

THE NURSING HOME MEDICAID MINEFIELD – PART I

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The subject of nursing home medicaid coverage became much more complex during the past several years. Part I of this article will explain the basic rules that were in existence before recent changes. Except where noted, those rules still apply. Part II will appear next month and will explain the changes. Part III will appear the following month and will describe tools for last-minute planning.

As of February 8, 2006, the rules for nursing home medicaid applications changed dramatically. That is the date that the Federal Deficit Reduction Act of 2005 (the “DRA”) was signed into law and the effective date for most of the drastic changes to the medicaid program. Before describing those changes, some explanation of basic medicaid rules is necessary.

Most people are aware that monthly area nursing home costs are well over \$10,000.00. Medicaid, a joint federal and state program administered by the counties, will pay for nursing home costs for individuals over sixty-five (65) years of age, once someone cannot afford to do so.

However, you must be very poor to be eligible for medicaid to pay for you. Currently, a single person may not have more than \$13,800.00 in “resources” (property) in order to qualify for medicaid. Although there are exceptions, such as IRAs and a home to which you intend to return, if you own any additional property, you must use that property to pay for your care before you will be eligible for medicaid.

In the case of a married couple, where one spouse enters a nursing home and the other remains in the community, the community spouse is entitled to keep the home, certain excludable personal property, and up to \$109,560.00 in his or her own name. Any amount owned by the community spouse above that amount is expected to be used to support the spouse in the nursing home.

The income of an unmarried nursing home medicaid applicant is required to be used to pay for his or her own care, after deducting a “personal needs allowance” of \$50.00 monthly and any expenses for health insurance premiums.

A community spouse is entitled to keep up to \$2,739.00 monthly (in 2010) of a married couple’s income (known as the “minimum monthly maintenance needs allowance”). Income above that amount (after deducting the \$50.00 monthly personal needs allowance and health insurance premiums) must be used to pay for nursing home care.

There are certain exceptions to these property and income limitations, such as a \$1,500.00 “burial allowance” or an irrevocable prepaid funeral trust fund, and various

sources of reparations, such as Nazi Persecution Accounts and Agent Orange Settlement Funds.

If someone applies for medicaid and has “excess income,” medicaid will determine a “budget” stating how much of the person’s income must be paid to the nursing home monthly. However, if the applicant has “excess resources” (above \$13,800.00), the application will be denied until those excess resources are spent.

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This brings us to a central part of medicaid planning: the question of whether to transfer any property (resources), including whether to make a transfer to a spouse and, if so, how best to accomplish medicaid eligibility. Some people believe that as long as they have property, they should use it to pay for their own care. Others would rather transfer that property to loved ones, as long as medicaid will pay for that care.

If the decision is made to transfer property, the first thought should be to do so in such a way that the transfer will be “exempt” from the medicaid transfer penalty rules, and make the applicant eligible for medicaid coverage despite the transfer. Fortunately for married couples, the rules state that property can be transferred to the community spouse and the nursing home spouse will thereafter be eligible for medicaid immediately. Even if transfers to the community spouse exceed the limits stated above, medicaid must still declare the nursing home spouse eligible, as long as the community spouse files what is known as a “spousal refusal,” which essentially states the community spouse’s intention not to support his or her nursing home spouse.

Although that concept might sound somewhat “cold,” it has become a financial necessity for many elderly couples, and is an absolute right under New York State law. However, and this is a big however, the Department of Social Services, while approving and paying for medicaid coverage for the nursing home spouse, then has the right to sue the community spouse for his or her share of support, whether it be based upon excess income or excess property. Although compromises are always possible, community spouses must be aware of this concern and be ready to deal with it. The chances of a community spouse being sued will of course increase with the amount of property kept by the community spouse above the allowable limit.

The Department of Social Services will know about the property owned by the community spouse because when a medicaid application is made, the income and property of both spouses are required to be disclosed and bank and finance records since February 8, 2006 are required to be provided. As you might imagine, lying on a medicaid application is a criminal offense.

When a nursing home medicaid application is made for an unmarried person, medicaid planning must be more creative. Certain transfers can be made without a penalty, such as a transfer of any property of any value or type to a disabled child. However, other factors must be considered before such a transfer is made. If the disabled

child is receiving government benefits, a transfer of property might result in the loss of such benefits. A properly drafted trust for the sole use and benefit of a disabled child can preserve that child's government benefits.

The medicaid applicant's home may be transferred to certain persons without incurring a penalty. Those persons include the spouse, a minor child, a disabled or blind child of any age, an adult child who has lived in the home with the parent as a care-giver for at least two years before the parent enters the nursing home, and a sibling of the applicant who has resided in the home for at least one year before the applicant enters the nursing home and who has an "equity interest" in the home. In the case of a transfer to anyone other than a spouse, possible gift taxes and capital gains taxes must be taken into account.

The rules regarding nursing home medicaid eligibility are extremely complex, and many alternatives exist. Since each particular case has its own unique facts, the reader is cautioned that the above summary can not be considered legal advice and should consult with an appropriate legal advisor. Please also note that the monetary figures stated herein are applicable to applications filed in 2010, and might vary in later years.

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Editor's Note:

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