Retired Investor

A series devoted to the issues that face investors in retirement.

Common Questions About Medicaid and Medicaid Planning

Medicaid is a needs-based medical assistance program administered by federal and state governments. It provides a wide range of medical services to the aged and disabled. You cannot exceed certain income and resource limits if you wish to qualify for Medicaid; you will probably need to "spend down" your assets until you reach required minimums before you are eligible.

State and federal governments continue to tinker with Medicaid eligibility and spend-down rules. Planning opportunities are currently available (even though a spouse may already be in a nursing home) that may not be available in the future. Even better planning opportunities exist if neither spouse is in a skilled care facility.

What Kind of Restrictions Can Medicaid Put on My Assets?

Medicaid will take a large portion of your assets in return for paying your skilled care costs. The amount left to you for personal expenses is called a "countable resource allowance." It is based on your "countable resources," which generally include all of your assets except the following:

- Your residence (if you have a non-disabled spouse or you plan to return to your residence from the nursing home);
- A motor vehicle, within certain parameters;
- Personal effects and household goods, within certain parameters;
- Life insurance, within severe parameters;
- Property used in an operating business or trade;
- A community spouse's retirement funds;
- Non-home real property listed for sale;
- Non-home real property jointly owned with another (exempt when the other owner refuses to sell or a sale would cause "undue hardship" to the other owner);
- Funds received to replace lost, damaged or stolen excluded resources; and
- Burial spaces and arrangements.

Note that the above exceptions may not apply in every state. In most states, the individual countable resource allowance is $2,000. The countable resource allowance for the community spouse (i.e., the spouse who is not in a skilled care facility) is generally somewhere between $50,000 and $120,000 depending on the amount of countable assets owned by husband and/or wife. Countable assets over this amount usually must be spent before the disabled spouse is eligible for Medicaid.

What About Medicare? Won't Medicare Help?

Many people mistakenly believe that Medicare will cover the cost of a nursing home stay. In fact, Medicare pays less than 5% of nursing home costs. Furthermore, Medicare only provides coverage for skilled care, with up to 100 nursing home bed days available. Additionally, Medicare does not provide any coverage for the most common type of nursing home care, which is defined as "custodial care."

What Does Medicaid Cover? What Does It Not Cover?

Medicaid coverage includes the following:

- Inpatient and outpatient hospital services and clinic services,
- Skilled and intermediate nursing home services and physicians' charges,
- Physical rehabilitation, and
- Psychiatric care.

Medicaid also covers the cost of drugs, medical supplies, tests and X-rays, prosthetic devices, dialysis and transportation. Medicare supplemental insurance plans may have some gaps; Medicaid covers virtually all of them. Medicaid may also pay for deductibles and co-pays of Medicare Part A and Part B. Under Medicaid, most medically necessary services (including nursing home care) have no maximum stays.

Medicaid does not cover some personal expenses, such as haircuts, beauty shop charges and clothing. However, once an individual is qualified for Medicaid, he or she may retain a portion of his or her monthly income to meet these expenditures. This allocation is defined as a "monthly personal needs benefit." The monthly personal needs benefit is generally around $65.

My Wife and I Are in Good Health, and We Have a Good Estate Plan. Why Do We Need This?

It's hard to ignore the implications of increasing long-term care costs and longer life spans. A 2003 study conducted by the Agency for Health Care Policy and Research projected that 43% of Americans who reach age 65 or older will spend time in a nursing home; 24% of the same group will spend at least one year. A 2003 congressional survey stated that 70% of single residents reached the poverty level (countable assets less than $2,000) after spending only 13 weeks in a nursing home, while 50% of couples, with one spouse in a nursing home, reached the same poverty level within only six months.

How do you best finance a long-term nursing home stay? When you consider (1) the likelihood of a nursing home stay; (2) the annual cost of a nursing home stay, which ranges nationally between $50,000 to well over $100,000; and (3) the many regulations that can make it difficult to preserve assets while making the disabled spouse eligible for Medicaid, it should be clear that some planning is necessary for every family.

Over and over again, we have seen instances where prior planning would have preserved assets, while permitting the full use of government benefits to cover long-term health care costs. Alternative means still remain available to protect assets. Your assets may be protected if you plan.

What Estate Planning Options Are Available?

Medicaid planning involves the development of a strategy to preserve your assets to the maximum extent possible. All plans are different because all individuals and families have different assets and different needs. There are many options available to you to preserve assets and still become eligible for Medicaid. Depending on the laws of your state of residence, some of these strategies might include the following:

- Some forms of gifting;
- Converting countable assets to non-countable assets;
- Making capital expenditures on non-countable assets;
- Life estates;
- Irrevocable trusts, including Medicaid asset protection trusts;

An estate planning attorney can help identify the strategies that are best for you and your family.

What Is a Medicaid Asset Protection Trust?

A Medicaid asset protection trust can be a highly effective estate planning tool, allowing an individual or a couple to transfer some of their assets into a trust to hold and manage these assets during their lifetimes. Upon death, the remainder can be distributed to designated beneficiaries in accordance with the provisions of the trust.

In order for the assets transferred to a Medicaid asset protection trust to qualify as non-countable for Medicaid qualification purposes, and subject to state-specific rules, the trust must meet certain requirements:

- The trust must be irrevocable;
- The trust must name someone other than you or your spouse as the trustee, typically an adult child or children;
- The trust must limit your access to income only;
- The principal of the trust must be unavailable to you; and
- The trust is subject to a "look-back period" of up to several years. This means that the assets transferred to the trust are not protected until the required number of years have passed since the date of transfer. (The number of years for this look-back period varies from state to state, but is typically either three years (e.g., New Mexico) or five years (e.g., Wisconsin.)

A Medicaid asset protection trust is not an appropriate planning strategy for everyone. For many people, the loss of control and the loss of access to the value of their assets do not justify the end result of protecting these assets, ultimately for the benefit of their children. Further, for those who do not wish to limit themselves in old age only to the care available to Medicaid recipients, exploring long-term care insurance options might be a better and more flexible approach than intentional Medicaid qualification.

However, in certain circumstances, and provided a person is willing to divest his or her assets to an irrevocable Medicaid asset protection trust, this type of trust can prove quite effective. For example, when the asset the person wishes to protect is real estate being used as his or her home, the Medicaid asset protection trust can include provisions allowing the person to continue residing in the home for his or her lifetime without paying rent. If the person wishes to downsize at some time in the future, the trustee of the trust can sell the real estate and purchase a smaller residence in the name of the trust. Provided he or she is past the look-back period, then when he or she is admitted to a nursing home, the real estate is considered a non-countable asset—even if the person does not plan to return home. The trustee is free to sell the real estate and invest the net sale proceeds. Upon the individual's death, the assets remaining in the trust can be distributed outside of probate directly to the designated beneficiaries with no payback requirement. Similarly, this approach can work well for family farms, allowing the person to use the income from the farming operation for his or her lifetime while preserving the value of the real estate in the event that he or she ends up in a nursing home at some time in the future.

If you are interested in Medicaid planning, you should consult with a qualified estate planning attorney well in advance of your anticipated nursing home admission.

—by John Horn and Dera L. Johnsen-Tracy, co-founders of Horn & Johnsen SC law firm.