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TRUST COUNSEL

MEDI-CAL PLANNING FROM START TO FINISH



STRATEGIES FOR LONG-TERM CARE

By Kirsten Howe, Esq., Managing Attorney



Have you or a loved one recently discovered that you have Alzheimer's disease or another degenerative illness, causing you to worry that the cost of long-term care will quickly exceed your savings? Or are you concerned about placing a burden on your children if you run out of money to pay your long-term care expenses? Or maybe you are already living in a nursing home and your family is in a panic about what will happen if the money runs out.

In all of these situations and many more, Medi-Cal may provide the long-term care financing solution you are seeking.

This book, together with expert counsel from the team at Absolute Trust Counsel, can help you explore your long-term care alternatives and secure the care you need for as long as you need it without depleting your savings or passing the burden onto your loved ones.

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CHAPTER ONE:

Medi-Cal Basics

Medi-Cal is California's Medicaid health care program, which offers free or low-cost health coverage and long-term care coverage for children and adults with limited income and resources. The program is paid for jointly by the State of California and the federal government.

Medi-Cal assists Californians in many different family and medical situations:

- Low-income adults
- Families with children
- Seniors older than age 64
- Persons with disabilities (either life-long or aging-related)
- Families with a child, parent or spouse who is blind or disabled
- Pregnant women
- Children in foster care
- Former foster youth (until their 26th birthday)

MEDI-CAL ELIGIBILITY REQUIREMENTS

In order to receive medical or long-term care assistance from Medi-Cal, an individual must meet three requirements:

- Be medically eligible;
- Have an income that is below a specified threshold; and
- Have countable assets that are below a specified threshold.

Medical eligibility is determined by a doctor when he or she establishes that a patient needs nursing home level care.

Establishing financial eligibility is a bit more complex, involving an analysis of your monthly income (Social Security, pensions, interest, dividends, IRAs, annuity and rent) together with the value of your total assets (homes and other real estate, cars, bank accounts, investment accounts, insurance policies and IRAs, 401ks and other retirement accounts).

VETERANS BENEFITS

If you are a veteran, you may be wondering whether to seek Medi-Cal or VA benefits. The answer depends on your unique circumstances.

Some wartime veterans* and the surviving spouses of wartime veterans are eligible for cash benefits from the Department of Veterans Affairs (VA) to help pay for medical and long-term care. VA benefits do not preclude Medi-Cal benefits. In many cases they can be used in combination.

VA benefits do not require that the recipient need nursing home level care and in fact are most often used by recipients who live in their own homes or in assisted living facilities. An attorney can help veterans assess whether Medi-Cal or VA benefits or both will best meet your needs, and plan accordingly.

**To be considered a wartime veteran, a person must have served at least 90 days of active duty, at least one of which occurred during a period that has been designated as wartime, including specific dates during World War II, the Korean Conflict, the Vietnam War, the Gulf War, and the ongoing conflicts in Iraq and Afghanistan.*

Absolute Trust Counsel works with clients young and old to secure Medi-Cal for health care and long-term care. However, this book is specifically focused on helping Californians ages 65 and older who need Medi-Cal assistance with long-term care. The chapters that follow will help you navigate the laws of Medi-Cal eligibility and share important planning strategies to maximize your chance to qualify for Medi-Cal long-term care benefits.

CHAPTER TWO:

Medi-Cal for Long-Term Care

Beyond health care, long-term care provides support for basic, everyday personal needs or Activities of Daily Living (ADLs) such as bathing, dressing, transferring (bed to chair), eating and toileting.

Unfortunately, the cost of long-term care is more than many families can afford. The insurance company Genworth conducts an annual survey of long-term care costs in all 50 states, and further analyzes the data by region. Based on their reporting, the median cost of a semi-private room in a nursing home in California is \$100,375 per year, and \$109,777 in the Bay Area. It is not unusual for annual cost increases to far exceed inflation. As our population ages, long-term care costs are likely to continue to escalate even more quickly as demand outpaces available care givers and facilities.

It's tempting to believe that you will never need long-term care. In fact, only 8 percent of Americans are planning ahead with the purchase of long-term care insurance. In actuality, 52 percent of Americans over the age of 65 will require long-term care at some point in their life.

The problem is, delaying the purchase of long-term care insurance can make it difficult or impossible to get. Individuals who are older than age 65 are likely to have trouble meeting medical underwriting requirements, while those who are already disabled or have been diagnosed with a debilitating illness will not be able to qualify at all.

**Without long-term care insurance,
Medi-Cal is often the only viable option.**



THE RANGE OF LONG-TERM CARE SERVICES

The State of California provides a wide variety of services that fall under the umbrella of long-term care.

For example, In Home Support Services (IHSS) may be available through the Department of Social Services for those who would otherwise require nursing home level care but prefer to (and are able to) remain in their homes. When it comes to in-home care, some programs provide direct support through agencies that contract with individual California counties, while others allow Medi-Cal recipients to hire caregivers they select themselves, including friends or family members.

When remaining in one's home is not possible, Medi-Cal provides financial support for nursing home care.

MAKING PLANS TO FUND LONG-TERM CARE WITH MEDI-CAL

As long as you have the mental capacity to do so, you are able to direct all long-term care planning efforts, now and in the future.

However, in cases where the person needing care no longer has the mental capacity to understand the planning process, it is up to trust or power of attorney documents to grant others the power to do the required planning.

Complexity often arises because Medi-Cal planning frequently requires the person needing long-term care to give away his or her property to reduce financial income and assets. Husbands and wives can often mistakenly assume they can make decisions about their spouse's property, but that is not true in a community property state like California. Plus, the power to give away property is often not included in trusts and powers of attorney documents. Without written authorization, no one, not even a spouse, can legally give property away or take ownership of your property. To do so without proper authority could be considered theft and elder financial abuse and it would not be recognized for Medi-Cal eligibility purposes.

That is why preparing a written power of attorney that explicitly authorizes someone else to give away your property is so important. The same is true for a trust. Your trustee must be specifically authorized to give away your property. These are not common provisions in either a power of attorney or trust documents, so creating appropriate power of attorney and trust language is one of the most urgent priorities as you make long-term care plans. Unfortunately, if these provisions are not established while the Medi-Cal applicant still has the mental capacity to do so, some planning options will not be available.

Proper trust and estate planning is also essential to avoid Medi-Cal Estate Recovery — a process through which the state seeks recovery of all payments made by Medi-Cal from the recipient's probate estate upon his or her death. We will discuss estate recovery in greater depth in Chapter 6.

Keep in mind that in many cases, Medi-Cal plans require friends and family members to take on important responsibilities. Just as in a conventional estate plan, the person needing long-term care will need people to serve as his or her agent under a durable power of attorney and an advance health care directive. For example, friends or family members will be responsible for transferring assets when required. These individuals will also have specific responsibilities if the person needing care becomes disabled or dies. Appointing the right individuals to manage these important duties is an essential part of the long-term care planning process.



CHAPTER THREE:

Financial Eligibility

INCOME

As mentioned in Chapter 1, a person's income must all below a certain threshold in order to be eligible for Medi-Cal. That threshold is computed based on "countable income" which includes all sources of income minus certain expenses.

The income calculation for Medi-Cal-funded nursing home care almost always results in what is called a "Share of Costs." Share of Costs is the amount of income that a Medi-Cal applicant will have to contribute to his or her care each month. The Share of Costs must be less than the Medi-Cal nursing home payment in order to meet Medi-Cal income requirements.

The Medi-Cal Share of Costs income calculation is fairly simple:

Single

Gross monthly income from all sources — applicant only

- Monthly Needs Allowances \$35

- Medical expenses not covered by Medi-Cal

= Share of Costs

Married

When one spouse is applying for nursing home Medi-Cal, the other spouse is called the "Community Spouse" and, if the couple has enough income, is entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA). The 2019 MMMNA is \$3,161.

Another important distinction for married couples is that only the income of the spouse in the nursing home is counted in the equation.

Let's take a look at what this means by getting to know Wendy and Henry. Henry is 65 and Wendy is 67, and the couple is retired. Wendy's income is \$1,300 per month and Henry's income is \$1,750. They each pay a Medicare Part B cost of \$134. Henry is in a nursing home and is the Medi-Cal applicant.

Henry

Gross income = \$1,750

- Health insurance premium \$134

- Monthly Needs Allowance \$35

\$1,581 = Share of Costs

Henry's Share of Costs is \$1,581. However, Wendy's income is only \$1,300 per month, which is less than the 2019 MMMNA of \$3,161 to which she is entitled. Medi-Cal will therefore permit Henry to give up to \$1,861 per month from his income to Wendy in order to bring her income up to the MMMNA allowance. Since Henry only has \$1,581 in income after his allowable deductions, the entire amount will go to Wendy, reducing Henry's Share of Costs to \$0.

This will provide Wendy with \$2,881 per month in monthly income, which is still less than the allowable MMMNA of \$3,161. We will discuss other strategies to increase Wendy's monthly income by the difference of \$280 in Chapter 4.

ASSETS

The second half of financial eligibility is based upon a valuation of assets. Medi-Cal requires documentation detailing all of an applicant's assets. While Medicaid's calculation of income is relatively straightforward, the assessment of assets can be fairly complex, depending on how many and what kind of assets you have. If the value of your assets is greater than what Medi-Cal allows, it is not possible to qualify for Medi-Cal benefits.

When California determines your financial eligibility for Medicaid, it divides assets into two categories: those that are counted (countable) and those that are excluded (exempt).

- **Exempt assets** include assets the applicant is allowed to own and still qualify for Medi-Cal.
- **Countable assets** prevent Medi-Cal eligibility.

Exempt Assets

The following assets are generally exempt and therefore not counted in determining Medi-Cal eligibility:

Principal Residence

Your home is exempt from consideration when either you or your spouse is receiving Medi-Cal under any of the following circumstances:

- If during any absence, including nursing home stays, the Medi-Cal beneficiary intends to return home and states so in writing. If the beneficiary is mentally incapacitated, a family member or someone acting on his or her behalf may also state this intent.
- If the beneficiary's spouse, child under age 21, or "dependent relative" continues to reside in the home.
- If the beneficiary's sibling, son or daughter is currently living in the home and has resided there continuously for at least one year prior to the date the beneficiary entered the nursing home.
- If there are legal obstacles preventing the sale of the home, and the beneficiary can provide evidence of attempting to overcome those obstacles.
- If the home is a multiple-dwelling unit, one of which is the principal residence of the beneficiary.

Household Goods, Personal Effects, and Jewelry

One Car

Insurance Policies

- Whole life policies if the total face value is \$1,500 or less
- Term life policies

Burial Plots

Burial plots are totally exempt, including the value of headstones, crypts, etc.

Burial Plans and Funds

Prepaid irrevocable burial plans of any amount and \$1,500 in designated burial funds are exempt. These designated funds must be kept separate from all other accounts.

Cash Reserves Up to \$2,000

Cash reserves can include monies saved in the beneficiary's savings and checking accounts.



IRAs, 401(k)s and Work-Related Pensions

- If the account or pension is in the beneficiary's name, the cash surrender value or balance, regardless of value, shall be considered exempt if the beneficiary receives regular monthly payments.
- If the account or pension is in the Community Spouse's name, it is totally exempt.

Non-Work-Related Annuities

- For annuities purchased prior to August 11, 1993, the cash surrender value or balance of the annuity is considered exempt if the beneficiary is receiving periodic payments (of any amount) of interest and principal.
- Annuities purchased between August 11, 1993 and March 1, 1996 are exempt if payments are scheduled to exhaust the balance at or before the end of the annuitant's life expectancy. Annuities purchased during this period that cannot be restructured to meet the new requirements will continue to be treated under the old rules. Written verification that the annuity cannot be restructured must be obtained from the insurance company or agent who issued or sold the annuity.
- Annuities purchased on or after March 1, 1996 must meet the above new requirements and no annuity hardship provisions apply.
- Annuities purchased on or after September 1, 2004, must meet the above requirements and are subject to estate recovery regardless of whether the annuity is designed to pay a lump sum or periodic payments upon the death of the decedent.

Other Real Property

Other real property can be exempt if the net market value of the property (assessed value or fair market value, whichever is less — minus any encumbrances such as mortgages, loans, etc.) is \$6,000 or less and the beneficiary is "utilizing" the property, i.e. receiving yearly income of at least 6% of the net market value. Property used as a business can also be exempt if it meets the standards under the program, i.e. it is actually used as a business and is reported to the IRS as such.

Community Spouse Resource Allowance (CSRA)

The CSRA for married couples in 2019 is \$126,420.

Countable Assets

The following assets are generally countable and may prevent Medi-Cal eligibility:

- Cash saved in checking and savings accounts
- Stocks and bonds
- Certificates of deposit
- Real property other than a primary residence
- Additional motor vehicles (i.e. more than one)

Let's check in with Wendy and Henry again to make sense of these guidelines.

First, what if Henry were single? He is 65 and owns a home worth \$650,000 and one car worth \$7,000. He has an IRA worth \$25,000, from which he receives \$100 per month. He has \$19,000 in his checking and savings accounts.

Exempt Assets

Home \$650,000

Car \$7,000

IRA \$25,000

Cash \$2,000

Countable Assets

\$17,000 in Cash

Henry has \$17,000 in cash, which is too much to be eligible for Medi-Cal. But since Henry and Wendy are married, the calculation is quite different. Together they own a home worth \$650,000, a car worth \$7,000 and a second car worth \$15,000. Henry has an IRA worth \$25,000 from which he receives \$100 per month. Wendy has an IRA worth \$95,000. Together, they have checking and savings of \$27,000 and an investment account worth \$50,000.

Exempt Assets

Home \$650,000

Car \$15,000

Henry's IRA \$25,000

Wendy's IRA \$95,000

Henry's Cash Reserve \$2,000

Wendy's Community Spouse Resource Allowance \$82,000 (Second car \$7,000+Cash \$25,000+ Investment account \$50,000)

Countable Assets

\$0

Henry and Wendy have no countable assets, so Henry may be eligible for Medi-Cal.

CHAPTER FOUR:

Eliminating Roadblocks to Eligibility

When individuals are ineligible for Medi-Cal due to higher-than-allowed income, assets, or both, it is possible to restore eligibility by reducing income, assets or both.

ADJUSTING INCOME

If income is too high because assets are generating income, transferring the assets, as discussed in Chapter 5, will reduce income.

ELIMINATING COUNTABLE ASSETS

There are a number of ways to eliminate countable assets.

Spend down

As long as fair value is received for the money spent, there is no penalty for spending down assets. You can pay off credit card bills and other debts, spend money on living expenses, conduct home repairs or even take a vacation.

Turn Countable Assets into Exempt Assets

Countable assets, such as money saved in bank accounts and investment accounts, can be used to procure exempt assets, such as a new car, which is an exempt asset regardless of its value. Cash can be used to pay off or significantly reduce the mortgage on a residence, increasing the equity in the exempt asset. Cash may also be moved into an IRA if permitted, or to purchase a burial plot — also an exempt asset.

Petition to Increase CSRA

For some married couples, even when the applicant spouse's income is transferred to the Community Spouse, the Community Spouse's monthly income is not high enough to meet the 2019 the Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$3,161. In these instances, couples can petition the court for permission to keep assets above the exempt asset limits in order for the Community Spouse to receive the income from those assets and benefit from the full \$3,161 MMMNA allowance.



Henry and Wendy might employ this strategy as part of Henry's Medi-Cal plan. He and Wendy have, in addition to their allowable exempt assets, a rental home worth \$275,000, from which they earn \$1,250 per month in rent. After subtracting Henry's personal allowance of \$35 per month, their joint income is \$2,750 per month (which includes the \$1,250 per month in rent). Because \$2,750 is less than Wendy's allowable MMMNA of \$3,161, Henry and Wendy could petition the court to allow Wendy to keep the rental home. Though such an allowance would mean the couple had more than the permissible amount of countable assets, the exception would be made to generate sufficient MMMNA income for Wendy. This is a common technique used to address both an asset problem (too much) and an income problem (too little).

Transfers

A Medi-Cal application is evaluated based on the assets owned by the applicant at the time of the application. Those assets include any owned by the applicant or owned jointly by the applicant and others, assets owned by the applicant's spouse, and assets owned by the applicant's revocable living trust. The countable assets do not include assets previously owned by the applicant but transferred to a family member or an irrevocable trust. One of the most useful and common long-term care planning techniques is to create an irrevocable trust and transfer assets to it.

Read on for more about transfer planning in the next chapter.

CHAPTER FIVE:

Transfer Planning

When making asset transfers to improve Medi-Cal eligibility, it is wise to make these transfers to an irrevocable trust rather than outright to a family member.

An irrevocable trust protects and controls the assets that are being transferred. By contrast, transferring assets to another person, even a loved one, poses inherent risks. It is impossible to control what another person decides to do with money once it is in their possession. They may invest it unwisely, gamble it away, or combine it in a joint bank account with their spouse where it becomes available to creditors or vulnerable in cases of divorce.

That said, before you can create a plan to transfer assets into an irrevocable trust, it is important to understand two additional Medi-Cal planning concepts: look-back and penalty periods.

LOOK-BACK PERIOD

The Medi-Cal application requires a list of all asset transfers made for less than their full value during the 30 months prior to the application date (or prior 60 months if transfers were made to a trust). The 30-month (or 60-month) pre-application reporting period is called the “look-back period.”

The term “transfers for less than full value” is synonymous with “gifts,” and applies to any occasion in which you gave someone something and got little or nothing in return. For example, if you gave your child \$5,000 to make a down payment on a new car, you must report that asset transfer because you received nothing in return.

PENALTY PERIOD

For each instance in which an asset was transferred for less than its full value during the look-back period, there is an associated “penalty period” during which the Medi-Cal applicant will not be eligible for Medi-Cal as a penalty for making such transfers.

Penalty periods are calculated using the “Average Private Pay Rate” or APPR. The value of each transfer is divided by the 2019 APPR of \$9,337 in order to arrive at the number of months for a given penalty period.



Though the idea of penalties and delays can cause a great deal of concern, they can be managed and resolved if anticipated in advance as part of the planning process. Anticipating penalties ensures that the Medi-Cal application is timed to proceed only once all penalty periods have passed.

Here again, let's turn to Henry to understand how anticipating a penalty period plays a key role in the planning process.

Henry transferred \$100,000 to an irrevocable trust one year before applying for Medi-Cal, during the look-back period of 60 months.

His penalty period is 10 months, calculated as follows: $\$100,000 \div \$9,337 = 10.7$ months, and rounded down by Medi-Cal to the nearest whole number.

The 10-month penalty period began on the date of the transfer. Because Henry made this transfer 12 months ago, he has already served his penalty period.

When Henry applies for Medi-Cal, he will therefore be eligible even though he made the \$100,000 transfer.

It's important to note that transferring an exempt asset does not result in a penalty. For example, because a primary residence is an exempt asset, transferring a home to an irrevocable trust is permitted and will not result in a penalty.

CHAPTER SIX:

Estate Recovery

The State of California is entitled to recover all Medi-Cal funds paid in connection with long-term care from the estate of a deceased Medi-Cal recipient. When a California resident dies, the executor of the estate is required to send a notification to the Department of Health Care Services (DHCS). If the decedent received Medi-Cal benefits, the DHCS will respond with a claim for the amount owed. These claims may amount to hundreds of thousands of dollars, depending on how long the decedent was receiving Medi-Cal benefits. The only exception to this rule occurs when the decedent is survived by a spouse, minor child, blind child or disabled child, in which case there is no estate recovery.

As we've discussed previously, the key is planning ahead. By anticipating this claims process, your estate can be protected.

Estate recovery can only be made against a probate estate. If the Medi-Cal recipient's assets are instead held in a revocable trust or will pass on death automatically by some mechanism other than probate, they are protected from estate recovery.

There are several different strategies that come into play:

EXEMPT ASSETS

As we defined in Chapter 3, exempt assets are those that a Medi-Cal recipient is allowed to own, including: a personal residence, car, furniture and other personal possessions. These assets should be owned by a revocable trust, because assets held in trust do not require a probate.

RETIREMENT ACCOUNTS

Retirement account assets pass on the death of the owner by means of a beneficiary designation. That said, it is very important that all retirement accounts have both primary and contingent beneficiary designations that are up to date. If no beneficiary is designated, the account will go to the decedent's probate estate and will be subject to estate recovery.

OTHER DEATH BENEFITS

Many clients have other assets that will pay a benefit on their death, such as life insurance and annuities. Just like retirement assets discussed above, it is very important to make sure that we have designated a primary and secondary beneficiary on all of these benefits so that the benefits will not go to the decedent's probate estate and be subject to estate recovery.

CHAPTER SEVEN:

Absolute Trust Counsel Is Here to Help

While seeking Medi-Cal benefits for long-term care can seem like a daunting process, the team at Absolute Trust Counsel can help you design a plan that ensures you receive the care you need while protecting your assets and caring for your loved ones.

Depending on your unique circumstance, your custom-tailored plan may include:

- Revising or creating a basic estate plan with trust, will, durable power of attorney, and health care directive
- Establishing beneficiary designations for life insurance, IRAs and annuities
- Starting distributions from IRAs and non-retirement annuities
- Paying debts
- Making expenditures on home improvements, a car, burial plot, pre-paid funeral
- Paying off a mortgage
- Creating an irrevocable trust
- Petitioning the court to increase MMMNA
- Creating a strategy for transferring assets that minimizes any transfer penalty

Once a Medi-Cal plan is fully implemented and you are eligible for Medi-Cal, you may choose to submit the application yourself or engage us to prepare and submit the application on your behalf. Our team is also available during the application review process to help respond to inquiries from the Medi-Cal case worker for additional information or documentation.

When the application is approved, we look forward to celebrating with you!



ABOUT THE AUTHOR

For more than 20 years, individuals and families in Walnut Creek, California and the surrounding areas have trusted Absolute Trust Counsel Managing Attorney Kirsten Howe and her team to help them secure their legacy.

Uniquely qualified to create individualized estate plans, Kirsten and her team provide focused counsel on estate planning, trust administration, probate, Medi-Cal planning, special needs planning, and other estate-related issues.

Kirsten began her law career as a business planning attorney, but soon realized estate planning and elder law were her passions. She founded Absolute Trust Counsel in 2017 as a firm dedicated exclusively to providing full-scope, client-centered estate planning services. She earned her law degree cum laude from the University of California, Hastings College of the Law and a B. S. in Biology from the University of Michigan. While in law school, she was a member of the Thurston Society and managing editor of The Hastings Law Journal.

A noted speaker on estate planning issues, Kirsten is a member of the Trust and Estates Section of the California State Bar, and the Estate Planning and Probate, Elder Law, and the Women's Sections of the Contra Costa County Bar. She also serves on the Board of Directors of the Estate Planning Council of Diablo Valley and is a member of the Robert G. McGrath Chapter of American Inns of Court.

ABOUT THE FIRM

Absolute Trust Counsel is a law firm specializing in providing individuals and families with comprehensive estate planning, trust administration, Medi-Cal planning, probate, special needs planning and retirement assets planning. Absolute Trust Counsel is a trusted law firm devoting their processes to making everything simple and easy for their clients. Kirsten Howe and her team are dedicated to providing quality work and personable assistance to each and every client.

Our intake process is very thorough, which enables us to identify the client's specific needs and streamline the information and documents we need from the beginning. Our production processes are designed so that the team members can complete clients' projects efficiently and on time. Clients are educated on every aspect along the way by our team and if questions arise, our clients know exactly who will assist them quickly.

OUR OFFER FOR YOU

Planning ahead for your future doesn't have to be stressful or difficult. Our skilled attorneys have extensive experience in the Medi-Cal application process and all areas of estate planning and administration, and we understand how important your estate is to you and your family. Our first priority is our clients' well-being, and we take great pride in both structuring the most effective plans as well as in maintaining long-term, collaborative attorney-client partnerships.

Contact us today to schedule your free initial consultation.
We can't wait to meet you.
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