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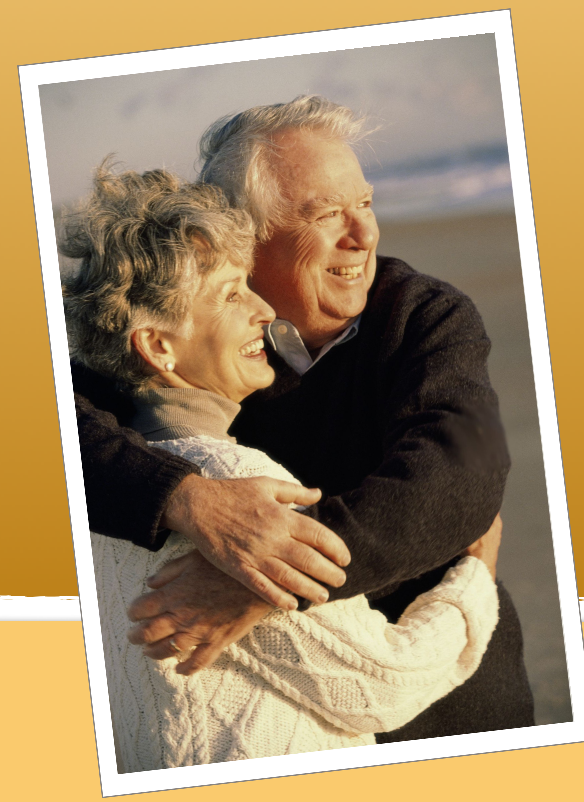
PREPARING FOR THE EXPENSE OF LONG-TERM CARE



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Preparing for the Expense of Long-Term Care

According to the Maine Department of Health and Human Services, the average cost of care to an individual in a nursing home in Maine is presently $8,476 per month. Neither Medicare nor Medi-gap insurance policies presently cover most nursing home care; you must have purchased special nursing home or long-term care insurance, pay yourself, or turn to the Medicaid program for assistance. In Maine, the Medicaid program is called "MaineCare."

While Medicare is an insurance program which is covered by contributions to the social security system, MaineCare is paid for out of state and federal taxes. The program subsidizes the cost of medical care, including nursing home level care, for people who cannot afford to pay for the care themselves. Because the cost of nursing home care is so high, many people who would not ordinarily qualify for government assistance do qualify for MaineCare coverage of nursing home care.

I. THE MAINECARE PROGRAM

Because MaineCare is funded by state and federal tax dollars, you must meet strict guidelines in order to receive assistance. Not only must you medically qualify, you must also meet income and asset guidelines. These guidelines change from time to time, so it's always a good idea to check up on what they are before applying.

In Maine, the MaineCare program is administered by the Department of Health and Human Services; applications for MaineCare must be made through the local office of the Department. If you are already in a nursing home or hospital, a social worker should be able to help you with a MaineCare application. If you need nursing home level care at home, your care manager should put you in touch with a person who can help you.

You must disclose your finances to the Department if you ask for help from the MaineCare program. If you are married you must list not only your income and assets, but also those of your spouse. (There is a special exception when your spouse refuses to cooperate.)

A. ASSET GUIDELINES

All assets must be listed on a MaineCare application. However, not all of them will be considered when determining eligibility for the program. For example, so long as you, your spouse, or a disabled dependent relative lives in your home, and so long as the value of the home is less than $750,000, it will not be considered a resource available to pay for your care. Other "excluded" resources include a vehicle and funds set aside to cover burial in a mortuary trust fund of up to $12,000 each. Real estate owned jointly with someone other than a spouse and non-liquid income-earning assets such as wood lots and rental real estate may also be exempted. Another valuable exception is something called a MaineCare compliant annuity; however, such annuities cannot be purchased before the need for MaineCare arises. Most other assets, such as bank accounts, stocks, and the cash value of life insurance policies and retirement plans will be considered available. The basic rule is, if you can turn other assets into cash to take care of yourself, you are expected to do so before asking the state for help.

When a married person with a spouse living at home applies for Nursing Home MaineCare, the Department first determines the total amount of the couple's countable assets. This process is sometimes called the "Asset Snapshot." Out of the countable assets, the spouse at home is allowed to keep a maximum of $128,640. The spouse in the nursing home may keep up to $10,000 of which $8,000 must be kept in an interest bearing account.

For couples who need assistance with residential or home care, the spouse who does not need the care may keep any amount of assets, but the spouse who needs care may have only $10,000. Because there is no penalty for transferring assets from spouse to spouse it may be relatively easy to arrange assets so as to qualify for MaineCare coverage of home care.

B. TRANSFER OF ASSETS PENALTY

If you give away assets in order to become poorer so that you qualify for MaineCare to cover your nursing care, you actually make yourself ineligible for MaineCare for a period of time. The amount of time, or "penalty period," depends on the value of the assets transferred and the value of anything received in return. The penalty period is determined by subtracting the consideration received from the value of what was given and dividing the remainder by the average monthly private pay rate for nursing homes in the state. The result is the number of months for which the donor and/or his or her spouse will have to wait for MaineCare assistance beyond the time they otherwise would have qualified. The Department will "look back" five years from the date of an application to see whether gifts were made–gifts made more than five years before the application are not penalized.

There is no penalty for buying things or selling things at fair market value; the penalty is applied only to assets given away or sold at less than fair market value. Thus, assets can be used to purchase anything at fair market value. It may sometimes be good planning to use countable assets to purchase exempt assets; for example, if you are going into the nursing home, now might be the time to get your spouse a new car or put a new roof on the house. Again, gifts to spouses do not result in a penalty.

C. INCOME

In Maine, you are generally eligible for MaineCare assistance with nursing home costs if your income is less than the private pay rate for the nursing home you are entering. Only the income of the spouse who is going into the nursing home is counted. The amount that will have to be paid to the nursing home will depend on how much income both you and your spouse have.

If you are in a nursing home, you may be able to continue to support your spouse at home; however, your spouse at home will not have to contribute to your expenses in the nursing home. If you qualify for MaineCare, the Department will look at the total amount of income you receive, subtract $40 per month for your personal needs, subtract an allowance for your spouse (which is determined by your spouse's income and expenses), subtract the cost of your medical expenses not covered by MaineCare or other insurance (such as health insurance premiums); and what is left is what you have to pay to the nursing home.

The amount of support for a community spouse is the difference between an allowance and what that spouse has for income. The allowance is determined by a formula which in 2020 begins at a minimum or $2,155. The minimum is increased for what are called "excess shelter costs." Excess shelter costs are the amount by which rent, mortgage, property taxes, insurance, utilities, and condominium maintenance charges exceed 30% of the minimum allowance. The maximum income allowance for spouses in 2020 is $3,216 per month.

If you stay at home instead of going to a nursing home, the income limits can be less favorable. The person who needs assistance can have no more than $,349 per month in income and may contribute to his spouse's support only if his spouse has income of less than one third of that amount. Generally, if your income is over that amount, even by a penny, you will not qualify for MaineCare assistance with home care. You might qualify for coverage in a residential care facility, but the allowance for the spouse at home will be significantly less than if you were in a nursing home. The upside is that a spouse who does not need care and who has more income need not contribute to the cost of care of the spouse who needs assistance regardless of the setting—home care, residential care or nursing home care.

D. ESTATE RECOVERY

If MaineCare helps you to pay for your nursing home care, the state has the right to file a claim on your probate estate after you die. The state's claim will have to be satisfied before probate assets can be distributed to your beneficiaries. However, no claim will be filed if you leave a surviving spouse or a disabled child. A disabled child does not have to live with you or be dependent on you in any way for the exemption from estate recovery to apply. The person who handles your estate will have to provide a copy of the letter from the Social Security Administration or the Maine Disability Determination Service finding the child to be disabled. If there is a disabled child in the family, it’s a good idea to obtain a copy of that letter and keep it with your estate planning documents.

II. PRIVATE LONG-TERM CARE INSURANCE

The key to buying long-term care insurance is to be sure that you understand both what your needs may be and what the policy you are considering will cover. If you are going to purchase insurance it is essential to do so early enough that the premiums are affordable.

III. THE IMPORTANCE OF PLANNING

Planning ahead can save you much time, money, and emotional trauma. A properly drafted and executed Durable Financial Power of Attorney and Last Will and Testament will allow you to maximize the assets which will be available to support your spouse and family should you become unfortunate enough to require long-term care. For couples who find themselves in those unfortunate circumstances, thought should be given to amending wills so that if the healthier spouse dies first, not all of the assets will be conveyed to the spouse in the nursing home. A testamentary trust may be beneficial in such circumstances. We cannot emphasize enough the importance of having in place durable financial powers of attorney that allow maximum flexibility in managing assets, particularly the ability to transfer assets between spouses.

Estate planning needs change over time and should be reviewed every few years or in connection with major life events, including: marriage, divorce, and remarriage; approaching or reaching age 55; one spouse requires long-term care; disability or death of a spouse or child. If you need basic estate planning documents or would like a review of your existing estate planning documents with elder law and long-term care planning issues in mind, Aroostook Elder Law would be pleased to assist you.