

The ABCs of Medicaid

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It is a cold hard fact that some of us will need assistance in the future with our “activities of daily living”, activities that most of us take for granted every day – getting out of bed in the morning; going to the bathroom; getting dressed; preparing and eating breakfast. And then there is the rest of the day to get through! In the event of a catastrophic illness, such as Alzheimer’s disease, it will be important to know your options as to where you can receive care and how to pay for it.

“I want to stay in my home”

I met with Alice who was recently diagnosed with early onset Alzheimer’s. She told me that she is worried that she may need help with her care in the future, but she does not want to go to a nursing home. She owns her home and she and her husband (who died 4 years ago) were able to save some of their hard earned money. She is getting by financially, but is concerned that if she needs help she would not be able to afford it and that her life savings would be wiped out.

I think it is safe to say that most of us feel the same as Alice and would prefer to stay in our own homes for as long as possible. But what happens when you need care? The cost of care at home can cost up to \$75,000 per year. How can you pay for it? One possible solution is Medicaid (referred to sometimes as “Community Medicaid”). However, Medicaid has strict eligibility rules regarding assets and income. For 2012, the Community Medicaid resource level is \$14,250. That means that you cannot apply for Medicaid unless you have \$14,250 or less in total assets (not including exempt assets, for example your residence). If someone has more than \$14,250 in non-exempt assets (i.e., bank accounts, investments, CDs or any asset that has your name on it), then planning needs to be implemented to protect one’s assets.

There is currently no “look back” for Community Medicaid. This means that if someone has more than \$14,250, they can divest themselves of the excess amount and Medicaid will not “penalize” them. They can then apply for Community Medicaid the following month. It is important to seek the advice of an experienced elder law attorney as to how and to whom the assets should be transferred before giving them away. There may also be gift and or income tax issues to be discussed.

Medicaid also has limits as to the amount of monthly income the Medicaid recipient is permitted to keep. For Community Medicaid, the monthly income allowance for a single person for 2012 is \$812 (for a married couple \$1,179). This means that any income over that amount must first be spent on health-related costs before Medicaid will pay for services. For example, if a single person has \$1,112 in monthly Social Security benefits as their only income, they would have to pay the first \$300 of health care expenses before Medicaid will pay. This

can be an issue for someone who needs all of their income to live on. The excess income can be protected in a Pooled Income Trust, such as the Theresa Foundation Pooled Income Trust.

“We don’t think dad can live at home anymore”

Joe and Sally were in my office last week regarding their father, Bill, who lives at home with their mother, Jennie. Their parents had been doing fine at home up to now, but dad’s dementia is getting worse and they felt that dad would need long term nursing home care at this point because mom cannot take care of him any longer. They were concerned about the cost of the nursing home as well as what financial impact it would have on mom.

There may come a time when a difficult decision needs to be made - that a loved one needs nursing home care. The cost of a nursing home in our area can be up \$175,000 per year. All of your hard work and savings over a lifetime could be lost if nursing home is needed.

If nursing home care is needed, we can again turn to the Medicaid program for help. However, as with Community Medicaid, there are very strict eligibility rules for Medicaid nursing home benefits regarding assets and income.

The asset level is the same as for Community Medicaid (i.e., \$14,250 for 2012, plus certain exempt assets). However, there are a number of differences between Community Medicaid and nursing home Medicaid, the most important of which are (1) there is a 60 month “look back”; and (2) there is a penalty for transferring assets within the look back period that will make you ineligible for Medicaid (subject to a limited number of exceptions).

When applying for Medicaid nursing home benefits, you have to provide all of your financial information for the previous 5 years. If the Medicaid applicant (or his/her spouse) made transfers (gifts) during that time, Medicaid will assess a penalty based upon the value of the assets transferred. The penalty is a period of time where the Medicaid applicant is not eligible for Medicaid and thus would have to pay privately for his or her own care.

The income limits for Medicaid nursing home care are also different than Community Medicaid. The Medicaid recipient is permitted to keep only \$50/month for his or her personal needs. If there is a spouse in the community, the community spouse is permitted (in 2012) to keep income of \$2,841/month and up to \$113,640 in assets (excluding the residence).

“My mother has an IRA. Is that protected from Medicaid?”

Michael came to me recently regarding his mother, Carol. Carol was in rehabilitation after a fall and Michael was not sure if she would be able to go back home again (“and if she does, she can’t be alone,” he says), or if she will need to go to a nursing home. He goes on to tell me she has some savings, but she also has an IRA worth approximately \$125,000 and is wondering if it is protected if she applies for Medicaid.

Medicaid has a special set of rules for qualified retirement assets such as an IRA. The Medicaid applicant can choose to have the IRA treated as an asset or as income. This is a decision that is typically made at the time of the Medicaid application since income taxes also need to be considered. It is very important to understand these options at that time as there are several factors that should be considered in the decision making process including: the value of the IRA; other monthly income; the age of the applicant; and the applicant's life expectancy. There are times where it may make sense to liquidate the IRA and others where it makes sense to keep the IRA and have it treated as income. This is an analysis where an experienced elder law attorney can help make a difference.

“If I am on Medicaid and move to Florida, can I keep the Medicaid?”

Alice, who I mentioned above, tells me she has a daughter in Florida and that if Alice does need help, at some point she may want to move to Florida to be closer to her family. She wants to know if she is receiving Medicaid in New York is it transferrable to Florida?

There are times when someone who is on Medicaid wants (or needs) to move to another state (or to New York from another state). Medicaid is federal/state specific and is not transferrable between states. Each state has its own eligibility criteria so that if someone on Medicaid in New York moves to Florida they will lose their benefits in New York and have to reapply in Florida.

Regardless of the particular issue, it is so important to seek the advice of an elder law attorney who knows the Medicaid laws regarding assets and income, and the asset protection planning techniques available (such as exempt assets and exempt transfers that do not create a Medicaid penalty). Planning in advance is always best, but even if no planning has been done, it is never too late to get help and peace of mind.