

Ask the Expert: Medicaid can sue you

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We're married, and jointly own our home and bank accounts. My pension will continue for both our lives. If one of us needs nursing home care and the healthy spouse refuses to pay for that care, can Medicaid attach any of our jointly held assets or my pension?

Asset transfers between spouses don't delay Medicaid eligibility, so the sick spouse can give his or her share to the healthy one. But Medicaid might still have claims on them.

Your house is exempt from claims as long as one of you lives there. But if the healthy spouse dies first, Medicaid can put a lien on the house to recover what it

paid for the surviving spouse's nursing home care, says Stephen J. Silverberg, a Roslyn elder law attorney. And whose name is on the pension check may influence whether Medicaid asserts a claim on it.

Let's call you John and Mary. Currently, if Medicaid pays for John's nursing home care, Mary can't keep more than \$113,640 of assets, and \$2,841 of monthly income, plus their house and car. Anything that exceeds those amounts must be spent on his care. However, federal law gives Mary the right to refuse to pay for it by signing a "spousal refusal." If she does that, Medicaid would grant John's application for help, reserving the right to sue Mary to recover what it spends on his care, Silverberg says.

But whether Medicaid decides to exercise that right depends on the amounts involved and the county you live in. "Not everybody gets sued," notes Bernard J. Krooks, a Manhattan elder law attorney. When Medicaid does sue, it sometimes settles out of court for less than its claim.

The bottom line Medicaid can sue people who exercise their right of "spousal refusal."

Websites with more information bit.ly/9urFgW and bit.ly/GBEDyu

