Medi-Cal Planning and Division of Assets

A Consumer's Guide

An Estate Planning and Elder Care Law Firm

3425 S. Bascom Avenue, Suite 240, Campbell, CA 95008

(408) 356-9200 • (831) 476-2400

www.attorneyoffice.com

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Introduction

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make.

Perhaps the move is being made because the family member can no longer care for himself or herself… or has a progressive disease like Alzheimer's… or has had a stroke or heart attack.

No matter the reason, those involved are almost always under great stress.

At times like these, it is important that you pause, take a deep breath and understand that there are things you can do. Good information is available, and you can make the right choices for you and your loved one.

This Consumer's Guide to Medi-Cal Planning and Division of Assets is designed to help provide you with information and answers to some of the questions you will encounter. These are questions which we, as Elder Law attorneys and nursing home professionals, deal with daily.

Our clients have found this guide to be a valuable resource, and we hope you will find it useful too.

This guide is brought to you as a service of:

LITHERLAND, KENNEDY & ASSOCIATES, APC
Attorneys at Law
An Estate Planning and Elder Care Law Firm
(408) 356-9200
info@attorneyoffice.com
attorneyoffice.com

Medi-Cal Planning and Division of Assets

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. As we conclude the first quarter of the 21st century, life expectancy has almost doubled. As a result, we face more challenges and transitions in our lives than those who came before us.

One of the most difficult transitions people face is the change from independent living in their own house or apartment to living in a long-term skilled nursing facility or "nursing home." There are many reasons why this transition is so difficult. One is the loss of home… a home where the person lived for many years with a lifetime of memories. Another is the loss of independence. Still another is the loss of the level of privacy we enjoy at home, since nursing home living is often shared with a roommate.

Most people who make the decision to move to a nursing home do so during a time of great stress. Some have been hospitalized after a stroke, some have fallen and broken a hip, still others have progressive dementia, like Alzheimer's disease, and can no longer be cared for in their own homes.

Whatever the reason, the spouse or relative who helps a person transition into a nursing home during a time of stress faces the immediate dilemma of how to find the right nursing home. The task is not small, and a huge sigh of relief can be heard when the right place is found and the loved one is moved into the nursing home. For many, the most difficult task is just beginning: *How to cope with nursing home bills that may total $15,000 to $24,000 per month or more?*

How to Pay for Nursing Home Care

One of the things that concerns people most about nursing home care is how to pay for that care. There are basically four ways that you can pay the cost of a nursing home:

1. **Long-Term Care Insurance:** If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of the nursing home. Unfortunately, long-term care insurance is not affordable to purchase when you need it and most people facing a nursing home stay do not have this coverage.
2. **Pay with Your Own Funds:** This is the method many people are required to use at first. Quite simply, it means paying for the cost of a nursing home out of your own pocket. Unfortunately, with nursing home bills averaging between $15,000 and $24,000 per month, *few people can afford a long-term stay in a nursing home*.
3. **Medicare:** This is the Federal health insurance program primarily for people 65 years of age and older. Medicare provides *short term* assistance with nursing home costs, but only if you are part of the 4% of the Medicare participants that meet the strict qualification rules.
4. **Medi-Cal:** Medi-Cal is the California implementation of the Federal Medicaid program. One of the primary benefits of Medi-Cal is that it helps pay for long-term custodial care in a nursing home. Custodial care refers to assistance with the activities of daily living (i.e., activities like dressing, bathing, toileting, preparing meals and so

on). The inability of some older persons to manage these activities on their own often results in the need to move to a nursing home.

As private pay (i.e. using your own funds) and long-term care insurance are self-explanatory, our discussion will concentrate on Medicare and Medi-Cal.

What About Medicare?

There is a great deal of confusion about Medicare and Medi-Cal.

Medicare is the federal health insurance program primarily designed for older individuals (i.e. those over age 65). There are some limited long-term care benefits that can be available under Medicare. In general, if you are enrolled in the traditional Medicare plan, and you have had a hospital stay of at least three (3) days, and then you are admitted into a skilled nursing facility (often for rehabilitation or skilled nursing care), Medicare may pay **for a while**. (If you are a Medicare Managed Care Plan beneficiary, a three-day hospital stay may not be required to qualify.)

If you qualify, traditional Medicare **may** pay the full cost of the nursing home stay for the first 20 days and **can** continue to pay the cost of the nursing home stay for up to the *next* 80 days, but with a deductible of $217 per day in 2026 (adjusted annually by Medicare). Some Medicare supplement insurance policies will pay the cost of that deductible. For Medicare Managed Care Plan enrollees, there is no deductible for days 21 through 100, as long as the strict qualifying rules continue to be met. So, in the best-case scenario, the traditional Medicare or the Medicare Managed Care Plan **may** pay up to 100 days for each "spell of illness." In order to qualify for these 100 days of coverage, however, the nursing home resident must be receiving daily "skilled care" and generally must continue to "improve." (Note: Once the Medicare and Managed Care beneficiary has not received a Medicare covered level of care for 60 consecutive days, the beneficiary may again be eligible for the 100 days of skilled nursing coverage for the next spell of illness.) Medicare is not intended to provide long-term skilled nursing care, instead, Medicare is designed to provide rehabilitation to get the patient out of the facility and back home.

While it is never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience, it usually falls far short of the 100-day maximum. Even if Medicare does cover the 100-day period, what then? What happens after the 100 days of coverage have been used?

At that point, in either case, you are back to one of the other alternatives… long-term care insurance, paying the expense with your own assets, or qualifying for Medi-Cal.

What Is Medi-Cal?

Medi-Cal is the California implementation of the Federal Medicaid program. Medicaid eligibility rules vary from state to state, with California being one of the least restrictive programs in the nation.

One of the primary benefits of Medi-Cal is that it helps pay for long-term custodial care in a nursing home once you have qualified. Medicare does not pay for treatment for all

diseases or conditions. For example, a long-term stay in a nursing home may be caused by Alzheimer's or Parkinson's disease, and even though the patient receives medical care, the treatment will not be paid for by Medicare. These stays are called custodial nursing stays. Medicare does not pay for custodial nursing home stays. In that instance, you will either pay privately (i.e. use long-term care insurance or your own funds), or you will have to qualify for Medi-Cal.

Why Seek Advice for Medi-Cal?

As life expectancies and long-term care costs continue to rise, the challenge quickly becomes how to pay for these services. Many people cannot afford to pay $15,000 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medi-Cal Program is there to help. In fact, in our lifetime, Medi-Cal has become the long-term care insurance of the middle class. But the eligibility to receive Medi-Cal benefits requires that you pass certain tests on the amount of income and assets that you have.

The reason for Medi-Cal planning is simple. First, you need to provide enough assets for the security of your loved ones or they too may have a similar crisis. Second, the rules are extremely complicated and confusing. The result is that without proper planning and advice, many people **spend more on their long-term care than they need,** and their family's security is jeopardized.

Exempt Assets and Countable Assets: What Must Be Spent?

To qualify for Medi-Cal, applicants must pass some fairly strict tests on the amount of assets they may keep. To understand how Medi-Cal works, we first need to review what are known as *exempt* and *non-exempt* (or countable) *assets. Exempt assets* are those which Medi-Cal will not take into account (at least for the time being). In general, the following are the primary exempt assets:

- The home, no matter what its value. The home must be the principal place of residence. The nursing home resident may be required to show some "intent to return home" even if this never actually takes place
- Personal belongings and household goods
- One automobile
- Retirement accounts of the incapacitated spouse *under certain circumstances*
- Burial spaces and certain related items for applicant and spouse
- Up to $1,500 designated as a burial fund for applicant and spouse
- Irrevocable prepaid funeral contract
- Value of life insurance if face value is $1,500 or less. If it does exceed $1,500 in total face amount, then the cash value in these policies is countable

All other assets are generally *non-exempt* and are countable. Basically, all money and property, and any item that can be valued and turned into cash, is a *countable asset* unless it is one of those assets listed above as exempt. Countable assets include:

- Cash, savings, and checking accounts, credit union share and draft accounts
- Certificates of deposit (CDs)
- U.S. Savings Bonds
- Individual Retirement Accounts (IRA), Keogh plans (401K, 403B) of the incapacitated spouse *if the specific requirements are not met*
- Nursing home accounts
- Prepaid funeral contracts which can be canceled
- Trusts (depending on the terms of the trust) and the assets titled in the Trusts
- Real estate other than the residence (subject to complicated exceptions for married couples)
- More than one automobile
- Boats or recreational vehicles
- Stocks, bonds, mutual funds, and brokerage accounts
- Land contracts or mortgages held on real estate

While Medi-Cal rules remain complicated and subject to change, a single individual may generally qualify for Medi-Cal in 2026 if they own only exempt assets and have countable assets within California's Medi-Cal asset limit, which is **$130,000** for one person, subject to applicable exclusions and program rules.

A Common Question

I have added my loved one's name(s) to my account. Does the account still count?

Yes. The entire amount in the account is counted for Medi-Cal purposes unless you can prove some or all the money was contributed by the other person who is on the account.

Division of Assets: Medi-Cal Planning for Married Couples

Division of Assets is the term commonly used to describe Medi-Cal's Spousal Anti-Impoverishment protections. These rules apply when one spouse requires long-term care in a nursing facility while the other spouse, known as the *community spouse*, continues to live at home. The purpose of these laws is to ensure that the spouse remaining at home is not left impoverished simply because the other spouse needs nursing home care.

Under California's Medi-Cal law effective January 1, 2026, asset limits once again apply to aged, blind, and disabled Medi-Cal programs, including long-term care. As a result, Division of Assets planning has renewed importance for married couples.

In a Division of Assets analysis, the couple must identify and review all countable assets owned by either or both spouses, whether held as community property or separate property. Exempt assets such as the primary residence, household goods, personal effects, and one automobile are not counted for Medi-Cal eligibility purposes.

Asset Limits for Married Couples

For 2026, California applies a combined household asset limit rather than the older, lower federal SSI limits. In general:

- A married couple may retain up to $195,000 in countable assets ($130,000 for the first household member plus $65,000 for the second), subject to Medi-Cal's rules regarding exemptions and availability.
- Assets exceeding this limit must generally be reduced or restructured through permissible planning strategies before the institutionalized spouse may qualify for Medi-Cal long-term care benefits.

Unlike prior law, eligibility is no longer determined by reducing the institutionalized spouse's assets to $2,000. Instead, Medi-Cal looks at the household's combined countable resources in relation to the applicable asset limit.

CSRA Transfers and the 90-Day Transfer Period (New for 2026)

Beginning in 2026, if assets are held jointly in a way that places the Medi-Cal spouse over the $130,000 limit, the couple may still apply for Medi-Cal. Once eligibility is approved, the couple is granted a 90-day Transfer Period, starting from the effective date of the Notice of Action (NOA), to reallocate assets.

During this period:

- Funds may be transferred from the Medi-Cal spouse to the community spouse
- These transfers are not subject to Medi-Cal transfer penalties
- The goal is to reduce the Medi-Cal spouse's countable assets to $130,000 or less, while allowing the community spouse to retain assets up to the Community Spouse Resource Allowance ("CSRA").

After Medi-Cal eligibility is established with spousal impoverishment protections in place, assets later acquired by the community spouse are not counted and do not affect the Medi-Cal spouse's eligibility.

Income Protections for the Community Spouse

In addition to preserving assets for the community spouse's needs, Medi-Cal law also sets the minimum amount of income the at-home spouse is allowed to retain. This minimum income limit is the Minimum Monthly Maintenance Needs Allowance ("MMMNA").

If the community spouse's own income falls below the MMMNA, then they may receive a portion of the nursing home spouse's income sufficient to reach that minimum level. The remainder of the institutionalized spouse's income goes to the facility as their share of cost.

The MMMNA is **adjusted annually**, and the applicable amount depends on federal guidelines in effect at the time of eligibility.

Example (Illustrative Only)

Assume the community spouse receives Social Security income and has no other income. If the applicable MMMNA exceeds this amount, the community spouse may receive an allocation from the nursing home spouse's income equal to the shortfall (the difference between the MMMNA and the community spouse's income). This income diversion helps prevent the at-home spouse from having to spend down savings simply to meet basic living expenses.

Planning Considerations

Spousal anti-impoverishment protections are designed to preserve financial stability for the spouse remaining at home, but **the rules are technical and time-sensitive**. Asset titling, timing of transfers, income allocation, and exemption planning can all materially affect eligibility and cost-sharing outcomes.

Because Medi-Cal law continues to evolve, married couples facing long-term care should seek guidance from a qualified Elder Law attorney to ensure compliance with current law while maximizing available protections.

Medi-Cal Estate Recovery and Your Home

California does not take your home while you are alive. However, after your death, the State may seek reimbursement for Medi-Cal benefits paid on your behalf through a process known as Medi-Cal Estate Recovery.

While your home is generally exempt for Medi-Cal eligibility purposes, it can still be subject to an estate recovery claim after death if it remains in your name and passes through probate. In that situation, the State may file a claim against your estate to recover Medi-Cal costs, up to the value of the assets subject to probate.

Importantly, a home titled in a Living Trust is not subject to the Medi-Cal Estate Recovery claim in California.

Exemptions to Medi-Cal Estate Recovery

Medi-Cal is prohibited from making an estate recovery claim in the following circumstances:

- **Surviving Spouse or Registered Domestic Partner**
  If the Medi-Cal recipient is survived by a spouse or registered domestic partner, an estate recovery claim is prohibited and permanently barred.
- **Minor, Blind, or Disabled Child**
  If the Medi-Cal recipient is survived by a minor child under age 21, or a blind or disabled child of any age, federal and state law prohibit estate recovery.
- **Homestead of Modest Value**
  Estate recovery is also prohibited when the home qualifies as a homestead of modest value. This is defined as a residence with a fair market value of 50 percent or less of the average home price in the county where the property is located, as of the date of death.

Planning Note: Advance planning can play a critical role in protecting the home from Medi-Cal estate recovery. With property planning, families can often preserve the home for their loved ones while remaining compliant with Medi-Cal rules.

Legal Assistance

Planning for nursing home care and Medi-Cal eligibility involves complex legal, financial, and care-related issues. For this reason, individuals and families facing long-term care decisions benefit from working with an attorney who has specific experience in Medi-Cal planning. These services are typically provided by Elder Law attorneys, and choosing the right professional is an important step during an already challenging time.

When selecting an attorney, look for someone who devotes a substantial portion of their practice to elder law and long-term care planning. Recommendations from trusted professionals, such as hospital social workers, support groups, accountants, or friends, can be helpful. You may also wish to consider whether the attorney is a member of professional organizations such as the National Academy of Elder Law Attorneys (NAELA), which provides ongoing education and resources in this specialized area of law. Ultimately, choose an attorney who is knowledgeable, attentive, and responsive to the unique needs of you and your family.

About LITHERLAND, KENNEDY & ASSOCIATES, APC Attorneys at Law

Litherland, Kennedy & Associates have been providing quality estate planning documents in the Greater Bay Area since 1975. They have helped thousands of people who are concerned about protecting their families from the devastating legal effects of disability and death. With the aid of public seminars, educational presentations, articles, interviews and television appearances, Litherland, Kennedy & Associates have championed the use of revocable living trusts as a proven way to protect families from the expense and delay of probate and to reduce or eliminate unnecessary taxes and to prevent Medi-Cal Estate Recovery.

Litherland, Kennedy & Associates are members of the American Academy of Estate Planning Attorneys, a national membership organization committed to assisting attorneys in providing quality estate planning services to their clients. They are also members of the National Academy of Elder Law Attorneys, a membership organization comprised of attorneys in the private and public sectors who deal with legal issues affecting the elderly and disabled.

Our Geriatric Care Manager helps our senior clients and their families with Medicare issues and Medi-Cal applications and representation. She provides psycho-social assessments of health care needs, develops individualized plans for care, evaluates the specific needs of clients, and makes recommendations when applicable for home care services, independent living communities, assisted living facilities, and nursing facilities. Her goal in working with clients is to advocate on behalf of the senior, and to enhance the quality of life of both the older adult and their loved ones.

Our firm is dedicated to providing you with quality estate planning resources so you can become familiar with all of the existing options. When you visit or call Litherland, Kennedy & Associates, we want you to feel comfortable discussing such an important issue concerning both you and your family. We want to arm you with the information you need to make an informed decision about your family's future.

If you have a well-drafted estate plan in place, you will ensure that your estate passes to whom you want, when you want, and is carried out in the manner you have chosen. You can rest assured that your family won't have to endure the public and costly probate process. The government won't be able to take what you have spent a lifetime building.

If you would like to attend a free seminar on Living Trusts, Medi-Cal Planning, or another estate planning topic, please contact us at:

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