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Medicaid Planning Outline

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I. Medicaid vs Medicare

A. Medicaid Generally

- (1) **Need based** program for medical and health-related services
- (2) Jointly funded by state and federal governments
- (3) Administered by FL Agency for Health Care Administration
- (4) Eligibility determined by FL Department of Children and Families or the Social Security Administration since a patient receiving Supplemental Social Security Income (SSI) qualifies automatically for Medicaid
- (5) Programs:
 - a. Medicaid ICP – Medicaid Institutionalized Care Program for nursing home expenses
 - b. Long-Term Care Diversion Programs / Assistive Services / Waiver Programs – for care expenses rendered at home or in an ALF (must also meet the ICP rules)
- (6) Does not pay the entire cost of care since patient must first contribute based on their monthly income (Patient Responsibility)
- (7) Medicaid then pays the Medicaid approved rate for the facility less the Patient Responsibility (**much less than private pay rate**)

B. Medicare Generally

- (1) Federal health insurance program for **ALL** persons 65 and older and for certain younger disabled persons
- (2) Does **not** cover long-term nursing home care (or **any** form of custodial care – assistance with activities of daily living)
- (3) Only pays for “skilled nursing care” – medically necessary acute care rendered by skilled personnel ordered and supervised by a physician; once patient is stabilized and condition no longer **improves**, they are deemed to not require skilled nursing care
- (4) Qualifications (to have Medicare pay facility):
 - a. Hospital stay of at least 3 days followed by
 - b. Admission to a Medicare approved skilled nursing facility within 30 days of hospital discharge for same condition for which hospitalized
- (5) Pays entire cost the first 20 days then most (supplemental health insurance policies often pay the co-pay) of the cost the following 80 days (100 day max)
- (6) Only about 2% of nursing home expenses paid by Medicare

II. Medicaid ICP Eligibility

A. 4 Requirements:

- (1) FL resident and US Citizen or Resident Alien
- (2) 65 or older, blind or disabled
- (3) Medical Need – Patient’s condition must limit their activities of daily living to a point where nursing home level of care is needed; determined by the Comprehensive Assessment and Review of Long-Term Care Services (CARES) unit of the Department of Elder affairs
- (4) Financial Need (2 tests discussed below)

B. Income Test (determined **throughout** each month)

- (1) **Gross** monthly income must be \$2,094 or less (includes all sources with no deductions other than \$35 for personal care expenses)
- (2) Community Spouse (spouse who is not receiving Medicaid benefits) income is **not** counted (can be unlimited)
- (3) Minimum Monthly Maintenance Income Allowance (MMMIA) is the amount of income the CS is entitled to receive from the IS determined by adding to CS’ gross monthly income an amount from IS’ income to maintain a reasonable standard of living. Minimum is \$1,839 (but CS can get up to \$2,739 upon a showing of greater expenses). MMMIA is not a Medicaid benefit but rather a diversion of IS’ income reducing the Patient Responsibility thus increasing the amount of nursing home expense paid by Medicaid

C. Resource Test (determined on the first day of each month)

- (1) All assets of the applicant and, if married, the CS, whether held jointly or not, are considered
- (2) Applicant cannot have **countable** assets in excess of \$2,000 (\$5,000 if income is under poverty level which is approx \$800 per month; full funding of Qualified Income Trust allows for \$5,000 in assets)
- (3) CS may retain up to \$113,640 in individual/joint countable assets and may request more if applicant's income falls short of the MMMIA

III. Excluded Resources

A. Homestead

- (1) Married/Dependents – If the spouse of the applicant or certain dependents continue to reside in the homestead, it is not counted as an asset (but what if spouse predeceases)
- (2) Single/No Dependents – The home is not counted as an asset if the applicant “intends to and can be reasonably expected to return to the home” – **however, this protection is limited to \$525,000 of equity**

NOTE: Once the applicant is deceased, if no spouse or dependent is then living in the home, it **may** be subject to Medicaid Estate Recovery; consider use of an enhanced life estate deed

NOTE: Do not put home in a Revocable Trust

B. Vehicles – One vehicle of any age, and a second vehicle if over 7 years old (unless it is a luxury, antique, or custom vehicle) are not countable

C. Personal/Household Goods – Personal items in the home such as furnishings are not countable. Other items such as jewelry or art may be considered countable if deemed collectible

D. Retirement Accounts – IRAs, 401(k)s and other retirement plans are not counted as assets (but are as income) so long as they are properly structured and the owner (applicant or spouse) is taking regular and periodic income distributions (NOT based on the tax MRD rules but rather on life expectancy using SSA determination)

E. Burial Funds and Prepaid Funeral Contracts – If irrevocable, the full value of a burial contract is not counted regardless of the amount or value; if revocable, up to \$2,500 is not counted

F. Income Producing Property – Business interests and real property that generate income to the applicant (or are listed for sale) are not counted

NOTE: **gross** proceeds from rental income is counted towards gross monthly income when applying the Income Test **but** some deductions are provided for some rental expenses

NOTE: Once the applicant is deceased, this property is subject to Medicaid Estate Recovery

G. Life Insurance – All term life insurance policies are excluded since they have no cash value. Whole Life or other forms of cash value life insurance policies with a current cash value may be counted as assets. If the total face value (in other words death benefit) of all policies owned is less than or equal to \$2,500 then the cash value of the total of all policies is excluded. If the total death benefit of all policies exceeds \$2,500 then the cash value of all policies is included in determining the asset test.

H. Properly Structured Immediate Annuities – Assets placed into a properly structured immediate annuity may not be countable provided the contract meets strict Medicaid guidelines

I. Promissory Notes – Not counted as an asset but counted as income; used often in “half the loaf planning” where half assets gifted and half loaned with loan payments to carry out penalty period provided income levels maintained or QIT used for excess income

IV. Gifting

A. Gifts trigger a penalty period equal to the value of any gifts made during the prior 60 months divided by \$5,000 (Medicaid monthly reimbursement rate)

B. Under the DRA, the penalty period will not begin to run until all of the following have occurred:

- (1) Transferor moves to a nursing home or is medically eligible for a diversion program
- (2) Transferor spends assets down to the asset limit for Medicaid eligibility
- (3) Transferor applies for Medicaid coverage, and
- (4) Transferor is approved for coverage but for the transfer penalty

C. Gifts to spouse do not trigger a penalty period

V. Trusts (Depends on whether you are in Planning or Crisis Mode)

A. Asset Protection Trust (“MAPT”) – This trust is created and funded at least 60 months prior to applying for Medicaid. There is no Medicaid “pay back” provision. Features:

- (1) Irrevocable self-settled trust
- (2) Trustee cannot be grantor or spouse but they may retain the right to change the trustee
- (3) All income is paid to grantor for life; can include a provision where income also paid to spouse (remember spouse's income can be unlimited)
- (4) Grantor shall have no right to trust principal; principal may be distributed to other beneficiaries
- (5) Often used to own homestead or other residences (full use of a residence not considered a right to principal)

B. "Pay Back" Trusts – Funded with disabled person's assets AND must contain a "pay back" provision to pay back any Medicaid assistance before other expenses (such as funeral) or disbursements are made. However, the true value is the government makes a "loan" of medical care at substantially reduced Medicaid payment rates and takes a lien, dollar for dollar with no interest, on the funds remaining in the trust if, and only if, there are funds remaining in the trust after the beneficiary dies.

(1) Qualified Income Trust (QIT) / Miller Trust

* Excess income (the amount of income over the income cap) transferred to this trust to allow for Medicaid eligibility; may NOT be funded with other assets (income only)

* Medicaid recipient gives up rights to the income, all of which must be used in the month it is received (if accumulated it becomes a countable resource) for the Medicaid recipient's "cost of care" (determined by DCF such as room, board, etc.)

* Medicaid applicant cannot be trustee but a family member may be a trustee; trustee may not receive compensation

(2) d4A Trust

- Disabled person must be under age 65 and must be the only current beneficiary (trustee and legal fees are ok)
- No funding after beneficiary reaches age 65
- Must be established by a parent, grandparent, legal guardian or a court
- Income and principal is for "special needs only" and is not considered income or an asset of the beneficiary so long as not

paid to beneficiary or for the beneficiary for things otherwise covered by the government (food, shelter, medical care, etc.)

(3) Pooled Special Needs Trust

- Established and managed by a nonprofit association
- Separate account for each beneficiary (of any age so long as disabled – but this could change since it conflicts with SSI rules) but assets pooled for investment management
- Remaining amount in beneficiary’s account at death are either retained in trust for other beneficiaries or subject to Medicaid “pay back”

C. Third Party Trusts – Funded with a third party’s assets and are NOT subject to Medicaid payback rules (be careful to use “special needs language”)

About the Author:



Mr. Naberhaus is a Shareholder in the Viera office and his practice consists mostly of estate planning, transfer tax planning, estate and trust administration, Medicaid planning, and asset protection planning. He is certified by the Florida Bar as an expert in the area of Wills, Trusts and Estates, and has extensive experience working with high net worth individuals. He also practices in the areas of business succession planning, charitable planning, guardianship and probate and trust litigation. He may be reached at RNaberhaus@deanmead.com.