Planning and Paying for Long-term Care (Part 4 in a Series: Medicaid/Medical Assistance)

by Scott Alan Mitchell

As of January 1, 2012, the average cost of skilled nursing care in Pennsylvania is $8,112.13 per month. Recall that according to national statistics, approximately 50% of nursing care throughout the country is paid by Medicaid – more than double any other source of payment (private funds, Medicare, long-term care insurance, etc.). Medicaid is a joint federal and state program under which States receive federal funding to establish programs to "dispense" medical care (including skilled nursing care) to needy and qualifying individuals.

Each State's Medicaid program must comply with complex requirements imposed by federal statutes and regulations. As described by one federal court in Pennsylvania, these statutes and regulations are "one of the most completely impenetrable texts within human experience and dense reading of the most tortuous kind." The court further added, "The court has nothing but sympathy for officials who must interpret or administer the Act." This complex web of federal statutes and regulations is further exacerbated in that, as part of administering the Medicaid program, each State adopts its own statutes, regulations, and policies, all of which are subject to change from year to year and even month to month.

Pennsylvania refers to its Medicaid program as "Medical Assistance" (which I will reference as "MA" hereafter). According to recent statistics, benefits paid under Pennsylvania's MA program amount to approximately $14 billion per year – 55% of which are federal funds, and 45% of which are Commonwealth funds.

Before discussing eligibility requirements for MA benefits, a few preliminary points should be noted. First, when a nursing home resident receives MA benefits, the resident's care remains the same as a resident paying privately for his or her care. Contrary to the belief of some, nursing homes do not have "Medicaid wings" where MA residents are sent to receive inferior care. Second, although one or two homes in a given county might not accept MA, most homes accept MA – and so a potential MA resident is not destined to go to what many refer to colloquially as "the county home." Finally, when a nursing home resident's care is being covered by MA, the nursing home does not receive the full monthly payment that it would receive from a private-pay resident. As a result, nursing homes typically limit the number of MA residents that they can accept at any one time. Thus, if a particular nursing home is at full capacity with MA residents, an individual who lacks sufficient assets to pay privately for one or two years of care might be placed on a waiting list at that home until an "MA bed" becomes available, which could result in the individual needing to consider other homes.

To become eligible for MA benefits, an individual must be determined by a doctor and the local Office of Aging to actually need skilled nursing care. In other words, MA benefits are not

available for personal care – and they are not available for an individual in skilled nursing care who does not truly need that level of care. Additionally, an individual must meet certain asset limits. As will be discussed further below and in subsequent parts of this series, certain assets are not counted as assets for purposes of MA eligibility. For a single individual, "countable" assets must be below $8,000. However, if the individual's gross monthly income is over $2,094, assets must be below $2,400.

For married couples, the spouse in the nursing home must have assets below the aforementioned limits. Additionally, the non-nursing home spouse (the "community spouse"), is entitled to retain one-half of the couple's "countable" assets, as valued on the first day the nursing home spouse entered the home. However, the one-half is subject to a minimum of $22,728 and a maximum of $113,640. Thus, if a couple's countable assets are $30,000, the community spouse may retain or protect $22,728; if a couple's countable assets are $190,000, the community spouse may retain $95,000; and if a couple's countable assets are $300,000, the community spouse may retain $113,640.

The following are examples of assets that are "exempt" or not "countable" for purposes of MA eligibility (which is to say that if an individual enters a nursing home, the community spouse may retain the below assets in addition to the one-half protected share referenced above):

1. Personal residence
2. One vehicle
3. Household furnishings/personal effects
4. Community spouse's retirement accounts (but not nursing home spouse's)
5. Life insurance policies with an aggregate face value of up to $1,500
6. Term life insurance policies
7. Real and personal property used in a trade or business, such as rental real estate
8. Pre-paid irrevocable funeral/burial policies and burial plots

It should be noted that with the exception of retirement accounts, whether an asset is in the name of the nursing home spouse, the community spouse, or both spouses is irrelevant to whether an asset is countable for purposes of Medical Assistance eligibility. Thus, moving all assets into the name of the community spouse – or titling one half of the assets in the nursing home spouse's name and the other half in the community spouse's name – has no impact on initial MA eligibility. Rather, all countable assets in the name of either or both spouses are considered available assets for purposes of MA eligibility, and the community spouse initially is able to protect one half of the countable assets (subject to the above-referenced minimum and maximum).

It also should be noted that MA does not recognize prenuptial agreements. Thus, although a couple might maintain separately-owned assets under a valid prenuptial agreement, for MA

purposes all countable assets of both spouses are considered available assets as part of the MA eligibility process.

To illustrate a sample asset calculation, assume that a married couple owns a house, car, and household furnishings. Additionally, the couple has $250,000 in investments, bank accounts, certificates of deposit, etc., and the nursing home spouse has an individual retirement account with a balance of $100,000. The couple's countable assets would be $350,000 (excluding the house, car, and household furnishings). Assume that the nursing home spouse can retain $2,400 in assets. Additionally, the community spouse can retain one-half of the countable assets – subject to the maximum of $113,640. Thus, the couple can protect $116,040, and the remaining "excess" assets total $233,960 – meaning that the couple cannot become eligible for MA unless and until the excess is either exhausted on nursing care or protected in some other fashion.

In part 5, I will discuss how excess assets are addressed and the various options that the law allows couples to protect some or all of these excess assets.