The Consumer's Guide to Medicaid: 2010

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**The contents of this handbook provide general guidance following the rules and regulations of the Deficit Reduction Act of 2005. As of the date of publication, Illinois has not yet implemented these new rules and regulations. It is anticipated that Illinois will implement the new rules within the next 6 - 8 months.*

In order to meet the financial burden of nursing home costs, an area of the law known as Medicaid Planning has developed. Medicaid is a joint federal-state program that provides health insurance coverage to low-income children, seniors and people with disabilities. In addition, it covers care in a nursing home for those who qualify. In the absence of any other public program covering long-term care, Medicaid has become the default nursing home insurance for many Americans.

The basic strategy of Medicaid Planning is to structure your asset ownership so that you will qualify for Medicaid benefits while preserving as much of your assets as possible to carry out your estate plan. The following is a summary of the relevant issues as they apply in Illinois.

Asset Rules

In order to be eligible for Medicaid benefits, a nursing home resident may have no more than $2,000 in "countable" assets. The spouse of a nursing home resident--called the "community spouse" -- is limited to one half of the couple's joint assets up to $109,560 in "countable" assets. This figure changes each year to reflect inflation.

All assets are counted against these limits unless the assets fall within the short list of "noncountable" assets. These include the following:

- Personal possessions, such as clothing, furniture, and jewelry
- One motor vehicle is excluded, regardless of value, as long as it is used for transportation of the applicant or a household member. The value of an additional automobile may be excluded if needed for health or self-support reasons.
- The applicant's principal residence, provided it is in the same state in which the individual is applying for coverage and the applicant can prove a reasonable likelihood of being able to return home. Principal residences may be deemed noncountable only to the extent their equity is less than

$500,000. The house may be kept with no equity limit if the Medicaid applicant's spouse or another dependent relative lives there

- Prepaid funeral plans and a small amount of life insurance
- Assets that are considered "inaccessible" for one reason or another

The Transfer Penalty and Look-Back Period

The second major rule of Medicaid eligibility is the penalty for transferring assets. Congress does not want you to move into a nursing home on Monday, give all your money to your children on Tuesday, and qualify for Medicaid on Wednesday. So it has imposed a penalty on people who transfer assets without receiving fair value in return during the look-back period. These restrictions, already severe, have been made even harsher by enactment of the Deficit Reduction Act of 2005 (DRA). (As of the date of publication, the DRA has not yet been implemented by Illinois.)

Medicaid's "look-back" period for all asset transfers is five years. Prior to enactment of the DRA, the agency reviewed transfers made within 36 months of the Medicaid application. Now, the look back period for all transfers is 60 months. The extension of the look-back period will make the application process more difficult and could result in more applicants being denied for lack of documentation, given that they will need to produce five years worth of records instead of three.

The "penalty period" is a period of time during which the person transferring the assets will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid determines to be the average private pay cost of a nursing home.

Example: *For example, if the average monthly cost of care has been determined to be $5,000, and you give away property worth $90,000, you will be ineligible for benefits for18 months ($90,000 ÷ $5,000 = 18).*

Another way to look at the above example is that for every $5,000 transferred, an applicant would be ineligible for Medicaid nursing home benefits for one month.

A significant change in the treatment of transfers made by the DRA has to do with when the penalty period created by the transfer begins. Under the prior law, the 30-month penalty period created by a transfer of $90,000 in the example described above would begin on the first day of the month during which the transfer occurred. Under the DRA, the penalty period will not begin until (1) the transferor has moved to a nursing home, (2) he has spent down to the asset limit for Medicaid eligibility, (3) has applied for Medicaid coverage, and (4) has been approved for coverage but for the transfer.

For instance, if an individual transfers $90,000 on April 1, 2009, moves to a nursing home on April 1, 2010, and spends down to Medicaid eligibility on April 1, 2010, that is when the 18-month penalty period will begin.

Exceptions to the Transfer Penalty

Transferring assets to certain recipients will not trigger a period of Medicaid ineligibility. These exempt recipients include the following:

- A spouse (or a transfer to anyone else as long as it is for the spouse's benefit)
- A blind or disabled child
- A trust for the benefit of a blind or disabled child
- A trust for the sole benefit of a disabled individual under age 65 (even if the trust is for the benefit of the Medicaid applicant, under certain circumstances).

In addition, special exceptions apply to the transfer of a home. The Medicaid applicant may freely transfer his or her home to the following individuals without incurring a transfer penalty:

- The applicant's spouse
- A child who is under age 21 or who is blind or disabled
- Into a trust for the sole benefit of a disabled individual under age 65
- A sibling who has lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home
- A "caretaker child," who is defined as a child of the applicant who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided care that allowed the applicant to avoid a nursing home stay.

Congress has created a very important escape hatch from the transfer penalty: the penalty will be "cured" if the transferred asset is returned in its entirety, or it will be reduced if the transferred asset is partially returned.

Treatment of Income

The basic Medicaid rule for nursing home residents is that they must pay all of their income, minus certain deductions, to the nursing home. The deductions include a $30-a-month personal needs allowance, a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant, an allowance for the spouse who continues to live at home if he or she needs income support. A deduction may also be allowed for a dependent child living at home.

For Medicaid applicants who are married, the income of the community spouse is not counted in determining the Medicaid applicant's eligibility. Only income in the applicant's name is counted in determining his or her eligibility. Thus, even if the community spouse is still working and earning $4,000 a month, she will not have to contribute to the cost of caring for her spouse in a nursing home if he is covered by Medicaid.

Protections for the Healthy (Community) Spouse

The Medicaid law provides special protections for the spouse of a nursing home resident to make sure she has the minimum support needed to continue to live in the community.

The so-called "spousal protections" work this way: if the Medicaid applicant is married, the countable assets of both the community spouse and the institutionalized spouse are totaled as of the date of "institutionalization," the day on which the ill spouse enters either a hospital or a long-term care facility in which he or she then stays for at least 30 days. (This is sometimes called the "snapshot" date because Medicaid is taking a picture of the couple's assets as of this date.)

In Illinois, the community spouse may keep "countable" assets up to a maximum of $109,560. Called the "community spouse resource allowance," this is the most that a state may allow a community spouse to retain.

In all circumstances, the income of the community spouse will continue undisturbed; he or she will not have to use his or her income to support the nursing home spouse receiving Medicaid benefits. But what if most of the couple's income is in the name of the institutionalized spouse, and the community spouse's income is not enough to live on? In such cases, the community spouse is entitled to some or all of the monthly income of the institutionalized spouse. How much the community spouse is entitled to depends on what the Medicaid agency determines to be a minimum income level for the community spouse. This figure, known as the minimum monthly maintenance needs allowance or MMMNA, is calculated for each community spouse according to a complicated formula based on his or her housing costs. The MMMNA may be as high as $2,739 a month (in Illinois the MMMNA is $2,739/month). If the community spouse's own income falls below his or her MMMNA, the shortfall is made up from the nursing home spouse's income.

Conclusion

Within the rules outlined above, there are numerous exceptions and planning techniques that you can utilize to qualify you or your loved one for Medicaid benefits while preserving a portion of your assets. A qualified Elder Law attorney will be able to explain these options to you and implement a plan best suited to your particular situation.

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