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## MaineCare Eligibility, Benefits, and Estate Recovery

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The high cost of **long-term care** has made planning a critically important issue for most middle class seniors and their families. In fact, most seniors will likely require some form of long-term care. Sadly, many of them are unprepared for the significant financial burdens it places on their family's hard earned savings. **Financial devastation looms large for a family facing ongoing nursing home care at a rate of \$10,000 or more per month. Some local nursing homes cost more than \$13,000 or more per month for a private room.**

### **Long-Term Care Options**

While some seniors are able to afford private pay care, the cost of long-term care will wipe out savings of all but the wealthiest families in a matter of years. Those who have planned ahead by purchasing long-term care insurance have a degree of certainty and peace of mind, knowing that they have a lesser need to rely on other sources in the future. Unfortunately, many can't afford or cannot bring themselves to pay the high cost of long-term care insurance or worse, because of age or medical conditions cannot qualify for long-term care insurance altogether. If you do have long-term care insurance, you should be aware of what your policy covers. Many policies have high deductibles or provide for only a short period of care in facility. In fact, many who have long-term care insurance still have to resort to Medicaid to pay for their care.

### **Medicaid Eligibility**

The other option to pay for care is **Medicaid**, which is known in Maine as **MaineCare**. A joint federal-state program, Medicaid provides medical assistance to low-income individuals, including those who are 65 or older, disabled or blind. Medicaid is the single largest payer of nursing home bills in America and serves as the option of last resort for people who have no other way to finance their long-term care. Although Medicaid eligibility rules vary from state to state, federal minimum standards and guidelines must be observed.

While Medicaid eligibility with respect to long-term care was not difficult in the past, there has been a steady drift towards more complex and restrictive rules, the latest being the Deficit Reduction Act of 2005 which went into effect on February 8, 2006. These changes have resulted in complex eligibility requirements for those in need of Medicaid benefits. It is no longer as easy as reviewing one's bank statements. There are a myriad of regulations involving look-back periods, income caps, transfer penalties and waiting periods to plan around.

## **“MaineCare Pre-Planning” versus “Crisis MaineCare Planning”**

Due to the 60-month lookback period, many seniors desire to plan ahead for long-term care as part of their estate planning, looking far into the future. This is what we call **“MaineCare Pre-Planning”** or **“Proactive MaineCare Planning”**. If the seniors are healthy enough, we strongly encourage them to purchase long-term care insurance to provide a large amount of flexibility in their options for future living. Even if seniors are not eligible to purchase long-term care insurance as a price that they feel is affordable, the attorneys at the Maine Center for Elder Law, LLC often assist seniors in implementing plans that can go a long way toward protecting assets in case of future need for assisted living or nursing home care. Done early enough and if there are honest, reliable family members or others involved, such “pre-planning” or “proactive planning” can save a large fraction of the seniors' assets.

Part of what distinguishes the Maine Center for Elder Law, LLC from other law firms is our ability to assist seniors and their families with **Crisis MaineCare Planning**. This ability is based on in-depth knowledge of the MaineCare eligibility rules, intensive study and experience with client cases in this field, and astute attention to the needs of seniors and their families in these urgent situations. Crisis Medicaid Planning typically occurs when the senior has received an extremely serious medical diagnosis, most commonly when hospital or rehabilitation facility medical personnel have determined that he or she cannot return home after rehab. At this point, the senior and family are facing extended nursing home time without Medicare coverage, starting at around \$9,000 per month and certain to increase in the future. Every month that will pass will consume a substantial portion of the senior's or couple's life savings. It is easy to see a life savings of one or a few hundred thousand dollars being consumed in a matter of a few months or years. Even allowing the Community Spouse to retain the Community Spouse Resource Allowance, described below, will destroy the rest of the savings that the Community Spouse may need in order to live for years or decades into the future. **Crisis MaineCare Planning** is essential to protect what can be saved under these drastic, adverse circumstances, where the costs of waiting even one month are very high.

### **Basics of MaineCare Eligibility for Seniors**

The goal of this article is to explain key factors in MaineCare eligibility for seniors (age 65 or older) in nursing homes or certain assisted living facilities, or to receive nursing care at home. “MaineCare” is Maine’s medical benefits program that implements the federal Medicaid program AND includes some state-funded programs. MaineCare includes healthcare programs for Mainers of all ages, but this article addresses only programs for seniors age 65 and older.

The MaineCare Eligibility Manual is available online from the Maine Secretary of State's Office at <http://www.maine.gov/sos/cec/rules/10/ch332.htm>. This massive set of rules (regulations) is very difficult for someone new to this information to understand and to put into proper perspective. We intend the following overview to be much more readily understandable.

The federal Medicaid program for seniors is designed to supplement a senior’s ability to pay for nursing home care with his or her own income and assets. In order to be eligible for this Medicaid program, the senior and his or her spouse must meet income and asset limitations, as applied through the state program. The MaineCare program allows a senior to be eligible in respect to income if his or her monthly income is less than the private-pay rate for the facility where the individual is institutionalized. The “official” state-wide average private-pay rate for semi-private nursing home rooms in Maine is **\$8,476 per month**, a number established in the MaineCare rules as of October 19, 2014, so most Mainers qualify in regard to income.

The individual must qualify medically by requiring assistance with at least three “**activities of daily living**” (ADLs) or having dementia. This is assessed for the Department of Health and Human Services (DHHS) by a new private contractor named “**Maximus**”, which does all of the DHHS medical eligibility assessments. DHHS orders a medical assessment when a senior files a MaineCare application, but the individual or family may also request Maximus to do an assessment earlier as part of preparing to apply for MaineCare benefits. Doing so can be very important because DHHS will not authorize nursing home benefits to begin for a month prior to the month of the medical assessment. Additionally, if the Maximus assessment determines that the individual does not qualify for nursing care, knowing this can make a substantial difference in the financial planning to be done.

To qualify for MaineCare, **the individual’s “countable” assets are limited to \$2,000**. However, Maine law allows a MaineCare applicant or recipient to possess a bank account or other investment account worth **\$8,000**, which is “**noncountable**”. Thus, in Maine we generally speak of a person being allowed to have a total of **\$10,000 of liquid assets**. This includes cash, savings, checking accounts, CDs, IRAs, the cash value of life insurance, etc. Most states only allow \$2,000 in liquid or otherwise available assets. Maine’s unique \$10,000 number is often helpful. Note: If both spouses share a room in a nursing home, the above limits are \$3,000 for total “countable” assets and \$12,000 for the investment account, so the institutionalized couple sharing a room may possess a total of \$15,000.

If one spouse is in a nursing home but the other spouse lives at home, then federal law and the MaineCare eligibility rules allow higher countable asset limits for the Community Spouse to avoid “**spousal impoverishment**”. The Community Spouse may possess countable assets up to the **Community Spouse Resource Allowance (CSRA)**, a number that usually changes annually as of January 1<sup>st</sup>. According to the MaineCare Eligibility Manual (the DHHS rules) **the CSRA may own countable assets up to \$128,640, effective 1/1/2020**. The Institutionalized Spouse may still own up to **\$10,000**, as described above.

**The above numbers do not take into consideration “noncountable” assets.** Part of the process of MaineCare planning is restructuring the individual’s and spouse’s assets and form of ownership to make as many assets as possible noncountable rather than countable and, therefore, exempt from the above limits.

While an individual receives MaineCare nursing home long-term care benefits, his or her net personal monthly income is paid to the nursing home except for allowed deductions for Medicare and private health insurance premiums, taxes if applicable (rarely), and a “**personal needs allowance**” of **\$40 per month**. This is the general rule, unless the spousal impoverishment provisions allow the Community Spouse to receive some or all of the Institutionalized Spouse’s net income.

Effective 7/1/2019, if the Community Spouse’s personal monthly income is less than the sum of the **Minimum Monthly Income Standard, \$2,113.75**, then he or she is entitled to as much of the Institutionalized Spouse’s net income or income-producing assets as it takes to bring his or her income up to the sum of the Minimum Monthly Income Standard plus the amount by which his or her shelter expenses exceed the **Monthly Excess Shelter Allowance, \$634.13**. If his or her monthly shelter expenses exceed \$617.25, the total of his or her personal income plus income from the Institutionalized Spouse can be increased to the **Maximum Monthly Income Allocation, \$3,216.00**, effective 1/1/2020.

DHHS caseworkers are authorized to allow the Community Spouse to retain enough of the Institutionalized Spouse's income to reach up to the Maximum Monthly Income Allocation

without the Community Spouse having to appeal the determination to an Administrative Hearing. Higher amounts require a hearing or appeal to court. (**NOTE:** The Maximum Monthly Income Allocation concerns only the Community Spouse's eligibility to receive income or income-producing assets from the Institutionalized Spouse; it does not limit the Community Spouse's personal income if he or she already has more income than that number.)

MaineCare pays the difference between the individual's net monthly income and the **"reimbursement rate"** for the particular nursing home. The reimbursement rate is less than the private-pay rate for the nursing home. It is set by the Maine Department of Health and Human Services based on the economics of the particular facility. It is our understanding that MaineCare reimbursement rates for nursing homes are typically more than \$1,000 lower than the private-pay rate, often about 2/3 of the private-pay rate, although these rates are not published for the general public to see. The MaineCare recipient receives nursing home long-term care at this discounted price. Over a long stay of several years, this savings can be substantial. Even though the state may eventually be reimbursed through **"estate recovery"**, the possibility of there being something left from a MaineCare recipient's or couple's life savings after estate recovery is greater than if noncountable assets are consumed up front to pay for nursing home care at the private-pay rate prior to going onto MaineCare.

### **MaineCare "Residential Care" Assisted Living Benefits**

In addition to nursing home benefits, MaineCare can pay for nursing-care benefits in the individual's home or non-nursing benefits in certain assisted living facilities. MaineCare's assisted living ("residential care") eligibility criteria are nearly identical to the nursing home criteria. For residential care, however, the individual does not need to satisfy the 3 ADL medical criteria of the **"Maximus assessment"**, the "spousal impoverishment provisions" do not apply, and the personal needs allowance is **\$70 per month**. On the favorable side, not being subject to the spousal impoverishment provisions means that **the Community Spouse's countable assets are not limited to \$128,640 if the assisted living spouse is already located in the facility.**

**There is a transfer penalty for uncompensated transfers that occur within the lookback period (60 months).** The residential care transfer penalty applies only to the room and board funded with state money, not to any Community Medicaid that the individual receives (which does not have a transfer penalty). It is important for the state to avoid imposing "double penalties" in regard to any federal Medicaid money involved. Double penalties (in regard to federal Medicaid dollars) assessed for any particular transfer would be illegal under federal law.

The residential care MaineCare transfer penalty is calculated similarly to the nursing home MaineCare transfer penalty, using the same divisor. There are slight differences in some wording as to what constitutes an uncompensated transfer, but for the most part, the two transfer penalty programs are similar.

We must always be aware that if someone in residential care should decline to the extent of needing nursing-level long-term care, the transfer penalty will apply to any non-exempt uncompensated transfers that occurred during the lookback period. **The lookback period is 60 months (5 years).** This nursing level transfer penalty is in addition to the state's residential care transfer penalty. So, there will be double penalties, although not in regard to federal funds.

### **Estate Recovery**

Under some circumstances, the state can assert an estate recovery claim to be reimbursed from assets of the deceased Medicaid recipient. The state's claim arises from Medicaid benefits provided by the state at and after age 55. Federal law requires states to pursue estate recovery

against assets in the decedent's probate estate – assets of the decedent that pass by will or intestacy (lack of an effective will). Federal law allows, but does not require, states to pursue estate recovery from nonprobate assets – those that pass by joint tenancy with right of survivorship, certain trusts, beneficiary designations, etc. Maine's estate recovery law provides full authority to pursue estate recovery from all probate and nonprobate assets of the decedent (except for joint tenancies in real estate, a unique exemption in Maine law that DHHS has lobbied the Maine Legislature to repeal several times). However, some assets are more difficult to pursue than others, and some are protected by other laws such as exemptions within the Maine Probate Code. Aligning the client's assets and the form of ownership in order to minimize risk of estate recovery is part of the elder law attorney's planning. This work is best done before the MaineCare application is prepared and filed.

Maine has a unique provision in its MaineCare Eligibility Manual in regard to what is known as "temporary coverage". A federal court Consent Decree in the case of Polk v. Longley in the 1970s has been codified in the MaineCare Eligibility Manual, which requires the state to provide temporary coverage MaineCare benefits to an applicant for which the state has violated the federal regulation that requires the state to make an approval or disapproval decision on a Medicaid application within 45 days after the application has been filed. (The federal regulation allows states 90 days in instances where a determination of disability is required. However, the Polk v. Longley Consent Decree imposes the 45-day standard for ALL applicants in Maine. A few years ago, DHHS asked the Legislature to change the law on this point, subject to federal court approval, but the Legislature did not change it.) Polk v. Longley and the MaineCare Eligibility Manual say that the state cannot subsequently pursue estate recovery against benefits received while the applicant is receiving temporary coverage, even if the applicant is ultimately determined to be ineligible for benefits.

The attorneys of the Maine Center for Elder Law have the experience and expertise to help avoid and prevent the financial ruin associated with the high cost of long-term care. [Contact us today](#) to start the process of understanding the issues surrounding Medicaid eligibility, to develop a Medicaid Asset Protection Report, and to implement the planning and application process.

This article appears on the Maine Center for Elder Law website at:

[http://mainecenterforelderlaw.com/kennebunk-york--me-medicaid-\(mainecare\)-planning-lawyer\\_pa2953.htm](http://mainecenterforelderlaw.com/kennebunk-york--me-medicaid-(mainecare)-planning-lawyer_pa2953.htm)

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