident, I Must Spend All of My Assets on My Medical Care and Nursing Home Bills Before I Can Get Medicaid

**The Truth:** It is true that MaineCare nursing home benefits are only available to applicants who are financially eligible. But there are legitimate strategies for preserving assets, particularly for the community spouse, even after an individual has entered a nursing home.

### Myth 6: I Can Hide My Assets and Become Eligible for Medicaid.

**The Truth:** Intentional misrepresentation in a Medicaid application is a crime. Generally, an applicant for MaineCare long-term care benefits must produce financial information dating back five years. A DHHS caseworker will carefully scrutinize those records.

### Myth 7: My Income Has to Be Used to Pay My Spouse's Nursing Home Bill.

**The Truth:** This is not true in Maine. Only the institutionalized spouse's income must be used to pay his or her nursing home bill.

2/15/19

### **Myth 8: All of My Spouse's Income Must Be Used to Pay the Bill if My Spouse is on Medicaid in a Nursing Home.**

**The Truth:** The law allows the community spouse to keep some of the institutionalized spouse's income if the community spouse's income is below certain limits. The institutionalized spouse is also allowed to keep enough income to pay medical premiums, as well as a \$40 personal needs allowance.

### **Myth 9: I Have to Wait Five Years After Giving Anything Away to Get Medicaid.**

**The Truth:** When an individual applies for MaineCare nursing home benefits, DHHS does a five-year look-back. Certain transfers are exempt from the transfer penalty, including transfers to spouses and to children with disabilities. For all other transfers made within the look-back period, a transfer penalty calculation is done. The "penalty" is a period of time that the individual is ineligible for those benefits. The value of all assets transferred is divided by the "transfer penalty divisor," and the quotient is the number of months that the individual is ineligible for benefits. Currently, the divisor is \$8,476. Example 1: A gift of \$13,000 to a non-exempt individual creates a 1.5 month penalty ( $\$13,000 \div \$8,476 = 1.534$ ). Example 2: A gift of real estate worth \$120,000 to a non-exempt individual creates a little over a 14 month penalty ( $\$120,000 \div \$8,476 = 14.157$ ). The penalty is prospective, and it does not start to run until after the MaineCare application is filed and the applicant is determined to be otherwise eligible for Medicaid benefits but for the penalty.

### **Myth 10: I Can Only Give Away \$10,000 Per Year Under Medicaid Rules.**

**The Truth:** In a given year, there is a limit on the amount of money that an individual can gift to one person without triggering a gift tax. This figure is known as the "annual exclusion amount," and it is currently \$15,000. This concept is important for minimizing estate and gift tax, but it has no relevance in planning for Medicaid eligibility. In 2019, the Maine estate tax threshold applies only to decedents whose taxable estates total more than \$5.7 million in assets and the federal estate tax threshold applies to decedents whose taxable estates total more than \$11.4 million in assets. People who are concerned about estate and gift tax law rarely need to worry about Medicaid planning.

### **Myth 11: My Spouse or My Agent Under My Power of Attorney Has the Power to Take Property Out of My Name if I Ever Need Medicaid.**

**The Truth:** The best tool for planning for future MaineCare eligibility is a general durable power of attorney for finances that includes gifting authority. Marriage itself does not allow one spouse to legally remove the name of an incapacitated spouse from real estate or bank accounts. And unless a power of attorney explicitly authorizes the agent to make gifts of the principal's property,

the agent cannot re-title assets belonging to the principal. Many powers of attorney do not contain gifting authority or, if they do, the power granted is inadequate. For instance, many documents have a gifting provision that limits the agent to making transfers of limited assets for estate tax planning. Such a provision is too limited for, and often irrelevant to, effective Medicaid planning.

There are risks to authorizing someone to make gifts of your assets. Your agent must be trustworthy and willing to become knowledgeable about you, your circumstances, and the MaineCare rules. You may want to require that the agent make gifts consistent with your estate plan or that he or she consult with an elder law attorney before making any asset transfers.

### **Myth 12: I Should Transfer My Assets Now to Get Medicaid Benefits in the Future.**

**The Truth:** Most elder law attorneys discourage their clients from making premature transfers of money and property. While an elder is healthy and living independently, retained assets represent freedom of choice for the elder. Transfers to even the most trusted of children may expose the transferred assets to financial problems the child might encounter, like lawsuits or divorce. Most importantly, Medicaid law and the MaineCare rules are constantly changing. A transfer made today may be scrutinized under very different rules in the future—rules that could leave the then-impoorished elder ineligible for government benefits necessary for their care.

### **Myth 13: The State Will Take My House.**

**The Truth:** Federal law requires each state to seek reimbursement of medical assistance paid through the Medicaid program. In Maine, repayment is pursued after the death of the MaineCare recipient through a claim against the decedent's estate. Maine's DHHS does not take a home or even file a lien against a home while a MaineCare recipient is living, but the individual in the nursing home is often forced to sell the home when there is no longer adequate income to maintain it.

### **Myth 14: The Medicaid Rules That Applied to My Neighbor When He Went Into a Nursing Home Will Also Apply to Me.**

**The Truth:** Medicaid law and MaineCare rules change, so do not expect that the same laws and rules that governed your neighbor's application are still in effect today.

### **Myth 15: I Can Research Medicaid Strategies on the Internet.**

**The Truth:** This is only true to a very limited extent. Medicaid is a highly complex benefits program that is jointly funded by federal and state taxes but separately administered by each state. Each state creates its own rules, so the eligibility rules can—and do—vary significantly from one state to another. A strategy that works in one state could be disastrous for an individual in another state.

*The strategies to qualify a married applicant for MaineCare (Maine Medicaid) residential care benefits and a Home and Community-Based Services waiver (in-home nursing services) are different from the strategies to qualify a married applicant for MaineCare nursing home benefits.*

*This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.*