

PLANNING FOR LONG-TERM CARE MEDICAID COVERAGE IN TEXAS

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The Medicaid Program

1. Medicaid Defined - Created under Title XIX of the Social Security Act in 1965 to provide medical assistance for individuals and families with low income and resources. Jointly funded by federal and state governments. In Texas, most funds come from the federal government. Each state establishes its own eligibility standards, determines the type, duration, amount and scope of services, sets the rate of payment for services and administers its own program within the federal guidelines.

2. Medicare vs. Medicaid. Medicare is a federally funded healthcare insurance program that pays allowable medical expenses for enrollees (65 and over, eligible for Social Security and enrolls in Medicare). Medicaid is a tax-supported entitlement to anyone of age that meets the state medical and financial eligibility requirements. If person is in a hospital for 3 days, Medicare will pay 100% of charges for skilled nursing care for the first 20 days. Thereafter, the patient has a co-payment of \$114.00 a day (in year 2004) for days 21 through 100 and Medicare pays the difference (which is not guaranteed - only as long as there is progress). There is no Medicare coverage after the 100th day. This leaves Medicaid, long-term care insurance and private pay to cover the cost of long-term skilled nursing care.

3. Reasons to avoid Medicaid.

A. Must prove a "medical necessity for nursing home care" - might need care, but not at that level.

B. Possibility of better care.

C. Must have a "Medicaid bed" available.

D. Client's values.

Unfortunately, many people do not qualify for long-term care insurance (most realize that they have a problem until there is a crisis) or the cost is prohibitive.

4. Requirements for Medicaid eligibility in Texas

A. Nationality and residence.

B. Age, Blindness or Disability - either 65 or blind or disabled

C. Medical Necessity

D. Income - Texas is an income cap state. If an individual seeking eligibility has gross income (typically, Social Security or pension

income) greater than the cap or if both members of a married couple seek eligibility, then there is ineligibility for Medicaid unless a "Miller" or "qualified income" trust is created. Sometimes a qualified domestic relations order can also be obtained if there is a community spouse whose income is high and who does not seek Medicaid. The income cap in year 2005 is \$1737 per month for a single person and \$3384 for a married couple both seeking Medicaid.

1. Miller Trust - income only (not resources) is placed into this irrevocable trust. The beneficiary receives a personal needs allowance (presently \$45 in most cases) If there is a community spouse, there may be a diversion of income up to the minimum monthly maintenance needs allowance (\$2377.50 in year 2005). If there is anything left at the time of death, then the state is to be the beneficiary. This is the legislative solution for those who make too much income for Medicaid eligibility, but whose income is less than the cost of a nursing home. The nursing home would then receive the income that is not used for a personal needs allowance, supplemental health insurance premiums or income diverted to the community spouse.

2. Qualified domestic relations orders - could be used where a qualified pension plus the community spouse's income is greater than the minimum monthly maintenance needs allowance.

3. Long-term care insurance benefits are not counted as income, but rather as "third party resources". As long as they are paid directly to the nursing home, they do not effect Medicaid eligibility. The effect of the benefits will be reduce or eliminate the amount the Medicaid program will have to pay for nursing home costs.

E. Resources (assets) that are not counted (not a total list):

1. Homestead.
2. Household goods and personal effects.
3. Car - regardless of value and sometimes a second car in certain spousal situations.
4. Term and burial insurance (has no cash surrender value).
5. Whole or universal life insurance if the face value is less than \$1500.
6. Pre-need burial (must be irrevocable)
7. Burial spaces for immediate family (one generation up, down and sideways with some exceptions plus the spouses of such individuals).
8. Resources essential for self-support (i.e., family business).
9. Certain mineral interests (< \$6000 + 6% rate of return).
10. Certain annuities (best used when there is a married couple and community spouse has high income if nursing home or hospital entry was prior to September 1, 2004 or when non-countable resource

income of both spouses is too great to expand if nursing home or hospital entry is on or after September 1, 2004).

It should be noted that other resources could be kept in spousal impoverishment cases depending on the income of the community spouse.

5. Understanding the Medicaid "spend down"

a. Resources are counted as of 12:01 a.m. of the first day of the first month in which the client is institutionalized for 30 or more consecutive days. Generally all resources count (except the resources listed above). If you are single, you can only have \$2000 of countable resources if you apply for Medicaid. If both members of a married couple apply for Medicaid, then only \$3000 or \$4000 can be kept of countable resources. If there is a spouse that stays at home (the "community spouse"), then there is a determination of the "protected resource amount" ("PRA") - which is the amount that can be kept by the community spouse (unless there is an expansion of the PRA which can be done if the income of the community spouse is low enough for nursing home or hospitalization prior to 9/1/04 or in cases of nursing home or hospital entry on or after 9/04 if the non-countable resource of both spouses is low enough - lower than the minimum monthly needs allowance which is presently \$2377.50 per month in year 2005). Until the applicant (if single) reaches only \$2000 of countable resources as of 12:01 a.m. of the first day of a month, or until the first day of the month when the couple reaches the PRA, there is not Medicaid eligibility (unless the PRA is expanded).

b. Calculation of the PRA - all countable resources (whether separate or community) of the couple are added as of the snapshot date (the 1st day of the first month of continuous institutionalization). The PRA is the greater of $\frac{1}{2}$ of the couple's countable resources, not to exceed the maximum amount set by federal law (which is \$95,100 in year 2005 - remember this amount may be expanded if the community spouse has income less than the minimum monthly maintenance needs allowance "MMMNA" of \$2377.50) or the minimum set by federal law (which is presently \$19,020).

Examples:

1. \$200,000 of countable resources - PRA is \$95,100 (since $\$200,000/2 = \$100,000 > \$95,100$)

2. \$25,000 of countable resources - PRA is \$19,020 (since $\$25,000/2 = \$12,500 < \$19,020$)

3. \$100,000 of countable resources - PRA is \$50,000 (since $\$100,000/2 = \$50,000$)

c. The PRA can be expanded if the income of the community spouse is less than the MMMNA and nursing home or hospital entry is prior to 9/1/04 or if the non-countable resource income of both spouses is below the MMNA on or after 9/1/04). This is permitted since people were getting divorced to get eligible for Medicaid. Thus, rules were implemented to prevent spousal impoverishment. The lower the non-countable resource income, then the PRA can be expanded to a greater amount. There is a formula set forth in the Medicaid Eligibility Handbook based on current interest rates.

6. Income and Asset Protection and Solutions (for Medicaid)

- a. Income- (1) Miller trusts and (2) QDROs
- b. Resources - (1) purchase of exempt or inaccessible resources (some exceptions)
 - (2) limited gifting (see rules below)
 - (3) pay debts
 - (4) combination of (1), (2) and (3)
 - (5) expansion of PRA

7. Transfer of Resources

a. Look-back period - 36 months on gifts (uncompensated transfers) and 60 months on uncompensated transfers to most trusts(there are a couple of exceptions). Uncompensated transfers made within 3 years from the month in which one applies for Medicaid, could result in a denial of Medicaid eligibility. To determine if there is Medicaid ineligibility, the amount of the uncompensated transfer is divided by the average private pay cost of a nursing home in Texas (presently \$2908). Thus, if the Medicaid applicant gave \$11,000 in January 2005, then there would be ineligibility for January, February and March of 2005 (Texas rounds down). If the same person had made the transfer in January 2004, then the penalty period would have expired (assuming no other uncompensated transfers had been made) even though the gift was made within the look-back period. There is no limit to the amount of the uncompensated transfer beyond the look-back period. However, the penalty period could be devastating if there was an application during the look-back and there was a large uncompensated transfer.

b. Permissible transfers: 1. Transfer of home to spouse, dependent or disabled children, certain siblings and certain caretaker children. 2. Transfers to a spouse. 3. Transfers for fair market value or the resources have been returned. 4. Undue hardship result.

8. The role of Medicaid Planning - preservation of assets and income for the community spouse and heirs; there may be no waiting period (if PRA is expanded); there may be qualification for Medicaid when long-term care insurance cannot be obtained as a

result of medical requirements; the client may not be able to afford long-term care insurance; there can be other planning in the event of disability. The myth that only the very poor can obtain Medicaid eligibility results in many people spending down all of the assets that they worked all of their lives to save.

9. Long-term care insurance in conjunction with Medicaid planning

a. If client is uninsurable or cannot afford long-term care insurance, then the client should get advice on planning for Medicaid eligibility - especially if their assets would otherwise be spent down.

b. If the client is middle class, then perhaps long-term care insurance should be purchased for a limited period of time (3 or 5 years) - so that the premiums are smaller and other assets can still be preserved if there is gifting beyond the look-back period in an attempt to obtain Medicaid.

Other items are often discussed such as offsetting distributions from IRAs or other income by the medical expense income tax deduction for the cost of long-term care. Also, if the community spouse has long-term care insurance, then certain annuities could be possibly be considered if the income of both spouses is too great. The wealthiest of individuals can either be self-insured or get full coverage. The policy may even be setup with the nursing home as a beneficiary so that it does not conflict with some rules regarding treatment of income (if the long-term care insurance was inadequate). Additionally, it should be remembered that Medicaid is limited in its coverage for assisted living and home care - so insurance coverage for these care levels should be considered.

10. Estate recovery - Gov. Perry signed H.B. 2292 on June 10, 2003 which allows recovery against estates of people who received certain Medicaid benefits (such as long term care Medicaid). The final implementation of the law was published on February 18, 2005 and will be effective for those who apply for long-term Medicaid on or after March 1, 2005 subject to any legislation which could change this. There are several exemptions for the homestead (which is generally the most likely asset for there to be a claim against - such as a surviving spouse, a disabled child living in the homestead, etc.). However, it is imperative for those who anticipate receiving such benefits to have their estate planning documents reviewed if they desire to plan to avoid or reduce the effects of estate recovery, if possible. The proposal as it stands now is that homes under \$100,000 shall be exempt from claims against the probate estate if the income of the heirs is less than 300% of the poverty level. Also, those who apply before March 1, 2005 or the date the law changes shall be grandfathered from any claims.

11. Summary

Careful selection of a long-term care insurance policy is a reasonable option for many to provide peace of mind while permitting the passing of their estate to their heirs. However, often seniors cannot afford such insurance and Medicaid may provide a safety net for them. Sometimes, one can purchase long-term care insurance yet still keep their Medicaid options open. The complexities of Medicaid (which often change), the existence of useful options and the potentially devastating financial impact of poor decisions makes it imperative that seniors received good advice about their options from a professional who is well-versed in Medicaid laws, rules and regulations in their state (it should be noted that a non-attorney who helps an individual obtain Medicaid and gets any remuneration for such advice is in violation of a criminal act in Texas - not to mentioned that is the unauthorized practice of law). The planning process should give peace of mind to seniors and their families and give them some flexibility and control over events that could occur.