

# A NEW JERSEY FAMILY'S GUIDE TO LONG-TERM CARE PLANNING

THE ELDER LAW CENTER AT SHAH & ASSOCIATES



**THE ELDER LAW CENTER**

at



Many family members of those entering a nursing home are concerned about protection. You want the peace of mind that your loved one is cared for and protected during the time they need it most. This experience may also spark concern about planning for yourself and your own care.

This informational book is to help you learn how to plan ahead for long-term care needs but also how to address some of the immediate concerns that arise in a crisis.

- **Planning Ahead:** This book will help you plan ahead for long-term care needs. We'll walk you through some of the different options available to you for planning for long-term care with an eye towards Medicaid especially. While this is a basic overview of options, it's designed to help bust some of the myths and clarify planning techniques to protect your family and the assets you have worked so hard to earn.
- **Immediate Help:** Many of our clients also come to us in times of need when an unexpected situation has reinforced the need for a nursing home. This book about crisis planning also helps when a loved one will need nursing home care in the immediate future. Our book helps you better understand planning techniques that are geared towards protecting as much of your assets as possible while still providing valuable care for your loved one.

**This Book!**

My Loved One Needs a Nursing Home: What Now? A Crisis Planning Guide

**Even among those who are familiar with the idea of planning for long-term care, 45% don't know how.**

This informational book is to help you learn how to plan ahead for long-term care needs but also how to address some of the immediate concerns that arise in a crisis.



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## Focusing on the Family

At the law firm of Shah & Associates, we pride ourselves on helping families. Whether it's through Veterans Benefits Planning, Medicaid planning, other tools, or a combination, we care about helping you protect the wealth that you or your parents have spent a lifetime building. The costs of a nursing home or other long-term care can be devastating if you're not prepared for it. Using estate planning, we help to create and administer wills and living trusts, manage estate probate, and generate plans to help to protect the assets of our clients. What sets our firm apart is the personalized approach we take for each client. With effective pre-planning, our goal is to give you the peace of mind in knowing that even if the unexpected were to occur, your family will be well taken care of.



# Meet Our Team

## Neel Shah

My law practice is focused on helping individuals, families & business owners who wish to protect their wealth and their legacy for current & future generations from estate taxes, law suits, the escalating costs of nursing homes and other sources of attack.

My past & present clients include parents, grandparents, children, established corporations, LLCs, individual entrepreneurs, and start-up ventures. Clients value my diverse training & expertise across the Wealth-planning, Business Law & Real Estate Law disciplines.



## Leena A. Lauger

My law practice is focused on helping individuals and families preserve their resources for current & future generations by safeguarding them from the astronomical and often unexpected costs of long-term care in New Jersey.

Past and present clients include families who have found themselves financially and mentally unprepared to be in a position of having a loved one in imminent need of either nursing home care, assisted living care or at home health care. Others are proactively planning ahead to protect their assets from being severely depleted in the event a family member will require long-term care in the future. In either situation, we are able to effectively guide them through what can be an exceedingly confusing and overwhelming subject matter. Clients value my breadth of experience in elder law planning, wealth and estate planning, commercial real estate and non-profit management.



## Rekha V. Rao

Our law practice is focused on helping individuals, families & business owners who wish to protect their wealth and their legacy for current & future generations from estate taxes, the escalating costs of nursing homes and other burdens. Clients include multi-generational families, individuals or married couples with diverse estate planning needs.

My past experience in the areas of corporate litigation, family law, residential real estate, elder law & special needs planning allows me to provide an integrated approach when designing our client's estate plans as I can foresee, analyze and incorporate customized solutions to our client's specific needs. Every client receives my individual attention and personalized level of care in order to achieve our client's maximum satisfaction.



If you're taking the time to read this book, there's a good chance that you are either approaching your golden years yourself or that you are preparing to care for an elderly loved one. In either case, you're probably thinking about future healthcare costs. Since there is a strong likelihood that you and your aging family member will both need long-term care services of some sort, you need to think about the options that you have to plan ahead effectively. If you wait for a crisis to occur, you may have limited options. That's why we encourage clients to think to the future and complete planning early. Putting your loved one into a nursing home raises a lot of questions not just about their short-term care needs but also about their long-term wishes. Before you move a parent into a facility, you need to clarify several of these questions by ensuring that critical estate planning documents are in place.



70% of people turning age 65 will need some kind of long-term care during their life

## Long Term Care Costs in New Jersey

The cost for care, whether it's in a facility or at home, is on the rise. The national rates for the services that you or a loved one may need can cripple a family that hasn't planned properly:

Home Health Aide	\$ 19/hour		
Assisted Living Average Monthly Cost	\$ 3850		
Nursing Home Care	Daily: \$307.60	Monthly: \$9535.62	Yearly: \$114,427.44

## Why Should We Be Concerned About Long Term Care?

The need for long-term care is only growing in the United States: it's expected that by 2020, 12 million elderly Americans will need some kind of long-term care service.

The majority of people making the decision to put a loved one into a nursing home are doing so because they expect that the loved one is in need of long term care. This kind of assistance is usually required when an individual can no longer take care of themselves and needs assistance with activities of daily living like walking, eating, dressing, bathing, or moving from a chair or a bed.

Unlike a hospital visit, this kind of care is more likely to be permanent whether the individual is placed there as a result of a disability, chronic illness, or Alzheimer's. Since this may be a place where your family lives for quite some time, it's important to do your research not just about the facility itself but also about the financial aspects of long-term care. Often, the process of situation a loved one into a nursing home can get you thinking about your own planning, too.

## Questions to Ask When Thinking About Your Own Long-Term Care

- Who would help take care of me in the event of an illness?
- Are my family members ready, willing, and able to help me if necessary? Are they financially and physical capable of pitching in?
- What will happen if someone else needs me to be the caregiver?

Long-term care is an issue that has implications for the entire family. If for any reason staying with your own family is not an option for you, pre-planning is critical.

# How Can We Pay For Long-Term Care?

**Depending on your circumstances, there are usually three options for paying for long-term care: you pay, insurance pays, or the government pays. Let's look at what each of these three options means.**

**Private Pay:** This is also referred to being “self-insured” and relates to situations where you or your family member pays out of pocket costs from your own assets. Unfortunately, many people who choose to self-insure find out too late that they have underestimated the costs of long term care. The average length of a nursing home stay in America is three years, so running through assets can happen very quickly.

**Insurance Pays:** If your loved one has long-term care insurance, this usually pays some or all of the long-term care costs. If your loved one doesn't have access to this kind of insurance, consider purchasing it for yourself to help provide critical protection in the future. The annual premium for obtaining this kind of insurance policy is usually much less expensive than even one month's stay in a nursing home, so it can be a wise investment. Used alongside proper planning, insurance may even allow you or a loved one to stay at home and get assistance. Make sure you speak with your parent about whether they have any kind of long-term care policy to help pay before you select a facility.



**Government Pays:** Many people are aware that assistance through Medicaid may be available, but most people don't understand all of how Medicaid works. It's a federal program that is administered by individual states to help provide health care for those individuals with limited income or assets. If you or your loved one meet the medical and financial eligibility requirements, Medicaid may cover the cost of nursing home care.

## Medicaid Versus Medicare: What You Need to Know

Medicaid and Medicare are both government programs but they serve two separate purposes. While Medicare is similar to general health insurance, Medicaid provides basic health insurance for individuals over the age of 65 with limited income and assets.

### Will Medicare Help Me?

Don't bet on Medicare covering your long-term care costs: this government program only provides assistance for "acute care" where the individual is expected to recover. It doesn't provide custodial care needed by individuals who cannot perform the activities of daily living.

Medicare will pay in certain situations, but not indefinitely.

- Medicare covers 100% of the cost for **up to 20 days** in a "skilled nursing facility" like a nursing home.
- After 20 days, Medicare provides a co-pay for up to 80 more days.
- **After the 100 day mark, the patient is completely responsible for care costs.**

### When Skilled Care is Needed, Medicaid Will:

- Cover custodial and nursing home care for those in need
- Continue to cover costs so long as an individual meets the income requirements
- Require that any income received by an individual who has otherwise qualified for Medicaid go first towards nursing home costs

## Medicaid Myths

The majority of questions regarding long-term care have to do with Medicaid and when an individual can obtain benefits through this program. Too many people rely on the word of mouth advice they hear from others about Medicaid, but this “free advice” can be costly if it’s not accurate. Here are some of the most common myths surrounding Medicaid.

### Myth #1

#### **You Must be Poor in Order to Qualify**

When it was initially created, Medicaid was designed to help only the poor. With proper planning, however, it’s possible for many individuals- even those with significant assets- to qualify for the benefits.

### Myth #2

#### **Medicaid’s Care is Substandard**

Usually, staff inside nursing homes are not even aware of which patient is Medicaid and which patient is a private pay. Beds are only labeled as such for the purposes of billing. This means that patients in good nursing homes should expect quality care regardless of who is making payment.

### Myth #3

#### **Your Assets Must Be Given Away to Be Protected**

While gifting is often a good strategy to help you qualify for Medicaid, the timing of the gift could jeopardize your Medicaid eligibility as well as create unintended tax consequences. You should always consult directly with an elder law attorney before making decisions related to gifting to ensure that your timing is appropriate.

### Myth #4

#### **My Assets Are Safe Because They Are in a Living Trust**

Usually, if the assets held inside a living trust are available to the Medicaid applicant, Medicaid can use them to determine eligibility. A revocable living trust does not totally shelter your assets for Medicaid purposes.

### Myth #5

#### **I Have Too Much Income To Qualify For Medicaid**

Medicaid does have a cap on the amount of income you need to have in order to qualify. However, with proper planning, you can become eligible for benefits even if you have more than the limit.

## How Does An Applicant Qualify for Medicaid?

There are three tests that an individual must pass in order to qualify for Medicaid benefits:



- ☑ Income Test
- ☑ Health Test
- ☑ Asset Test

**The Income Test:** This varies by state, but in New Jersey and other participating states, if the applicant's income falls below 133% of the federal poverty line, he or she may qualify for Medicaid benefits.

**The Health Test:** In order to be approved for Medicaid benefits, an individual must meet the requirements regarding "medical necessity". In most cases, this refers to a need for ongoing or chronic care due to an inability to perform a minimum of three activities of daily living. In addition, an applicant must be aged 65 or older or disabled or blind as well as meeting state and national residency requirements.

**The Asset Test:** In New Jersey, there are several factors that go into the asset tests.

### Applicants may have:

- A spouse protecting assets between \$23,844 and \$119,220
- A monthly "maintenance needs" allowance between \$1966.25 and \$2,980.50
- Home equity up to \$828,000

**Under federal Medicaid Guidelines, there are two categories for assets: Countable and Non-Countable Resources. Countable resources refer to those that could easily be converted into cash to pay for care and will be considered in determining eligibility by Medicaid:**

- IRAs, 401k(s)
- Stocks & Bonds
- Bank and Investment Accounts
- Real estate (beyond the primary home)
- Life insurance policies above certain amounts

**Non-countable resources are those not considered in determining eligibility for Medicaid, such as:**

- One vehicle
- The Homestead (under certain requirements)
- Prepaid funeral plans for the applicant, spouse, or immediate family members
- Personal effects and household goods
- Life insurance with cash limits

Figures for the asset test are for 2015

<sup>1</sup>Data are as of 2/1/2015

## **Transferring Assets for Medicaid Qualification Purposes**

Medicaid limits the circumstances under which people can make gifts in order to qualify for Medicaid. After an application has been submitted to the Medicaid office, program employees look back over an individual's financial activity for the previous 60 months to classify them as compensated or uncompensated transfers.

A compensated transfer refers to situations where the giver provides assets to an entity or other people but also gets something of equal value back. It's not classified as a gift since the individual gave and received something of equal value.

An uncompensated transfer, on the other hand, is when the transfer of assets does not result in receipt of something of equal value. The giver either receives nothing back in value or something valued at less than what was transferred. Gifts within the 60 month period can be penalized by Medicaid. Bear in mind that simply using the federal gift tax transfer as a way to avoid Medicaid penalties doesn't work: Medicaid can classify all uncompensated transfers in the 60 month look back period as qualified for penalties.

## **How Does the Penalty Work?**

The penalty period translates to the number of months that could have helped pay for a nursing home if the assets had not been transferred. A monthly divisor using the average cost of one month in a nursing home in that state is used. In New Jersey, the current average monthly cost for nursing home care is \$9,535.62.

## What If An Applicant Doesn't Qualify For Medicaid Now?

Even if you don't meet the qualifications for Medicaid now, there are steps you can likely take to qualify down the road.

### Too Much Income or Too Many Assets?

The main reasons that people don't qualify for Medicaid are that they have too much in terms of income or assets. If you have a spouse, you may be able to transfer an income source to the spouse. Medicaid uses what's known as the "name on the check" test: if the Medicaid applicant's name is not on that particular income stream, it can't be used in calculations of that person's eligibility.

If you have too many assets, trust planning can help you protect those assets while also qualifying for Medicaid. The critical factor here is timing- the sooner that you create and implement a plan, the more assets you may be able to protect.

### What Can A Trust Do to Help?

A trust can be a valuable tool for the purposes of protecting assets and qualifying for Medicaid. A trust can:

- **Protect assets:** A trust that is Medicaid compliant can pull the assets from your estate but also shield them from being lost.
- **Help you qualify for Medicaid:** When you transfer your assets into a trust that is Medicaid compliant, the penalty clock starts at the time of the transfer. If you are able to stay out of the nursing home for the 60 months that follow, those assets won't be considered when you apply for Medicaid benefits. If you did end up needing placement in a nursing home before the 60 months was up, you could pay privately or with insurance to delay your Medicaid benefits application.

## What Should I Do Now?

When going through the process of putting your loved one into a nursing home, it's common to start thinking about planning for your own future. While there's no universal strategy that works for everyone, the strategies in this book are a sample of what can be used to help an individual qualify for Medicaid.

Evaluate all your planning options carefully by working with our team of elder law and estate planning professionals at The Elder Law Center at Shah & Associates who can help you navigate how to plan either in a current crisis situation or plan ahead for the future.

*Plan For  
and  
Protect Your Future*



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