CLIENT BULLETIN

A PUBLICATION FROM

McGRATH LAW OFFICE P.C.

THE ELDERLY AND HEALTH CARE

For people nearing retirement age, health care planning is an important yet frequently overlooked issue. Many people fail to develop a long-term health care plan until they need one. The problem with this practice is that last-minute planning typically does not provide comprehensive and cost-efficient health care coverage because as recipients get older, planning options decrease while the cost of health care coverage increases.

Medicare and Medicaid are the two primary government-administered health care programs. Almost everyone over 65 is eligible for Medicare, which is administered by the federal government. Medicare's coverage, however, is limited to roughly 40 percent of the total health care needs of an aged and disabled person. For covered services, Medicare still requires the recipient to pay substantial deductibles and co-payments.

Medicaid is a state-administered health care program for low-income individuals. Although Medicaid offers comprehensive coverage, including long-term care, the program has limits on the amount of assets and income a person may own or receive and still qualify for benefits. Because of this, one important part of many long-term health care plans is a strategy to transfer assets to family members until the recipient's assets and income fall below the Medicaid benefits eligibility threshold in order to become eligible for Medicaid without being forced to self-finance long-term care. This means that a long-term health care plan is especially important for couples, because if one spouse needs long-term care, the financial burdens of that care may threaten to impoverish the spouse who does not require long-term care.

Of course, each individual must consider carefully the consequences of choosing to protect assets for Medicaid eligibility. One of the notable considerations is that the quality of care Medicaid patients receive is sometimes considerably lower than the care non-Medicaid patients receive. Additionally, the impoverishment requirements of Medicaid mean that the Medicaid patient has few or no remaining funds for personal items while receiving long-term care. Therefore, all consequences of attempting to qualify for Medicaid should be examined against each individual's financial status, moral values, alternative forms of care, and physical needs before deciding to protect assets to achieve Medicaid eligibility. The remainder of this discussion focuses on how to protect assets and income from being exhausted by health-care expenses once the decision has been made.

Be "Paper Poor" or Pay: Funding the Cost of Nursing Home Care

Unfortunately, many older Americans eventually require nursing home care. Nursing home care is expensive, with costs averaging between $42,000 and $84,000 per year. Those patients who do not carry long-term care insurance too often face a financial crisis. They find themselves grappling with questions such as, "Where are we going to get that kind of money?" If they have sufficient savings, they lament spending their potential legacy. What about their children's inheritance or a planned bequest to a church or charity? What about providing for a surviving spouse?

"Poor" seniors need not worry. The government pays the nursing home bills for senior citizens who qualify for Medicaid. The amount of assets a senior citizen may have and still be eligible for Medicaid changes depending on the applicant's specific characteristics and state law. In Illinois, a married individual may have no more than $3,000 in non exempt assets when both spouses are institutionalized. That limit falls to $2,000 for an unmarried or widowed applicant. The following assets are exempt, meaning they are not counted when determining Medicaid eligibility:

- A home, as long as either non-institutionalized spouse continues to live there
- A car, if there is a surviving spouse living at home;
- Household goods;
- Wedding rings;
- Burial plots;
- Some funeral expense accounts; and
- Some life insurance policies.

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If an individual has more than the specified amount of non-exempt assets, he or she may still be able to qualify for Medicaid coverage. With careful planning, seniors may be able to transfer some of their non-exempt assets or convert them into exempt ones. By disposing of or protecting enough of their assets, individuals can reduce their countable assets and qualify for Medicaid coverage.

Common strategies seniors use to make themselves "poor" on paper, include giving gifts, placing non-exempt assets into trust, and converting non-exempt assets into exempt ones. An attorney can help devise a strategy, using these and other techniques, to protect assets. Here follows an overview of these strategies, but you should also consult your attorney to get specific information and advice on these matters.

Gifts are irrevocable, and the assets given are lost to the gift recipient forever. Nonetheless, if one's goal in protecting assets is to save the children's inheritance, it may be prudent to give the inheritance money now as a gift. Placing assets into an irrevocable trust is another way for seniors to make themselves "paper poor." Properly drafted irrevocable trusts, which deprive the grantor of access to and control over the principal, prevent inclusion of that principal in the $2,000 limit on non-exempt assets.

However, gifts and trusts do pose some problems. Be sure to avoid federal gift tax. Also, be aware that Medicaid imposes sanctions if you transfer assets within a certain period of time called a look-back period. The lookback period is now 60 months for all transfers of assets. If you transfer assets within the look-back period, you may have to wait to become eligible for Medicaid. This waiting period is based on a simple formula that takes the amount of assets transferred and divides that number by the average cost of care in your state. The resulting number equals the number of months that the applicant will have to wait until benefits can be received. Before transferring assets, you should carefully consider this ineligibility period.

The simplest strategy is to convert your non-exempt assets into exempt assets. If you do not own a house or a car, buy one. Homes and cars are exempt while the cash in your bank account is not. If you own a home, pay off the mortgage or make improvements. If your car is not paid for, pay it off. Maybe buy a more expensive one. Household goods (including oriental rugs, fine arts, and antiques that are not deemed investments), wedding rings, and burial plots are exempt.

Simply buying exempt assets though is often a short term win, and a long term loss. A more thoughtful strategy can protect more assets for your family.

When contemplating your future, do not overlook health care planning. It should be considered carefully, along with wills, living trusts, and durable powers of attorney in anticipating future needs. If these are matters affecting you presently, or matters you are planning for in the future, consider calling our office to take advantage of the expertise we can offer.

Along with this Bulletin, we are providing supplemental information about the following related topics:

Preventing Spousal Impoverishment - tips on protecting your assets when one spouse needs long-term care and the other remains independent; and

Long-Term Care Insurance - private insurance policies that pay a portion of your total nursing care expenses.

Contact our office for further advice on how to best plan for your future. □

LONG-TERM CARE INSURANCE: PAY NOW FOR PEACE OF MIND LATER

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For many, becoming "paper poor" will not be an acceptable way to prevent assets from being exhausted by health care costs. For others who opt for early distribution of assets or the building of equity in exempt assets, a period of disqualification from Medicaid will result no matter how an asset transfer is structured. In either case, the private payment of nursing home costs will be inevitable. Prudent health care planning should, therefore, consider the purchase of a private insurance policy that pays a portion of the total health care expenses. There are two principal types of insurance that cover expenses not paid by Medicare. A good long-term care plan may include one or both types of policies. The first type is known as Medicare Supplemental or "Medigap" insurance.

There are two types of Medigap insurance: service and indemnity. A service policy pays a fixed percentage (which may range up to 100 percent, depending on the policy) of the expenses that Medicare does not cover. Indemnity policies, on the other hand, typically pay a set amount per day of hospitalization or per medical procedure. Service policies provide better benefits; if medical expenses rise as the years go by, the level of protection remains proportionately the same. Indemnity policies, however, continue to pay the set amount per day - leaving you to pay the uncovered balance, which will increase as medical costs increase.

The second type of insurance that covers expenses not paid by Medicare is long-term care insurance. Long-term care insurance typically pays a set daily indemnity rate for care in nursing homes or for services required for home care. Premiums for long-term care insurance are based upon the beneficiary's age and health at the time the policy is purchased. The older a person is when the policy is initially purchased, the higher the premium will be. In Illinois, cancellation or non-renewal of any long-term care policy on grounds of age or deteriorating mental or physical condition of the policyholder is prohibited.

There are several things to keep in mind while searching for long-term care insurance in Illinois. First, Illinois law requires an insurer to pay benefits for treatment of any preexisting condition listed on the policy application, as long as the treatment is provided at least six months after the policy is issued. Also, coverage of such listed preexisting conditions may not be waived, excluded, or otherwise limited. Finally, Illinois law also bars long-term care policies from requiring prior hospitalization before paying any benefits.

A number of factors influence the cost of long-term care insurance. As mentioned above, the age and health of the beneficiary at the time a policy is initially purchased are major factors. Another factor is the length of the deductible, which is the number of days you must pay all costs before you are eligible for insurance benefits. Deductibles generally vary from 20 to 100 days - The longer the deductible period, the lower the premium. Also, since most long-term care policies pay daily indemnity amounts, the policy's premium will rise as the policy's indemnity amount rises.

When you purchase a policy, Illinois law requires the insurance company to issue a full refund at any time within 30 days of delivery of the policy if you are not satisfied. Take the time to carefully review the policy. Pay close attention to anything under the heading "Limitations or Conditions on Eligibility for Benefits," which Illinois law dictates must be used to designate any such policy restriction. Above all, remember that planning for long-term care is something that should not be postponed until you or your spouse needs such care. Time spent now will save you money in the future.

The insurance industry has over the past decade or more developed some hybrid life insurance/long term care insurance options. These policies are often permanent life insurance policies, with provisions built in allowing for the owner to draw on the policy up to certain limits to pay for long term care insurance expenses. □

PREVENTING SPOUSAL IMPOVERISHMENT

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In many households across the country, couples are facing the problem where one spouse requires long-term nursing care while the other remains independent. As discussed earlier, providing this long-term care can drain away a couple's assets. As a result, many couples are threatened with the spousal impoverishment of the "community spouse," the one who remains in the home.

Because almost all of a couple's assets must be spent or disposed of before Medicaid kicks in, the community spouse is left with very little on which to live. In response to this dilemma, Congress established criteria that allow the community spouse to retain an even greater monthly income and a greater share of the couple's assets than before.

With the "community spouse asset allowance," the non-institutionalized spouse may keep an additional percentage of the couple's assets beyond those a couple can own and still qualify for Medicaid. Each state can decide a dollar figure for the community spouse allowance, but this amount must be equal to or lower than the maximum amount established by federal law. Therefore, the amount of allowance provided in each state varies. In Illinois, the community spouse asset allowance for 2020 is $109,560, meaning a non-institutionalized spouse can hold up to that amount in assets without adversely affecting his or her spouse’s Medicaid eligibility.

In addition to this protection of assets for the benefit of the community spouse, a monthly income may likewise be retained. Allowances may also be made for dependents (including children, parents, or siblings) who are living with the community spouse. Because these amounts increase annually and may vary from state to state, it would be advisable to contact an attorney early in the estate planning process to ensure that the amount of the client's income and assets protected will be optimized. In Illinois, the community spouse can retain $2,739 per month in income under the community spouse maintenance needs allowance.

Despite these allowances for income and assets, nursing care may still deplete too large a percentage of a couple's assets, leaving many feeling threatened by poverty. Early asset distribution and increasing equity in exempt assets are typical responses to these concerns. The purchase of long-term health care insurance is another. Still others opt for divorce. Obviously this is not a popular alternative due to the emotional turmoil it causes for all parties concerned. However, where incapacity is imminent or has occurred, it is an option that merits consideration. If the couple proceeds with an uncontested divorce, the community spouse by agreement can retain a larger portion of the couple's assets, without concern for the applicability of asset transfer restrictions. The institutionalized spouse also can decline alimony or other support.

Due to the turmoil surrounding the institutionalization of a partner, the needs of the community spouse may be ignored. The different needs of both spouses must be determined and met to help ease this inevitably difficult transition in a couple's life. Contact our office to discuss these important issues. □