

SOME THINGS YOU SHOULD KNOW ABOUT NURSING HOME MEDICAID

BY BEN KINIRY, ESQ.

Last year I wrote an article regarding Medicaid, specifically the program that pays for care in a nursing home. In this article I would like to take some time to give you some additional tidbits of knowledge that may be helpful if you, or a family member, ever need to apply for Medicaid to pay for a nursing home stay.

Nursing Home Care is Not for Me

I'm well aware no one wants to live in a nursing home, yet there are many of them and they are full of people. The reality is that people are living longer and many of us will require some nursing home care. In other words, nursing home care is a reality that should be properly prepared for (sorry for the tough love). Another reality is the high cost of nursing home care, which can easily exceed \$10,000 per month. Given the high cost, Medicaid may be the only available option to have these services paid for.

This is Not Easy

You should be warned that applying for Medicaid is a complicated task to say the least. You are not likely to know much about the process, have any knowledge of the law or understand any of the potential traps you could fall into (yes, there are traps, and they are unforgiving). Because of the realities of making an application for Medicaid, I would highly suggest that if you ever need to apply on behalf of yourself, or a loved one, that you seek out competent counsel to guide you through the process. Not only will it save you an incredible amount of stress, in the end, it will most likely result in approval of the benefit at an earlier date and potentially leave your spouse in a better financial position.

Married People and Legal Counsel

I would like you to make a mental note regarding married people. For married individuals who will require nursing home care there are a number of steps that can be taken to place the community spouse (the spouse who continues to reside in the family home) in the best possible financial position.

Knowledge of the Medicaid laws and the strategies that can be utilized in order to best preserve family assets and income can likely only be accomplished by those who specialize in this area of the law.

Income Formula

A good example of this knowledge can be found in the income allocation formula. The income



allocation formula determines how much income the *community spouse* may receive from the spouse who moved into the nursing home. Without additional knowledge, the formula would seem to be set in stone. It's possible, however, to go to court under what is called a "Petition for Separate Maintenance." This type of petition is filed in order to request to receive more funds than the state Medicaid formula would otherwise allow (Note: such petitions can be made prior to applying for Medicaid). At the hearing your income, expenses, age and needs are presented to the judge for his consideration.

If you are able to prove that you are in need of additional income, above and beyond what was determined by the state Medicaid formula, then the judge is likely to rule in your favor. This can result in hundreds and sometimes thousands of dollars in allocation to the community spouse per month.

Five Years of Records

It's necessary to understand that any person applying for Medicaid to pay for nursing home care will have to provide five years of financial records prior to the date of the application. *All records* for every bank account, investments, assets, *everything!*

It's the job of the employees at the Department of Health and Human Services (DHHS) to review these records in great detail. DHHS will see your everyday transactions, such as credit card payments, the cable and phone bills all without issue.

However, you may also have written checks made out to cash, or checks with a blank memo lines or even have taken cash withdrawals from ATMs. In such cases DHHS employees will be asking you (or family member) to provide an explanation of how those moneys were spent. Why, what is the point? DHHS will be looking for gifts.

Be Careful with Gifts

The point of the financial review exercise, in large part, is to find out whether or not you have made any gifts in the five years prior to making the application for Medicaid. Gifts are not allowed in the five years prior to making

an application. Why? As you can imagine, some people may try to intentionally bankrupt themselves in an effort to benefit their family members and then ask the Medicaid program (funded by tax payers) to pay for their nursing home stay. Also, under public policy, we as a society generally agree that people should save funds to pay for any potential cost they may incur in the future. Given this policy, it does not seem reasonable to give away your money when you may need it to pay for your own care.

What is a Gift?

For Medicaid purposes, a gift occurs when you give away an asset or a sum of money and you don't receive something back in return having an equivalent fair market value. I know what you're thinking, what about birthdays, Christmas and anniversaries?

There isn't a specific answer or at least not a specific legal answer. In my field I have heard a range of responses from "don't make any gifts" to not making any gifts in excess of \$500. Some of the factors you should consider prior to making any gifts are your wealth, health and income level. Even with all the facts, it still isn't possible to know what the final determination will be by DHHS regarding an individual's gifting. I would have you give serious consideration before making anything but small pecuniary gifts.

What if I Have Made Gifts?

If you've made gifts over the course of the five year period and you are unable to have those gifts returned (in most cases the people receiving the gifts already spent the money) a penalty will be assessed. The penalty, in essence, means DHHS will not pay the nursing home for a period of time based on the dollar amount of gifts that were made.

The penalty is only assessed after you have run out of money, so as you can imagine, being assessed a penalty would leave you in quite a bind, to say the least.

Don't Use Cash

If you can help it, don't use cash; in fact it would be best if you utilized debit or credit cards because they provide an automatic record of all transactions, which in turn may save you (or your family) a lot of trouble at the time of the Medicaid application. You may not want to heed this warning, you may think to yourself "I can go ahead and use cash, it's not going to be a problem." You would be wrong.

In the end it behooves you to treat your money and financial records in such a manner that someday you will have to explain them in detail to a third-party, because someday you may actually have to do so. Finally, you should start keeping five years of records now, if you don't already do so, and follow the advice stated above.

The information provided in this article does not constitute legal advice.

Jodi Robinson Fundraiser

American Legion Auxiliary Unit 21 in Concord and the American Legion Family (Legionnaires and Sons of the American Legion) wish to thank all who participated in our fundraiser held on June 23 in honor of our past Auxiliary President, Jodi Robinson.

The proceeds of our event (\$1300) will be donated to the NH Veterans Home and to Friends of Forgotten Children, two of Jodi's favorite causes.

Jodi's death on Christmas night, 2016, after a long and courageous battle with cancer, was a big loss to our Auxiliary members in Bow and the area.

Thanks to all who gave time, energy, and their skills to make this event so very successful.

More than thirty area businesses donated goods, services and food to our raffle.

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