

A Closer Look at

THE LAW



CUNNINGHAM
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ATTORNEYS AT LAW

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Cunningham Dalman, PC
321 Settlers Road
P.O. Box 1767
Holland, MI 49422
Phone: (616) 392-1821
www.holland-law.com
Fax: (616) 392-4769

Disclaimer: This newsletter is for general information only and covers only broad legal concepts. In no way is this newsletter intended as formal legal advice. If you have further questions regarding a legal matter, please consult a licensed attorney.

Cunningham Dalman, P.C. is a full service law firm located in Holland, as well as in Douglas, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

Medicaid – What you Don't Know Can Hurt You

By: [P. Haans Mulder](#)

Attorney at Law

You are probably familiar with the adage, “Ignorance is bliss.” While it may be true in some areas of life, it is definitely not true for your long-term care needs and Medicaid eligibility. Did you know that 40% of people over 65 will need nursing home care? Did you know that the average stay in a nursing home is 2.4 years? Did you know that the average monthly amount in Michigan for a stay in a nursing home is \$5,549? All of this means that for a 2.4 year stay in a nursing home, you will pay at least \$159,811.

The likelihood of needing this level of care and its cost are major challenges for everyone, especially people who have spent many years working hard and saving their money. With nursing home care a reality for so many people, the immediate question is how am I going to afford to pay \$159,811 for this care? The answer to this question is mixed. On the one hand, there is a federal program to deal with this reality which is called Medicaid. However, on the other hand, the Medicaid rules are very complex and it is becoming more and more difficult for people to qualify for Medicaid. Being aware of how you can better manage this cost by qualifying for Medicaid is critical.

General Medicaid Rules

To meet the asset eligibility rules, a single person can only have \$2,000 or less of what are called “countable” assets. As a general rule, this includes funds that can easily be cashed in, such as bank accounts, retirement accounts, and investment accounts. The Medicaid rules are designed to require you to cash in these funds and pay

them to a nursing home before you are eligible for Medicaid. You are entitled to “keep” what are referred to as “exempt” assets. These include your home (subject to what I will discuss later), one vehicle, and a prepaid funeral contract (and some lesser-held assets). Unlike every other state in the country, Michigan does not have what is commonly referred to as a Medicaid lien law. Many people have the impression that you have to sell your home to be eligible for Medicaid. Fortunately, this is not true in Michigan (at least for the time being). If Michigan adopts this legislation, it is likely that you will not be required to sell your home. Instead, when you pass away and your home is later sold, the State of Michigan would be reimbursed for the care that was provided to you while you were on Medicaid. This offers some consolation, but not much for the 40% of people who will have to pay \$159,811 of countable assets for their stay in a nursing home.

Owning Your Home in Your Trust

Michigan has a very counter-intuitive and disadvantageous rule regarding the ownership of a home in a trust. The rule essentially penalizes people who have planned their financial affairs and established a trust. Establishing a trust and transferring your home into it to avoid probate is a very common practice these days. Surprisingly, though, the Medicaid rules in Michigan provide that if your home is owned in your trust, it is a countable asset and that will prevent you from becoming eligible for Medicaid. On the other hand, if you do not transfer your home to your trust, it will go through probate and essentially make most

of the estate planning you did with probate avoidance worthless. Remember, your home must be owned by your trust to avoid probate. Fortunately, there is a way under the current rules to avoid having your home become a “countable” asset (requiring that it be sold for you to qualify for Medicaid) and still avoiding probate. Cunningham Dalman, P.C. can assist you in carrying this out.

New Medicaid Rules

On February 8 of this year, Congress passed a law that is dubbed the “The Nursing Home Bankruptcy Act of

2005.” It includes a number of provisions that directly affect Medicaid eligibility. For example, you must now disclose all gifts you made within five years of filing for Medicaid. Even worse, if you made a gift in this five year “window,” you will be ineligible for some period of time. This is a significant change from the current rules which allowed the eligibility period to expire (depending on the size of the gift) prior to you needing Medicaid. It is important to be aware that the Medicaid rules have changed and how they impact your eligibility for Medicaid. Remember, ignorance is not bliss when it comes to Medicaid.

Imagine Cheaper Car Insurance

By: [Kenneth B. Breese](#)
Attorney at Law

Imagine that you and a loved one are driving home from a movie on a Friday evening, stopping at all the stop signs and obeying the speed laws. As you drive through an intersection, a drunk driver fails to stop and hits your car. You suffer two broken legs and a whiplash injury to your neck, even though you had your seat belt on and air bags enabled. Your loved one suffers a broken back. You are taken to a local hospital and treated. You are kept overnight for observation and your loved one spends a week in the hospital, during which there is a surgery to repair the broken back. Several months of painful recovery follow for both of you, but through hard work and grit both you and your loved one are able to resume your jobs after several weeks, even though you both suffer significant amounts of pain. There are some things, however, that you will never be able to do as well as you did before. For example, you will not be able to ski again, at least on the Black Diamond

Trails. Your loved one can no longer bicycle competitively. You both have residual pain and will probably develop arthritis.

The good news is that your own insurance company has paid for all of your medical bills, for the time the two of you lost from work and for the household chores and yard work the two of you couldn't do while you were recovering (at least up to \$20 a day). The bad news is you will probably never recover a dime from the drunk driver who caused all of this trouble. The reason for this is that the Michigan Supreme Court has now interpreted the Automobile Insurance Law of this state to require that in order to recover for pain and suffering damages, you must prove that your general ability to live life has been significantly impaired. This means that you must prove, for example, that there are so many things that you can no longer do (or adapt yourself to do) that your general ability to live life has

been effected to the extent that it changes the trajectory of your life. As a result of this, dozens if not hundreds of people a month are without recourse to recover damages for their injuries.

In 1973, when the No Fault automobile insurance law was adopted, the Michigan legislature clearly stated that it intended to eliminate “nuisance lawsuits.” Examples that were given at that time were that someone could not recover thousands of dollars for a broken finger or bruises. Over the past decade, however, the Michigan

Supreme Court has twisted this to the point where the example cited above occurs nearly every day! Perhaps if car insurance premiums had fallen dramatically (as the people of the State of Michigan were promised when No Fault car insurance was adopted), we could say that there had been a fair trade off. Let’s just hope that you, or someone you care about, are never put in this situation.

Remember, if you, or a family member, are in a motor vehicle accident please contact us immediately to help you find your way through the maze of insurance questions that will follow.