

COMMON MISCONCEPTIONS ABOUT LONG TERM CARE ASSISTANCE IN MAINE

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The average cost of nursing home care in Maine is over a staggering \$100,000 per year. A year or two of nursing home care is enough to wipe out one's life savings. Medicare covers only up to 100 days of nursing home care, but only if one qualifies medically for such care and with hefty co-pays. Most people in Maine end up looking to MaineCare for assistance with this cost.

MaineCare is our state's name for the Medicaid program, a federal assistance program that is run by each state. Since 1993, Congress has implemented a series of changes to the Medicaid rules designed to make it more difficult to qualify for assistance. The thrust of most of these changes has been to discourage people from transferring assets in order to qualify for assistance. Because of the complexity of the Medicaid rules and the numerous changes, much misinformation abounds, often deterring people from attaining assistance for which they might qualify. Here are some of the most common misconceptions.

The State Will Take My House.

The value of one's home up to \$500,000 (\$750,000 for a couple) is an exempt asset under the MaineCare rules, thus the home rarely has a bearing on one's eligibility for MaineCare. This is true even for a single person applying for nursing home assistance. The only requirement is stating an intent to return home, however unrealistic such intent may be. The State, however, will assert a claim against it after the death of the MaineCare recipient, but only if there is no surviving spouse.

I Have to Spend All of My Money Before My Spouse Will be Eligible for Assistance.

Not only is one's home exempt from consideration in assessing one's eligibility for MaineCare, but the spouse of the applicant may keep up to \$126,420 in other assets, plus an automobile. This is in addition to the \$10,000 that the applicant is allowed. Sadly, a lot of people don't realize this and up spending their savings unnecessarily before applying for assistance.

I Can Make Gifts of \$15,000 Each Year Without Getting Into Trouble.

This misconception confuses federal and state tax laws with the gifting rules under MaineCare. The former is based on I.R.S. and Maine Revenue laws while the latter is based on Medicaid law - two entirely separate statutory schemes. The gift tax exemption allows one to make annual gifts of up to \$15,000 without using any of one's \$11 million credit against federal estate and gift tax and \$5.6 million credit against state estate and gift tax. For people with estates of less than several million, this is of no benefit because the entire estate will pass free of gift and estate tax. Under Medicaid law, transfers or gifts of any size which occur within five years of one's application for MaineCare will result in a penalty period. For MaineCare purposes, only combined gifts of less than \$500 per calendar quarter are exempt.

I Can Shelter My Assets in an Annuity.

Annuities can only be used to shelter the assets of the spouse of an individual entering a nursing home and only if the annuity meets several strict criteria. The annuity must be immediate, meaning that the annuity has been converted into a stream of income, with no possibility of cashing it out. In addition, there are several other requirements in order for the annuity to be considered an exempt asset or to not result in a penalty period. Most annuities being sold today are deferred annuities that can be cashed in or assigned, and therefore they are a countable asset insofar as MaineCare eligibility. Using annuities to plan for long term care is complicated and should be done with the guidance of a professional who thoroughly understands the Medicaid laws.

I Can Shelter My Assets in a Trust.

To the extent that a MaineCare applicant or his spouse has the use of funds in a trust, those assets will be counted in determining eligibility for MaineCare and are not exempt. There are limited circumstances when a trust can be a good planning device for long term care, but trusts are no magic bullet for long term care planning.

If I Haven't Transferred Assets Five Years Prior to Needing Assistance, I Have No Options.

Certainly, one's options are limited when the need for nursing home care is looming, however, there are often still steps that can be taken. Certain exceptions to the transfer penalty rules are often overlooked, such as transfers to disabled children, transfers to trusts for disabled individuals and transfer of the house to a child who has been caring for the applicant parent in the house. There are also other options which are beyond the scope of this article, and which require the assistance of an experienced elder law attorney.

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