



Medicaid 101

Medicaid 101

Medicaid is available only to certain low-income individuals and families who fit into an eligibility group that is recognized by federal and state law. Medicaid does not pay money to you but instead it sends payments directly to your health care providers. Depending on the state's rules, you may also be asked to pay a small part of the cost (co-payment) for some medical services.

Medicaid is a state administered program and each state sets its own guidelines regarding eligibility and services. Read more and educate yourself about your state Medicaid program. Many groups of people are covered or eligible to be Medicaid. Even within these groups though, certain requirements must be met. These may include your age, whether you are pregnant, disabled, blind, or aged, your income and resources (like bank accounts, real property, or other items that can be sold for cash) and whether you are a U.S. citizen or a lawfully admitted immigrant. The rules for counting your income and resources vary from state to state and from group to group. There are special rules for those who live in nursing homes and for disabled children living at home.

Medicare or Medicaid – what's the difference

For all practical purposes, in the United States the only "insurance" plan for long-term institutional care is Medicaid. Lacking access to alternatives such as paying privately or being covered by a long-term care insurance policy, most people pay out of their own pockets for long-term care until they become eligible for Medicaid. Although their names are confusingly alike, Medicaid and Medicare are quite different programs. All retirees who receive Social Security benefits also receive Medicare as their *health insurance*. *Medicare is an "entitlement" program. Medicaid, on the other hand, is a form of welfare* -- or at least that's how it began. So to be eligible for Medicaid, you must become "impoverished" under the program's guidelines.



Medicaid Planning – Ethics

An article written in late 1989 by a well known acclaimed financial columnist attacked the practice of Medicaid planning as a shameful and offensive behavior on the part of the public and financial advisors and elder law attorneys alike. One of the points made in this article was that Medicaid planning was in effect creating an artificial poverty that is ultimately paid for in the long run by the public. This columnist stated that the Medicaid program is specifically designed to help the “poor” and that it is immoral for advisors to show or instruct people on how to protect, move or redistribute assets in order to qualify.

This is a view that is worthy of further examination. First, we must realize that the very laws of Medicaid allow for these redistributing of assets, and the very lawmakers who govern Medicaid laws could have easily throughout the years removed these provisions that make the redistribution of assets possible.

The Medicaid law itself provides that the government will pay, unless of course we are willing and foolish enough to offer up our life savings and pay for the care ourselves, and then run out of assets and wind up on the program anyway.

Arranging our assets in a way provided for by the Medicaid laws is not immoral any more than the arranging of those same assets to qualify for income tax or estate tax savings.

On another note, neither Congress nor the state legislatures have resolved the public policy question of how we as a society should be paying for the long-term care of our seniors. The result is a confusing, makeshift system of Medicare, private insurance, out-of-pocket payments, family caregivers, and Medicaid as a last resort.

Lastly, we all have to ask ourselves, when we are faced with the choices between Medicaid planning or bankruptcy, what do we feel personally and professionally would be the long term best choice.



Transfers

Congress has established a period of ineligibility for Medicaid for those who chose to transfer assets. For transfers made after passage of the DRA the so-called "look back" period for all transfers is 60 months. Transfers should be made carefully, with an understanding of all the potential consequences. People who make transfers should be careful not to apply for Medicaid before the five-year look back period elapses, without first consulting with an elder law attorney. This is because the penalty could ultimately extend even longer than five years, depending on the size of the transfer.

One of the prime planning techniques used prior to the enactment of the DRA, often referred to as "half a loaf," was for the Medicaid applicant to give away approximately half of his or her assets. It would work this way: before applying for Medicaid, the prospective applicant would transfer half of his or her resources, thus creating a Medicaid penalty period. The applicant, who was often already in a nursing home, then used the other half of their resources to pay for care while waiting out the ensuing penalty period. After the penalty period had expired, the individual could apply for Medicaid coverage.

Trusts

The problem with transferring assets is that you have given them away. You no longer control them, and even a trusted child or other relative may lose them. A safer approach is to put them in an irrevocable trust. A trust is a legal entity under which one person -- the "trustee" -- holds legal title to property for the benefit of others -- the "beneficiaries." The trustee must follow the rules provided in the trust instrument. Whether trust assets are counted against Medicaid's resource limits depends on the terms of the trust and who created it.

A "revocable" trust is one that may be changed or rescinded by the person who created it. Medicaid considers the principal of such trusts (that is, the funds that make up the trust) to be assets that are countable in determining Medicaid eligibility. Thus, revocable trusts are of no use in Medicaid planning.



Protecting the House

After a Medicaid recipient dies, the state must attempt to recoup from their estate, whatever benefits it has paid for the recipient's care. This is called "estate recovery." Thus you must be aware to put into place protection for not only your assets but your fully paid home.

Life Estates

For many people, setting up a "life estate" is an appropriate way to protecting the home from estate recovery. A life estate is a form of joint ownership of property between two or more people and they each have an ownership interest in the property, but for different periods of time. The person holding the life estate possesses the property currently and for the rest of their life. The other owners have current ownership interest but cannot take possession until the end of the life estate, which occurs at the death of the life estate holder. Keep in mind the deed into a life estate can trigger a Medicaid ineligibility period of up to five years.

Let's look at an example:

Pat wants to protect her home so she gave a remainder interest in her house to her children, while retaining a life interest for herself. She can execute this through a simple deed. After this, Pat, who is the life estate holder, still has the right to live in the property or rent it out and collect the rents for herself. She is also responsible for any of the costs of maintenance and taxes on the property. The property cannot be sold to a third party without the cooperation of the children who are the remainder interest holders.

Now when Pat passes, the house *will not* go through probate, since at her death the ownership will pass automatically to the holders of the remainder interest, the children. Although the property will not be included in Pat's *probate* estate, it will be included in her *taxable* estate. The downside of this strategy is that depending on the size of the estate and the state's estate tax threshold, the property may be subject to estate taxation. The upside to this strategy is that this can mean a significant reduction in the tax on capital gains when the children sell the property because they will receive a "step up" in the property's basis.

For the Medicaid issue the benefit is that in many states, once the house passes to the children the state *cannot recover* against it for any Medicaid expenses that may have been incurred.

Spending Down



As part of Medicaid Planning applicants for Medicaid and their spouses may protect savings by spending them on non-countable assets. These expenditures may include:

- prepaying funeral expenses
- paying off a mortgage
- buying a new home
- making repairs to a home
- replacing an old automobile
- updating home furnishings
- paying for more care at home

In the case of married couples, it is often important that any spend-down steps be taken only after the unhealthy spouse moves to a nursing home if this would affect the community spouse's resource allowance.

Immediate Annuities

Immediate annuities can be used for Medicaid planning tools for spouses of nursing home residents. For single individuals, they are usually less useful. An immediate annuity is a contract with an insurance company which the consumer pays a certain amount of money to the company and the company sends the consumer a monthly check for the rest of their life. In most states the purchase of an annuity is not considered to be a transfer for the purpose of eligibility for Medicaid, but instead is considered a purchase of an investment. This strategy will thus turn countable assets into a non-countable income stream.

For the annuity purchase to not to be considered a transfer, it must meet three basic requirements: (1) it must be irrevocable--you cannot have the right to take the funds out of the annuity except through the monthly payments. (2) You must receive back at least what you paid into the annuity during your actuarial life expectancy.

For example, let's say you have an actuarial life expectancy of 10 years, and you pay \$60,000 for an annuity, you would then need to receive annuity payments of at least \$500 a month ($\$500 \times 12 \times 10 = \$60,000$). (3) If you purchase an annuity with a term certain, then it must be shorter than your



actuarial life expectancy. (4) Under the DRA, the state must be named the remainder beneficiary up to the amount of Medicaid paid on the annuitant's behalf.

The Attorney's Role

Do you need an attorney for even "simple" Medicaid planning? This depends on your situation, but in most cases, the prudent answer would be "yes."

To Your Success,
Brokers Choice of America

**As with any financial transaction make sure to consult your CPA or tax attorney as well as your Financial Advisor for the most appropriate information as it applies to you individually. This article is written only to provide a basic understanding of the above concept.*

Disclaimer: BCA Universities are a trademarked marketing name of a course offered by BCA Marketing. BCA Universities are not accredited by any organization of higher education nor are any courses approved for C.E. (Continuing Educating) credits for any professional license.