

How will you pay for nursing home care?

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66%

of Americans will require nursing home care.

\$76,000+

Average annual cost of nursing home care in Nebraska.

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 of \$76,000 per year in Nebraska, protecting, planning for and avoiding the depletion of life savings should be a goal.

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

Medicaid is a “needs-based” federal program administered by the states for seniors and disabled individuals dealing with the expenses of long-term care. While the federal government sets specific program guidelines, each state is given the flexibility to run its own 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 over 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” or “institutionalized spouse.” 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. This 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 \$2,057.50 in Monthly Maintenance Needs Allowance. The first \$2,057.50 of a couple’s income is allocated to the community spouse to reach this minimum income level. The government established this minimum to ensure that the community spouse has resources to cover his or her own expenses.

Asset Test (Exempt vs. Available): Certain assets are specifically designated as “exempt.” The applicant’s ownership of exempt assets will not disqualify them for Medicaid. The community spouse can retain certain exempt assets like the house, household goods, and one car. In effect, these assets are outside the reach of Medicaid. If an asset is not exempt, then it is “available.” A single person applying for Medicaid can retain only \$4,000 of available 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 \$126,420. Except for these retained assets, all the remaining non-exempt assets of both spouses are available and must be used to pay nursing home expenses. The minimum level of assets the community spouse can retain is \$25,284. So, if the couple has less than \$50,568 (twice the minimum), they do not have to split the assets evenly between them. Instead, the community spouse gets to keep the first \$25,284 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 referred to as “spousal impoverishment.”

5-year Look-Back Period: Depending on how assets are moved around, issues may arise that can delay Medicaid eligibility. Any transfer of assets within five years of the date of the Medicaid application that was 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 rather than sold at a discount. Thus, gifts and bargain sales to family members are all classified as a “deprivation of resources,” which can result in penalties. Therefore, such transactions should be undertaken only with thorough analysis. The penalty resulting from a deprivation of resources is an “ineligibility period” that lasts for as many months of nursing home care as the value of the property transferred could have been used to pay. 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 five months.

Strategies to Qualify for Medicaid Sooner and Preserve More Assets for Your 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 given the myriad rules and regulations. With the limited content in this publication, our intention is not to present 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. The strategies we implement include:

- **Irrevocable Trusts:** A longer-term strategy to protect assets, businesses and farmland is moving the assets into an Irrevocable Trust. The transfer or "gift" to the trust starts the clock on the 5-year lookback period for Medicaid eligibility. 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 preserves assets that may be needed to cover expenses during a penalty period. Irrevocable Trusts also remove assets from the applicant/veteran to permit qualification for "Aid and Attendance" (A&A), a benefit for veterans that is discussed below.
- **Life Insurance Settlements:** The sale of an existing life insurance policy in the secondary market. Medicaid does not exempt any life insurance policy from asset limits unless its face value is less than \$1,500.
- **Spend-Down of Assets:** The payment 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. The spend-down of assets necessary to achieve eligibility can be one of the most challenging parts of the application process.
- **Spousal Impoverishment:** As discussed above, certain spousal protections apply to ensure that the community

spouse can continue to provide for themselves. While their spouse is in a nursing home, the community spouse is permitted to retain up to \$126,420 of a couple's countable assets, while the Medicaid applicant can retain only \$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 can be used to turn otherwise available 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 as Medicaid-Compliant. We work with your investment advisor or refer you to a specialist to implement the strategy of using a Medicaid-Compliant Annuity.
- **Long-Term Care Insurance:** Long-term care insurance can be a vital tool in paying nursing home expenses. The benefit of these policies is increased when they are part of the 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.
- **Reverse Mortgage:** This strategy utilizes the equity in your home to provide additional income for a community spouse or to fund home health care. Carlson & Burnett works with financial experts when it comes to tools such as reverse mortgages.
- **Miller Trusts (Iowa):** For individuals who are not married or whose spouse's income is too high, Miller Trusts help the applicant avoid exceeding the Medicaid income limit. Income over the limit is allocated to a Miller Trust that is used to pay medical bills and nursing



A wartime veteran and their surviving spouse who are over 65 may be entitled to an income tax-free pension supplement called Aid & Attendance.

home costs. These trusts 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.

VA Benefit of Aid & Attendance:

The Medicaid/VA attorneys at Carlson & Burnett, LLP are all VA Accredited and assist our clients in qualifying for A&A. Because A&A provides an additional funding source to cover home health 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 \$1,881/month for a single veteran, \$1,210/month for the surviving spouse of a deceased veteran, and \$2,230/month for a veteran with 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”

(ADLs) 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” (IADLs) 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 ADLs and one IADL. Given that an applicant may require assistance with ADLs while not requiring “skilled nursing,” A&A can be more helpful than Medicaid when it comes to paying for assisted living as opposed to nursing home care.

- **Service Test:** The veteran must have received an honorable discharge from a branch of the U.S. armed forces (not including the Reserves or National Guard unless called up during war time), must have served at least one day during a period of wartime (WWII Dec 7, 1941 – Dec 31, 1946; Korean War June 27, 1950 – Jan 31, 1955; Vietnam generally February 28, 1961 – May 7, 1975; Gulf War August 2, 1990 – present), 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 of \$76,000 per year or more, 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. As of October 18, 2018, when new rules regarding VA benefits went into effect, a veteran and his or her spouse can have assets up to a total of \$123,600. If they move assets around in order not to exceed this amount, these transfers will be regarded in the same way as Medicaid views deprivations of resources. But whereas Medicaid imposes a penalty based on the entire amount of the deprivation, the VA bases its penalty only on the amount over \$123,600. For example, if a veteran has \$150,000 in assets and gives away \$40,000 prior to applying for benefits, they would only be penalized for \$26,400 (the amount by which the gift exceeds \$123,600), rather than the whole \$40,000.

In addition, whereas Medicaid imposes a five-year look-back period when it comes to identifying deprivations of resources, the VA's look-back period is only three years. Penalty periods are longer in the VA context, however, because under the new rules, the VA uses \$2,169 as the

divider in calculating the penalty period, rather than the monthly facility cost. This means that the five-month Medicaid penalty discussed above ($\$50,000 \text{ gift} \div \$10,000 \text{ facility cost} = 5 \text{ months}$) would be 23 months for VA purposes ($\$50,000 \div \$2,169 = 23.05$). As all these calculations suggest, maneuvering through the application process and minimizing penalties can be quite complicated. This is one compelling reason for seeking the help of Carlson & Burnett in dealing with these complexities.

- **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, or income for VA purposes (IVAP), 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 for the full benefit.



At Carlson & Burnett, planning and implementing asset protection strategies is critical to ensuring that our clients have a high quality of life in their retirement years.

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 look-back 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 in the near future 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.

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 about each step of the application process. With nursing home care costing an average of \$6,300 per month in Nebraska, a three-month delay in eligibility 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 part of our role in the process.

With two-thirds of Americans requiring a nursing home stay during their lifetime, 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 that provide vital assistance in paying nursing home costs.



Carlson & Burnett has set itself apart as an experienced, dedicated firm in Omaha. Serving clients in dealing with 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 our 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, or just needing assistance with planning for an aging family member, think of Carlson & Burnett as your true "friend of the family."

We strive to help our clients through the challenging times that we all have to navigate at some point in our lives. It is our goal to provide open and honest communication with our clients so they can make informed decisions. Our clients trust that 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 our office feeling as if they have a new and trusted friend of the family.



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 receiving her J.D. from Creighton University School of Law in 1997. She received the CALI 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 benefits, 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 the Omaha Senior Resource Group, a professional network of organizations focused on providing 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 defining moment in Steve's career was when he began to understand the impact of using 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, four adult children, and four grandchildren. 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, the Medicaid application process, and guardianships/conservatorships. He is also a frequent speaker on elder law and related topics.

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.

David 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 is currently Vice President of the Elder Law Section of the Nebraska State Bar Association.

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Adam J. Wintz

Adam J. Wintz is an Associate Attorney on our Estate Planning team. Adam has a breadth of experience that includes estate planning, elder law, wealth preservation, fiduciary litigation, and trust work.

Adam grew up in Omaha and graduated from Skutt Catholic High School. He received a Bachelor's Degree from Arizona State University and earned his J.D. from Whittier Law School in Costa Mesa, California. He began his legal career in Phoenix, Arizona, where he practiced estate planning and family law. He returned to Omaha in 2013 and joined Badura Law, LLC, where he focused on probate, guardianships /conservatorships, and fiduciary litigation. Before joining Carlson & Burnett, Adam also gained valuable experience as a Wealth Management Administrator at Great Western Bank. Adam is particularly passionate about protecting vulnerable people from exploitation and preserving wealth for his clients across generations.

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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 them 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!

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.