Caregiver Guide

In the back of your mind, you knew…
Now the next step…

THE Delaware Elder Law Center™
Protecting Seniors and Those Who Love Them

How does a caregiver obtain the best care for a loved one and manage the financial cost of that care?

That's the purpose of this handbook.

→ What are some basic resources to cover the cost of care?

→ How do I transition from one payment source to the next?

This information is general in nature and meant to help get the caregiver to the next step.

Hospitalization

Do not assume that Medicare will pay for a loved one's hospital stay. The issue is whether the patient was *Admitted for Treatment* versus *Observation*.

- *Admission for Observation* is **not** covered by Medicare.
- A patient must be *Admitted for Treatment* due to a medical condition that is best addressed in a hospital setting, and such treatment must last a minimum of three full days (3 midnights) for Medicare to pay for it.
- The status of *Admitted for Treatment* is required for Medicare to pay for rehabilitative care after discharge from the hospital.

If these criteria are not met, then the patient is billed directly for self-pay.

NOTE: ***Keep asking for a final decision on the admission status until you know what it is.*** If the medical staff does not make the status of the patient clear, then go to the business office to see who the hospital plans to send the bill to: Medicare, or the patient?

Medicare
- vs -
Long-Term Care Medicaid (LTCM)

Medicare Pays for Short-Term Medical Care

Doctor visits, prescriptions, emergency room, hospitalization, and rehabilitative care.

For each medical event, Medicare will cover:

→ The first 20 days at 100%

→ The next 80 days at 80%

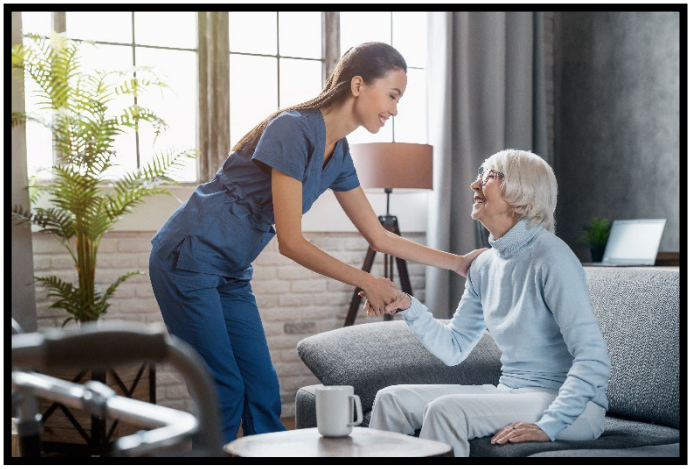
- **IMPORTANT:** For coverage to continue for the full 100 days, the patient must require skilled care and participate to maintain or improve their condition.
- Be prepared for the facility providing the rehabilitative care to report that Medicare coverage will stop well before the 100-day limit is reached. You have a right to appeal the decision to stop coverage.

Long-Term Care Medicaid pays for Custodial Care

Custodial care is provided either in a facility or at home on a long-term basis. It picks up where Medicare leaves off.

- The patient must qualify medically (needs assistance with at least one activity of daily living.) There are financial limitations, but Medicaid will not process an application *until the medical need is established*.
- See our DELC Resources page for a variety of information: https://www.DelawareElderLawCenter.com/resources

The Transition from
Rehabilitative Care
to
Custodial Care



Once rehabilitative care stops, either:

1. Your loved one has regained their independence with activities of daily living, *or*;
2. The need for custodial care has arrived.

When Medicare payments stop, the ***patient is totally responsible*** for the cost of further treatment (i.e. physical therapy, home health aides, or facility care).

- Unless the patient has some form of long-term care insurance that pays for some long-term care, the *only other* payment sources are self-pay (at full price) or Long-Term Care Medicaid.
- It is critical to manage the transition from one payment source to the other so that all bills are ultimately paid, and the patient's personal funds are not exhausted.

The Truth About
Long-Term Care Medicaid (LTCM)

NOTE: Information from any source other than from an Elder Law Attorney about protecting assets for Medicaid qualification purposes is either incomplete, inaccurate, or, in some cases, wrong.

- Long-Term Care Medicaid is a government benefit *for the disabled.*
- The prerequisite to qualifying medically for Medicaid is a determination that the patient needs assistance with at least one activity of daily living (ADL).

Delaware Medicaid pays for assistance in the home, in an assisted living facility, and in a nursing home.

Long-Term Medicaid is a benefit that is available to disabled individuals and married couples who still have a significant amount of assets, as well as to those who do not.

The financial qualification rule for an **individual applicant** is well known in the community; he/she must "spend down" to $2,000 or less in assets. The *exception* to this general rule is not well known or understood.

- The fact is that the spend-down can be accomplished in a way where at least 50% of the applicant's assets are protected with income requirements resolved, and then the application can be approved.

The financial qualification rules for **married couples** are not well known in the community.

- All assets of the couple are taken into consideration regardless of how the assets are titled.
- The following assets are protected (not subject to the spend-down rules): one home, community/well spouse's income and retirement funds, one car, and up to $137,400 of the remaining assets.
- All other assets are considered excess and must be spent down. Using certain exceptions to the general rules, it is possible to protect the vast majority of these excess assets.

Miller Trust

And Income Regulations

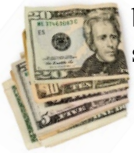
The Medicaid regulations also impose a limit on monthly income as a financial qualification requirement. If the gross monthly income amount is greater than $2,102.50 (2022 Medicaid guidelines), the applicant must set up a Miller Trust account to meet this requirement.

The necessary steps are:

1. Determine who will act as Trustee (not the applicant) and who will be the Successor Trustee.
2. Arrange for an Elder Law Attorney to draft the Trust document. The attorney will have you execute the document in front of witnesses and a Notary Public. The attorney has the responsibility to explain to you the substantive details of the Trust document and how to manage the Trust bank account properly.
3. Open the Trust account at the bank. Make arrangements to have the applicant's Social Security and pension income automatically deposited into the Trust account.

Caution:

- **<u>All income</u>** must be paid out of the account (except the personal needs allowance) every single month. Income becomes countable as an asset if it stays in the account more than 30 days. Allowing income to accumulate in the account may cause the applicant to become disqualified for Medicaid based on having too many resources (greater than $2,000).
- When an applicant dies, the balance in the Trust account belongs to the State of Delaware. This is another reason to be sure not to accumulate income in the Trust account.



When to Take Action
Protecting Assets for Long-Term Care Medicaid Purposes

There are three key factors that determine when to start the Medicaid application process:

- Medical need for assistance with activities of daily living is established;
- Care will take place in Delaware; *and*
- The cost of care will exceed the applicant's income.

In Delaware, the ***monthly*** cost of care is generally…

→ $18,000 for 24/7 in-home care

→ $5,000 to $10,000 for assisted living facilities

→ $12,000 to $16,000 for skilled nursing facilities

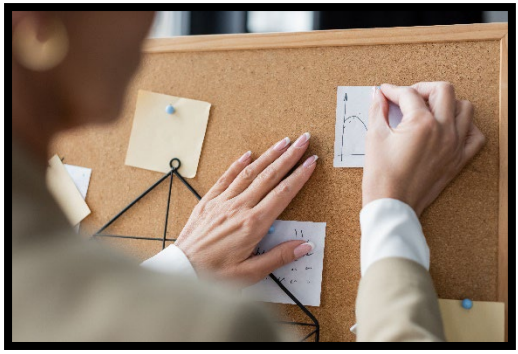
In order to protect assets, the patient must actually file an application for Long-Term Care Medicaid. Filing early allows for the protection of the greatest number of assets.

If a loved one must go into a nursing home, it is critical to understand that a nursing home's Medicaid certified beds are reserved for patients who have paid that facility full price for the longest time. This means that a patient must prove to the facility that he/she can self-pay at full price for at least as long as it will take to get on Medicaid.



The Medicaid application process takes on average **three to six months** to complete. To be safe, once a person is down to $75,000 in assets and needs to go into a nursing home, the Long-Term Care Medicaid application process must start immediately to avoid receiving a bill with no available resources to pay it. Keep in mind that this process can start sooner as long as a medical need is established.

Miscellaneous Helpful Notes



If your loved one is having memory issues:

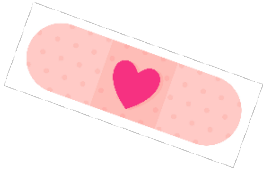
- Have an Elder Law Attorney create three vital documents **ASAP**:
  - **Durable Power of Attorney** (for financial matters)
  - **Advanced Healthcare Directive** (AKA *Living Will* or *Medical Power of Attorney* for medical matters)
  - **HIPAA Authorization** (AKA *Release of Protected Health Information*)

  These documents avoid the necessity of becoming an appointed Guardian by the Court - **Do not put this off.**
- Schedule a memory evaluation with your Neurologist, or:
  - Swank Memory Center of Christiana Hospital: (302) 320-2664
  - JFS Compass: (302) 478-9411
- Dementia patients are very vulnerable to online financial scams. Monitor internet activity and block any unknown phone numbers from calling in.
- Take a picture of his/her car and the license plate so you can give an exact description to the police if needed.
- Keep a list of your loved one's medications on your phone.

Miscellaneous Helpful Notes

If your loved one is in a facility:

- Do not let a bill go unpaid. Unpaid bills lead to the facility turning to the courts to get paid.
- A facility cannot discharge a patient unless a *30-Day Discharge Notice* is issued to the patient. The decision to discharge is appealable for a hearing in front of an administrative law judge.
- Every patient has an advocate through the Division of Aging known as an "Ombudsman." The Ombudsman's job is to protect the best interests of the patient.
  - Call 855-773-1002 for assistance.
- Learn about and understand the "bed hold policy" for each facility. Generally, if the patient must leave the facility for any period of time, the family will be required to continue to pay for the bed to keep it open until the patient returns.
- *See the* Delaware Health Care Facilities Association site at **www.dhcfa.org** for other useful information.


Resources for navigating the long-term care process:

Resources are available at the Mid-Atlantic Aging Life Care Association (ALCA), an organization of private practitioners who advance the dignified social, psychological, and health care for patients with chronic needs and their families: **www.midatlanticalca.org**

Our Services Include…

Long-Term Care Planning

- Long-Term Care Medicaid process and approval
- Asset Protection and Miller Trusts
- Counsel regarding putting in place a supportive care network
- Family Caregiver Agreement

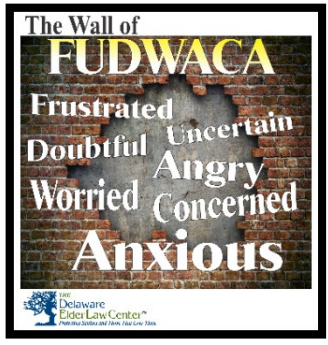
Estate Planning

- Trusts
  - Revocable Trusts
  - Irrevocable Trusts
  - Special Needs Trusts
  - Counsel regarding funding Trusts
- Wills
- Durable Power of Attorney
- Healthcare Power of Attorney
- HIPAA Release

Delaware Elder Law Center

The Delaware Elder Law Center provides solutions to families managing the care of a disabled loved one.

Be sure to visit ***DelawareElderLawCenter.com***
to check out our Blog Series:



Call us - we can help.

THE Delaware Elder Law Center™
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