

Nursing Homes, Medicaid and Your Assets

By TOM LAURICELLA

July 22, 2007

More than a year has passed since the federal government changed the rules for qualifying for Medicaid assistance for long-term care, and experts in the field are still sorting out the implications for those who want to pass assets on to their children.

The new rules made it tougher, for example, to give gifts to children or grandchildren to help pay for their college education. Individuals who make such gifts can find themselves ineligible for Medicaid benefits after they're already in a nursing home.

But estate-planning experts say some options remain open for those who want to pass on some assets, such as a home, through a trust, or preserve some income for a spouse in certain kinds of annuities.

Confusion Abounds

Even by government-bureaucracy standards, Medicaid rules are confusing and complex. And the stakes are high: A mistake can mean legal bills and financial problems that come on top of the emotional strain of having a loved one in a nursing home.

Complicating matters is the fact that the federal government oversees Medicaid, but individual states administer the program.

State rules can vary significantly. In fact, some states are only just now finalizing their guidelines based on last year's changes to the federal law; California, for one, hasn't even gotten that far, attorneys say.

As a result, it's important to speak with an expert in your state's rules.

Individuals generally become eligible for Medicaid assistance to pay for long-term care after using up all but a certain amount of assets. That level varies by state, but can be as little as \$2,000 in cash and investments. For many people who had hoped to pass on even a small inheritance to their children, that's an unhappy prospect.

One way to avoid having a lifetime's savings being wiped out has been to transfer assets to children before entering a nursing home. Though controversial, it was a perfectly legal strategy that came with some limits to prevent abuses.

Prior to the new law, if you gave money away within the past three years, you would be ineligible for Medicaid for a period of time based on how much money was transferred or given away. For instance, if you gave away, say, the equivalent of nine months' aid, you would be denied Medicaid help for that period of time -- starting from when you made the gift. For those who were healthy, it was a risk many were willing to take.

Now the "look back" period for any gifts or transfers you may have made extends back five years from when you apply for Medicaid. And significantly, the period of time you will be denied aid begins not from when you made the gift, but when you apply for assistance and are otherwise fully qualified.

That means you could be in a nursing home, have exhausted your savings and be unable to receive Medicaid for months or even years depending on the value of what you gave away or transferred. That could leave your family potentially liable for unpaid bills, even if they didn't receive any of the gifts.

This affects not only those trying to shelter assets from future nursing-home costs, but even those who simply want to make a gift to a child or grandchild, say, to help pay for college education. (Gifts or transfers made before the new law was signed in February 2006 were grandfathered.)

"You give your grandchild money for college and three years later you're in a nursing home, you use up your remaining money over the next year -- it's only then that the penalty starts," says Jeffrey Marshall, an elder law attorney in Williamsport, Pa. "That's why it's so devastating -- there's no other way you can make the payments to the nursing home."

Trusts Gain

While the new Medicaid rules complicate estate planning, they don't make it impossible. **Philip Bouklas**, a New York lawyer, says the change in the rule for gifts removed a disadvantage for trusts used to protect assets. Trusts previously had a five-year look-back period while gifts had the three-year look back (presumably because people who used trusts were wealthier or more sophisticated and were doing so to skirt the Medicaid rules).

Now that it's a level playing field, Mr. Bouklas is more often using what are known as irrevocable income-only trusts in situations where individuals want to pass on a house or other assets to a child. By using an income-only trust -- as opposed to just deeding the property over to a child -- the parent can still live in the house and even sell it. Plus the trust offers tax advantages over just changing the name on the deed.

"You might as well use a trust since there's no extra penalty period and there's more flexibility," he says,

One additional twist on the strategy is to take out long-term-care insurance to cover the look-back period in case you unexpectedly end up in a nursing home.

Using an Annuity

The changes to the Medicaid rules also tightened -- but left somewhat open -- another planning loophole. It used to be that many annuities weren't counted as an asset when determining Medicaid eligibility. It's still possible to put money in an annuity and have the funds protected, but there are now greater restrictions.

Here's how it would work. If a couple has \$200,000 in assets and one spouse has to go into a nursing home, the rules would likely require spending half that money before the ill spouse is eligible for Medicaid. However, by putting \$100,000 into an annuity, the healthy spouse could collect the income off the annuity and the spouse in the nursing home would be eligible for Medicaid.

"You're converting a countable resource into one that's not countable," says Mr. Marshall.

However, the law put in place added guidelines that an annuity must meet to avoid being counted as a transfer of assets that would lead to ineligibility.

For example, it has to be irrevocable and has to be an immediate annuity -- which means your investment is turned into an income stream with equal payments right away without any deferral.

What's more, the state needs to be named as a beneficiary to cover the cost of the medical treatment paid on behalf of the institutionalized person.

If the annuity isn't set up properly, your state could deny Medicaid benefits. "Be wary," says Mr. Bouklas.

- Email: encore@wsj.com