

Medicaid and Long-Term Care Planning



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Long-Term Care Planning (Medicaid)

- People are living longer and costs of long-term care continue to rise
- Protects spouse that remains in the home while other spouse moves to nursing home
 - Medicaid rules for eligibility are complex!
 - May need to have one spouse disinherit the other spouse
 - May need to have assets transferred between spouses
 - May need to adjust assets holdings
 - May need Medical Assistance Income Trust if income is too high
 - May need to purchase Medicaid Annuity



Medicaid Basic Eligibility

Non-Financial

- Age or Disability
 - Age 65 or older;
 - Blind; or
 - Disabled
- Proving Disability for those under age 65
 - Receives federal disability benefits (SSI); or
 - Unable to engage in any “substantial gainful activity” because of a severe physical or mental impairment. The impairment must be medically documented and must be expected to last continuously for 12 months or result in death



Medicaid: Basic Eligibility - Financial

- Income of about \$2,313 / Month, or less
 - amount is adjusted annually for inflation
- “Countable” Resources of \$2,000 or less
- Timing of Application – should file application when entering nursing facility
 - DHS will look at financial information as of the first day of the month that person enters care center



Income Test

- Limit: \$2,313 / month (for 2019)
- Only the applicant's income is counted
 - For married couples, spouse's income is NOT included
- Income includes anything a person receives in cash or in-kind to meet the person's basic need of food, clothing or shelter.
- Income is typically projected using income amounts from 3 months prior to application



Spousal Allowance

- “Community Spouse” is entitled to at least \$3,160.50/ month (for 2019) (the Minimum Monthly Maintenance Needs Allowance or MMMNA)
- If Community Spouse’s income is not at or above the MMMNA, then Custodial Spouse’s income can be diverted to the Community Spouse to extent necessary to bring monthly income up to the MMMNA



Miller Trust

- If applicant's income is above \$2,313 (but below average monthly nursing home costs of about \$5,700) and is not sufficient to pay monthly nursing home and medical expenses, then applicant needs a Miller Trust
- Legally referred to as a Medical Assistance Income Trust – Iowa Code Chapter 633C
- Applicant assigns all income to the Trust
 - \$10 may be paid to trustee
 - \$50 to Applicant each month for personal expenses
 - Amount necessary to give community spouse MMMNA is diverted to community spouse
 - Rest of income distributed to care center
 - Medicaid pays balance owed
 - Any assets at death are paid to Medicaid Recovery (to extent benefits had been paid by Medicaid)



Attribution of Resources

- Upon entering Medicaid eligible facility, DHS will do attribution of countable resources
 - Half to “Community Spouse”
 - Half to “Custodial Spouse”
 - Community Spouse is entitled to at least \$25,284, but no more than \$126,420 (for 2019)



Countable v. Non-Countable Resources

- Assets of both spouses are counted – does not matter which spouse owns the asset (different than the income test)
- Non-countable
 - Homestead – includes home and all contiguous land and buildings
 - One car – regardless of value
 - All household goods and personal effects
 - Prepaid funeral
 - Burial plot
- Countable
 - Everything else, including life estates, interest in trusts



The Spend-down

- Does NOT need to be spent on medical and nursing home care
- Can be spent on anything that benefit's applicant or applicant's spouse
 - Burial plots and funerals
 - Pay off debts and mortgage
 - Buy furniture, TVs, clothes, household furnishings
 - Fix up the homestead (new roof, remodel, etc.)
 - Take a vacation
- Wait until AFTER applicant enters nursing home to make these expenditures as part of the spend-down down



Life Estates

- Very effective way to protect property for descendants
- Transfer property (usually farm), retain life estate
 - Transfer is subject to 5 year look back
 - Value of retained life estate after 5 years is determined by actuarial value using appraisal of property and life expectancy; can use a lower value if documentation is provided to show lower value than table
 - Property still qualifies for homestead exemption (if it is person's home)
 - Once transferor needs care, remainderman can buy life estate
 - If transferor does not ever become Medicaid qualified, then entire property receives stepped up basis under IRC §2036 (retained interest)



Mortgage the House Before Application for Benefits?

- Use of a Mortgage is effective way to manipulate the attribution and spend-down
 - Example – Couple with \$100,000 in cash (countable) and a \$100,000 home (non-countable);
 - Attribution: \$50,000 to each spouse; spend-down equals \$48,000 (\$50,000 - \$2,000)
 - Community Spouse ends up with \$50,000 and the home worth \$100,000
- Take out a mortgage on house for \$100,000 prior to entering nursing facility
 - Now have \$200,000 in cash and \$100,000 home and \$100,000 in debt; attribution results in \$100,000 to each spouse
 - Spend-down equals \$98,000 (\$100,000 - \$2,000); immediately pay off the mortgage and applicant has used entire spend-down amount to pay off mortgage and now qualifies for Medicaid benefits
 - Community Spouse keeps \$100,000 in cash and the home worth \$100,000
- Mortgage does not need to be given to a bank – properly papered loan and mortgage from family members can save transaction costs (borrow from a child if possible)

Trusts

- Transfers to a Trust are subject to the 5 year look back period
- Assets will be included to the extent that applicant or applicant's spouse could potentially receive income or principal from trust
- Cases from other states indicate that a trust for benefit of one spouse will be imputed as asset of the other (distributions from a trust benefit both spouses)
- Although similar to a life estate, trusts are clearly treated differently for Medicaid eligibility
- If you use a trust, best to
 - Trustee should be someone other than grantor or spouse
 - Give trustee no discretion whatsoever over distributions (income only or percentage each year)
- Most cases on trusts deal with Medicaid Recovery and find that trust assets are subject to recovery
 - See In re Barkema Trust, 690 N.W.2d 50, 54 (Iowa 2004); (discretionary support trust)
 - See In re Estate of Gist, 763 N.W.2d 561, 568 (Iowa 2009); (discretionary trust with standards)



Divorce - Is this the answer?

- Rarely, but yes in certain situations; good idea when
 - There is a Premarital Agreement
 - Custodial spouse has bulk of assets
- Some clients think it is a good hedge; why not protect at least half of the assets – statistically, if they have enough assets (over \$226,000) to even consider this strategy, then custodial spouse will likely die before qualifying for Medicaid (average stay in the nursing home is around 2 years)
- Scaring clients (especially second marriages) about the cost of nursing home care and fact that they may be liable for spouse's care can often provide catalyst necessary for them to have a Premarital Agreement



Medicaid-Qualified Annuities

- May want to consider the purchase of a Medicaid-Qualified Annuity
- Medicaid-Qualified Annuity must
 - Be irrevocable and non-assignable
 - Be actuarially sound
 - Provide for equal payments during term with no deferral or balloon payment
 - Name the state of Iowa as remainder beneficiary
 - Either first position; or
 - Second position after spouse or minor or disabled child
- Use this annuity to convert countable resources that would be spent down into income for community spouse



Rules: Transfer of Assets

- Spending and/or wasting money is fine, gifting is NOT
- Iowa Code Chapter 249A governs rules on transfers
- If applicant has transferred non-exempt assets or his or her home prior to making Medicaid application, then DHS will calculate a “penalty”
 - Penalty is amount of time applicant could have paid for own care had the transfer not been made
 - Look-back period: 5 years
 - Transfer of resources for less than fair market value in order to obtain public assistance is criminal – serious misdemeanor under Iowa Code §714.8(12)
 - DHS can recover gift from the donee under Iowa Code §249F.2



Transfer of Assets

- Transfers include
 - Disclaiming an inheritance
 - Failing to claim spousal share of community spouse's estate



Transfer Rules – Exceptions Iowa Code Chapter 249F

- Transfers to Spouse
- Transfer of home to either
 - Sibling of the transferor who has an equity interest in the dwelling and who was residing in dwelling for at least one year prior to date transferor became institutionalized
 - Child of transferor who resided in the dwelling for at least 2 years before institutionalization and who provided care to the transferor so he or she could remain in the dwelling (large exception)
- Other small exceptions for disabled children of applicants.

Medicaid Recovery

- Upon death of person who has received Medicaid benefits, state will seek repayment from his or her estate and other assets
- No recovery from assets passing to surviving spouse
- Upon surviving spouse's later death, recovery only up to the amount surviving spouse received property from custodial spouse
 - Lesson: transfer all assets to Community Spouse prior to Custodial Spouse's name prior to death – can avoid recovery completely
 - Give Business Power of Attorney power to at least make gifts to spouse; Custodial Spouse is often incompetent and can not make gifts himself or herself



Medicaid Recovery - Continued

- Assets subject to recovery
 - Pretty much everything and then some
 - Retained life estates
 - See In re Estate of Laughead, 696 N.W.2d 312, 316 (Iowa 2005) (estate for Medicaid recovery is broader than probate estate)
 - Joint tenancy property
 - See In re Estate of Serovy, 711 N.W.2d 290, 293 (Iowa 2006)
 - Annuities
 - Trusts
- Life insurance proceeds are NOT subject to recovery



No Brainers

- Transfer all property to Community Spouse (prevent recovery when community spouse dies)
- Community Spouse executes new will and beneficiary designations
 - Disinherit Custodial Spouse to extent possible
- Convert countable resources into non-countable resources as part of spend-down
- Consider the Medicaid-Qualified annuity





Questions?

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