

MEDICAID AND VA ASSISTANCE BY THE NUMBERS

How Will You Pay for Nursing Home Care?



66%

of Americans will require nursing home care.

\$80,000+

Average annual cost of nursing home care.

78.6

The average life expectancy for Americans. Women have a life expectancy of 81.1 years compared to 76.1 years for men.

Given that two-thirds of us will require a nursing home stay during our lifetime, with an average cost in excess of \$80,000 per year — protecting, planning and avoiding the depletion of life savings should be a goal.

With the time constraints to reposition assets and complete the Medicaid application process, it is vital that families have an experienced team of attorneys helping them maneuver through the Medicaid and VA processes. At Carlson & Burnett, we analyze many different strategies and provide you with our recommendations on how to best protect your assets for you and your family by quickly qualifying you for assistance.

Medicaid is a “needs-based” federal program administered by the states for low-income seniors and disabled individuals. While the federal government sets specific program guidelines, each state is given the flexibility to run its Medicaid program. Nebraska and Iowa have similar programs. The metrics (i.e. exemptions, resource levels and asset levels) in this brochure are Nebraska examples but are similar for Iowa.

Requirements to Qualify for Medicaid:

- Residency – applicant must be a resident of the state in which they are applying and be a U.S. Citizen or have proper immigration status.
- Age or Disability – applicant must be 65+ or be blind/disabled.
- Income Test – discussed below
- Asset Test – discussed below

When one spouse of a married couple applies for Medicaid and needs nursing home care, this individual is referred to as the “applicant.” The other spouse, who continues to reside at home and in the community is called the “community spouse.”

Income Test: The applicant can retain only \$60 per month of their income as a Monthly Personal Needs Allowance. That means that all of an applicant’s income in excess of the \$60 monthly allowance must be paid to the nursing home. For a married couple, the community spouse can retain a minimum of \$2,030 in Monthly Maintenance Needs Allowance. In addition, the first \$2,030 of a couple’s income is allocated to the community spouse until this minimum income level is reached. Alternatively stated, none of the couple’s income is allocated to the applicant spouse until the first \$2,030 of monthly income is paid to the community spouse. The government wants to maintain at least poverty level existence for the community spouse.

Asset Test (Exempt vs. Available): Certain assets are specifically designated as “exempt.” The applicant’s ownership of exempt assets will not disqualify the applicant for

Medicaid. In effect, the exempt assets are outside of the reach of Medicaid. If an asset is not exempt, then it is “available.” All available assets (except \$4,000) need to be liquidated and applied toward the costs of nursing home care before the applicant will qualify for Medicaid.

A single person applying for Medicaid can only retain \$4,000 of assets. Ouch! Remember that Medicaid is a “needs-based” program. For a single person, their “need” is established when they deplete all but \$4,000 of their life savings.

When a married couple applies for Medicaid for the applicant spouse, the community spouse can retain one-half of the couple’s assets up to a maximum of \$123,600 of assets. Except for these retained assets, all the remaining non-exempt assets of both spouses are available and must be used to pay the nursing home expenses before Medicaid eligibility can be established. The community spouse can also retain certain exempt assets like the house, household goods, and one car. The minimum level of assets the community spouse can retain is \$24,720. So, if the couple has less than \$49,440, they do not have to split the assets evenly between them. Rather, the community spouse gets to keep the first \$24,720 of the couple’s assets. The process of moving assets to the community spouse so that the applicant spouse can qualify for Medicaid more quickly is generally referred to as “spousal impoverishment.”

5-year Look-Back Penalty: Any transfer of assets within five (5) years of the date of the Medicaid application for less than fair market value triggers a penalty, because these are assets that could have been used to pay for the applicant’s care. Thus, gifts and bargain sales to family members are all classified as a “deprivation of resources,” which can result in penalties. Thus, gifts and bargain sales to relatives should be undertaken only with thorough analysis. The penalty resulting from a deprivation of resources is an “ineligibility period” that lasts as many months as the value of the property transferred could have paid for nursing home. For example, if a nursing home costs \$10,000 per month, a gift of assets valued at \$50,000 would mean an applicant would not qualify for Medicaid for 5 months.

Strategies to Qualify for Medicaid Sooner & Preserve

More Assets for Family: Medicaid planning is an art that utilizes multiple strategies to achieve our clients' varied goals. At Carlson & Burnett, LLP, we utilize many strategies to assist our Medicaid planning clients in preserving their wealth within the myriad of rules and regulations.

With limited content in this publication, our intention is not to undertake an exhaustive review of all the strategies we implement. However, we provide an overview of some of the strategies we implement in our Medicaid Plans so you understand that there are SOLUTIONS! There are strategies to qualify for Medicaid faster, preserve assets for our clients and their families, and pay for nursing home care without totally depleting a family's wealth. Some of the strategies we implement include:

- **Partnership Program for Long-Term Care Insurance:**

The Partnership Program allows an applicant to “disregard,” for purposes of determining an applicant's total assets, an amount equal to the total benefits paid out under a Partnership Qualified Policy. Therefore, if an applicant has a Partnership Qualified Long-Term Care Policy that will pay \$100,000 in long-term care costs, the Applicant can retain an additional \$100,000 over the asset limit and still qualify for Medicaid promptly.

- **Irrevocable Trusts:** A longer term strategy to protect assets, businesses and farmland is moving the assets into an Irrevocable Trust. The “gift” to the trust starts the clock on the 5-year lookback period. Generally, the trustee and beneficiaries are family members. The trust holds and protects the applicant's assets for the benefit of family members. The trust structure also keeps the assets locked up if the assets are required during the 5-year lookback period. Irrevocable Trusts remove assets from the applicant/veteran to permit immediate qualification for the “Aid and Attendance” (A&A) benefit (discussed below).

- **Life Insurance Settlements:** The sale of an existing life insurance policy in the secondary market.

- **Spend Down of Assets:** The payments of bills and expenses to reduce assets to satisfy the “asset test.”

Examples of spend down payments that do not count as a deprivation of resources (i.e. don't trigger a penalty period) include: paying off loans, paying for home improvements, prepaying funeral expenses, and purchasing a new or upgraded vehicle.

- **Spousal Impoverishment:** When only one spouse of a married couple is applying for Medicaid, certain spousal protections apply to ensure the community spouse can continue to provide for themselves. The community spouse is permitted to retain up to \$123,600 of a couple's countable assets, while the Medicaid applicant is only permitted to retain \$4,000. With spousal impoverishment, the assets are redirected to the community spouse to help him/her retain the maximum amount possible while simultaneously lowering the applicant's resources to a Medicaid compliant level.
- **Medicaid Compliant Annuities:** For married couples in which only the applicant spouse is residing in the nursing home and applying for Medicaid, a Medicaid Compliant Annuity turns countable assets into a stream of income for the community spouse. There are a few specific requirements defining what qualifies as a “Medicaid Compliant Annuity.” Understand that a typical annuity investment product will not qualify. We work with your investment advisor or refer you to a specialist to implement this strategy with a Medicaid Compliant Annuity.
- **Reverse Mortgage:** This strategy utilizes the equity in your home to provide additional income for a community spouse or to fund home health care.
- **Miller Trusts (Iowa):** For individuals who are not married or whose spouse's income is too high, Miller Trusts help the applicant meet the Medicaid income limit. Income over the limit is allocated into a Miller Trust that is used to pay medical bills and nursing home care. These accounts allow the applicant to qualify for Medicaid and receive money from the trust for care and support each month. Miller Trusts are not allowed in Nebraska, but are permissible in Iowa.



A wartime veteran and their surviving spouse, who are 65+, may be entitled to an income tax-free benefit called Aid and Attendance

VA BENEFIT of A&A:

A wartime veteran and their surviving spouse, who are 65+, may be entitled to an income tax-free benefit called Aid and Attendance (“A&A”). Our Medicaid/VA attorneys at Carlson & Burnett, LLP are all “VA Accredited” and assist our clients in qualifying for A&A and completing the application process. Because A&A provides an additional funding source to cover home health care or institutional care, it provides a valuable financial benefit for our well-deserving veterans.

The A&A benefit provides financial assistance to help cover the cost of long-term care for Veterans who require assistance with their activities of daily living. The maximum A&A benefit for veterans who qualify is \$1,830/month for a single veteran; \$1,176/month for the surviving spouse of a deceased veteran; \$2,169/month for a veteran with spouse; and \$1,437/month for a healthy veteran with a disabled spouse.

Requirements to qualify for A&A:

- **Activities of Daily Living:** The applicant must require help with at least two of the “activities of daily living” (which include bathing, dressing, eating, maintaining continence, personal hygiene, and the ability to get out of bed and move from seated to standing position), and some “instrumental activities of daily living” (such as managing finances and medications). The applicant does not have to require help in all areas, but must demonstrate a need for assistance with at least two activities of daily living.
- **Service Test:** The Veteran must have received an honorable discharge from a branch of the US armed forces (not including the Reserves or National Guard unless called up during war time), must have served at least one-day during wartime (WWII Dec 7, 1941 – Dec 31, 1946; Korean June 27, 1950 – Jan 31, 1955; Vietnam generally February 28, 1961 – May 7, 1975), and have served at least 90 days of continuous service.



With two-thirds of Americans requiring a nursing home stay during their lifetime at an average cost in excess of \$80,000 per year, planning to avoid the depletion of life savings can never start too soon.

- **Asset Test:** To qualify for A&A, the applicant must have limited assets to satisfy the Asset Test. The applicant for A&A will have to demonstrate it is not “reasonable” for the applicant to use their own assets to pay for care. Despite Medicaid’s maximum asset threshold of \$4,000; for A&A, the maximum asset limit is in the \$70,000 – \$80,000 range for a veteran (\$35,000 – \$40,000 for a surviving spouse of a veteran). Another major distinction from Medicaid is that A&A (at the time of this publication) has no five-year look-back on transfers. Note that proposed new VA regulations may implement a three-year lookback. This creates planning opportunities where a veteran can gift away their assets to family and qualify for A&A the very next day. However, these transfers can result in a penalty period from Medicaid.
- **Income Test:** There is also an income test to qualify for A&A benefits. The applicant’s net income must be below the maximum monthly payment amount to qualify. Net income is determined by subtracting all unreimbursed

medical expenses, including the cost of the care facility, from the applicant’s income. The difference between this net income and the maximum monthly benefit available under A&A is the benefit amount the veteran will receive. Given that the cost of a facility generally exceeds an applicant’s income, most applicants qualify.

Asset protection starts with your call today!

At Carlson & Burnett, our team of attorneys and paralegals work with our clients to reduce their financial risks and protect their assets. Our “Medicaid/VA Plans” are categorized as either a long-term plan or a crisis plan.

The long-term Medicaid/VA Plans are strategic and generally work around the 5-year lookback period imposed by Medicaid. Long-term Medicaid/VA Plans also focus more on estate planning, income tax planning and asset protection from long-term health care costs. This type of plan provides the greatest flexibility to accomplish our clients’ goals.



The “crisis” Medicaid/VA Plans are necessary when our clients are either headed toward nursing home care or already residing in a nursing home. Crisis Medicaid/VA Plans require immediate strategies and rapid implementation to qualify our clients for Medicaid/VA benefits to assist in paying for their health care costs.

We work with nursing home administrators to coordinate the Medicaid application process. Exchanging information and providing regular updates on the status of the Medicaid application to your nursing home is essential so that everyone stays informed on each step of the application process. With nursing home costs exceeding \$8,000 per month, a three-month delay in qualification can cost the family or the nursing home thousands of dollars. Making certain the Medicaid application is timely filed, accurate and free from disqualifying items is our role in the process.

With two-thirds of Americans requiring a nursing home stay during their lifetime at an average cost in excess of

\$80,000 per year, planning to avoid the depletion of life savings cannot start soon enough. Whether we are assisting our clients with long-term strategies or crisis planning, our Medicaid/VA Plans preserve assets for our clients and their families while at the same time providing access to Medicaid/VA benefits to provide vital assistance in paying nursing home costs.



**CARLSON | BURNETT**

Carlson & Burnett has set itself apart as an experienced, dedicated firm in Omaha. Serving clients in a breadth of legal issues, the firm is passionate about providing guidance, representation, and closure to some of the most complicated and difficult legal circumstances that their clients will face. The firm is made up of highly-accomplished attorneys and a friendly support staff who are united in their mission to assist people in overcoming legal challenges with integrity and passion. During our time with clients, we strive to build strong relationships that will last through multiple generations.



Where the Focus is on Family

At Carlson & Burnett we believe that understanding and working with the entire family is important. Simply stated, life's challenges are easier for our clients to manage when they have the understanding and support of the entire family. When you or your family is facing those unexpected challenges, whether it's an injury from a car accident, a divorce, estate planning, or just needing some assistance with elder law planning for an aging family member, think of Carlson & Burnett as your true "friend of the family."

We strive to help our clients through these challenging times that we will all have to navigate at some point in our life. It is our goal to provide open and honest communication with our clients so they can make informed decisions. Our clients trust we always look out for their best interests and work diligently to achieve the best possible outcome given their circumstances. Initially individuals consult with our attorneys seeking advice and counsel, but it is our goal that our clients leave feeling as if they have a new and trusted friend of the family.



Darren R. Carlson

Darren Carlson is a dedicated Omaha attorney practicing in Iowa and Nebraska. Darren is recognizable from a series of cancer surgeries that left him with his notable appearance as he dons his infamous black eye patch. In 1985, Darren graduated from Iowa State University with a degree in Agricultural Business. He went on to attend Creighton University School of Law, obtaining his law degree magna cum laude in 1988. Darren was a member of the Creighton Law Review editorial staff from 1986 to 1988.

Darren has served on the boards for many local charities. During his free time, he loves traveling and spending time with his wife, Tammy, and their two adult children. Throughout his 30-year legal career, Darren has maintained a reputation for excellence in the areas of Estate Planning, Medicaid Planning and Elder Law.

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Anne K. Burnett

Anne K. Burnett graduated with honors from Northern State University in Aberdeen, South Dakota with her Bachelor of Arts in Accounting before graduating from Creighton University School of Law with her J.D. in 1997. She received the CALI Award — an award given for the highest grade in the class — as the top Estate Planning student. She is licensed in both Nebraska and Iowa.

Anne has spent her career providing her clients with excellent counsel in the area of Medicaid Planning, VA Matters, Guardianships, Probate and Elder Law matters. She also serves as a presenter on those topics for numerous groups, such as the Nebraska Vietnam Veterans Reunion, National Association of Retired Federal Employees, U.S. Army Corp of Engineers and the U.S. National Park Service. Anne is a founding member of Omaha Senior Resource Group, which is a professional network focused on provided services to seniors. As a wife and mother of two children, she understands the importance of proper planning for her clients' security and the well-being of their families.

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Stephen "Steve" P. Schmidt

Steve Schmidt is an Elder Law attorney focusing heavily on asset protection planning to preserve clients' wealth. Steve graduated from Grace University in Omaha, Nebraska in 1988. He received his J.D. from Creighton University School of Law, Cum Laude in 1991.

A major defining moment in Steve's career was when he began to understand the impact of implementing the correct tools to protect a client's wealth. Asset protection planning to preserve family wealth and avoid losing assets to the nursing home has been Steve's focus for years. Steve has a broad professional career in Iowa and Nebraska as an estate planning attorney, trust officer, and planned giving officer. Steve enjoys family time with his wife and four adult children. He is a member of the Omaha Estate Planning Council and has educated many allied professionals in asset protection.

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David M. Thompson

David M. Thompson is an attorney on Carlson & Burnett's Elder Law team and focuses on Veterans' Benefits and the Medicaid application process.

David first came to the Omaha area when his father was stationed at Offutt Air Force Base in Bellevue. David earned his B.A. at the University of Nebraska-Lincoln with distinction, then attended Oxford University on a Marshall Scholarship. He completed his doctoral studies at the University of Chicago.

He earned his J.D. at Northwestern Pritzker School of Law, where he served as Editor-in-Chief of the Northwestern University Law Review. After practicing law for years in Chicago, David returned to Omaha in 2013. David enjoys perusing Omaha's art galleries. He also serves on a pro bono basis as guardian for several unrepresented, low-income senior citizens living in area nursing homes.

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A Little Levity

BATHTUB TEST FOR COMPETENCY

I recently asked a friend of mine who is a doctor, "How do you determine whether or not a patient is competent or whether he should be placed in a nursing home?"

"Well," the doctor said, "we fill up a bathtub, then we offer a teaspoon, a teacup and a bucket to the patient and ask him to empty the bathtub."

"Oh, I understand," I said. "A normal person would use the bucket because it is bigger than the spoon or the teacup."

"No" the doctor explained. "A normal person would pull the plug! Do you want a bed near the window?"

MY LIVING WILL

Last night, my kids and I were sitting in the living room and I said to them, 'I never want to live in a vegetative state, dependent on some machine and fluids from a bottle. If that ever happens, just pull the plug.'

They got up, unplugged the computer, and threw out my wine.

PERKS OF BEING OVER 70 & BEYOND!

1. No one expects you to run — anywhere.
2. People call at 9 PM (or 9 AM) and ask, 'Did I wake you?'
3. People no longer view you as a hypochondriac.
4. There is nothing left to learn the hard way.
5. Things you buy now won't wear out.
6. You can eat supper at 4 PM.
7. You can live without sex but not your glasses.
8. You no longer think of speed limits as a challenge.
9. Your eyes won't get much worse.
10. Your investment in health insurance is finally beginning to pay off.
11. Your secrets are safe with your friends because they can't remember them either.