

SMITH LAW, P.A.
49 Pleasant Street
Brunswick, Maine 04011

MAINECARE PLANNING

(as of December 28, 2018)

What is MaineCare and why is it important?

MaineCare is a joint federal/state program providing long term care benefits to Maine residents who cannot afford to pay them on their own. MaineCare is administered by the Department of Health and Human Services. To qualify for nursing home or residential care benefits, you must be both financially and medically eligible. The rules and regulations governing eligibility are comprehensive and complicated, and they are only getting more so. Moreover, nursing home services are extremely expensive in Maine¹, so it is vitally important you have a well-thought out plan in the event long term care becomes a reality. Often, individuals do not have sufficient resources to pay for these medical services, and without long term care insurance, the last option is often MaineCare. Many nursing homes do not accept MaineCare, and the ones that do typically offer a limited number of beds for MaineCare-eligible individuals.

If you are interested in discussing your long term care planning options, or especially if you or your spouse will be entering a nursing home in the near future, you should speak with an elder law attorney. Proper counsel will ensure most importantly that you qualify for MaineCare and your medical expenses are taken care of, and secondarily that you have a plan in place to protect assets which you've worked your whole life to accumulate. This memo briefly outlines some of the rules and issues that may or may not be relevant to your particular circumstances. Please understand that the law changes so this information although currently accurate may be inapplicable in the future.

Basic Rules of Eligibility

Only Maine residents qualify for MaineCare benefits (either nursing home or residential care services), and the applicant must be 65 years or older, blind, or disabled. In addition, you must demonstrate that you satisfy the medical and financial eligibility criteria as enumerated in the MaineCare Eligibility Manual. After filing the application, each applicant is assigned a caseworker who serves as your point of contact with respect to the qualification process. Caseworkers' personalities and the extent of information they require you to provide vary, but the basic financial and medical criteria stated below are set in stone.

Medical Criteria

If you are applying for nursing home benefits, you must demonstrate that you need assistance with 3 "activities of daily living" (e.g. eating, toileting, locomotion, transferring, and bed mobility) or that you have dementia. Maximus (also known as "Ascend Management Innovations") performs the medical eligibility determination (MED), which is either ordered by DHHS as part of the

¹ Average cost of nursing home per month: \$9,429 for semi-private room per Genworth Cost of Care Survey

qualification process or done in advance of filing the application. Generally it makes good sense to get the MED done in advance of filing the application, since DHHS will not authorize benefits payments beyond a month prior to the assessment. If you are applying for residential care, Maximus will also perform the MED although the requirements are understandably much less onerous. In general, if you are elderly and need limited assistance, you will meet the eligibility criteria for residential care coverage.

Financial Criteria

To qualify for MaineCare, the applicant must spend down his or her “countable” assets to \$2,000. However, an applicant’s bank or investment account is excluded if it is worth \$8,000 or less. Thus it is generally stated that applicant may have a total of \$10,000 in liquid assets to satisfy this rule.

Generally speaking, all assets are countable unless they are specifically excluded in the rules. The following is a noncomprehensive list of the some of the more noteworthy “noncountable” assets (i.e. assets which are excluded from the above \$10,000 spend down requirement). For more information please speak to an attorney or consult the MaineCare Eligibility Manual.

- Primary residence: includes the land and all buildings/improvements including adjoining land as long as the applicant’s equity interest does not exceed \$750,000; equity interest limit does not apply if the applicant’s spouse, dependent or disabled child of the applicant is residing in the home. Often it is recommended that you get a broker’s letter of opinion to confirm the value of the home.
- Other real estate: if for sale at fair market value
- Rental property: if rented for 3 years prior to the application and provided a 4.04% annual rate of return
- Life insurance: term life insurance is excluded as a countable asset; whole life insurance is excluded as long as face value does not exceed \$1,500
- Annuities: There are complicated and stringent rules with respect to annuities, and in order to be effective they must be purchased in conjunction with filing the MaineCare application. Compliance with these rules is crucial, and you will want to make sure the annuity contract adheres to them. In general, MaineCare compliant annuities must be irrevocable, nonassignable, actuarially sound, and have equal payments during the annuity terms with no deferral or balloon payments. The State of Maine must be named as first remainder beneficiary.
- Motor vehicles: one vehicle used for transportation for the household is excluded; in general if you have another vehicle you must show a need for it to be noncountable
- Prepaid funeral/burial contracts: up to \$12,000; if the contract is valued at over \$12,000, the State of Maine must be named as beneficiary to receive any funds remaining after payment of funeral and burial expenses

- Personal/household goods: any items of day-to-day living (this definition precludes the applicant from buying a \$100,000 Rolex, for example)
- Long Term Care Partnership Program: if a MaineCare recipient has a long term care insurance policy which is qualified by the Maine Bureau of Insurance, then he or she may be able to shelter additional countable assets equal to the benefits paid under the policy after the policy terminates

In addition to the countable assets requirement, the applicant will need to comply with the five year lookback period and, if seeking nursing home benefits, the spousal impoverishment requirements, both of which are discussed later in this memo. If you are applying for assisted living benefits, the spousal impoverishment rules do not apply.

You should also understand that all of the nursing home applicant's income is paid to the nursing home with only a couple of exceptions: Medicare premiums, private health insurance premiums, and a \$40/month personal needs allowance.

Rules Affecting the Community Spouse

Spousal Income: The community spouse may keep all of his or her income; none is required to be paid to the nursing home. Furthermore, the community spouse may draw from the nursing home spouse's income for her benefit if she herself is sufficiently impoverished. Specifically, the community spouse may siphon funds or income producing assets from the nursing home spouse's income to the extent necessary to bring her personal income up to the "minimum monthly income standard" (\$2,058/month) plus monthly excess shelter allowance (\$618/month). To add another layer of complexity, if the community spouse's shelter costs exceed \$618/month, then she may tap into the nursing home spouse's income to supplement her total personal income up to \$3,161/month.

Spousal Impoverishment Requirement: An applicant for nursing home benefits must also satisfy the spousal impoverishment requirement, which puts a limit on the community spouse's countable assets of \$126,420. This amount excludes any noncountable assets (e.g. home and car) owned by the applicant or community spouse. Once the nursing home spouse is determined to be eligible for MaineCare, the community spouse's asset limit is extinguished. Please note this requirement does not apply to applicants seeking assisted living benefits. In other words, the community spouse may have unlimited assets if applicant spouse is seeking assisted living benefits only.

The above allowances are adjusted each year for inflation.

Transfers of Assets & Five Year Lookback Period

All transfers within 5 years of the application for MaineCare must be disclosed as part of the application for nursing home benefits. Depending on the nature of the transfer, a penalty may be assessed resulting in a period of time during which the applicant's long term care expenses will not be paid by MaineCare, no matter how impoverished or needy the applicant is. As a general rule, an uncompensated transfer (i.e. a transfer for less than fair market value) is deemed a nonexempt transfer (and thereby invokes a penalty) unless it is specifically exempted under the

MaineCare rules.² The following is a noncomprehensive list of the some of the more noteworthy “exempt transfers” (i.e. transfers which are not penalized for purposes of MaineCare eligibility).

- ALL spouse-to-spouse transfers of assets
- Transfer of residence to a child: if s/he is under the age of 21 and blind or disabled, or if s/he is over the age of 21, has lived in the residence for at least two years, and has provided care services enabling the applicant to remain in the home
- Transfer of residence to sibling: if s/he co-owns the residence with the applicant and has lived there for at least a year prior to the applicant entering the nursing home
- Transfer of assets to special needs trust: any assets transferred to a trust for the benefit of a disabled or blind individual
- Recovered transfer: any assets transferred for less than FMV are not penalized once the assets have been returned to the applicant
- Transfers outside lookback period: any transfers of assets occurring five years prior to MaineCare application are not penalized
- De minimis transfers: irregular or infrequent gifts are not penalized, provided that the cumulative amount of those gifts do not exceed \$500 per calendar quarter
- Transfers exclusively for a purpose other than to qualify for MaineCare: this is difficult to demonstrate

The transfer penalty is calculated by determining the amount of the transfer and dividing it by the average monthly rate for a semiprivate room at a private nursing facility (currently \$8,476). The penalty begins to run once DHHS determines that the applicant is eligible (pursuant to the financial and medical criteria discussed above) *but for* the transfer penalty. Thus it is generally a good idea to get medically assessed as soon as practicable to trigger the running of any penalty.

EXAMPLE: if the applicant transfers \$50,000 to his son in May 2014 and applies for MaineCare in May 2015, the transfer penalty would be approximately six months ($\$50,000 / \$8,476$).

Estate Recovery

Under Maine’s Estate Recovery law, DHHS is authorized to assert a claim against the estate of a decedent for MaineCare benefits the decedent received during his lifetime. The claim is limited to the amount paid by MaineCare on behalf of the decedent. If the decedent left *probate* property, federal law requires the state to pursue a claim to recoup benefits. If the decedent left nonprobate property (e.g. joint bank account), the state has the discretion to pursue such a claim. Please note that real estate owned in joint tenancy is exempt from estate recovery under current regulations.

² Some examples of nonexempt transfers are run-of-the-mill gifts of money from the applicant to a child, a disclaimer of interest under a trust or will, and a spouse’s failure to exercise his/her elective share rights.

Planning Techniques

The planning techniques which are appropriate for you will depend upon your situation and circumstances. We often recommend clients obtain long term care insurance if they have the financial means and are not medically precluded from doing so. Oftentimes a transfer of assets (coupled with a revised estate plan for the community spouse) may be appropriate in order to shield assets from being classified as “countable” under the rules. If the applicant is incapacitated, a Financial Power of Attorney which contains gifting authority is necessary to accomplish this. In addition, purchasing exempt assets may be something to consider. Other planning techniques which may help protect your assets include a calculated spend-down (e.g. make improvements to the home, buy a new car, take a vacation, purchase funeral contracts, pay off debts), supplemental needs trusts (SNT), or MaineCare Asset Protection Trusts (MAPT). If a family member will be moving in and taking care of a sick parent, proper caution should be exercised to ensure a caretaker agreement is in place. Your attorney will be able to explore these options and others to fit the client’s particular goals and circumstances.