PLAN ON IT®

UNDERSTANDING LONG-TERM CARE MEDI-CAL

A Comprehensive Legal Guide
By Christopher E. Botti, Esq.

California Board Certified Specialist in Estate Planning, Trust and Probate Law

Fifth Edition

A Plan on It™ Publication

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About the Author

Christopher E. Botti is a Board Certified Specialist in Estate Planning, Trust and Probate Law, a field that includes Elder Law. The California Board of Legal Specialization estimates that only three percent (3%) of practicing attorneys in California can call themselves a "Board Certified Specialist."

Mr. Botti co-founded Botti & Morison Estate Planning Attorneys in 2003. The company has grown to six offices and has become one of the largest firms devoted to estate planning in California. Mr. Botti's practice includes Long-Term Care Medi-Cal planning, estate planning, asset protection, special needs planning, estate and trust administration, as well as probate. He has helped thousands of clients plan for the challenges of confronting long-term care and incapacity.

During his thirty-plus-year career, Mr. Botti's mission has been to educate individuals about the importance of long-term care estate planning. He is a member of the National Academy of Elder Law Attorneys (NAELA), a professional organization comprising attorneys who are experienced and trained in addressing the legal issues of older Americans.

Mr. Botti was born in Brooklyn, New York, in 1964. He received his B.S. in Business Economics from the State University of New York, College at Oneonta in 1987. He obtained his J.D. from Whittier College School of Law in 1990 and served as an editor for the Whittier Law Review.

What is Long-Term Care Estate Planning

Long-term care estate planning involves two primary objectives.

The first is to plan for incapacity. According to the California Partnership for Long-Term Care, two out of three Californians will require long-term care. Those needing long-term care will likely experience difficulty or an inability to perform at least one of the six domains of functioning: seeing, hearing, mobility, communication, cognition, and self-care. You want to control your destiny if you become incapacitated and avoid the Probate system. Trusted individuals can be placed in a position to make financial and medical decisions for you with a properly crafted Durable Power of Attorney for Finances and an Advance Health Care Directive. These two critical documents will avoid a costly Probate Conservatorship.

The second objective is nest egg preservation. A well-crafted, comprehensive long-term care estate plan will legally allow you to take advantage of certain government programs. These programs will help pay for long-term care costs, thereby preserving your assets for yourself and your family.

The primary cause of poverty among those 65 and over is failing to prepare for the cost of a nursing home stay or other long-term care. Nursing home costs in California average over one hundred and thirty thousand dollars ($130,000.00) annually. The average lifetime length of stay in a nursing home is approximately 2.3 years, as reported by the California Partnership for Long-Term Care.

Long-term care is becoming more expensive every year, with cost increases far exceeding the pace of inflation. By far, the biggest concern of my clients who are over the age of 65 is the fear of losing everything if they get sick and can't afford to pay for the appropriate care. With proper planning, this concern can be eliminated.

Why Your Estate Plan Must be Long-Term Care Compliant

A typical estate plan consists of a Living Trust at its core as well as a Will, Durable Power of Attorney, and an Advance Health Care Directive. Under California Law, it is critical that these documents are integrated and contain provisions to allow for long-term care planning to occur in the event of incapacity. You cannot prepare the necessary legal documents once you lose legal capacity. Moreover, your existing documents cannot be repaired if they are deficient once incapacitated. Your only option is an expensive, time-consuming, humiliating Probate procedure known as Conservatorship.

You cannot prepare the necessary legal documents once you lose legal capacity. Moreover, your existing documents cannot be repaired if they are deficient once incapacitated. Your only option is an expensive, time-consuming, and humiliating Probate procedure known as Conservatorship.

The good news is that the risk of Conservatorship can be virtually eliminated with proper long-term care estate planning. Planning techniques and strategies outlined in this eBook can protect your estate, including your home, allowing you to leave a legacy for your family. In order to avail yourself of these legal strategies, it is critical that your existing estate planning documents are long-term care compliant.

Because this planning often involves "self-dealing" transactions, it is essential that your legal documents have the express power to engage in these activities. Nest egg preservation not only benefits you, but it also benefits your family. Both your Living Trust and your Durable Power of Attorney must have reciprocal provisions that include the express power to amend, revoke, and create new estate planning documents. Your estate planning documents must also include the power to gift, transfer, and recharacterize assets, all on your behalf, to protect your nest egg. These powers should only be conferred upon those you trust implicitly. The successor trustees and agents you appoint in your estate plan are fiduciaries and held to the highest standard of care and fidelity under California Law.

The vast majority of the estate plans I reviewed during my 35-year career fall short regarding long-term care compliance. It should be no shock that the documents that were either self-drafted or prepared by non-attorneys were grossly inadequate. Surprisingly, many attorneydrafted plans also lacked critical provisions because those attorneys were either generalists or lacked experience in Elder Law.

Flexibility is key when it comes to long-term care estate planning, and that flexibility must be built into your estate plan to accommodate changing circumstances. You must plan ahead. Laws and regulations change frequently in this area, and decades often go by between the creation of your estate planning documents and the time they are actually needed.

Your estate planning documents must contain provisions that allow you, or someone on your behalf, to navigate the laws and regulations that exist when this planning is needed. You also want to avail yourself of the current, state-of-the-art legal strategies available to Elder Law attorneys.

Long-Term Care Payment Sources

There are only 5 ways to pay for long-term care in California:

1. Private Pay
The average cost of a nursing home in California in 2024 is $12,608.00 per month. The average lifetime length of stay in a nursing home is approximately 2.3 years. Therefore, bankruptcy is a real threat to a family with modest or limited means.

2. Medicare
As shown below, Medicare's coverage falls short in almost every long-term care situation.

3. Long-Term Care Insurance
This is a key planning tool if you have it and can afford to keep it. Payouts vary and are subject to individual policy terms.

4. Veterans Benefits
If you meet the strict eligibility requirements, then Veterans Benefits can provide a measure of relief and should not be dismissed.

Long-Term Care Medi-Cal is not a poverty-based program. It will pay for your nursing home care if you meet the surprisingly liberal eligibility requirements.

5. Long-Term Care Medi-Cal
Long-Term Care Medi-Cal is not a poverty-based program. It will pay for your nursing home care if you meet the surprisingly liberal eligibility requirements.

Medicare versus Medi-Cal

To understand Long-Term Care Medi-Cal, you must first understand how it differs from Medicare. Medicare and Long-Term Care Medi-Cal are separate and distinct programs. Once you understand these differences, you will realize why Long-Term Care Medi-Cal is the only program capable of paying for continual long-term care.

Medicare

Medicare is a federal entitlement program that provides health and medical benefits to Americans 65 and older. It is funded with Social Security deductions. All persons over sixty-five who have made Social Security contributions are entitled to these benefits. Persons under 65 with disabilities who have been previously eligible for Social Security disability benefits are also entitled to these benefits.

Medicare is not based on financial need. Any individual who meets the age, disability, and coverage requirements is eligible. Participants are responsible for co-payments and deductibles. Medicare does not pay for all medical expenses and often must be supplemented with private insurance.

There are four parts to Medicare.

- Part A covers limited hospital expenses and acts like health insurance.
- Part B covers outpatient care.
- Part C allows private companies to offer supplemental plans to Medicare.
- Part D covers prescription drug expenses.

By far, the greatest Medicare myth is that it will pay for all long-term care costs. It will not pay for care in an assisted living facility or residential board and care home. The truth is that Medicare only provides limited coverage in a skilled nursing environment. It was never designed to cover long-term care broadly. Many people don't realize Medicare's long-term care limitations until it is too late.

Medicare will only cover nursing home expenses if they follow a three-day stretch in a hospital (not including the date of discharge). If that first requirement is met, then Medicare will pay up to 20 days of care in a nursing home for rehabilitation purposes only. From day 21 to day 100, a co-payment of $209.00 per day will be required, provided rehabilitation continues. The co-payment amount adjusts for inflation every year. Home health care may be provided in Part A if it is "medically necessary," an exceptionally difficult standard to meet.

Medicare benefits are fleeting and require deductibles and co-payments that can eat into your nest egg. The average stay in a nursing home under Medicare is usually less than 24 days. There is no Medicare coverage for nursing home care beyond 100 days in any single benefit period. Thus, few can look to Medicare to pay for any substantial nursing home costs. Don't fall into this trap.

Long-Term Care Medi-Cal

Long-Term Care Medi-Cal, as opposed to an entirely separate program known as "Community Based Medi-Cal," is California's version of Medicaid for individuals 50 and older, regardless of immigration status. Both state and federal funds support it. Long-Term Care Medi-Cal's usefulness primarily depends on your monthly income. There is one assessment that must be completely satisfied before Long-Term Care Medi-Cal will pay for nursing home care.

The Medical Assessment

It is important to understand that like Medicare, Medi-Cal will not pay for care in an assisted living facility or residential board and care home. This includes memory care in an assisted living facility.

Prior authorization is a prerequisite for nursing home coverage. You need a doctor's order stating that you need nursing care in a skilled nursing facility, and your stay must be "medically necessary." It is important to understand that, like Medicare, Medi-Cal will not pay for care in an assisted living facility or residential board and care home. This includes memory care in an assisted living facility**.** There is limited coverage for in-home care under the In-Home Supportive Services (IHSS) program, which will be covered later in this eBook.

The Elimination of the Asset Assessment - A Game Changer

The myth that you can "only have $2,000.00 in your name" has now been relegated to history. Medi-Cal does not count assets as a basis to determine eligibility as of January 1, 2024. California W&I Code, Section 14005.62. The result of this dramatic change is that anyone, regardless of the size of their estate, can obtain Long-Term Care Medi-Cal benefits.

Under the "name on the instrument rule," the community spouse (at-home spouse/domestic partner) may retain any income received, regardless of the amount in their name alone...

Spousal Impoverishment Laws

The California spousal impoverishment laws are designed to protect family income. They allow the community or well spouse/domestic partner to retain a maximum monthly maintenance needs allowance (the "MMMNA"). The MMMNA is

$3,948.00 per month in 2025. This amount is adjusted annually by the cost-of-living increases. Under the “name on the instrument rule,” the community spouse (at-home spouse/domestic partner) may retain any income received, regardless of the amount in their name alone, even if this exceeds the MMMNA. For example, if the community spouse’s monthly income (in his or her name alone) is $12,000.00, the community spouse may keep it all. In fact, there are no income limits imposed under the Long-Term Care Medi-Cal program. If the community spouse’s monthly income is less than the MMMNA of $3,948.00, they may receive an allocation from the ill spouse’s income until they reach the $3,948.00MMMNA.

Legal strategies are available to reduce or eliminate your monthly resident cost.

The MMMNA can also be expanded through the legal process if the community spouse can demonstrate exceptional circumstances, which would cause extreme financial distress, to exist if the MMMNA were not increased. For example, extraordinary medical expenses for the at-home spouse could result in extreme financial distress, warranting an increase in the MMMNA. Again, any attempt to increase the MMMNA should be made by a qualified Elder Law attorney.

If you have income and are receiving Long-Term Care Medi-Cal, you must pay the Monthly Resident Cost (formerly known as “Share of Cost”). In most situations, the Monthly Resident Cost acts as a copayment. Once you pay the Monthly Resident Cost, Medi-Cal will pay the facility the difference between the Monthly Resident Cost and the Medi-Cal per diem rate.

The Monthly Resident Cost is calculated by the Medi-Cal Office by tabulating the person’s gross monthly income and then deducting any medical premiums as well as the Personal Needs Allowance of $35. If the person receives SSI, the personal needs allowance increases to $50. It is important to understand that if an individual qualifies for Long-Term Care Medi-Cal, they do not need private “Medigap” or HMO insurance. However, if such insurance exists, the premiums are deducted from your income when computing the Monthly Resident Cost. Thus, the insurance does not cost anything.

Beware of the “Lookback Rule” for Transfers made prior to January 1, 2024

Prior to the elimination of the asset test on January 1, 2024, many uninformed individuals started gifting assets in a misguided attempt to get to a level where they “only have $2,000.00” in their name.

The Medi-Cal eligibility worker has the right to review the 30-month period prior to application for Long-Term Care Medi-Cal services to determine if there were any improper transfers of property. A transfer of non-exempt assets can result in a period of ineligibility, which is calculated by totaling the value of the transferred assets and dividing it by the average private pay rate (APPR). The current APPR is $12,608 (effective January 1, 2024). The good news is that the lookback rule will fade into the sunset as of July 1, 2026.

The lookback rule has never applied to non-exempt assets. Transfers of any "exempt" property, such as the family home, made prior to January 1, 2024, will not affect eligibility.

This is by far the most significant aspect of the law change.

Any transfers of assets, regardless of their value, made from January 1, 2024, forward will not result in the loss of eligibility. This is by far the most significant aspect of the law change. These new rules open the door to tremendous planning opportunities when it comes to reducing the Monthly Resident Cost. Most of my clients cannot survive on $3,948.00 a month, which is the maintenance needs allowance ("MMMNA").

Long-Term Medi-Cal Planning in Action

Examples of How to Reduce or Eliminate Monthly Resident Cost

One of the goals of Long-Term Care Medi-Cal planning is to reduce or eliminate monthly resident costs.

This can be accomplished in several ways using various strategies. These strategies vary from case to case. Asset configuration, the size of the estate, the individual's medical needs, as well as the family dynamic, all play a role in determining which strategy would work best. Transparency is the name of the game, and all those affected should be involved. If, at the end of the day, the best interests of the Medi-Cal applicant would not be served by moving forward, then other alternatives must be considered and implemented.

Here are two examples of Long-Term Care Medi-Cal planning in action:

Example One. Single Person

Alice is an 85-year-old widow with four children. She has worked extremely hard all of her life, paid her taxes, and wants to leave a legacy to her children upon her death. She had a devastating stroke and needs immediate placement in a nursing home.

Here is a breakdown of her monthly income:

1. $2,356.00 in monthly Social Security income
2. $6,125.00 in rental income from two rental properties

Total Monthly Income: $8,481.00
Total Monthly Resident Cost: $8,446.00 ($8,481.00 less the $35.00 personal needs allowance)

Possible Strategies to Reduce Monthly Resident Cost

The Conversion Approach:
Alice may remove the rental income from her Monthly Resident Cost by selling both properties and depositing the funds in a low-interest bank account. The minimal interest earned would dramatically reduce the Monthly Resident Cost. However, this approach is not attractive because she would incur significant capital gains tax liability because of the extremely low tax basis she has for both properties.

The Gifting Approach:
Under this method, Alice could transfer both rental properties to her children. However, giving gifts outright to her children without strings attached is not generally recommended, as those assets, once transferred, would be exposed to creditors and her children's whims. The better approach would be to establish an Irrevocable Medi-Cal Asset Preservation Trust and transfer the rental properties to this trust.

It is important to note that if a transfer is being made on behalf of a person who lacks legal capacity, then express and unlimited gifting powers must exist in the estate planning documents. A long-term care-compliant estate plan would contain these critical provisions. Failure to have the legal authority to make gifts could result in allegations of financial elder abuse, fraud, and breach of fiduciary duty. Therefore, extreme caution is urged, and you should only engage in this type of gifting with the guidance of an Elder Law attorney. Gifts or transfers of any kind should only be made when they are in the best interests of the Long-Term Care Medi-Cal applicant.

The Wonders of an Irrevocable Medi-Cal Asset Preservation Trust

Oftentimes long-term care estate planning includes the creation of an Irrevocable Medi-Cal Asset Preservation Trust, also known as an Intentionally Defective Grantor Trust. The term "Intentionally Defective" does not mean the trust will not serve its intended purpose or is invalid under the law.

"Intentionally Defective" is a tax planning term of art and means that the assets placed in this trust will be included in the individual's estate for federal estate tax purposes. As long as the estate is less than the current 2025 Federal Estate Tax Exemption of $13.99 million, the entire amount will pass to the beneficiaries completely tax-free. The trust will also be treated as a pass-through entity for federal and state income tax purposes.

The transfer of Alice's two rental properties to an Irrevocable Medi-Cal Asset Preservation Trust would accomplish all of the following:

1. Alice would be able to maintain management and control of the two properties until her death, and the rental income generated would be excluded from her Monthly Residence Cost.

2. Alice's beneficiaries named in the trust can receive the properties as an inheritance upon her death.

3. Alice would minimize the potential for family beneficiary conflict.

4. Alice would empower the irrevocable trust trustee to take control of the properties in the event of her incapacity or death, thereby eliminating the need for conservatorship or probate.

5. Alice would avoid estate recovery on any claims made by the Estate Recovery Section of the California Department of Health Services at the time of her death for Medi-Cal benefits paid to her during her lifetime.

6. Alice would subject her home to inclusion within her federal taxable estate for federal estate tax purposes. This is within the scope of the tax rules established by Trotter v. Commissioner, T.C. Memo 2001-250 (2001) and Linderme Estate v. Commissioner, 52 T.C. 305 (1969), in order to establish a cost basis increase for the home. The new cost basis would be the date of death value, thereby eliminating the tremendous built-in capital gains

for the two rental properties. A step-up in basis would not have occurred if she had gifted the properties outright to her children prior to her death.

7. Alice would preserve her continuing eligibility for Medi-Cal benefits.

8. Alice could retain the right to name new beneficiaries of the trust upon her death using a "limited power of appointment."

9. Alice could retain the right to change or add trustees.

10. The trust would be treated as a grantor trust for income tax purposes.

11. Alice would protect the trust assets from the claims of her beneficiaries' creditors in the event of their subsequent disability, death, bankruptcy, or divorce.

12. Recovery Protection: All assets placed into the Irrevocable Medi-Cal Asset Preservation Trust would escape any recovery efforts. As long as Alice does not have a "probate estate" her entire remaining nest egg will transfer to her children upon her death. See below for a further discussion about estate recovery.

Example Two. Married Couple

Henry is 79 and Wendy is 76. They have two children and have been married for over 30 years. In July 2023 Wendy was diagnosed with dementia. Henry has been caring for Wendy at home as best as he can. His health is now being compromised by the stress associated with caring for Wendy and the fear of financial devastation. The children are concerned. Wendy's doctor has indicated that her condition has progressed to the point that she needs skilled nursing care, and Henry reluctantly agrees to transfer her to a skilled nursing facility. Wendy may be looking at a multiple-year stay in a skilled nursing facility as she is otherwise not suffering from any other ailments.

Here is a breakdown of their total monthly income:

1. $3,250.00 monthly Social Security income for Henry.

2. $1,475.00 monthly Social Security income for Wendy.

3. $6,500.00 in joint monthly rental income from two rental properties currently owned by their joint revocable living trust. This income will be allocated 50% to each spouse because the asset is jointly owned.

4. $4,125.00 a month income generated from a brokerage account invested in fixed-income assets currently owned by their joint revocable living trust. This income will be allocated 50% to each spouse because the asset is jointly owned.

Total monthly joint income: $15,350.00
Total monthly income for Henry: $8,562.50
Total monthly income for Wendy: $6,787.50
Total monthly resident cost for Wendy: $6752.50 ($6,787.50, less the $35.00 personal needs allowance)

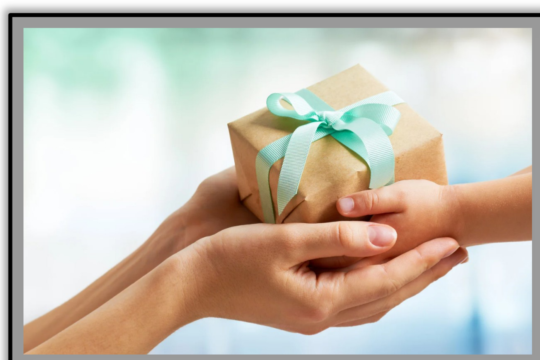
Possible Strategies to Reduce Monthly Resident Cost

Henry needs more than his monthly income of $8,562.50 under the "name of the check" rule to cover all family expenses and maintain his standard of living. He is unable to apply the Spousal Impoverishment rules to obtain additional income from Wendy because his income exceeds the monthly maintenance needs allowance (the "MMMNA") of $3,948.00.

How does Harry secure more income?

The Conversion Approach:
Henry could convert high-income-generating assets to low-income-generating assets by selling the two rental properties and the securities and placing the net sale proceeds in a low-interest bank account. However, this approach is not attractive because of the massive capital gains taxes that would be incurred, as well as the fact that the family does not want to sell the rental properties that have been in the family for generations.

The Gifting Approach:
Henry could transfer the two rental properties as well as the brokerage account from the joint revocable living trust into his name as his sole and separate property. He would utilize the "name on the instrument" rule so that all income was payable to him thereby reducing Wendy's Monthly Resident Cost to $1,440.00 (her social security income of less the $35.00 monthly needs allowance). Henry is aware, based upon the advice of his Elder Law attorney, that assets titled in his name only could be subject to Probate and a recovery claim. Instead, Henry establishes a new revocable separate property trust to eliminate the risks of probate and state recovery.



Medi-Cal Recovery

The State of California can use liens and estate claims to seek reimbursement for payments made to beneficiaries under the Long-Term Care Medi-Cal program. Liens are rare and are imposed to “lockdown” the property until the beneficiary dies.

Estate claims are made against the estate following the death of a Long-Term Care Medi-Cal beneficiary. Both can be avoided with proper planning.

On January 1, 2017, Senate Bill 833 modified California’s recovery law. It contains the following key provisions:

1. Recovery claims are now prohibited against surviving spouses and registered domestic partners.

2. Recovery is limited to individuals 55 years of age or older who receive care in nursing homes or through home and community-based services.

3. Recovery is permitted only to those assets subject to a full California probate proceeding.

By far, the most significant change was item No. 3. Items not subject to probate, such as assets placed in a revocable or irrevocable trust, life insurance, retirement accounts, and assets where a beneficiary is named, all escape recovery. As a result, recovery can now be completely eliminated with careful estate planning.

Options for Residential Long-Term Care Outside the Home

Several care options are available when a person can no longer live safely or comfortably in their own home. At one end of the spectrum, an individual may be able to move in with family or friends. If an individual needs more help than a family member or friend can provide, then they might move to a live-in facility, such as a board and care home, an assisted living facility, or a continuing care retirement community. On the other end of the spectrum is a nursing home. It is important to understand the difference between these live-in options.

A Board and Care is a residential home licensed by the California Department of Social Services to house and provide non-medical care for six elderly residents.

The term "assisted living facility" describes various facilities that provide housing and personal care. They include Board and Care homes, as well as much larger facilities. Some facilities primarily serve adults under age 60 (Adult Residential Care Facilities), and others primarily serve adults age 60 and over (Residential Care Facilities for the Elderly — RCFEs). RCFEs may also serve persons under the age of 60 who have similar needs. RCFEs may care for individuals with dementia if the facility is adequately equipped and staff are trained sufficiently to meet the needs of all residents. RCFEs cannot legally provide ongoing medical care because they are not licensed as medical facilities by the Department of Health Services.

A continuing care retirement community (CCRC) offers the full spectrum of long-term continuing care. Residents execute a contract with the facility that provides for housing, residential services, and nursing care, usually for a person’s lifetime. All providers offering continuing care contracts must first obtain a certificate of authority and a residential care facility for the elderly (RCFE) license. In addition, CCRCs that offer skilled nursing services must hold a Skilled Nursing Facility License issued by the Department of Health Services.

Nursing homes, also called skilled nursing facilities, provide a wide range of health and personal care medical services. Services offered in a nursing home typically include nursing care, 24-hour supervision, three meals a day, and assistance with everyday activities. Rehabilitation services, such as physical, occupational, and speech therapy, are also provided.

The Pursuit of Long-Term Care Medi-Cal is Not for Everyone

A nursing home resident who pays privately has more options concerning nursing home placement. A pure private pay patient may receive a higher level of service that includes a private room. Moreover, pure private pay facilities tend to have more amenities and facilities that border on luxury. The family should consider these factors if they can afford to go the private pay route.

Once a patient has been admitted to a Medi-Cal-certified facility, they cannot be transferred or evicted simply because of a change from private pay to Medi-Cal. Thus, unless a person can pay privately for an indefinite period of time, they should seek out a nursing home that contracts with Medi-Cal.

> **Medi-Cal offers no coverage for those individuals in a board and care home, as well as an assisted living facility, even if that facility has a memory care unit.**

The Long-Term Medi-Cal program offers no coverage for individuals in a board and care home or assisted living facility, even if that facility has a memory care unit. Board and care homes and assisted living facilities are not medical facilities. Individuals must rely upon private pay arrangements, use long-term care insurance, or a combination of both.

It is important to understand that long-term care is provided on a spectrum. There is an overlap where an adequate level of care can be provided at home, in an assisted living facility, or in a nursing home.

Ultimately, the person needing long-term care should be placed in the least restrictive environment for the level of care needed. Options such as in-home care, an assisted living facility, or a board and care facility must be seriously considered. Nest egg preservation is just one factor to be weighed. Placement should, in the end, be based on what is in the best interest of the individual.

Home and Community-Based Services

Home and Community-Based Services (HCBS) are programs that can substitute for skilled nursing facilities. These programs are separate and distinct from the Long-Term Medi-Cal program. Many individuals or their families would prefer that they receive care while remaining at home. The availability of HCBS programs and the services provided vary between counties.

There are many HCBS existing programs and a detailed look into each program and its eligibility requirements is beyond the scope of this eBook. An individual must be receiving Medi-Cal (have a Medi-Cal Card) before applying and being accepted into an HCBS program. It is important to note that the "Spousal Impoverishment Rules" outlined earlier in this eBook can be applied to an HCBS program to increase the likelihood of eligibility for certain individuals with higher family incomes.

If an individual meets the eligibility criteria, the In-Home Support Services (IHSS), the Assisted Living Waiver (ALW), and the Program for All-Inclusive Care for the Elderly (PACE) are worth considering as an alternative to Long-Term Care Medi-Cal in a nursing home.

The IHSS program is by far the most available and most popular HCBS program. IHSS provides individuals with modest incomes who are over the age of 65 with home healthcare services. IHSS services include protective supervision (for both cognitively and physically impaired individuals), transportation, medication assistance, incontinence care, meal preparation, cleaning, dressing, grooming, and personal hygiene. You must be at home to receive IHSS. You cannot reside in a hospital, nursing home, assisted living or licensed board and care home. The applicant must also be unable to live safely at home without caregivers.

The copayment (share of cost) is based on countable income, less available deductions. The method of delivering the service is selected by the Medi-Cal beneficiary. The care delivery methods include Contract, County Homemaker, or Independent Provider (IP) service. For Contract service, the County contracts with an outside agency that employs caregivers. For the County Homemaker service, the county hires and controls the caregivers. The majority of individuals use the IP service. The Medi-Cal beneficiary locates and controls the caregivers under the IP Service. As a result, many IPs are paid family members of the Medi-Cal beneficiary.

A social worker will visit the Medi-Cal beneficiary's home to conduct a "needs assessment" once the application is processed. The social worker will ask questions about the physical and mental state of the Medi-Cal beneficiary to determine the type of service needed as well as the number of hours for each service that will be provided. The Medi-Cal beneficiary's living situation is also assessed. The notice indicating acceptance will include how many hours were authorized for each type of service and how many total monthly hours will be provided.

It is important to understand that the IHSS program does not provide round-the-clock care. If fact, none of the HCBS programs do. That level of care can only be provided in a skilled nursing facility. California has limited monthly service hours to 195 hours per month for "non–severely impaired" beneficiaries and 283 hours per month for the "severely impaired" under the IHSS program.

Long-Term Care Insurance

Long-Term Care Insurance can provide coverage for nursing homes, assisted living facilities, and in-home care. Cost is dependent on a number of variables that include the following:

1. Age & Health
2. Length of Coverage
3. Insurance Company Rating
4. Exclusions & Riders
5. Cost of Living Adjustment Provisions

Many Long-Term Care insurance policies do not cover the full cost of care for various reasons, resulting in the need to apply for Long-Term Care Medi-Cal to fill the gap. This is largely due to the fact that long-term care expenses are increasing at a rate far greater than the cost-of-living adjustment provisions contained within the policy. Many companies have reduced coverage or exited the market entirely due to a lack of profitability.

Nevertheless, the fact remains that Long-Term Care Insurance can be a valuable planning tool. This is neither a recommendation to cancel your insurance nor a recommendation to not consider purchasing it. It is important that you know the details of your policy to make an informed decision.

VA Benefits

If you are a veteran overwhelmed with the high cost of long-term care, the Veterans Aid and Attendance benefit could be the solution to help offset these rising care costs. It is important that you understand if the pursuit of these benefits should be made. A detailed discussion of Veterans Benefits is beyond the scope of this eBook. Please visit the U.S. Department of Veterans Affairs website if you would like to take a deeper dive into the subject and qualification requirements.

There are two general categories of Veterans' benefits: service-connected benefits and non-service-connected (pension) benefits. When dealing with long-term care planning, the "Aid and Attendance" program is the most commonly utilized. Aid and Attendance benefits are very important in the assisted living setting because there is no meaningful and realistic alternative under the Long-Term Care Medi-Cal Program for assisted living.

VA Aid and Attendance Benefits

What are VA Aid and Attendance benefits? These benefits provide additional payments to the total amount of a monthly VA pension received by qualified Veterans and survivors. If you or a loved one need help with daily activities or are housebound, you may qualify for the VA Aid and Attendance allowance.

Income Limitations for VA Aid and Attendance Benefits
If you qualify for VA Aid and Attendance benefits, your payment is based on the difference between your countable income and a limit that Congress sets (the Maximum Annual Pension Rate or MAPR).

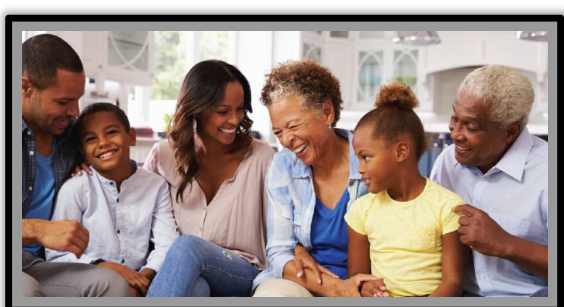
Your countable income is how much you earn, including your Social Security benefits, investment and retirement payments, and any income your dependents receive. Some expenses, like non-reimbursable medical expenses (medical expenses not covered by your insurance provider), may reduce your countable income.

Your MAPR is the maximum amount of pension payable. It is based on your number of dependents, whether you're married to another Veteran who qualifies for a pension, and whether your disabilities qualify you for Housebound or Aid and Attendance benefits. MAPRs are adjusted each year for cost-of-living increases.

When Should You Apply for a Medi-Cal Card?

A Medi-Cal Card is a prerequisite to obtaining all of the Medi-Cal Programs outlined in this eBook. It is my recommendation that if an individual may need either Long-Term Medi-Cal or a Home and Community-Based Services (HCBS) program within the next year, then a Medi-Cal application should be submitted. The California Department of Health Care Services will issue a Medi-Cal Card to any individual who meets the eligibility criteria. You need to be prepared. Having a Medi-Cal Card in hand offers tremendous peace of mind. It can be deployed immediately to apply for a specific program when the need arises.

Conclusion



Long-term Medi-Cal is not a poverty-based program. Nursing home costs in California average over one hundred thirty thousand dollars ($130,000.00) annually. You now know that planning techniques and strategies employed by Elder Law attorneys exist that can protect your estate, including your home, allowing you to leave a legacy for your family. To avail yourself of these legal strategies, it is critical that your existing estate planning documents are long-term care compliant.

Your living trust or will, as well as your medical and financial powers of attorney, must have appropriate provisions to allow this type of planning to occur. Without an integrated, comprehensive, Long-Term Care Medi-Cal-compliant estate plan, an expensive and time-consuming Probate Conservatorship will be your only option.

The legal requirements for qualifying for Long-Term Care Medi-Cal rules are complex and fraught with traps and pitfalls. Your existing estate planning documents may need substantial modifications, or you may need to create new documents. Change is constant, and your documents must have sufficient flexibility to deal with future laws and regulations.

The myth that "you can only have $2,000.00 in your name" has resulted in tremendous damage, hardship, and anxiety for many families. The State of California does not provide a realistic road map to help you navigate this area. Most individuals and families leave money on the table that could have been protected had they only known better.

If you are interested in a long-term care estate planning review for your existing estate planning documents or are interested in establishing a new long-term care estate plan, please contact Christopher E. Botti at info@bottilaw.com or call 877-585-1885 to get the process started. All legal services are provided by Botti & Morison Estate Planning Attorneys, Ltd.

Disclaimer: This eBook is not intended to offer legal advice and the information provided herein is for general educational purposes only. Specific legal advice can only be provided during consultation with an attorney.

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