Medicaid Issues

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LONG-TERM CARE PROJECTIONS

- **More than 12,000,000 Americans over age 65 need some type of long term care.**
- **Most Americans do not have insurance for the cost of long-term care.**

WHO NEEDS LONG TERM CARE?

- **Women: make up 85% of nursing home population**
- **20% of today’s 65 year olds will need long term care for more than 5 years**
- **Someone turning age 65 today has almost a 70% chance of needing some type of long term care services and supports in their remaining years**

What are the Costs of Care?

- **Average annual costs for paid care:**
  - **Nursing home ~ $85,000 to $105,000**
  - **Assisted living facilities = $34,200 to $72,000**
  - **Home and community-based care = $35,770 at 4 hours/day x $24.50/hour**

PAYING FOR LONG-TERM CARE

- **Private Payments**
- **LTC Insurance**
- **Medicaid**
- **Veterans Special Pension Benefit**

  (Aid & Attendance/ Housebound)
- ***Medicare*** ☠ **- no LTC!**

MEDICARE

- Three Days Hospital Stay

- **Up to** 100 days of SNF coverage:
  - 20 Days Full Coverage
  - 80 Days Co-Payment **$185.50/day 2021**

- No Financial Requirements

Medicaid versus Medicare

	Medicaid	**Medicare**
Qualifications	Categorical & Financial eligibility requirements	Age or Disability requirements
Administration	Federal & State DFR & Private Contractors	Federal SSA & Private Companies
Coverage	Varies state to state	Same
Services	Many medical and non-medical services	Limited services and time frames

Can Medicaid pay for:

- Home Care – YES!

- Adult Foster Care – YES!

- Assisted Living – YES!

- Nursing Facility – YES!

THE MEDICAID BASICS
Part 1

Preparation of good legal documents, including thorough power of attorney and a will with special needs trust for the applicant spouse

Special Provisions in POA

- **General authority to apply for public benefits of any kind, to represent my interests in obtaining and maintaining benefits, to create a Qualified Income ("Miller") trust, and to make assignment of medical rights in a Medicaid application or redetermination process.**
- **Expanded gifting authority**
- **Fees for services**
- **Know the statutory limitations!**

THE MEDICAID BASICS PART 2

- Resource eligibility and asset preservation

- Awareness of estate recovery by the State

- Knowledge of the complex transfer of asset laws and evaluation of gifts the applicant may have made

RESOURCE LIMITS

- $2,000 for Single Person
- $3,000 for Married Couple if both in community or both in an institution.
- Different rules (spousal impoverishment rules) apply if one spouse in nursing home or receiving “waiver” services

LIQUID VS. NON-LIQUID

- **LIQUID: CONVERTS TO CASH WITHIN 20 DAYS**

- **NON-LIQUID: CANNOT BE CONVERTED WITHIN 20 BUSINESS DAYS**

Special Exemptions

- Up to $1,500 of any separately identifiable funds or assets which have been set aside for burial can be excluded.
- One motor vehicle of any value is exempt
- Equity value of real property owned <u>solely</u> by CS (or jointly with someone other than IS) IHCPPM §§ 2620.15.30, 2635.10.10.05.
- Retirement accounts owned by CS

RETIREMENT ACCOUNTS

IHCPPM §2615.15.00 exempts:

- Individual Retirement Accounts (IRAs)
- Keogh Plans
- 401K Plans
- Pensions, annuities and work related plans
- Some profit sharing plans

if owned by non-eligible spouse.

BEWARE ANNUITIES!

- Must be irrevocable and non-assignable to be “non-countable”

- BUT: Remember to do a **transfer of asset analysis**!

DRA Rules on Annuities

- Apply to Annuities Purchased on or after 11/1/09
- Also Apply to Annuities with significant changes on or after 11/1/09, such as annuitized, change in ownership, etc.
- Do not apply if minor changes only, such as change of address, notification of death of a beneficiary, etc.
- Look back rules still apply, so applies to annuities purchased within look back period.

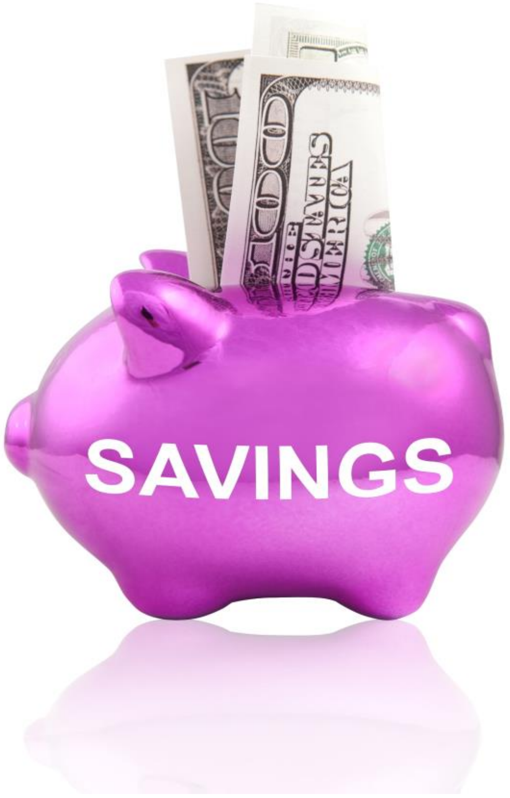
To Avoid Penalizable Transfer

- Annuity purchased by applicant or spouse MUST name state as the remainder beneficiary for at least the total amount of medical assistance paid **on the behalf of the applicant for medical assistance**
- State can be in 2nd position if there is a community spouse and/or minor or disabled child

Additional Exemptions

- Business Accounts: IHCPPM §2615.10.05.05 – must be clearly labeled
- HSA accounts: IHCPPM §2627.00.00
- Able accounts for those whose disability began before age 26 -- up to $100,000

529 PLANS: §2615.10.20 EXEMPT



EXEMPT REAL ESTATE

- Home of applicant, recipient, spouse

- Income producing property
- Property used to produce
  food for home consumption
- Burial spaces

Exempt Real Estate (cont.)

- Property owned JTWROS
  - By recipient / applicant & other not financially responsible for recipient / applicant
- Life estates – offer for rent or sale
- IHCPPM § 2620.15.30: Real estate owned in name of CS if:
  - Applicant / recipient spouse resides in nursing home or hospital or receives waiver services

SPOUSAL SHARE RESOURCE LIMITS 2021

- Floor (Minimum) $26,076
- Ceiling (Maximum) $130,380
- ½ the total countable resources
- Indexed to inflation

$260,760 or greater	Ceiling: $130,380
$100,000	$50,000
$26,076 to $52,152	Floor
$26,076 or less	All

Transfers of Assets

- **Many misconceptions about the gift rules.**
- **Not all gifts are subject to penalty**
- **Beware the IRS "exclusion" gift of $15,000 per year per person**
- **You can't just "get everything out of Mom's name" to make her eligible for Medicaid!**

Issues in Considering Transfers

- How far back are transfers considered? (Look back)
- Is this transaction a “transfer of assets?”
- Is this transaction exempt from a penalty?
- What is the “uncompensated value” of the transfer?
- If there is a penalty, how long is it and when does it run?

Look Back

- Look Back 5 Years.

- Look Back from “Baseline” Date: first date is in a nursing home (or receiving waiver services) and has applied for Medicaid.

- **Each person has one Baseline Date.**

Remember Forward Effect of Transfers

Transfer now will be considered for 5 years forward if one needs institutional Medicaid within 5 years.

Is there a “transfer of assets”?

- “Assets” include income and resources using SSI rules, except for home, where specific rules apply.
- So there is no penalty for transferring resources (exc. home) exempt under SSI

Exempt Transfers

- Adequate Compensation
- Transfers to spouse
- Transfers to disabled child, or trust for disabled
- The Home if certain criteria met
- Exclusively other than to qualify for Medicaid
- Assets protected by Partnership Policy
- Property used in a trade or business
- Federal Tax Refund Within 12 Months
- Undue Hardship

Uncompensated Value of Transfer

Value of item transferred

- Amount paid

= Uncompensated value

(amount to be penalized)

Penalty Period

A period of time during which Medicaid will not pay for nursing home care, waiver services, & certain other services.

Computing the Penalty Period

- Formula used. Divide all amounts of uncompensated value not exempt within look back period by average monthly nursing home cost to determine number of months of penalty

- Current nursing home rate is $6,873

Penalty for Any Transfer?

- **Charitable gifts?**
- **Gifts to church?**
- **Gifts for Christmas?**
- **Birthday gifts?**

Planning Strategy No. 1

- Transfers can be made so long as Retain Sufficient Assets or have Long Term Care Insurance so there will be no need for Medicaid within 5 years of any Gifts. It can be hard to predict outlays that will be needed over a 5 year period.

Planning Strategy No. 2

- Only make transfers that will not cause a penalty period. This is especially important if Medicaid will be needed within five years.

Planning Strategy No. 3

- Make Gifts that Will Result in a Penalty Period, but Use Exempt Assets (either already existing or ones converted, such as annuity or promissory note) to Privately Pay During the Penalty Period. Calculation will be needed to determine how much can be gifted.
- May Need a Miller Trust to be Eligible

CLAIMS AGAINST ESTATES

- Upon the death of a Medicaid recipient, Indiana has a claim against the recipient’s estate for Medicaid benefits received after age 55
- Federal law requires states to recover from probate assets
- Since 2002, Indiana can also pursue claims against non-probate transfers
- Indiana no longer claims against non-Recipient spouse who dies after a recipient spouse

Repayment to State is not Necessarily Bad

- Repayment to State is at Medicaid rate rather than paying provider at private rate
- No interest is being added to the claims for delay in payment.

CLAIMS:
Non-Probate Transfers

- Jointly held financial accounts
- Real estate if held as Joint Tenants with Rights of Survivorship **if the joint tenancy was created after June 30, 2002**
- Property placed in revocable trust **after April 30, 2002**
- Transfer on Death Deed
- Annuities purchased **after May 1, 2005**
- BUT life estate and life ins. cannot be claimed

When There is No Estate Recovery

- Property is needed for support of surviving Spouse, dependent child under age 21, or disabled dependent
- $2,150 for funeral / burial
- Assets protected under Long Term Care Insurance Partnership Program
- Undue Hardship
- No recovery against non-Recipient spouse who dies after Recipient spouse