

NEW ENGLAND CONSULTING GROUP OF GUILFORD, INC

# The Medicaid Planning Guide 2010

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**Presented By:**

**Thomas J. Perrone, CLU, President**  
**New England Consulting Group of Guilford, Inc.**  
**2514 Boston Post Rd C-2, Guilford, CT 06437**  
**800-311-1115 or 203-453-0471**  
**Fax: 203-453-0877**  
**[www.necgg.com](http://www.necgg.com)**  
**email: [tpnecgg@comcast.net](mailto:tpnecgg@comcast.net)**

# The Medicaid Guide For Planning

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Thomas J. Perrone, CLU, President  
800-311-1115  
[www.necgg.com](http://www.necgg.com)  
E-mail: [tpnecgg@comcast.net](mailto:tpnecgg@comcast.net)

***The Medicaid system is complex. This guide is for the purposes of explaining the general concepts and provisions of the Medicaid system. Each state has its own version of the general Medicaid code. Before any planning is done you should consult with a local Medicaid planning advisor.***

*It has been my experience after giving workshops to over 1,000 attendees that long term care and the Medicaid system is a major issue to most retirees. When you consider that the average nursing home cost in Connecticut is over \$10,000 with no cap in sight, it is no wonder most retirees feel their financial future is in jeopardy. People are living longer and many people have retired with a lifetime of savings which have been earmarked to supplement their living expenses. When you consider the cost of a nursing home and how the system works, most retirees who have a long term care issue will ultimately bankrupt their family. Not only does the system require a large spend down of assets, it places a great amount of financial pressure on the retiree who is considered the stay home spouse (community spouse) of the person who has a long term illness. Because of the limited assets that are allowed to be kept by the community spouse, there in most cases will be a poverty level of income for the community spouse. At this time in their lives is not the time a retiree should feel financially insecure.*

*If you haven't considered what options you may have, or may want to know specifically how the system works, you might consider attending one of our many workshops held locally throughout the year. If interested in attending, call our office and we can give you a schedule of our upcoming Adult Education Workshops.*

## Eligibility for Medicaid

### What is Medicaid?

Medicaid was created in 1965 as a joint federal-state program providing medical assistance to aged, disabled, or blind individuals (or to needy, dependent children) who could not otherwise afford necessary medical care. Medicaid covers a number of medical costs, including hospital bills, physician services, and long-term nursing home care. Each state administers its own programs based on broad federal guidelines and regulations. Within these guidelines, each state:

- Determines its own eligibility requirements
- Prescribes the amount, duration, and types of services
- Chooses the rate of payment for services
- Oversees its own program

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General Medicaid eligibility requirements will be presented here first. Then, because long-term nursing home care is of individual interest in financial planning, the discussion will be tailored to specific Medicaid eligibility rules for nursing home residents.

**Caution:** The rules of eligibility for Medicaid benefits are constantly changing. Seniors and their families should take no action without consulting a knowledgeable elder law attorney.

## How do states determine Medicaid eligibility?

To qualify for Medicaid, individuals generally must meet two basic eligibility requirements. First, the individual must be considered categorically needy because of blindness, disability, or old age, or by virtue of being the parent of a minor child. Next, the individual must be financially needy, which is determined by income and asset limitation tests.

States have a great deal of discretion in determining which groups their Medicaid programs will cover. However, a state participating in Medicaid must provide coverage for all of its state residents who can be considered categorically needy. Essentially, categorically needy may be defined as people who receive benefits under Supplemental Security Income (SSI) for the aged, blind, and disabled. It also includes families who qualified for Aid to Families with Dependent Children (AFDC) under rules in effect on July 16, 1996.

In order to enable more people to qualify for Medicaid, federal law gives states the discretion to offer Medicaid benefits to other groups as well. For example, states may provide coverage under a medically needy program that extends eligibility to those individuals with incomes exceeding the applicable SSI or AFDC limits but who still can't afford certain medical care, such as the cost of monthly nursing home bills.

States may allow all medically needy persons in one or more of the following groups to qualify for Medicaid:

- The aged
- The blind
- The disabled
- The blind or disabled under 1973 standards
- Pregnant women
- Individuals under age 21
- Caretaker relatives

These states require medically needy individuals to spend down their excess income on the cost of medical bills; Medicaid makes up the difference.

## How may a nursing home resident qualify for Medicaid?

With ever-increasing life expectancies and a steady climb in the cost of long-term nursing home care, Medicaid planning may well be an important part of your overall

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financial plan. The following discussion, therefore, is tailored with a view toward long-term nursing home care.

If you foresee a need for nursing home care, you must satisfy three tests in order to be eligible for financial assistance from Medicaid:

- Age, disability, or blindness
- Income level
- Assets

## **First test for nursing home residents: age, disability, or blindness**

If you need nursing home care, you must be either age 65 (or older), disabled (physically or mentally), or blind in order to qualify for Medicaid benefits from the state in which you have your domicile (place of permanent residence). Hence, a 30-year-old blind woman in need of long-term care could qualify for benefits (assuming she also satisfied the income and asset requirements). Likewise, an 85-year-old man (not disabled), needing only custodial care, could also qualify.

Although the age requirement is straightforward, each state has its own definition of disabled. It is essential to review your state's rules, therefore, to find out whether you meet the applicable definition of disabled. Nonetheless, most states follow SSI eligibility criteria; in other words, you must be considered permanently and totally disabled.

### ***What is meant by permanently and totally disabled?***

You are considered permanently and totally disabled if you cannot engage in any substantial gainful activity because of your physical or mental condition. A physician must certify that the condition has lasted or can be expected to last continuously for 12 months or more, or that the condition can be expected to result in death.

Substantial gainful activity is defined as the performance of significant duties over a reasonable period of time, while working for pay or profit or in work generally done for pay or profit. Full-time work (or part-time work done at your employer's convenience) in a competitive work situation, for at least the minimum wage, conclusively shows that you are able to engage in substantial gainful activity.

**Example(s):** Assume that Trisha, a salesclerk, retired because of a physical disability that prevented her from performing her normal duties. She now works full-time as a baby-sitter for the minimum wage. Although Trisha must work in a different occupation, she is able to perform her duties in a full-time, competitive work situation for the minimum wage. Therefore, because she is engaging in substantial gainful activity, she is not considered permanently and totally disabled.

### ***When is one considered blind?***

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With respect to blindness, you are considered blind under the SSI definition if your vision is no better than 20/200, or you have a visual field of 20 degrees or less in your better eye, with the use of eyeglasses. Each state, however, may have more strict standards for determining blindness.

### **Second test: income (countable, exempt income)**

Each state sets a monthly income level for Medicaid applicants. Ordinarily, you would not qualify for Medicaid if your monthly income exceeded the allowable limit. However, most states are spend-down states, which means that you may qualify for Medicaid if you spend your monthly income (less a small personal allowance) on medical or nursing home expenses and Medicaid will pay the balance (if any) of such bills.

**Example(s):** Assume George is 80 years old and receives \$800 per month from Social Security. After entering a nursing home that charges \$3,000 per month, George applies for Medicaid. The allowable income limit in his state is \$700 per month. Although George's income exceeds the allowable limit by \$100, he may still qualify for Medicaid by spending his income (less a small personal allowance) on his monthly nursing home bills. Medicaid will pick up the tab on the remainder of the nursing home bill.

#### ***What about income-cap states?***

It is important to note, however, that some states, called income-cap states, do not allow a spend-down of income. Rather, you are disqualified from receiving Medicaid benefits if your monthly income exceeds the threshold amount by even one dollar, regardless of your medical condition.

With respect to income-cap states, the amount of monthly income you can receive in order to qualify for Medicaid is limited to three times the monthly SSI benefit level under the federal rules. States can set a threshold of less (but not more) than this figure. This means that in 2009, the income cap is \$2,022 (3 x \$674 SSI benefit level). In 1993, the federal government recognized the hardship created in income-cap states when a person with few assets received monthly income just over the cap. In income-cap states only, therefore, applicants may (under certain conditions) establish a Miller trust in order to become eligible for Medicaid. Miller trusts provide that at the death of the applicant, the state must be reimbursed from the remainder of the trust (what's left) for Medicaid payments expended on the applicant's behalf.

Income, under Medicaid, can generally be broken down into two categories, countable and exempt.

#### ***All income is countable unless specifically exempted***

All of your income, whether taxable or not, is countable under the Medicaid eligibility formula. This means that your income from all sources will be totaled to determine both your eligibility for Medicaid and the amount of your spend-down, if any. Before income is applied to nursing home bills, however, a resident may exempt certain portions (discussed later). Income, for Medicaid purposes, is defined in the SSI regulations and

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includes any cash, goods, or services used for your daily living expenses. Income includes (but is not limited to):

- Social Security
- Interest and dividends
- IRA, Keogh, and other retirement plan distributions
- Gifts from family members and others
- Wages and earnings
- Alimony
- Royalties
- Trust income
- Rental income
- Gambling winnings
- Veterans benefits
- Disability income

Contact your state Medicaid office to ascertain your state's monthly income limit.

### **Exempt income need not be spent on nursing home bills**

Exempt income refers to cash that need not be spent on nursing home bills. A nursing home resident is allowed to retain a small personal needs allowance, a monthly income allowance (if applicable) for his or her non-institutionalized spouse, and money to pay for certain medical expenses not covered by Medicaid or Medicare (such as a Medigap policy).

- **Personal needs allowance:** Most states allow you to keep a small amount of monthly income for your personal needs, such as haircut expenses, toiletries, and the like. While this amount varies from state to state, it averages approximately \$40.
- **Spousal income allowance:** In general, the income rules are inapplicable to the non-institutionalized (at-home) spouse; this spouse is entitled to keep all of his or her periodic income and is under no obligation to contribute to the institutionalized partner's care. Therefore, if the terms of a trust direct the trustee to pay income to Alice only, then the income belongs to Alice only. If a dividend check names Alice as the sole payee, then the income is hers alone. With respect to joint income such as a joint bank account, most states allow the at-home spouse to keep one-half. A problem arises, however, when most of the income is in the name of the institutionalized spouse. For this reason, federal law requires that the states set a minimum monthly maintenance needs allowance for the at-home spouse within prescribed federal limits. The federal minimum monthly needs allowance is \$1,750 (effective July 1, 2008 through June 30, 2009). However, states could set higher limits, up to a maximum of \$2,739. The spousal income allowance is granted from the income of the institutionalized spouse before consideration of any nursing home bills. Naturally, if the at-home spouse's monthly income exceeds the minimum monthly maintenance needs allowance, he or she will not be entitled to a spousal allowance.

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**Example(s):** Assume Ralph and Alice are married and live on Ralph's monthly pension and Social Security check (totaling \$3,300), and Alice's monthly Social Security check of \$400. The personal needs allowance in their state is \$40 per month, and the spousal income allowance is \$1,900.

If Ralph enters a nursing home and applies for Medicaid, he will make the following monthly deductions from his \$3,300 income:

A personal needs allowance of \$40, and \$1,500 to supplement Alice's \$400 income (\$1,500 + \$400 = \$1,900 spousal income allowance)

**Example(s):** Thus, Alice will have a monthly income of \$1,900, Ralph will pay \$1,760 toward his monthly nursing home bill, and Medicaid will subsidize the balance of the nursing home charges.

It is important to note, however, that if Ralph and Alice lived in an income-cap state, Ralph's remaining \$1,760 could not exceed the applicable cap; otherwise, he would be ineligible to receive Medicaid.

- Medical expenses: A nursing home resident is also allowed to deduct money to pay for certain medical expenses not covered by Medicaid or Medicare, such as the premiums on a Medigap policy.

## **Third test: assets (countable, exempt, inaccessible assets)**

### *Value of your countable assets will determine your Medicaid eligibility*

The term "countable assets" refers to anything valuable that you own that is not exempt by law or otherwise made inaccessible; the total value of your countable assets will determine your eligibility for Medicaid. A Medicaid applicant is allowed to retain a small amount of countable assets, but the amount varies from state to state. However, most states set a \$2,000 asset limit.

Countable assets include (but are not limited to):

- Savings and checking accounts
- Stocks
- Bonds
- Certificates of deposit
- Treasury bills
- Savings bonds
- Investment property and vacation homes
- Second vehicles
- Livestock
- Individual retirement accounts

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- 401(k) accounts
- Mutual funds
- Precious metals and coins
- Whole life insurance (above a certain surrender value, often \$1,500)
- Home equity if it is over \$500,000 or at the state's option \$750,000 (equity is noncountable if you, your spouse, or your minor, blind, or disabled child lives there)

To be eligible for Medicaid, most states provide that you may not have more than \$2,000 of countable assets if you're single. For a married couple living together (applying for benefits at the same time), the limit is usually \$3,000 of countable assets. Because spouses are treated as individuals one month after either of them enters a nursing home, however, the \$2,000 limit will usually apply.

A nursing home resident, therefore, may usually keep \$2,000 in countable assets. If you have more than that, the additional amount must be spent down on nursing home bills until you reach the allowable level.

**Tip:** If you don't know your state's countable asset allowance figure, be sure to call your state Medicaid office.

### ***Spouse is given some assets prior to any spend-down***

When a spouse enters a nursing home and applies for Medicaid, the couple's assets must be pooled together and totaled to determine what portion the noninstitutionalized ("at-home") spouse may keep. This is called the spousal resource allowance. Each year, the federal government sets a minimum and maximum asset amount for the community spouse; the states set their own parameters within the federal limits.

In 2009, under federal guidelines, the at-home spouse could receive one-half of the family assets or a minimum of \$21,912 (whichever is larger), but no more than \$109,560.<sup>1</sup>

After the spousal resource allowance has been determined by the state, the Medicaid applicant must transfer assets representing the amount of the spousal resource allowance to the community spouse within 90 days (depending on the state) of the state's determination of eligibility for Medicaid.

**Tip:** Bear in mind that a married couple's assets will be pooled together--it makes no difference, for example, whether the source of the asset can be traced back to one spouse or the other (e.g., inherited funds, a bank account established by one spouse prior to the marriage, or the like).

### ***Exempt assets do not affect your Medicaid eligibility***

Exempt assets are assets that do not affect your Medicaid eligibility. Under federal guidelines, each state composes a list of exempt assets, which include the following:

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<sup>1</sup> 2010 CT. Spouse can keep all assets up to \$109,560.

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- Principal home, regardless of value, so long as you, your spouse, or your minor, disabled, or blind child resides there; in some states, the principal home is noncountable if the nursing home resident intends to return home, while in other states, the nursing home resident must show a likelihood of returning home
- Household furnishings, jewelry, and personal effects (though some states limit these items)
- Burial funds of approximately \$1,500, depending on the state
- Burial plots for the applicant and immediate members of family
- Prepaid, noncancelable burial contracts
- One automobile (for use by you and your family)
- Term life insurance policies
- Cash value of life insurance policies, provided the face value does not exceed \$1,500

**Example(s):** If Medicaid applicant George and his wife, Martha, own \$24,000 of countable assets, a principal home, one car, and a term life insurance policy of \$300,000, then only George's portion of the \$24,000 of countable assets can be reached by the state during the couple's lifetime; the other assets will be exempt. At George's death, however, state authorities could seek reimbursement for Medicaid payments under a theory of estate recovery.

Simply stated, Medicaid authorities may be granted a lien against the home, collectible after the death of the Medicaid recipient (and the death of his or her spouse or other specified relatives living in the home).

### ***Inaccessible assets will not be counted***

As with exempt assets, the state will not consider inaccessible assets when determining your Medicaid eligibility. These assets are otherwise countable ones that have been made unavailable to you and, hence, unavailable to Medicaid. You can make assets unavailable by giving them away or by holding them in certain trusts. Although a proper transfer of assets will preserve these assets for your loved ones, the transfer may also create a period of ineligibility before you can collect Medicaid benefits. It is vital, therefore, to become familiar with the transfer rules. For more information, consult a financial professional or elder law attorney experienced with Medicaid planning.

Note: 2010;

A recent Federal court case "Lopez", ruled that there is exemptions using Medicaid compliant annuities. You can view the ruling by going to my website: [www.necgg.com](http://www.necgg.com) and selecting "Tom's Favorite Articles ", then click Lopes.

(Or, <http://www.necgg.com/files/2374/press%20release%20of%20lopez%20case%2Epdf> Cut this into your internet address).

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With the changes made this year, relief seems to be on the way, however, you must know about what can be used to protect your assets. You must be proactive as the new rules are not automatic. The biggest concern we have is that most people will lose not only most of their assets, but also their pension income. Even if the community spouse is able to keep more assets than before, there still is the question of having enough income to support the lifestyle needed.

If you feel the need to research what planning options you may have to help you avoid losing assets to the Medicaid system call me. A brief phone call discussion may help direct you to the planning options and clarify questions you may have.

To arrange your **FREE phone conference**, call our office and speak to our office staff to arrange a time. Or, call us to find out when our next scheduled workshop will be. You can also visit our website: [www.necgg.com](http://www.necgg.com) for more information and to view our calendar for workshops and events.

Sincerely,



Thomas J. Perrone, CLU, President