

## Important Terms in Elder Law

**Conservator of the Estate:** An individual appointed to supervise the financial affairs of another person who is found by the probate court to be incapable of doing so himself or herself.

**Conservator of the Person:** An individual appointed to supervise the personal affairs of another person who is found by the probate court to be incapable of doing so himself or herself.

**Date of Institutionalization:** The day on which the institutionalized spouse enters either a hospital or a long-term care facility in which he or she stays for at least 30 days. This is the date when a snapshot of the couple's assets is taken to determine the CSPA.

**Durable Power of Attorney:** A document that appoints an attorney-in-fact and gives him or her the authority to act on an individual's behalf with regard to all legal and financial matters (or the authority may be limited to specific matters) and continue to do so in the event of an individual's incapacity.

**Living Will:** A document that expresses an individual's wishes with regard to medical treatment in the event he or she is faced with serious illness or accident. A Living Will may also designate a healthcare agent to make medical decisions on an individual's behalf in the event he or she is unable to do so for himself or herself.

**Probate:** A court-supervised process for settling a deceased person's estate.

**Special Needs Trust:** A type of trust specifically designed for individuals who are physically and/or mentally disabled. The assets held in a Special Needs Trusts are protected from creditors and lien holders and are not considered countable assets for purposes of qualifying for certain government programs.

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<b>Family caregiver contracts</b>	<b>Powers of Attorney</b>
<b>Health care instructions</b>	<b>Probate &amp; estate administration</b>

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# Elder Law & Long-Term Care Planning

## What is Elder Law?

Elder law encompasses many different topics, all related to legal issues that affect people as they age. Brody Wilkinson's Trusts & Estates Group is experienced in planning and managing the legal needs of elderly clients. Attorneys in the Group handle aging and incapacity planning, living trusts, living wills and health care instructions, tax planning and Medicaid planning on behalf of elderly individuals and the children of elderly individuals.

## Paying for Long-Term Care

Long-term care in a nursing home is usually paid for in one of three ways:

- Private pay by the recipient of services or his or her family
- Coverage under a long-term care insurance policy
- Coverage under Medicaid

A long-term care insurance policy is a type of insurance that covers long-term care services, such as nursing homes, assisted living facilities, and sometimes, care in your own home. Coverage varies, but usually includes a daily benefit amount, a maximum benefit amount and a maximum number of years of coverage. It also typically has an "elimination period" during which time you are responsible for payments on your own prior to the policy beginning payments. There are several companies that offer this type of insurance, and many different types of policies, so it is important to research options and seek assistance before purchasing a policy.

## Medicare

The Medicare program is the main insurance program for people over age 65 and certain people with disabilities. It is divided into parts – Parts A, B, C and D. People who receive Social Security Retirement benefits at age 65 are automatically enrolled in Medicare Part A. Others must apply for Medicare through the Social Security office.

**Medicare Part A** mainly covers hospitalization. It will also cover hospice care, and has some long-term care coverage, but it is very limited, and includes no more than 100 days. It has no premiums, but it does have deductibles for hospital stays. For care in a skilled nursing facility, Medicare may cover the first 20 days, but after the first 20 days, it only covers a portion of the cost, and does not cover stays longer than 100 days. After that time period, people usually need to find other sources of payment to cover the cost of a skilled nursing facility.

**Medicare Part B** covers doctors' visits, lab tests, and durable medical equipment. It is optional and does come with a monthly

premium. Medicare Part C, also known as Medicare Advantage Plan, is an add-on to Part A and B coverage, and is sold through private insurance companies. It adds additional coverage, but participants are required to work within a network of doctors and hospitals. Medicare Part D is also optional and provides coverage for prescription drugs. Premiums, deductibles and cost-sharing vary depending on the plan the participant chooses.

## Medicaid

Medicaid is a joint federal and state benefits program that provides payment of medical care for people of any age who cannot otherwise afford it. It pays for nursing home care as well as physician services, hospital care and some medical supplies.

### ELIGIBILITY

Medicaid laws vary by state. In order to be eligible for Medicaid assistance in Connecticut, a potential applicant needs to satisfy strict financial eligibility rules. These rules permit an individual to have the following resources: (a) no more than \$1,600 in assets; (b) a pre-paid burial plan (up to \$5,400 if irrevocable); (c) a burial plot, casket, and headstone; (d) life insurance with a face value of no more than \$1,500; and (e) personal effects.

The home is an exempt asset (up to a certain value) when the individual who receives Medicaid assistance lives there, or the home is occupied by certain individuals (i.e., a spouse; a child under 21; a child who is blind or disabled according to Social Security rules; a sibling with an equity interest in the home who has lived there for at least one year prior to the individual's admission to a medical institution). The home loses its exempt status if the individual who receives Medicaid services no longer lives there and has no expectation of returning home or the home is not occupied by one of the individuals listed above.

In order for a potential applicant to qualify for Medicaid assistance in the future, he or she will have to "spend down" their assets to meet the above guidelines. If the individual gives away his or her assets in order to qualify sooner, they may be subject to a period of disqualification for assistance. As between a married couple where one spouse needs to apply for assistance, there are guidelines for determining the amount of assets which are protected for the applicant's spouse.

### TRANSFER OF ASSETS

In general, if a transfer of assets for less than fair market value has occurred during the applicable "look back" period (60 months), a period of ineligibility for benefits is calculated unless the transfer fits within certain exceptions to the transfer rules. The penalty period for transfers of assets for less than fair market value begins in the month in which the applicant is otherwise eligible for Medicaid coverage.

## SPOUSAL ASSESSMENT

The community spouse is allowed to keep a certain amount of the family's assets if his or her spouse enters a nursing home first. The amount of such protected assets is referred to as the Community Spouse Protected Amount (CSPA). When a Medicaid application is filed, the State assesses the couple's total assets, whether jointly or solely held, and makes a determination regarding how much a community spouse may retain.

With respect to income, Connecticut uses a complicated formula to determine if the community spouse is left with sufficient income funds. This is referred to as the Monthly Maintenance Needs Allowance (MMNA). There is a cap on such income. If the community spouse, based on housing costs (mortgage, utilities, etc.), requires an amount up to the full cap to maintain himself or herself and does not have sufficient income of his or her own, then income from the institutionalized spouse may be diverted to the community spouse. This is known as the community spouse allowance.

## THE APPLICATION PROCESS

Applying for Medicaid benefits can be a long and tedious process if not properly undertaken from the outset. The Department of Social Services likely will require documentation concerning any assets owned or transferred during the look back period, and proof of any assertion that certain assets are exempt under the Medicaid rules. If such request for information is not adequately or timely provided, the application could be denied and then the applicant would have to re-apply once the requested information was obtained. Further, after Medicaid eligibility is approved, the Department of Social Services requires a re-determination form to be completed every six months to one year thereafter.

## Medicaid Planning & Preserving Assets

The Medicaid application process can be complex and time consuming. The earlier an individual begins planning for Medicaid, the more that can be done to preserve assets and increase the likelihood an application will be accepted. Medicaid planning may allow an individual to preserve assets for future generations that might otherwise have been required to be spent down on nursing care.

Please contact us for more information about how to plan for Medicaid.