



# Elder Law Advisor

## Legislative Alert!

### Do You Have a Spouse on Medicaid? Oregon Law Now Requires You to Change Your Will

According to the State of Oregon, the average cost of long-term care is now \$7,663 per month. Paying for this care for very long is beyond the means of most middle-class families. In an effort to obtain good care for an ill spouse and preserve enough assets for the healthy spouse to live independently, many people in this situation apply for assistance with care costs through the Medicaid program.

Once the Medicaid application is approved, most people neglect to consider a crucial question: What happens if the healthy spouse passes away before the ill spouse? While Medicaid allows an ill spouse to have only \$2,000 in assets, a healthy spouse is permitted to maintain additional assets, as much as \$109,560 plus the family home, for his or her support. What will happen to these assets if the healthy spouse dies first?

The answer depends on the will of the healthy spouse. Mostly, we see that the healthy spouse has made no change at all to an old will leaving all assets to the ill spouse. In that event, if the healthy spouse dies first, all assets pass to the ill spouse. This causes two problems. First, the ill spouse will immediately lose eligibility for Medicaid benefits. Second, due to illness, the ill spouse is usually unable to manage the inheritance. Sometimes the court has to appoint a conservator to manage the ill spouse's inheritance and pay the bills. All of this results in large expenses for the ill spouse and extra hassle for loved ones.

Sometimes, the healthy spouse will go to the other extreme. Instead of leaving everything to the ill spouse, the healthy spouse signs a new will leaving nothing to the ill spouse. The problem with this is, under Oregon law, you cannot completely disinherit your spouse. An ill spouse has the right to receive a portion of the healthy spouse's estate. If the ill spouse is on Medicaid, the State of Oregon will intervene in the healthy spouse's estate, and the court will require that some of the

healthy spouse's estate be set aside for the ill spouse. As of January 1, 2011, that amount is being increased to one-third of the healthy spouse's estate.

As a practical matter, this means that every healthy spouse who has an ill spouse receiving Medicaid benefits needs to update his or her will to comply with this change in Oregon law. At a minimum, one-third of the healthy spouse's estate should be left in a support trust for the ill spouse. Remaining assets can be left in a special needs trust for the ill spouse (these funds will be protected from the Medicaid spend-down) or to other beneficiaries.

So, if you have a spouse in long-term care who now receives, or who may in the future receive Medicaid assistance, speak with an experienced elder law attorney to discuss bringing your will into compliance with Oregon law. Prompt attention to this issue could save your family tens of thousands of dollars and avoid delays in Medicaid eligibility. Most importantly, updating your will helps to insure that the ill spouse will always receive good care and has the best possible quality of life.

*Geoff Bernhardt is an elder law attorney in Portland, Oregon. For more information on his firm and on estate planning issues, please visit his website at [www.elderlawpdx.com](http://www.elderlawpdx.com).*

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### Geoff Bernhardt Attorney at Law

Law Offices of Geoff Bernhardt  
5603 SW Hood Avenue  
Portland, OR 97239  
phone: 503-548-4000  
fax: 503-548-4003

e-mail: [geoff@elderlawpdx.com](mailto:geoff@elderlawpdx.com)  
[www.elderlawpdx.com](http://www.elderlawpdx.com)  
[www.elderlawpdx.blogspot.com](http://www.elderlawpdx.blogspot.com)