

# MOM NEEDS TO GO INTO ASSISTED LIVING OR A NURSING HOME — WHAT DO I DO?



## *A Family's Guide To New Jersey Long-Term Care Planning*

BY VICTOR J. MEDINA



It's all about family! You want to protect those who are closest and dearest to you. You want assurance that those who cared and sacrificed for you are protected during their time of need. You also want to protect yourself and plan for your own future care. This two-part series will help explain how to pre-plan for future long-term care needs of you and your loved ones, and how to plan in a crisis for immediate needs. Be sure to pick up the book that applies to your current situation. We want to help you help your family!

### ✓ **THINKING ABOUT PRE-PLANNING**

This book is for those interested in pre-planning for long-term care needs. Provided here is a brief look at different options to plan for long-term care with an emphasis on Medicaid planning. This basic overview of available options is designed to dispel much of the confusion regarding long-term care planning and offer planning techniques to ensure your family can protect as much of your hard-earned assets as the law allows, and enable you to receive the care you need without losing everything!

### ✓ **HELP ME NOW! ⇒ THIS BOOK!**

Our book on crisis planning is for you or a loved one who is facing drastic life changes and will be requiring nursing care soon. Geared toward readers who are already familiar with the long-term care options available, our crisis planning book suggests strategic planning techniques to protect as much of your hard-earned assets as possible and help to get you qualified for Medicaid benefits as soon as possible.

## *“Our family taking care of your family!”*

We at Medina Law Group specialize in helping families. Through Medicaid and VA planning, we help families protect what they have spent a lifetime to build from the potentially devastating costs of nursing homes and long-term care. Through estate planning, we create and help administer wills and living trusts. We probate estates and help our clients achieve asset protection, having helped clients for years. What distinguishes our law firm from others is that we treat our clients like family.

Accepting our clients into our client family, we can relate with compassion and understanding to help bring peace of mind, and clearly inform our clients of their estate planning options to devise the best plan for their needs.



### **Victor J. Medina**

“Most middle-class Americans spend their entire lives saving their assets to provide themselves a reasonably comfortable retirement living.”

Most middle-class Americans spend their entire lives saving their assets to provide themselves a reasonably comfortable retirement living. Their hope is to then pass on some remaining estate value to their children. But often, an unexpected medical turn of events finds their assets being drained by an aging parent or spouse who can no longer take care of themselves, and needs help.

If this sounds familiar, you may be feeling unprepared for the changes and decisions looming ahead. Difficult choices must be made and they can seem overwhelming. You look for answers, but are not sure what questions to ask. You may have already made the transition of moving your loved one into a nursing home, but you are worried that your loved one’s money might not last to pay the exorbitant healthcare bills received each month.

Whether you have a loved one currently in a nursing home or you are looking to place a loved one in a nursing home within the next year, this book will help you. It is a road map, a starting point. It will answer some of the questions of what to do, when to do it, and how. By reading this book, you may be well on your way to getting the help your family needs.



# CONTENTS

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<b>We Understand .....</b>	<b>1</b>
<b>Do Your Homework .....</b>	<b>2</b>
<b>What Can I Afford .....</b>	<b>8</b>
<b>Are There Any Programs To Help Me? .....</b>	<b>10</b>
<b>How Can I Protect the “Stay-at-Home” Spouse?... ..</b>	<b>18</b>
<b>How Can I Protect My Nest Egg? .....</b>	<b>19</b>
<b>Why Acting Quickly is Important.....</b>	<b>21</b>
<b>Where Do I Go From Here? .....</b>	<b>22</b>

# WE UNDERSTAND

Our loved ones cared for us, and naturally, we want to care for them, should they need our help. At first, you may help with chores around the house, maintaining the yard or providing housecleaning. You may run errands for them, like going to the grocery store or picking up prescriptions. You may take over paying their monthly bills or provide taxi service to their doctor appointments.

But as care requirements increase, you are faced with more responsibilities. You may be dealing with a mom, dad, aunt, spouse, or friend. No matter the relationship, what we are really talking about here is helping a loved one in need. In this book, we talk about “Mom,” but really this could be anyone in your life who is important to you.

If you are the child of an aging parent with long-term care needs and are reading this book, you are often called the “sandwich generation” because you are forced to juggle caring for your own family with children while also caring for your parents. You feel the demands of your own household, work and personal life often taking second place to the responsibilities of parents.

You may feel guilty if you are not available to help should your parent call for assistance, but you also may regret the time taken away from your own immediate family. You might use sick days, vacation days, and your own money to help finance your loved one’s needs. We see this scenario play out in our client’s lives time and time again.

At some point, you must face the fact that you cannot manage your own household, work your job, and care for Mom and Dad’s needs at the same time.

Perhaps you are the spouse and your partner needs help. You may be feeling some guilt because you don’t want to share the care giving with someone who is not family. You might feel some shame as you reconsider your promise to your loved one that you would never put him or her into a nursing home. But, you just want what is best. When illness strikes and your husband has a stroke and can’t get out of bed and into his wheelchair without assistance, or when your wife gets scared and confused and wanders away from home, it’s probably time to get some outside help.

## **Who’s In Charge?**

Before reading further, it is important to determine who is in charge of making the decisions on how to best help your loved one. Is it the oldest child? A consensus among children? The spouse? Another family member or friend? Whoever the decision-maker is, it is important that they read the remainder of this book. Share this book with that individual through our website or request a hard-copy version from our office.

# DO YOUR HOMEWORK

## Where do you begin?

Rest assured that there is help available to you. An experienced Elder Law attorney can guide you through the process and offer a “roadmap” of how best to prepare for these sudden changes. The first step is to call for an office conference where you can discuss in detail your circumstances and what help you need. In the meantime, there is some homework you should do to prepare for the initial meeting.

First, start with what you already know.

## Assignment #1: What does Mom need?

Have a doctor assess her current health condition. Is the condition correctable under a doctor’s care? If the conditions are not correctable, what type of elder care is appropriate (in-home care, assisted living, or nursing home care)?

Nursing home care is often advised when a patient’s medical needs require skilled nursing supervision, but do not require the intensive care of hospitalization. These medical needs can be the result of old age, a bad fall, serious illness, or disease. Observe whether Mom can perform activities of daily living on her own, such as bathing, dressing, transferring from bed or chair, taking medication, eating, and toilet use. If she cannot perform at least three of these activities, nursing home assistance should be considered.

## Assignment #2: Get an accurate of Mom’s finances.

You cannot make educated decisions concerning cost of care without first knowing what Mom can afford. Gather a list of her assets and determine current fair market value of all:

- Bank & Investment Accounts
- IRAs & 401k(s)
- Stocks & Bonds

# DO YOUR HOMEWORK

- Life Insurance
- Real Estate
- Automobiles & Recreation Vehicles
- Household Goods & Personal Effects

Determine Mom's monthly gross income received from all sources. This would include social security payments, pension payments, and possibly dividends from investments.

Calculate Mom's monthly living expenses, including utilities, groceries, mortgage or rental payments, medical and drug expenses, clothing and entertainment.

## **Assignment #3: Does Mom have the right legal documents?**

Is there a general power of attorney (POA) allowing someone else to act on Mom's behalf? Most people do not have this document. If a POA is discovered, determine:

- When was the POA signed? POAs can get "stale" and are less likely to be accepted after a certain amount of time has passed.
- To whom is the power given (the "agent")? Often with an old POA, a deceased spouse or a child who has fallen out of good favor with the family is listed as the agent.
- Is an alternate agent designated if the primary agent is unavailable or unwilling to serve?
- When does the POA become effective: upon the document's signing or only upon Mom's incapacity?
- What does the POA authorize the agent to do (or not do)?

## DO YOUR HOMEWORK

**Use this checklist as a guide to determine if your POA addresses the issues relevant to your current needs.**

- Real and Personal Property Sales and Purchases
- Real Property Management
- Tangible Personal Property Management
- Residence and Tangible Personal Property
- Investments and Investment Transactions
- Securities
- Business Operations
- Partnership Interests
- Obligations
- Legal Actions
- Fiduciary Positions
- Your Spouse
- Your Support
- Support of Dependents
- Recreation and Travel
- Advance Funeral Arrangements
- Memberships
- Online Accounts and Social Media
- Fixtures and Personalty
- Insurance
- Estate Transactions
- Disclaimers and Statutory Elections
- Powers of Appointment
- Trusts
- Safe-Deposit Boxes
- Business Succession Transactions
- Estate Transactions
- Disclaimers and Statutory Elections
- Powers of Appointment
- Trusts



## DO YOUR HOMEWORK

- Safe-Deposit Boxes
- Business Succession Agreements
- Loans and Notes
- Annuities
- Government Agencies and Benefits
- Power to Deal with Tax Authorities
- HIPAA Authorization
- Employment of Professionals
- Gifting Powers
- Gift-Splitting
- Intent to Return Home
- Domicile
- Business Activities
- Marital Agreements and Designation of Spouse as Agent
- Caregiver Agreements
- Qualified Plans
- Enforcement Proceedings
- Credit Cards
- Domestic Pets
- Estate and Long-Term Care Planning
- Ownership and Rights of Survivorship
- Beneficiary Designations
- Companionship
- U.S. Mail
- Court Proceedings
- Document Execution
- Custody of Documents

\*Note: POAs should contain specific language that gives an agent authority to apply for governmental assistance. Otherwise, there may be problems in implementing many of the elder law strategies available.

## DO YOUR HOMEWORK

Is there a healthcare power of attorney allowing someone else to make medical decisions for Mom if she is unable to make such decisions for herself? Most people do not have this document either. New Jersey has an accepted healthcare power of attorney form. If a healthcare power of attorney was executed in a state other than New Jersey, it is important to have a qualified estate planning or elder law attorney review the document to determine if it substantially complies with the New Jersey form. These powers of attorney can also get “stale.” Check the date the healthcare power of attorney was signed. If some time has passed since the power of attorney was executed, it might be wise to refresh it with a more current document.

If you discover that Mom has not executed a power of attorney (general or healthcare) or the power of attorney fails to meet your current needs, it may be advisable to seek the help of a qualified estate planning or elder law attorney to prepare such a document. Please note, however, that any type of power of attorney can only be signed if your loved one has the mental capabilities to understand what he or she is signing.

If he or she would fail to understand, then you might need to get a guardian appointed over your loved one to manage his or her financial affairs. Guardianship is a legal process designed to protect individuals who can no longer take care of themselves due to a physical or mental condition. A qualified estate planning or elder law attorney can also guide you through this process if it is determined that a guardianship is needed.

### **Assignment #4: Consider where you might want Mom to live.**

“You can’t judge a book by its cover” applies to nursing homes. The quality of a nursing home cannot be determined by the look of the building. Visit the nursing homes you are interested in on a regular basis and at different times of the day, on evenings and weekends. Talk to other residents and their families to determine their overall satisfaction with the quality of care offered.

# DO YOUR HOMEWORK

Consult with the nursing home staff and get answers to key questions:

What are the state inspection ratings for this facility?

- How many certified nurses are on staff? Is the staffing different at night or on weekends?
- How often and what time of day does a doctor make rounds?
- Do employees receive appropriate training on a regular basis?
- What does the facility do exceptionally well? What improvement goals is the facility working on?
- What types of therapy are available?
- Can residents choose a personalized daily schedule for getting up, eating, showering and going to bed?
- Are there varied social activities everyday for the residents; and are they appropriate for the various levels of ability?
- What charges are you responsible for?
- Does the nursing home accept Medicaid residents? If so, is there a waiting list for Medicaid beds? How long is the list?

Nursing homes today are not like they were decades ago. Often, it was the dismal nursing home of long ago that caused your loved ones to make you promise not to send them there! Today, all nursing homes in New Jersey are regulated by a state agency to ensure that their health and safety within the nursing home is not compromised. You can review the results of a nursing home's most recent inspection and can compare facilities within a specific geographic area.

Once you have done your homework by taking inventory of Mom's physical and financial health, gathered pertinent documents, and explored options as to where to place Mom, you are now ready for your scheduled appointment to discuss with a qualified elder law attorney ways in which to pay for long-term care.

# WHAT CAN I AFFORD?

**The average cost of a nursing home in NJ is \$9,000/month or \$108,000 a year.**

## **Are You Going to Pay the Costs Yourself?**

Your mom or family can privately pay out of pocket from their own funds to pay for the cost of care. However, before you choose to pull out your checkbook, consider the cost.

Writing the nursing home a check for \$9,000 each and every month could quickly wipe out your savings and be devastating to the family. Do the math. How long will your loved ones' current resources carry them in a nursing home? If he or she is married, will the cost of care leave the healthy spouse with enough money to live comfortably? Unfortunately, most middle-class Americans cannot afford their long-term care without outside help.

## **Is Insurance Going to Pay the Costs?**

If Mom has long-term care insurance, review the policy and determine if it will meet her current needs by asking some of the following questions:

- What types of care are covered and in what setting?
- What is needed to prove she qualifies for the benefits? Must she need help with at least two or three activities of daily living (bathing, dressing, eating, transferring, walking, toilet use)? What if she has problems with her memory, does that count?
- How long is the elimination period (the time they must wait between qualifying and actually receiving benefits)? Some policies require a 30 or 60 day wait before insurance begins to pay. This means she might need to pay privately for those days before benefits begin.
- How much is the daily benefit for each type of care? Is the amount subject to inflation or is the amount set?
- How long will benefits be paid? Until they reach a certain limit or is there lifetime coverage?



# ARE THERE PROGRAMS TO HELP ME?

**YES!**

There are governmental programs that can cover Mom's healthcare costs if she meets the program's financial and medical eligibility requirements. (This can be an attractive option for those trying to preserve their assets to pass to family members upon death instead of having them eliminated to cover medical bills.)

The two primary means to receive long-term care help is through the assistance of Medicaid benefits and the Veterans Administration (VA) Aid & Attendance pension plan. Let's look at these two options more closely.

## Medicaid Benefits

Medicaid is the primary payer for about two-thirds of nursing home residents. In order to qualify for Medicaid benefits, an individual must pass three tests:

- ✓ **Health Test**
- ✓ **Income Test**
- ✓ **Asset Test**

## Health Test

An individual must meet the "medical necessity" requirement. Usually, this means the individual needs chronic or ongoing care and cannot perform at least three activities of daily living (bathing, dressing, taking medication, walking, eating, and toilet use).

The person must also meet national and New Jersey residency requirements, be age 65 or older, or be disabled or blind.

Once a person becomes physically qualified, then he or she must become financially qualified.

## Income Test

In New Jersey, the income cap (the maximum gross income a person can earn) for individuals applying for Medicaid is \$2,199 per month.

# ARE THERE PROGRAMS TO HELP ME?

If the individual applying for Medicaid is married, the healthy spouse (“community spouse”) can have unlimited income (but at least \$2,980.50 per month) without affecting the Medicaid applicant’s eligibility.

## Asset Test

In New Jersey, a Medicaid applicant can have up to \$2,000 in countable resources and qualify for Medicaid. If the Medicaid applicant is married, the community spouse is allowed to protect a minimum of \$23,844 and a maximum of \$119,220 of the couple’s joint countable assets. Under certain situations, this amount can be even more!

Under the federal Medicaid rules, assets fall into two categories: Countable Resources and Non-Countable Resources.

**Countable Resources are assets that are considered in determining Medicaid eligibility. They consist of assets that could be readily converted to cash in order to pay for cost of care. Examples include:**

- Bank and Investment Accounts
- IRAs, 401k(s)
- Stocks & Bonds
- Life Insurance Policies over a certain amount
- Real estate, excluding the homestead

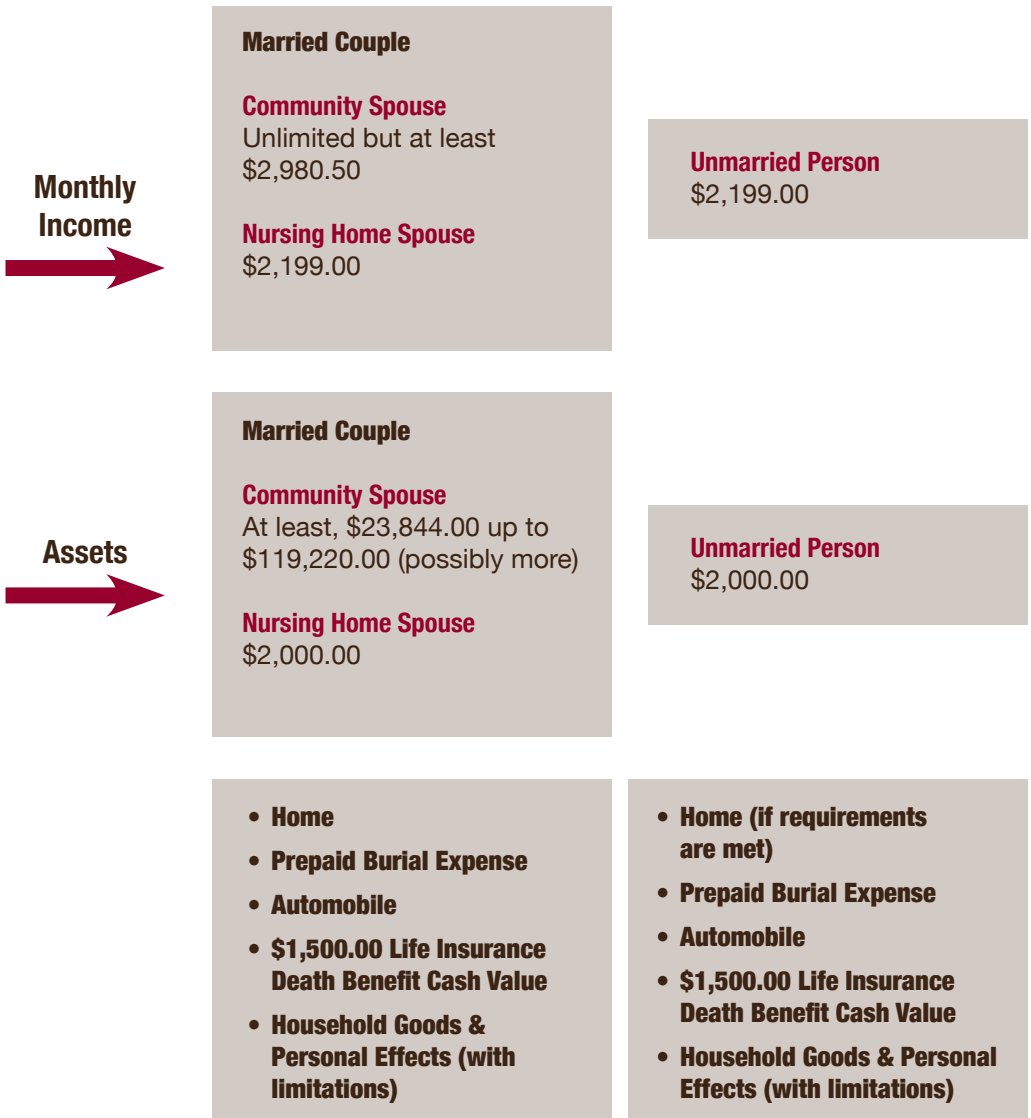
**Non-Countable Resources are assets that are not counted in determining Medicaid eligibility. Examples include:**

- Homestead (if certain requirements are met)
- One automobile
- Prepaid funeral plan for Medicaid applicant, spouse or immediate family members
- Life Insurance with certain cash limits
- Household goods and personal effects (furniture, clothing, jewelry, etc. with certain limitations)

# ARE THERE PROGRAMS TO HELP ME?

## Diagram

Here is a diagram to help you understand the Income and Asset Rules:





# ARE THERE PROGRAMS TO HELP ME?

## Transferring Assets to Qualify for Medicaid

The Medicaid office puts restrictions on making gifts to prevent people from becoming eligible for Medicaid simply by giving their property away.

Once an application for Medicaid benefits is made, the Medicaid office will review all financial activity over the last 60 months (“the look back period”) to determine if any transfers occurred. Medicaid then evaluates these transfers and categorizes them as either compensated or uncompensated transfers. Uncompensated transfers will result in a delay of Medicaid coverage.



**A compensated transfer is a transfer of assets to a person or entity when the giver receives something of equal value in return.**

For example, you offer to pay a painter to paint your house. You both agree the value of the service is \$5,000 and you pay the painter \$5,000. No gift has been made because you gave equal value for equal value. This is a compensated transfer.

**An uncompensated transfer is a transfer of assets to a person or entity when the giver receives no value, or less than the value transferred in return.** For example, you give your son-in-law \$15,000 to paint your house when the value of the service is only \$5,000. You just made a \$10,000 gift to your son-in-law. Gifts within the look-back period are uncompensated transfers and will trigger a penalty for Medicaid eligibility.

*\*Note that there is a difference between the annual federal gift tax exclusion and gifting for Medicaid. You may have heard that every taxpayer can give up to \$14,000 per year to any individual without having to pay gift tax. Many people mistakenly believe they can use this gifting strategy to qualify for Medicaid. Not True! The Medicaid office is not concerned with IRS rules regarding the gift tax exclusion. If any uncompensated transfer is made during the look back period, it is considered a gift under the Medicaid rules and a penalty will be applied.*

## ARE THERE PROGRAMS TO HELP ME?

The penalty period for uncompensated transfers equals the number of months that could have been paid for a nursing home had the amount not been transferred.

The penalty period is calculated by dividing the value of the uncompensated transfer by a “monthly divisor.” The monthly divisor is the statewide average cost of one month in a nursing home. In New Jersey, the monthly divisor is \$328/day, or roughly \$10,000 per month.

To illustrate the calculation of the penalty period, let’s use an example: You made a gift of \$100,000 within the last 60 months and now wish to qualify for Medicaid. This gift was an uncompensated transfer; therefore, a penalty period would apply. To determine the length of the penalty period, here is the calculation:

$$\mathbf{\$100,000 \div \$328 = 304 \text{ days (about 10 months) of penalty}}$$

Based on this example, if you applied for Medicaid today and were otherwise qualified, you would need to pay your own way for 304 days (about 10 months), and then Medicaid would cover your future nursing home expenses.

A qualified elder law attorney can help you determine how the Medicaid rules apply to your specific circumstances. Medicaid rules are quite complex. Do not attempt Medicaid qualification on your own!

# ARE THERE PROGRAMS TO HELP ME?

## **Veterans Administration (VA) Pension**

The Department of Veterans Affairs offers monetary support (called a VA pension) for veterans who meet certain eligibility requirements. Veterans who served must have low income, be either permanently and totally disabled, or be age 65 and older, and have 90 days or more of active military service, with at least one day during a time of war.

Veterans and surviving spouses who are eligible for VA pensions may also be eligible for Aid and Attendance or Housebound benefits, which increase the maximum annual pension rate. Qualifying for Aid and Attendance benefits requires that an individual need the regular assistance of another person in order to perform activities of daily living or is bedridden, a patient in a nursing home due to mental or physical incapacity, blind, or permanently and substantially confined to his or her immediate premises because of a disability. While VA benefits are usually not enough to cover the full cost of long-term care, they can provide a great supplement to one's income.

You can find out more about the VA Pension on our website and can request a copy of our book, *For God & Country: The VA Aid & Attendance Benefit*.

In addition, active duty veterans have the option to live in a Veterans Nursing Home free of charge. These Veterans Nursing Homes are available in every state. However, many states have long waiting lists (from several weeks up to several months) for available beds. In New Jersey, there are only three Veterans Nursing Home facilities.

Whether you decide to pay for long-term care through personal funds, insurance or with the help of governmental assistance, these different payment options do not have to be independent of one another, and often may include combining all three. Knowing about the options available will help you make better decisions in choosing the best strategy to protect your family.

## **Cardinal Rule:**

### **Never Apply Until You Know That You Qualify!**

Applying for Medicaid and VA benefits too early can be disastrous, leaving your loved one ineligible for benefits for a significantly longer period than otherwise necessary. And, for Medicaid, there are no “do-overs” when applying. Once you apply, if any penalty period is triggered, it cannot be removed with a re-application. If you are interested in learning more about Medicaid and VA benefits, seek the assistance of a qualified elder law attorney to develop a strategy for you to maximize the benefits available to your family

## HOW CAN I PROTECT THE STAY-AT-HOME SPOUSE?

If Mom needs to go to the nursing home, the other spouse's living expenses ordinarily continue as before. But, what happens if all of Mom's income is needed to pay for the nursing home? Or what if assets must be sold to pay for long-term care? This could leave the stay at home spouse with substantially less income and assets than before and could lead to bankrupting the "healthy spouse." There are ways to prevent this from occurring.

One way to protect the stay at home spouse's income would be to transfer the source of the income to the healthy spouse under the "name on the check" rule. If Mom's name is not on the income stream, it is presumed to be out of her estate. This is possible because the New Jersey community spouse's income is disregarded when determining Medicaid eligibility for income purposes.

In addition, we might consider purchasing an irrevocable Medicaid compliant annuity or promissory note that would effectively protect a bulk of Mom's assets while providing a steady income stream for the stay at home spouse. Using any of these tools could effectively protect the stay at home spouse's income from being eaten up by long-term care costs.

We could also protect a portion of the stay at home spouse's assets, as well. Under New Jersey law, at least \$23,844 and up to \$119,220 of Mom's and her spouse's joint countable assets could be protected. In certain situations, this amount can be even more, depending on the types of assets owned by the couple.

Our law firm offers a planning tool to help identify what assets and income can be saved should a loved one need to enter a nursing home. We call this tool the Medicaid Asset Protection Diagnostic. This detailed analysis is tailored to your family's specific circumstances. The Medicaid Asset Protection Diagnostic offers you a road map which you and your family can reference to guide you toward making the right financial decision for your loved one's care. Written in easy to understand language, it outlines many of the protection strategies available to save your family as much of their hard-earned assets as possible from the devastating costs of long-term care. If you would like more information on the Medicaid Asset Protection Diagnostic, please email us or call our office.

## HOW CAN I PROTECT OUR NEST EGG?

One of the most common strategies for protecting your nest egg is to convert assets to non-countable resources for Medicaid purposes. Examples include purchasing items that the family will need regardless of whether long-term care is required. Pre-paid burial contracts for Mom and Dad and the immediate family could be purchased. If the family car is old, you could buy a newer car, perhaps one that is wheelchair accessible. Your family could also make improvements to the house, such as renovating baths and kitchens to be more elder friendly. These “tried and true” methods of protecting the family’s assets are conservative, but have proven to be effective.

That is why we encourage our clients to consider using the Medicaid Asset Protection Diagnostic. It provides an opportunity to x-ray your family’s current financial situation. Because it is in writing, you can take the diagnostic and implement some of the cost-saving techniques yourself or have a local elder law attorney in your area implement these strategies for you. The Medicaid Asset Protection Diagnostic provides you with the blue prints necessary to evaluate your family’s needs and then offers suggestions on how to meet those goals.







## WHY ACTING QUICKLY IS IMPORTANT

The sooner you begin planning, the fewer surprises there will be. Delay could result in needlessly exhausting your loved one's funds to pay for care when he or she may have been eligible for benefits. Even if your loved one is already in a nursing home, often we can still protect a bulk of the family's wealth. With numerous strategies, we have helped our clients preserve their assets, ensuring that their money stays in the family and is not whittled away in healthcare costs. Remember, it is never too late to plan. Call today to get started on protecting and preserving assets.



## WHERE DO I GO FROM HERE?

There is no “one size fits all” strategy to position your assets to financially qualify for Medicaid benefits. Each case is different because all families’ goals and needs are different. The strategies offered in this book are just a sampling of the tools available to you.

If your loved one plans on entering a nursing home within the next year, we encourage you to call our office for a consultation to discuss ways in which you can preserve your assets while getting the long-term care you need. Inquire about the Medicaid Asset Protection Diagnostic which will provide the road map necessary to navigate the healthcare payment options available. The more you know about how to get the help and protection you deserve, the better you will be able to look out for your family’s best interests. Get the right help.

**Contact us today to determine  
how our family can help yours.**



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