Legal Issues Confronting Caregivers

by Reneé R. Cipriani, RP

Many estate-planning clients are elderly or have elderly parents. Individuals are living longer, and long-term care is, therefore, an important and more widespread issue than in decades past. Many individuals are struggling to cope with the stresses of care giving for a family member and are uncertain how to manage long-range-care decisions. Understanding Medicare and Medicaid helps resolve some of these issues. In May, the Cincinnati Paralegal Association Probate Specialty Section sponsored a presentation by Patricia S. Meek, an attorney for Clodfelter & Gutzwiller and a member of the Speaker's Bureau for Caregiver Assistance Network. Following is an overview of her presentation on Medicaid eligibility in Ohio.

First, it is important to understand the difference between Medicare and Medicaid. **Medicare** is a joint federal/state program that provides health insurance for low-income children, people with disabilities and everyone age 65 and older. **Medicaid** pays for nursing-home care for those who can't afford it.

There are six requirements to receive Medicaid benefits. The three financial requirements are:

1. The individual must be receiving skilled-nursing care. Individuals in assisted living are not eligible for Medicaid benefits.
2. The individual's income must be less than the cost of the care.
3. The individual's resources, or assets, must be less than $1,500.

Certain assets are exempt from the $1,500 resource limitation. Exempt assets include personal belongings, term life insurance in any amount (because it has no cash value), whole life policies (as long as the combined face value of all policies is $1,500 or less), irrevocable funeral arrangements and cemetery plots. If an individual applying for Medicaid benefits is married, there are additional exempt assets, which include a home and a car. In the case of a married couple with one applying for Medicaid while the other is living independently, all nonexempt assets of the husband or wife individually or jointly are considered. The value of these assets is divided by two to determine the Community Spouse Resource Allowance (CSRA). The maximum allowance is $90,660. This figure changes each year to reflect inflation.

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Should the CSRA exceed the maximum allowance, the "spend down" amount must be determined. All assets less exempt assets, less the resource allowance of $1,500, less the CSRA equal the "spend down" amount for the individual to be eligible for Medicaid.

There are various methods to accomplish Medicaid planning. One of these is to convert resources to income. An individual may use additional money to purchase annuities to create an additional income stream for his or her spouse. This is a narrow strategy and should only be done *before* one of the spouses enters a nursing home.

Exemption planning is another Medicaid planning tool. Individuals may upgrade existing assets by trading in an old car for a newer model or repairing and remodeling a home to make it more comfortable and more marketable. Individuals may purchase new exempt assets, such as new appliances or new carpeting for the home. This method can be a hard sell for older, frugal clients.

A third method of Medicaid planning is transfer planning. Individuals should make all proper transfers that are available. Examples of proper transfers are:

1. Transfer of a home to a resident sibling with an equity interest;
2. Transfer of a home to a resident child who has provided two years of care; and
3. Transfers for the benefit of a disabled child (any assets, not just the home). Any amount of money invested in a

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special-needs trust for a disabled child is an exempt resource for Medicaid purposes.

Additionally, individuals can make judicious improper transfers. For example, while paying privately for nursing-home care, an individual may also make a gift every month. It is important to understand that improper transfers are legal; however, all transfers must be reported on the Medicaid application. Failure to report improper transfers is fraud. Improper transfers include all transfers to a trust within 60 months of application for Medicaid benefits and all other transfers within 36 months of application (except "proper transfers"). Improper transfers incur a period of ineligibility for Medicaid benefits. The period of ineligibility, or penalty months, equals the amount of the transfer divided by the cost of care per month. The cost of care per month is a state average. Currently, Ohio's state average is calculated at $4,215.

Under the allowance for Medicaid Estate Recovery, the state can recover Medicaid benefits from the recipient's estate but only from probate assets and only after the death of a spouse. The state can place a lien on real estate, but Ohio has not done so to date.

Medicaid law is complex and varies from state to state. The advice of an attorney should be sought concerning specific issues. ■

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