

## **The Basic Rules of Nursing Home Medicaid Eligibility**

For all practical purposes, in the United States the only "insurance" plan for long-term institutional care is Medicaid. Medicare only pays for approximately 2 percent of skilled nursing care in the United States. Private insurance pays for even less. The result is that most people pay out of their own pockets for long-term care until they become eligible for Medicaid. While Medicare is an entitlement program, Medicaid is a form of welfare - or at least that's how it began. So to be eligible, you must become "impoverished" under the program's guidelines.

Despite the costs, there are advantages to paying privately for nursing home care. The foremost is that by paying privately an individual is more likely to gain entrance to a better quality facility. The obvious disadvantage is the expense; in Rhode Island, nursing home fees average \$6,612 a month. Without proper planning nursing home residents can lose the bulk of their savings.

For most individuals, the object of long-term care planning is to protect savings (by avoiding paying them to a nursing home) while simultaneously qualifying for nursing home Medicaid benefits. This can be done within the following rules of Medicaid eligibility.

### **THE ASSET RULES**

In Rhode Island Medicaid is administered by the Department of Health and Human Services (the "DHS"). However, in order to qualify for federal reimbursement, the state program must comply with applicable federal statutes and regulations. So the following explanation includes both - and federal law as applicable.

The basic rule of nursing home Medicaid eligibility is that an applicant, whether single or married, may have no more than \$4,000 in "countable" assets in his or her name. "Countable" assets generally include all belongings except for (1) the home and associated land, regardless of value; (2) household goods and personal effects, regardless of value; (3) one motor vehicle, regardless of value (4) life insurance with a face value less than \$4,000; (5) a burial site or burial plot; (6) irrevocable burial contracts or trusts; and (7) assets that are considered inaccessible for one reason or another.

There are also special rules which are applicable if the applicant is the beneficiary of a trust. If the applicant is the settlor of a revocable trust, the assets transferred to the trust are countable assets. If the applicant (or the applicant's spouse, unless the trust is funded via the spouse's will) is the settlor of an irrevocable trust and the applicant is a permissible beneficiary of the trust then the maximum amount which may permissibly be distributed to the applicant will be deemed to be a countable asset. If the applicant is the settlor of an irrevocable trust but under no circumstances may receive any distribution from the trust, then the trust's assets will not be deemed to be countable assets, although the transfer of assets to the trust may violate the asset transfer rules to be discussed later.

### **Joint Assets**

If assets are jointly held with someone else, the ownership interest deemed to the applicant for Medicaid depends on the type of asset. All assets held in banks under joint names are presumed to belong totally to the applicant for Medicaid. Other property held jointly, such as stocks, bonds, and real estate, are deemed to belong to the applicant in proportion to the number of owners. These deeming rules are presumptions and may be rebutted with evidence of different ownership interests or contributions. Despite these deeming rules, under OBRA-93 any transfer of joint property will be treated as having been caused by the applicant for Medicaid, no matter who in fact effected it.

### **The Home**

The home will not be considered a countable asset and, therefore, will not be counted against the asset limits for Medicaid eligibility purposes as long as the nursing home resident intends to return home or his or her spouse or other dependent relatives live there. It does not matter if it does not appear likely that the nursing home resident will ever be able to return home; the intent to return home by itself preserves the property's character as the person's principal place of residence and thus as a noncountable resource. As a result, for all practical purposes nursing home residents do not have to sell their homes in order to qualify for Medicaid. However, it should be noted that this rule only applies to principal residences as opposed to summer residences or vacant lots and, as of August 10, 1993, the State of Rhode Island has been encouraged by the federal government to sell homes of individuals who have no chance of returning to them due to poor health.

### **THE TRANSFER PENALTY**

The other major rule of Medicaid eligibility is the penalty for transferring assets. If an applicant (or his or her spouse) transfers assets, he or she will be ineligible for Medicaid for a period of time beginning on the date of the transfer. The actual number of months of ineligibility is determined by dividing the amount transferred by \$6,612. For instance, if an applicant made gifts totaling \$125,628, he or she would be ineligible for Medicaid for 19 months (\$125,628 divided by \$6,612). *Another way to look at this is that for every \$6,612 transferred, an applicant will be ineligible for nursing home Medicaid benefits for one month.*

For transfers made on or before August 10, 1993, Medicaid provides for an upper limit of 30 months of ineligibility. For transfers made after that date, there is no cap on the period of ineligibility. So, for instance, the period of ineligibility for the transfer of property worth \$661,200 is 100 months (\$661,200 divided by \$6,612). However, DHS may only consider transfers made during the 36-month period (60 months in the case of some trusts) preceding an application for Medicaid, the "look back" period. Effectively, then, there is now a 36-month cap on periods of ineligibility resulting from transfers. (However, it's not

yet clear what will happen to people who mistakenly apply for Medicaid before the 36-month look-back period passes.)

### **Rules Applicable to Transfers to Trusts**

If an applicant transfers assets to a trust, he or she will be subject to special rules which are invoked whenever a transfer of assets is made to a trust (whether revocable or irrevocable). In this case, the "look back" period is extended from 36 months to 60 months. This 60-month period also applies to the transfer to an irrevocable trust of assets which cannot be paid under any circumstances to the individual making such transfer, and to income from those assets, payment of which to the such individual is prohibited. Thus, the effective cap on periods of ineligibility resulting from the transfer of assets to a trust is 60 months.

### **Exceptions to the Transfer Penalty**

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

- (1) A spouse (or anyone else for the spouse's benefit);
- (2) A blind or disabled child;
- (3) A trust for the benefit of a blind or disabled child; or
- (4) A trust for the benefit of a disabled individual under age 65 (even for the benefit of the applicant under certain circumstances).

Special rules apply with respect to the transfer of a home. In addition to being able to make the transfers without penalty to one's spouse or blind or disabled child, or into trust for other disabled beneficiaries, the applicant may freely transfer his or her home to:

- (1) A child under age 21;
- (2) 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; or
- (3) **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 such care that the applicant did not need to move to a nursing home.**

Recently enacted legislation provides a very important escape hatch concerning the transfer penalty. A transfer can be cured by the return of the transferred asset in its entirety. Returning even one dollar less than the original gift will provide no cure.

## **ESTATE RECOVERY**

The state has the right to recover whatever benefits it paid for the care of the Medicaid recipient from his or her probate estate. Given the rules for Medicaid eligibility, the only property of substantial value that a Medicaid recipient is likely to own at death is his or her home. Under recently enacted Rhode Island law, upon the death of a recipient of medical assistance, the total sum of assistance paid on behalf of a recipient who was fifty-five (55) years of age or older at the time of receipt of such assistance shall constitute a lien upon the estate of the recipient. The term "estate" is specifically defined in the law as "real or personal property and other assets included or includable within the individual's probate estate." The lien does not attach against the estate of a recipient who is survived by a spouse, a child who is under the age of twenty-one (21) or a child who is blind or permanently disabled as defined in the applicable federal statute. DHS interprets the statute in such a way as to preclude a lien in every case in which the recipient is survived by a person enumerated therein regardless of whether the survivor resides in the home.

## **TREATMENT OF INCOME**

When a nursing home resident becomes eligible for Medicaid, all of his or her income (i.e. Social Security, annuity, promissory note payments), less certain deductions, must be paid to the nursing home. The deductions include a \$60-a-month personal needs allowance and a deduction for any uncovered medical costs (including medical insurance premiums). Therefore, all of the nursing home resident's income less the personal needs allowance must be paid to the nursing home in the event that a spouse enters such a home.

## **THE MEDICAID APPLICATION**

Applying for Medicaid is cumbersome and tedious. Every fact asserted in the application must be verified by documentation. The application process can drag on for several months as the DHS demands more and more verifications regarding such issues as the amount of assets and dates of transfers. If the applicant does not comply with these requests and deadlines on a timely basis, DHS will deny the application. In addition, after Medicaid eligibility is achieved, it must be redetermined every six months.

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