

# Lack of Knowledge or Bad Knowledge Hurts those Needing Benefits

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By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on February 1, 2002.

For those of you who are old enough to remember, there was a time when the federal government used to send agents out to canvass neighborhoods looking for people who were unaware of the fact that they were eligible for governmental benefits, such as Social Security, Supplemental Security Income, Social Security Disability Income, or Social Security Survivor's Benefits.

The government doesn't seem to do this anymore, or not where we have noticed. Now, the position of town crier has fallen to those who have an interest in seeing that citizens know about the benefits Congress has designed for them.

Our attention was turned to this type of public service several years ago. One of the nursing home Medicaid spousal impoverishment cases we had wound up in a small, but thriving city, in West Texas. A spousal impoverishment case is one in which one of the spouses of a married couple requires nursing home care and the other spouse remains in the community. If the case is handled properly, in many cases, the Department of Human Services will allow significant sums of money to be protected for the spouse at home while still allowing the other spouse to receive Medicaid benefits. Medicaid pays for virtually all of the costs of nursing home care.

The caseworker indicated that we would be waiting for a while before the appellate officer would arrive from Midland. When asked why the officer was having to be brought in from out of town, the reply was "Because we've never done this type of case here. This was disconcerting information because it basically meant that no one was informing people in that community of their rights under federal law to protect assets for the spouse at home. In other words, there had to have been a lot of people in that city who were losing their proverbial shirts.

The lack of information in our communities is a problem closely followed by incorrect street knowledge, which can be as damaging to people as no knowledge at all. Here are a few common misconceptions which elder law attorneys regularly hear in their offices from people who are seeking nursing home Medicaid.

**Q:** We have \$100,000 in cash. We need a Miller Trust, right? This is incorrect. The Miller Trust, which has been codified by Congress at 42 U.S.C.A. 1396, is now called a Qualified Income Trust (QIT). The key word, "income", will help you remember the limited purpose of a Miller Trust/QIT. Texas is an income cap state. Under current guidelines, a person entering the nursing home is limited to income of \$1,635 per month. If the applicant's income exceeds this amount by just one dollar, the applicant is ineligible for Medicaid benefits unless, and until, the applicant has established a Miller Trust/QIT. This legal device was created to fix this particular problem and it is the only problem it will fix. It will not fix the problem of having assets over the asset limit. That type of problem requires the use of other techniques.

**Q:** I can gift up to \$10,000 per year away to get assets out of an estate in order to qualify for nursing home Medicaid, right? This is a common thought held by many persons. The person is mistakenly using old information on one hand, and is in need of additional concepts on the other. The \$10,000 gifting figure is referring to the annual exclusion amount. This is an IRS rule and the figure was recently raised to \$11,000. The rule allows a person to gift away up to \$11,000 per year per person, to as many individuals the donor wishes to gift and can afford, with absolutely no gift tax consequences, nor the need to file a gift tax return. In addition to the annual exclusion, a person can pass lifetime taxable gifts and the person's assets at death tax free if the combined amount does not exceed one million dollars

The person who wishes to reduce an estate by gifting must not only be acquainted with IRS gifting rules but must also be acquainted with Medicaid gifting rules. The rules are significantly different -- and Medicaid gifting rules are usually far more liberal than what a person would think. Therefore, in many cases, the informed person will be able to gift out far more than the person thought had the person only used the knowledge pertaining to the annual exclusion. This type of planning should be done with the guidance of an experienced elder law attorney.

**Q:** I had to have done something 36 months ago to effectively deal with the assets of an estate when seeking eligibility for Medicaid, right? No. Although time is your enemy in Medicaid planning and more time is usually better, most people can be assisted with preserving some, all or a significant amount of assets even if the family member has been in the nursing home for years.

A client came in a few months ago. Her husband had been in the nursing home for five years and they had started with \$600,000 in cash. Now, five years later, and with \$300,000 left, she wanted to know if anything could be done to get her husband on Medicaid. After reviewing the file, there was good as well as bad news to deliver to her. The good? Her husband was eligible for Medicaid immediately, subject only to the time it would take to go through the process, and the remaining \$300,000 would be preserved for her use. The bad? The entire \$600,000 could have been preserved under federal law and the husband could have received Medicaid five years ago if they had just known to seek help at the time.