**What Is Medicaid?**

Medicaid (called "Medi-Cal" in California, "MassHealth" in Massachusetts, and "TennCare" in Tennessee) is a joint federal-state program that provides health insurance coverage to low-income children, seniors, and people with disabilities. In addition, it covers care in a nursing home for those who qualify.

In the absence of any other public program covering long-term care, Medicaid has become the default nursing home insurance of the middle class. Lacking access to alternatives such as paying privately or being covered by a long-term care insurance policy, most people pay out of their own pockets for long-term care until they become eligible for Medicaid.

As for home care, Medicaid has traditionally offered very little -- except in New York, which provides home care to all Medicaid recipients who need it. Recognizing that home care costs far less than nursing home care, more and more states are providing Medicaid-covered services to those who remain in their homes.

Although their names are confusingly alike, Medicaid and Medicare are quite different programs. For one thing, all retirees who receive Social Security benefits also receive Medicare as their health insurance. Medicare is an "entitlement" program. Medicaid, on the other hand, is a form of welfare -- or at least that's how it began. So to be eligible for Medicaid, you must become "impoverished" under the program's guidelines.

Also, unlike Medicare, which is totally federal, Medicaid is a joint federal-state program. Each state operates its own Medicaid system, but this system must conform to federal guidelines in order for the state to receive federal money, which pays for about half the state's Medicaid costs. (The state picks up the rest of the tab.) This complicates matters, since the Medicaid eligibility rules are somewhat different from state to state and they keep changing. This most recently occurred with the passage of the Deficit Reduction Act of 2005 (the DRA), which significantly changed rules governing the treatment of asset transfers and homes of nursing home residents. To be certain of your rights, consult an expert. He or she can guide you through the complicated rules of the different programs and help you plan ahead.

**Spending Down Assets to Qualify for Medicaid**

In order to be eligible for Medicaid, applicants must have no more than $2,000 in "countable" assets (the dollar figure may be slightly more, depending on the state). Applicants for Medicaid and their spouses may protect savings by spending them on non-countable assets. The following are examples of such expenditures:

* prepaying funeral expenses
* paying off a mortgage
* making repairs to a home
* replacing an old automobile
* updating home furnishings
* paying for more care at home
* buying a new home

In the case of married couples, it is often important that any spend-down steps be taken only after the unhealthy spouse moves to a nursing home if this would affect the community spouse's resource allowance.

  **Transferring Assets to Qualify for Medicaid – and the “LOOK BACK”**

Congress has established a period of ineligibility for Medicaid for those who transfer assets. For transfers made prior to February 8, 2006, state Medicaid officials would look only at transfers made within the 36 months prior to the Medicaid application (or 60 months if the transfer was made to or from certain kinds of trusts). But for transfers made after February 8, 2006, the so-called "look-back" period for all transfers is 60 months.

While the look-back period determines what transfers will be penalized, the length of the penalty depends on the amount transferred. The penalty period is determined by dividing the amount transferred by the average monthly cost of nursing home care in the state. For instance, if the nursing home resident transferred $100,000 in a state where the average monthly cost of care was $5,000, the penalty period would be 20 months ($100,000/$5,000 = 20). The 20-month period will not begin until (1) the transferor has moved to a nursing home, (2) he has spent down to the asset limit for Medicaid eligibility, (3) has applied for Medicaid coverage, and (4) has been approved for coverage but for the transfer. Therefore, if an individual transfers $100,000 on April 1, 2013, moves to a nursing home on April 1, 2014 and spends down to Medicaid eligibility on April 1, 2015, that is when the 20-month penalty period will begin, and it will not end until December 1, 2016.

Transfers should be made carefully, with an understanding of all the consequences. People who make transfers must be careful not to apply for Medicaid before the five-year look-back period elapses without first consulting with an elder law attorney. This is because the penalty could ultimately extend even longer than five years, depending on the size of the transfer.

One of the prime planning techniques used before the enactment of the Deficit Reduction Act of 2005 (DRA), often referred to as "half a loaf," was for the Medicaid applicant to give away approximately half of his or her assets. It worked this way: before applying for Medicaid, the prospective applicant would transfer half of his or her resources, thus creating a Medicaid penalty period. The applicant, who was often already in a nursing home, then used the other half of his or her resources to pay for care while waiting out the ensuing penalty period. After the penalty period had expired, the individual could apply for Medicaid coverage.

Example: Mrs. Jones had savings of $72,000. The average private-pay nursing home rate in her state is $6,000 a month. When she entered a nursing home, she transferred $36,000 of her savings to her son. This created a six-month period of Medicaid ineligibility ($36,000/$6,000 = 6). During these six months, she used the remaining $36,000 plus her income to pay privately for her nursing home care. After the six-month Medicaid penalty period had elapsed, Mrs. Jones would have spent down her remaining assets and be able to qualify for Medicaid coverage.

One of the main goals of the DRA was to eliminate this kind of planning. To determine whether it is still an available strategy in your state, you will have to consult with a local elder law attorney.

Be very, very careful before making transfers. Any transfer strategy must take into account the nursing home resident's income and all of his or her expenses, including the cost of the nursing home. Bear in mind that if you give money to your children, it belongs to them and you should not rely on them to hold the money for your benefit. However well-intentioned they may be, your children could lose the funds due to bankruptcy, divorce, or lawsuit. Any of these occurrences would jeopardize the savings you spent a lifetime accumulating. Do not give away your savings unless you are ready for these risks.

In addition, be aware that the fact that your children are holding your funds in their names could jeopardize your grandchildren's eligibility for financial aid in college. Transfers can also have bad tax consequences for your children. This is especially true of assets that have appreciated in value, such as real estate and stocks. If you give these to your children, they will not get the tax advantages they would get if they were to receive them through your estate. The result is that when they sell the property they will have to pay a much higher tax on capital gains than they would have if they had inherited it.

As a rule, never transfer assets for Medicaid planning unless you keep enough funds in your name to (1) pay for any care needs you may have during the resulting period of ineligibility for Medicaid and (2) feel comfortable and have sufficient resources to maintain your present lifestyle.

**Remember: You do not have to save your estate for your children. The bumper sticker that reads "I'm spending my children's inheritance" is a perfectly appropriate approach to estate and Medicaid planning.**

Even though a nursing home resident may receive Medicaid while owning a home, if the resident is married he or she should transfer the home to the community spouse (assuming the nursing home resident is both willing and competent). This gives the community spouse control over the asset and allows the spouse to sell it after the nursing home spouse becomes eligible for Medicaid. In addition, the community spouse should change his or her will to bypass the nursing home spouse. Otherwise, at the community spouse's death, the home and other assets of the community spouse will go to the nursing home spouse and have to be spent down.

**Permitted transfers**

While most transfers are penalized with a period of Medicaid ineligibility of up to five years, certain transfers are exempt from this penalty. Even after entering a nursing home, you may transfer any asset to the following individuals without having to wait out a period of Medicaid ineligibility:

Your spouse (but this may not help you become eligible since the same limit on both spouse's assets will apply)

Your child who is blind or permanently disabled.

Into trust for the sole benefit of anyone under age 65 and permanently disabled.

In addition, you may transfer your home to the following individuals (as well as to those listed above):

Your child who is under age 21.

Your child who has lived in your home for at least two years prior to your moving to a nursing home and who provided you with care that allowed you to stay at home during that time.

A sibling who already has an equity interest in the house and who lived there for at least a year before you moved to a nursing home.

**Caregiver Contracts: A Growing Planning Trend for Families**

Many people are willing to voluntarily care for a parent or loved one without any promise of compensation. Even so, a growing number of people are entering into caregiver contracts (also called personal service or personal care agreements) with their family members. Having such a contract has many benefits. It rewards the family member doing the work. It can help alleviate tension between family members by making sure the work is fairly compensated. In addition, it can be a be a key part of Medicaid planning, helping to spend down savings so that the elder might more easily be able to qualify for Medicaid long-term care coverage, if necessary.

*The following are some things to keep in mind when drafting a caregiver contract:*

Meet with your attorney. It is important to get your attorney's help in drafting the contract, especially if qualifying for Medicaid is a goal.

Caregiver's duties. The contract should set out the caregiver's duties, which can be anything from driving to doctor's appointments and attending doctor's meetings to grocery shopping to help with paying bills. The length of the term of the contract is usually for the elder's lifetime, so it is important to cover all possibilities, even if they are not currently needed. The contract can continue even if the elder enters a nursing home, with the caregiver acting as the elder's advocate to ensure the best possible care.

Payment. Payment to the caregiver can either be made with a lump-sum payment or in weekly or monthly installments. For Medicaid purposes, it is very important that the pay not be excessive. Excessive pay could be viewed as a gift for Medicaid eligibility purposes. The pay should be similar to what other caregivers in the area are making, or less. To calculate a lump-sum payment, take the monthly rate and multiply it by the elder's life expectancy. (Not that some states, Georgia for example, do not recognize the ability to create a lump sum contract based upon life expectancy.)

Taxes. Keep in mind that there are tax consequences. The caregiver will have to pay taxes on the income he or she receives.

Other sources of payment. If the elder does not have enough money to pay his or her caregiver, there may be other sources of payment. A long-term care insurance policy may cover family caregivers, for example. Also, there may be state or federal government programs that compensate family caregivers. Check with your local Agency on Aging to get more information.