



1001 Craig Road, Suite 224, St. Louis, Missouri 63146
314-567-9292

107 Southpointe Drive, Suite 2, Edwardsville, Illinois 62025
618-659-9292

MEDICAID PLANNING FOR MARRIED COUPLES UNDER THE DEFICIT REDUCTION ACT

Although the Deficit Reduction Act of 2005 made sweeping changes in the rules governing eligibility for Medicaid nursing home benefits, those changes mainly impact single and widowed persons. Planning options for married couples remain essentially intact.

In this issue, we'll review the rules governing Medicaid eligibility when one spouse of a married couple is a nursing home resident and the other one remains at home. We'll then briefly outline planning strategies available to married couples in Illinois and Missouri, and discuss the things married couples should avoid if they want to preserve eligibility.

Although a nursing home resident is only entitled to keep a small amount of "countable assets" (\$2,000.00 in Illinois; \$999.99 in Missouri), a "community spouse" is entitled to keep additional assets. In Missouri, the rules allow that spouse to keep half of the couple's "countable assets," subject to a minimum of \$20,328.00 and a maximum of \$101,640.00. In Illinois, the community spouse is automatically entitled to the maximum.

In either state, the spouse in the nursing home is only entitled to keep \$30.00 of income per month. However, the community spouse is entitled to keep additional income. In Missouri, the minimum is \$1,650.00 and the maximum is \$2,541.00. Income above the minimum is awarded when monthly shelter expenses exceed \$495.00, utility costs exceed \$252.00, or other extraordinary expenses can be shown. In Illinois, the community spouse is automatically allowed the \$2,541.00 maximum.

In many cases, particularly in Illinois, a married couple's assets and income fall within those allowances. But does

that mean that the spouse in the nursing home will automatically qualify for Medicaid, or that there is no need for the couple to do any planning? In each case, the answer is "no."

"Transfer penalties," which can cause ineligibility for benefits based on transfers of property to children or other third parties, apply to married persons as well as single ones. A transfer of property by *either* spouse can affect the eligibility of the one who applies for benefits. So, it is critical that married couples not give or otherwise transfer assets to their children or other loved ones in order to become eligible. As noted in previous newsletters, people who don't know the rules can inadvertently make penalty-causing transfers.

Most married couples own a home. They need planning in order to protect it. Otherwise, it can be lost to Medicaid

"estate recovery," a way the state can recover Medicaid benefits paid to someone when that person, or his or her

spouse, later dies. If it can, the state goes after the house.

It's also a big problem if the "community spouse" dies first and – as most married people do, through wills or joint tenancy – leaves all or most of his or her estate to the spouse in the nursing home. That spouse will then become ineligible for Medicaid until the inherited assets are spent down. Planning can keep that from happening.

Essentially every married couple should consider Medicaid eligibility planning when ones spouse enters a nursing home or the couple becomes aware that that is likely to happen. In almost every instance, an elder law attorney skilled in Medicaid eligibility planning can develop a plan for a married couple that will enable that couple to keep more – often substantially more – than the above rules would suggest.

Just about every married couple should consider Medicaid planning when one spouse enters a nursing home or that is likely to happen.

Often, a couple has more assets, but less income, that the rules will let them keep. Many older couples have done a good job or saving for retirement, but Social Security is their only regular source of income. That is one of the easiest problems for good planning to fix, and there are several ways of doing it.

One way is to convert assets that could not be kept into income that can be, by investing in a "Medicaid-qualified annuity." For example, a couple with \$30,000.00 in extra assets, but \$500.00 per month less income than the rules would let them keep, could use the "excess assets" to buy five-year stream of income in that amount for the community spouse.

Another way to address the problem is to seek an increase, through either an administrative hearing or a court proceeding, in the amount of resources the community spouse can keep. That can be done if extra assets are needed to generate the amount of income the rules allow that spouse to keep.

A final way is to apply the extra assets toward the purchase of "exempt assets" (things the rules let the couple keep) or to pay off debts. Particularly in Missouri, timing is critical toward the success of that strategy, especially as it relates to maximizing the amount of assets the community spouse will be allowed to keep.

Medicaid planning will also, in most situations, substantially benefit a married couple with "too much assets," even if converting the "excess assets" into income would cause them to have "too much income." In Illinois, the community spouse is only required to contribute a portion of the extra income toward paying for the care of the spouse in the nursing home. In Missouri, the community spouse is not required to contribute any of the community spouse's separate income toward the cost of the nursing home spouse's care. As a result, some Missouri couples can, through planning, protect everything they have through the community spouse's income. The only "catch," under the new rules, is that the community spouse needs to live out the term of the annuity for this to work. Any remaining monthly payments would go first to the state to repay Medicaid benefits paid to the spouse in the nursing home.

In Illinois, if a couple is willing to forego the right to transfer any countable assets from the nursing home spouse to the community spouse, the latter can keep all of his or her separate assets by refusing to have them considered toward determining the eligibility of the spouse in the nursing home. For example, if the wife is in a nursing home and a couple's savings consist mainly of the husband's IRA or retirement savings plan, the hus-

band can keep all of it through a proper "spousal refusal." Since this election is based on federal Medicaid law, it should also apply in Missouri, but so far, there are no reported decisions on whether it does.

In many instances, these strategies, and other Medicaid planning techniques available to single people as well as married ones, work best if they are applied in combination. The order in which things are done is often critical toward achieving a good result.

Every situation is different. What works best in one situation will not work nearly as well in another.

Medicaid eligibility planning, done right, is a very personalized process. But for the great majority of couples facing nursing home costs, its benefits far exceed the investment in legal fees the planning requires.

Hospice Newsletter Has Arrived

The Coulson Law Group has a new newsletter for 2007 - *Hospice Care and Planning*. It addresses the interrelated medical, emotional, legal and other challenges faced by Hospice families. We welcome contributions from guest columnists.

To be added to our mailing list for *Hospice Care and Planning* or if you would like to be a guest columnist, please contact our Director of Community Education and Outreach, Beth Frame, at (314) 567-9292 or (618) 659-9292, or email to beth@coulsonlawgroup.com, to be included in our distribution.

To view past issues of our *Medicaid Planning Today* or our new *Hospice Care and Planning*, visit our website at www.qualifyformedicaid.com and click on the Newsletter Archives tab or call our office at 314-567-9292 and we will send the issues to you.

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