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# Legal Matters®

## Should you prepare a Medicaid application yourself, or get help?

**A** decision on whether to prepare and file a Medicaid application on your own or hire help depends on answers to these questions:

- How old is the applicant?
- How complicated is the applicant's financial situation?
- Is the individual applying for community or nursing home benefits?
- How much time do you have available?
- How organized are you?

Medicaid is the health care program for individuals without other insurance or those whose insurance does not cover what they need, such as long-term care. Many people rely on Medicaid for assistance in paying for care at home or in nursing homes.

For those under age 65 who don't need long-term care, Medicaid eligibility is determined largely by income, and the process of applying is not very complicated. Most people can apply on their own without assistance.

Matters get a bit more complicated for applicants age 65 and older, and those of any age who need nursing home or other long-term care coverage. In such cases, it is practically essential to seek the services of an attorney.

To be eligible, Medicaid applicants over age 65 are limited to \$2,000 in countable assets (in most states).

It's possible to transfer assets over this amount to become eligible, but seniors need to be careful. They may need the funds in the future, and if they



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move to a nursing home the transfer could make them ineligible for benefits for five years.

Professional advice is also crucial because there is a confusing array of Medicaid programs that may be of assistance in providing home care, each with its own rules.

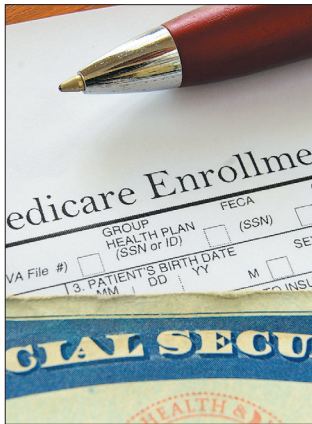
The application process is not as complicated for community benefits, meaning care that takes place outside of an institutional setting, such as in the beneficiary's home.

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## Don't make the mistake of not signing up for Medicare supplemental coverage



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If you are turning 65 and enrolling in Medicare as a healthy senior, do you really need to sign up for Medicare's supplemental coverage as well?

Not signing up initially could be very costly down the road.

With all the deductibles, copayments and coverage exclusions, basic Medicare pays for only about half of all medical costs.

To augment Medicare's coverage, you can purchase a supplemental, or "Medigap," insurance policy from a private insurer.

There are 10 Medigap plans, each identified by a different letter of the alphabet and each offering a different combination of benefits, allowing purchasers to choose the combinations that are right for them.

In addition, Medicare offers a federally subsidized prescription drug program in which private health insurers provide limited insurance coverage of prescription drugs to elderly and disabled Medicare recipients.

Purchasing the supplemental coverage means paying more in premiums. If you don't go to the doctor very often or have any regular prescriptions, you may not want to sign up for the additional coverage. However, if you get sick, what Medicare doesn't cover can be a lot more costly than the extra premiums, and buying coverage after you get sick can be difficult and expensive.

You cannot be denied a Medigap policy for pre-existing conditions if you apply within six months of enrolling in Medicare Part B. But if you don't buy a policy

within this time frame, the plan can use medical underwriting to decide whether to accept your application. The plan will look at your age, gender and pre-existing conditions, and it can charge you higher premiums, restrict coverage or even reject your application.

Beneficiaries who enroll in Medicare Advantage plans, which are Medicare's version of managed care, can't also buy Medigap policies. If they chose Medicare Advantage as their first form of insurance and later decide to return to original Medicare, they must select a Medigap policy within the first year of their initial Medicare enrollment or risk being shut out of a policy.

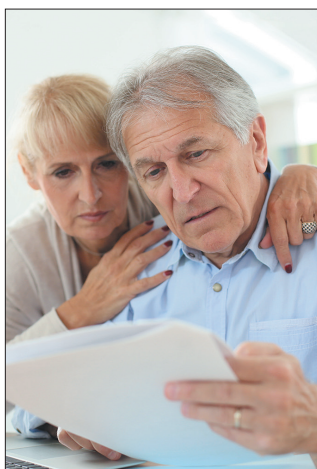
Medicare beneficiaries are also subject to significant financial penalties for late enrollment in the Medicare drug benefit (Medicare Part D).

For every month you delay enrollment past the Initial Enrollment Period, the Medicare Part D premium increases at least 1 percent.

For example, if the premium is \$40 a month and you delay enrollment for 15 months, your premium penalty would be \$6 ( $.04 \times 15 = \$6$ ), meaning that you would pay \$46 a month, not \$40, for coverage that year, and an extra \$6 a month each succeeding year.

There are some exceptions built in to both Medigap and Medicare Part D if you did not enroll right away because you had other coverage.

But if you choose not to enroll because you think you won't need the plan, it is not easy to change your mind later on.



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## Should you prepare a Medicaid application yourself?

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In short: in many cases people older than 65 will need to consult with an elder law attorney for planning purposes, but they or their families may be able to prepare and submit the Medicaid application unassisted.

Submitting an application for nursing home benefits without an attorney's help, however, is not a good idea. Medicaid officials subject such applications to enhanced scrutiny, and the application requires submission of as much as five years of financial records and documentation of every fact. Any unexplained expense may be treated as a disqualifying transfer of assets, and many planning steps, such as trusts, transfers to family members and family care agreements, are viewed as suspect unless properly explained. The process generally takes

several months. An applicant should expect Medicaid to continue asking questions and demanding supporting documentation for answers provided.

Many elder law attorneys offer assistance with Medicaid applications as part of their services. By enlisting a knowledgeable attorney you will receive expert advice on how best to qualify for benefits as early as possible, experience in dealing with the more difficult eligibility questions that often arise and a high level of service through a long, grueling process.

The drawback of using an attorney rather than a lay service is that the fee is typically substantially higher. Given the high cost of nursing home care, however, accelerating eligibility by even a month with the help of a lawyer will generally cover the fee.

# Drafting a power of attorney that reduces the chances of abuse

A power of attorney is one of the most important estate planning documents you can create, but it is also one that can be misused. While it isn't possible to entirely prevent the possibility of abuse, there are steps you can take in drafting the document to greatly reduce the chances.

A power of attorney allows a person you appoint — your “attorney-in-fact” or “agent” — to act in place of you — the “principal” — for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Unfortunately, if the agent chooses to exploit the principal, a power of attorney in the wrong hands or with too

**Another option is to have multiple agents, which allows more than one person to share the responsibility and permits them to divvy up tasks. Requiring the co-agents to act together provides checks and balances.**

much power can be very bad news. Here are some ways to draft a power of attorney to prevent someone from taking advantage of you:

- **Trustworthy agent.** The most important thing you can do is appoint a trustworthy agent. Think carefully about whom you want acting on your behalf. You need to appoint someone you trust to have your best interests in mind. If you do not have any friends or relatives who are appropriate, you could hire a professional fiduciary. This can be a bank with trust powers, a certified public accountant or a trust company. Another option is to have multiple agents, which allows more than one person to share the responsibility and permits them to divvy up tasks. Requiring the co-agents to act together provides checks and balances, but it could become quite cumbersome if all of your agents have to sign every check or other document.

- **Second signature.** If you don't want to have

co-agents, but you want a check on the agent, one option is to require two signatures for large transactions. The power of attorney document can set rules on what kinds of transactions would require an additional person to sign off on them.

- **Backup agent.** In addition to having a trustworthy agent, it is a good idea to have a backup agent in case the first agent becomes incapacitated or no longer wants to serve as agent. If you do name alternates, make sure the document is very clear about when the alternate takes over and what evidence he or she will need to present when using the power of attorney.

- **Third-party accounting.** One way to prevent an agent under a power of attorney from exploiting the principal is to require the agent to provide an accounting to a third party. The third party could be a family member or a friend. It doesn't have to be a formal accounting; it can be a summary of the financial transactions. The power of attorney document can provide the details on what information needs to be provided to whom and how often.

- **Limit powers.** The power of attorney can provide detailed instructions on the various powers the attorney-in-fact may carry out. You can make it as broad or as limited as you want. For example, you can allow your agent to pay bills, but not to change your will. One of the most important powers in the power of attorney document is the power to gift. A way to prevent abuse is to strictly define when gifting is allowed and how much the agent can give.

- **Review the choices.** Every few years, you should review your choices in case something has changed. Don't be afraid to revoke the power of attorney if you are no longer happy with your choice of an agent.

Because of these drafting choices, it is a good idea to have an attorney draft the document for you. Your attorney can help you decide how to best protect yourself or a loved one.



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## Four Social Security myths debunked

There are a lot of misconceptions surrounding the Social Security system. Here are four common myths and the facts about how Social Security works and its future prospects.

**Myth 1: You should collect benefits early.**

This is one of the biggest Social Security myths. Beneficiaries can start taking retirement benefits as early as age 62, but if you take Social Security between age 62 and your full retirement age (which ranges from 65 to 67, depending on your year of birth) your benefits will be permanently reduced to account for the longer period you will be paid.

On the other hand, if you delay taking retirement, depending on when you were born your benefit will increase by 6 to 8 percent for every year that you delay, in addition to any cost of living increases.

**Myth 2: Your money goes into an account with your name on it.**

When you pay into Social Security, the money is not set aside in a separate account, as with a 401(k) or IRA. Instead, your contributions are used to pay current recipients. When you start receiving benefits, people pay-

ing into the system will be paying your benefits.

**Myth 3: Social Security will be out of money soon.**

Many young people believe the Social Security system will run out of money before they have a chance to collect anything. Currently, the Social Security trustees predict that the combined trust funds for the retirement and disability programs will run out of money in 2035. Politically, it seems unlikely that Congress would let this happen. Changes will likely be made to the system by either raising taxes, reducing benefits for high-income individuals, increasing the retirement age or something else that will allow Social Security to be fully funded.

**Myth 4: If you haven't worked, you cannot collect benefits.**

If you haven't worked outside of the home, you will not be able to collect Social Security benefits on your own record, but you may be able to collect them based on your spouse or ex-spouse's record. Spouses are entitled to collect as much half of a worker's retirement benefit. This rule applies to ex-spouses as well, as long as the marriage lasted at least 10 years and the spouse applying for benefits isn't remarried.