

UNDERSTANDING

Medicaid Eligibility for Nursing Home Care

By Norma Scales Schmidt, Esq.

The average cost of nursing home care in Pennsylvania for 2008 is more than \$80,000 a year. Understandably, many people are concerned that a nursing home stay could quickly wipe out an entire lifetime of savings. Most people do not have long-term care insurance, and although most seniors are insured by Medicare, this social insurance program was designed for short-term (acute) care and has only limited coverage for long-term (chronic) nursing care. This means that most people would have to spend their own money to pay for care in a nursing home, until they were poor enough to qualify for Medicaid.

For Medicaid to pay for nursing home care, a single person must own no more than \$2,400 or \$8,000 of "countable" resources depending on their income. (People with less than \$1,911 of income a month can have up to \$8,000, but anything over \$2,400 in their estate when they die will be subject to a Medicaid "estate recovery" claim, as explained later). Some things do not count toward the resource limit. This includes a car, a home, up to \$1,000 cash value on life insurance, an irrevocable pre-paid funeral, and household goods and personal effects. For a married couple, there are special Medicaid rules to help protect the spouse remaining at home (i.e., the "community spouse"). For example, the

community spouse can keep half of the couple's total countable assets, up to \$104,400, as well as the community spouse's own IRA. If the community spouse does not have enough income, he or she may also be permitted to keep some of the income of the spouse in the nursing home.

People are often very concerned about losing their home if nursing home care is needed. Because the home is a "non-countable resource," a person can own a home and still qualify for Medicaid to pay for long-term care. The problem, however, is that when someone over the age of 55 receives Medicaid for nursing home care, the Department of Public Welfare (DPW) will have a claim against a probate estate over \$2,400 when he or she dies, for the total value of the Medicaid received. This is called "Medicaid Estate Recovery". If the home is part of the probate estate, it will be subject to Medicaid Estate Recovery and will likely have to be sold to pay the claim. For a married couple, if one spouse needs nursing home care but the other spouse remains at home, the house is fully protected and will not be subject to Medicaid Estate Recovery if the spouse in the nursing home passes away first. However, if the community spouse dies first, then unless the home had previously been transferred out of joint names and into the community spouse's name alone, it would be left in the name of the nursing-home spouse, putting it at risk for Medicaid Estate Recovery.

Many people wonder if they can give money away in order to become eligible for Medicaid sooner. The application for long-term care Medicaid currently asks about any transfers of assets made within the past 36 months (three years). This is referred to as the "look-back" period. (In the Deficit Reduction Act of 2005, federal law changed the look-back period to 60 months (five years) for any gifts made on or after February 8, 2006). If money or property was given away, or sold for less than fair market value, within the applicable look-back period, there will be a period for ineligibility for Medicaid. The length of the penalty period depends on the amount that was transferred. As of January 1, 2008, a person will be ineligible for long-term care Medicaid for one month for every \$6,942 given away. (This \$6,942 represents the 2008 average

monthly cost of nursing home care in Pennsylvania and is known as the "state divisor" for calculating Medicaid ineligibility). Here is an example, which for ease of calculation will assume a state divisor of \$7,000:

Alice gave \$10,000 to her son in January 2007, and then transferred her house (worth \$60,000) to her daughter in May 2007. In February 2008 Alice entered a nursing home. She had enough money to pay for her own care for six months, but by August 2008 Alice was nearly out of money and her daughter applied for Medicaid for her. Because the gifts Alice had made to her children within the look-back period totaled \$70,000, she will be ineligible for Medicaid for 10 months (\$70,000 of gifts divided by \$7,000), or until June 2009.

Of course, Alice is very concerned how she will pay for the nursing home for these next ten months, and unfortunately the law does not provide a clear answer. It is therefore very important that anyone who may apply for Medicaid to pay for long-term care within the next five years be very careful about making large gifts or transfers of money or real estate.

However, despite the strict rules, there are often ways to help seniors needing nursing home care qualify for Medicaid without spending most or all of their life savings on the nursing home or losing their home to Medicaid Estate Recovery. These legal strategies may include purchasing "non-countable" resources, paying for home improvements, purchasing certain kinds of annuities, transferring assets to a loved one with a disability, setting up special kinds of trusts, or the strategic use of gifting, loans, and promissory notes. A qualified elder law attorney will be able to identify which options make sense in a particular situation. **CG**

The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law / disability law attorney.

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