



## Medicaid, Nursing Home Planning, and Asset Protection

Seven out of ten couples, age 65 or older, will have one or both spouses enter a nursing home. The average confinement in a nursing home is 2.9 years, resulting in a cost of \$104,000.00 to \$174,000.00! For those individuals that do not have a policy of insurance that provides for long-term custodial nursing home care, nursing home expenses of this magnitude could constitute a financial disaster. When one spouse enters a nursing home for long term custodial care, obtaining assistance from Medicaid to pay the nursing home bill is often a financial necessity for the community spouse that remains at home.

Frequently, the composition of assets and debts, and the income of an individual, initially render them ineligible for Medicaid benefits. But whether the individual entering the nursing home (the institutionalized person) is married or single, there are often permissible changes that can be made and strategies that can be employed that will enable the institutionalized individual to become eligible for Medicaid benefits.

Assuming that the institutionalized individual is 65 years old or older, then eligibility for Medicaid benefits is based on meeting the following two criteria: first, the individual can have an income no greater than \$1,590.00 per month; and second, the institutionalized spouse can have no more than \$2,000.00 of accountable assets, and the community spouse can have no more than \$87,000.00 of accountable assets. In addition, of course, the institutionalized individual must meet basic medical requirements for eligibility.

### **Income Limit**

Florida is one of many states in which Medicaid eligibility contains an income cap. Until recently, if your gross monthly income exceeded the states income cap, you were completely ineligible for Medicaid benefits. Many people found themselves to be ineligible for Medicaid benefits because their income exceeded the income cap, but their income was still substantially insufficient to pay the average monthly nursing home bill of \$3,000.00 to \$4,000.00.

The inequity has now been resolved by federal statutes, which authorize individuals with income in excess of the income cap to establish a Qualifying Income Trust. For those individuals with an income in excess of the \$1,536.00 Florida income cap, the use of a Qualifying Income Trust will enable them to satisfy the income requirement for Medicaid.



### **Resource or Asset Limits**

In Florida, an institutionalized spouse can have countable assets of no more than \$2,000.00. If married, the community spouse can have countable assets of no more than \$87,000.00. For individuals or couples with assets in excess of these amounts, Medicaid benefits will not be initially available, without engaging in a proper Medicaid restructuring of assets. Those individuals or couples that do not employ an appropriate Medicaid restructuring of assets, will privately pay for nursing home care until the assets have been depleted below the level at which they become eligible for Medicaid benefits. In many instances, private payment of nursing home bills would have been unnecessary with proper legal advice and planning.

The first opportunity for planning arises out of the distinction between accountable assets and non-countable assets. Certain assets, including the individual's residence, household furnishings, automobile, properly structured prepaid burial contracts and a variety of other assets are not countable assets for Medicaid purposes. Other assets such as certificates of deposit, deferred annuities, stocks and bonds are countable assets.

In a simple case, for example, where countable assets such as cash, bank deposits, and investments exceed the asset limits, the excess countable assets can be used to pay off a mortgage on the residence or to purchase prepaid burial accounts or to acquire other non-countable assets. In this way, the spouse can be made immediately eligible for Medicaid benefits.

Since there is no limit on the amount of income that can be received by the community spouse, and since transfers from an institutionalized spouse to a community spouse are permissible, Medicaid eligibility can often be obtained through the transfer of assets from the institutionalized spouse to the community spouse, who then converts such assets into eligible income. For example, excess joint assets can be transferred to the community spouse who then uses the excess assets to purchase a qualifying Medicaid annuity. Since an immediate annuity, which meets specific Medicaid requirements is considered income and not a resource, eligibility can often be obtained in this manner.

There are a variety of strategies that can be employed but they are too numerous and too complex to be addressed in this handout. Where an individual has already been institutionalized, or where there is an expectation that an individual will have to be institutionalized, you should obtain assistance from a knowledgeable professional. The attorney or financial planner consulted by you with respect to these matters should



possess specific knowledge regarding Medicaid rules and regulations. The attempt to perform Medicaid planning, without assistance, or even with the assistance of an attorney or financial planner who is not knowledgeable in Medicaid rules and regulations, could have devastating results. The transfers of assets can result in periods of ineligibility for as long as five years. The acquisition of assets that do not meet Medicaid requirements could result in financial penalties for the subsequent sale or disposition of those assets. We look forward to the opportunity to work with you to obtain Medicaid assistance for your loved ones.