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Answers on Medicaid Vary State by State

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Our column last month about the aftermath of changes Congress made in early 2006 in the rules for qualifying for Medicaid assistance for long-term care -- and ways to hold on to a home or other assets -- generated a stream of questions and comments.

An important aspect of the changes involves the "look back" period that the government uses to deter inappropriately giving away or sheltering money or other assets that could otherwise be used to pay nursing-home costs. Previously, if you gave money away during 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. That look-back period has been extended to five years.

We also discussed ways that the law allows to protect money by putting investments in an annuity or a home in a trust.

More Information

Many readers asked a basic question: Where can they go to get more information. But, as with just about everything associated with Medicaid, there is no simple answer. As we noted in the previous column, Medicaid is a state-managed program and rules can vary significantly from state to state.

Still, a good first stop is the federal government's Web site: cms.hhs.gov/home/medicaid.asp. A section on eligibility provides an overview of the issues anyone applying for Medicaid needs to understand, such as income guidelines and rules for transferring assets.

The next step should be to locate the agency that oversees Medicaid in your home state and either call or visit its Web site.

In Florida, for example, it's the Agency for Health Care Administration. But it can be a tough slog to relevant information. On the Florida Web site, it takes a few clicks to reach the "SSI-Related Programs Fact Sheet." That fact sheet is a 29-page outline of eligibility requirements and requires wading through more than a dozen variations of the state's Medicaid program to find the right one for you.

A close read of the Florida materials, however, still will provide important information. For example, Florida has yet to implement important parts of last year's federal rule changes on gifts and Medicaid eligibility that we wrote about last month.

One cautionary note: When looking online for information about Medicaid, make sure you're visiting an official site -- Internet searches for Medicaid often direct inquiries to companies selling insurance or other services.

It's also a good idea to seek out an expert in your state's Medicaid laws. A good place to start is the National Academy of Elder Law Attorneys at naela.org. Some state bar associations will also have referral services.

But before hiring anyone, talk to a few candidates and take the time to check out their references.

Gift Thresholds

Some readers asked whether there is a threshold below which a gift wouldn't affect eligibility.

The answer, says New York attorney Philip Bouklas, is "it depends." In New York, he says, different counties can have different standards. "The regulations do not specify an amount as to gifts," Mr. Bouklas says. "However, when poring through three to five years' worth of bank statements, the [state] does not question every transaction. Some counties require the caseworker to question transactions over \$1,000. Others question transactions over \$5,000."

In the past column, we used the example of making a gift to help pay for college education and one reader wondered if other kinds of gifts counted as well. They do.

"If you give money to a charity (during the look back) you're going to get penalized," Mr. Bouklas says.

Annuities

A number of readers also asked for additional information on annuities and Medicaid. Under the new guidelines set by Congress, it's still possible to put money in an annuity and have it not be counted as an asset when determining Medicaid eligibility.

The idea is that if a couple has more than the allowable level of assets when one spouse needs to go into a nursing home, rather than spend the money down to the maximum allowable assets (about \$101,000 in many states) the difference can be put into an immediate annuity from which the healthy spouse can draw income.

One reader asked what the best timing would be for taking that step.

It's not something you'll do ahead of time, says attorney Jeffrey Marshall. "You do it at the time when you need to apply for Medicaid," he says, that way you know the exact amounts you need to put away in the annuity.

The strategy of putting a home or other assets into a irrevocable-income-only trust also generated some questions about how they worked.

"How can the house be sold by the parent?" one reader asks.

The basic concept is that whatever is transferred into the trust -- investments or a house -- counts as principal. The parents can take income from investments in the trust or even rental income off the home. If the house is sold, they can take income off investments made with the proceeds of the house -- but they can't touch the principal. "The house counts as principal," says Chicago attorney Janna Dutton.

"As long as there is no access to the principal, it would not be counted as an available asset," he says.

Ethical Questions

But a number of readers questioned the idea of estate planning around Medicaid that involved sheltering assets from nursing homes.

"Why is it that you would encourage people to turn to Medicaid to pay for their nursing-home costs so that they can leave their assets to their kids? Is that fair?" one reader wrote. "We all need to cover our own medical and nursing costs with our savings, our home equity, long-term care insurance, etc. It is outrageous to take the position that our heirs' inheritance be preserved for them at a huge cost to every taxpayer in the United States."

It is true that this is a divisive issue, but these practices exist and are legal. Meanwhile, Encore has written extensively about the ins and outs of long-term-care insurance in the past. It's a subject that the column will continue to cover closely as readers try to meet the rising costs of long-term care.

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