

Elder Law Advisor

Winter 2018

If my father creates a limited liability company (LLC) and transfers his assets into it, will the LLC count as an available asset if he applies for Medicaid?

Since your father created the LLC, he is the initial owner of the LLC units. The value of the LLC will be treated as a countable resource unless it is an active trade or business, such as rental property or a farm operation.

If your father gives his LLC units to a child or irrevocable trust, then the LLC would not be an available asset when he applies for Medicaid. In addition, if he makes the gift of the LLC units more than five years before applying for Medicaid, there will not be a penalty assessed on the transfer. However, if he makes the gift during the five years prior to his application for Medicaid, the gift will trigger a waiting period for benefits.

In general, transferring assets to an LLC is not a strategy used to protect assets from long-term care costs. Transferring assets to an irrevocable trust may be a better option for your father. 

My husband needs nursing home care. We have kept separate accounts since we both have children from prior marriages, and have a pre-nuptial agreement showing that he has no ownership interest in my assets. Will my assets count when we apply for Medicaid for my husband?

In Wisconsin, it does not matter whose name is on the title. Medicaid looks at all assets owned by the married couple, and unless an asset meets an exception, it is considered a “countable asset.” Some of your assets, however, may meet one of the exceptions. There are exceptions for one vehicle, your primary residence, and your IRA accounts, meaning they will not count when calculating Medicaid’s countable resources.

In addition, Wisconsin will not allow you, as the healthy spouse, to refuse to cooperate in spending down your assets without impacting your husband’s Medicaid. This refusal to cooperate (known as “spousal refusal”) is not allowed in Wisconsin. 

Can my mother transfer her life insurance policy? The face value is over \$1,500.

The issue is not whether the policy can be transferred (most life insurance policies can); rather, the issue is whether there is a consequence for that transfer. When dealing with Medicaid, transferring assets during the five years prior to applying for benefits will trigger a waiting period for benefits. If applying for Medicaid in the next five years is not anticipated, then transferring the policy may be advised.

If, however, you think your mother may need Medicaid within the next five years, other options should be explored. For example, your mother may be able to sell the policy and use the proceeds for repairs to her home, or she may be able to withdraw some of the cash value to be used as part of her spend down to qualify for Medicaid. Another option may be to assign the policy to a funeral home to be used to pay for her funeral. 

2018 Updates

Medicaid Figures for 2018

- The new maximum community spouse resource allowance (CSRA) = \$123,600.
- The maximum monthly maintenance needs allowance = \$2,706.66.
- To calculate divestment penalties, the daily average nursing home private pay rate is \$278.05 per day (\$8,457.35 per month)

Gift and Estate Tax Figures

- Federal estate tax exemption = \$11.18 million (estimate) for individuals
- Lifetime tax exclusion for gifts = \$11.18 million (estimate)
- Generation-skipping transfer tax exemption = \$11.18 million (estimate)
- Annual gift tax exclusion = \$15,000

Medicare Premiums, Deductibles and Copayments for 2018

- Standard Part B premium = \$134/month (unchanged)
- Part B deductible = \$183 (unchanged)
- Part A deductible = \$1,340 (up from \$1,316)
- Co-payment for hospital stay days 61-90 = \$335/day (up from \$329)
- Co-payment for hospital stay days 91 and beyond = \$670/day (up from \$658)
- Skilled nursing facility co-payment, days 21-100 = \$167.50/day (up from \$164.50)

Save the Date: 2018 Elder Law Seminars

Protect Your Assets
Medical Assistance & Long-Term Care Planning

Presentations by Attorney Aric Burch

March 8, 2018 @ Holiday Inn 94 South,
Eau Claire, WI

March 20, 2018 @ Holiday Inn & Suites, Rothschild, WI

Visit www.ruderware.com/seminars for details.



Around the State and Nation

On September 18, 2017, Aric presented to the Retired Educators' Association

Aric attended the following Webinars in 2017 - 2018:

- Medicaid and the Use of Irrevocable Trusts in Long-Term Care
- Take the Scare Out of Annuities
- Advanced Crisis Medicaid Planning for the Married Couple
- Fiduciary Pitfalls of Managing SNT's That Own Real Estate
- Social Security Disability for Non-SSD Attorney

Aric recently attended the following conferences:

- National Conference for Special Needs Planning (Florida)
- Elder Law Workshop Seminar (Wisconsin Dells)

About the Author

Attorney Aric Burch



Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

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This document provides information of a general nature regarding legislative or other legal developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues, and additional facts and information or future developments may affect the subjects addressed.

Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans' benefits

Elder Law Team

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