

## **LEGAL ISSUES AFFECTING ELDERLY CLIENTS**

### **Medicare and Medicaid for the Elderly**

For those 65 years of age and older, Medicare is the federal government's principal health care insurance program. Medicare is an entitlement program that is not based on financial need. It does not cover all of the medical care expenses of the elderly client and may require that clients pay a deductible. Those covered by Medicare often purchase private supplemental insurance policies called Medigap policies. The elderly client may also pay for Medicare Part D coverage which provides limited insurance coverage of prescription drugs to elderly clients through private health insurers.

The costs of the above programs to the elderly client, continue to rise, in some instances, making them unaffordable to many of the elderly. The elderly client may not be able to afford the out-of-pocket costs and premiums attendant to Medicare coverage. In some instances, the elderly client may need services such as long term skilled nursing care that are not covered by Medicare. In those circumstances, the elderly client may obtain the necessary services through Medicaid if they are Medicaid eligible.

Medicaid is a financial needs based program run jointly by the federal and state government. Eligibility for Medicaid is dependent upon the assets available to the elderly client, and may involve advance planning to conserve assets, to care for a disabled child or to care for a spouse who remains in the community when the other spouse enters a nursing home. Questions such as the treatment of the income of a nursing home resident and the financial protections afforded a community spouse may differ from state to state. The elderly client should consult an attorney to assist with estate planning, particularly for purposes of Medicaid eligibility.

### **A. The Nursing Home Resident.**

In order to be eligible for Medicaid benefits, a nursing home resident may have no more than \$2,000.00 in countable assets. All assets, unless categorized as non-countable assets, are countable assets. Non-countable assets include:

- The applicant's principal residence;
- One motor vehicle;
- Personal possessions such as clothing, furniture and jewelry;
- Prepaid funeral plans and some limited life insurance; and,
- Other assets that are not viewed as accessible by the applicant.

In some instances where the Medicaid applicant has countable assets in excess of \$2,000.00, the applicant may "spend down" those assets by using excess funds to purchase items that are non-countable assets.

### **B. The Community Spouse.**

Many times, when one spouse enters a nursing home, a healthy spouse remains in their home ("the community spouse"). As of 2009, in Illinois the community spouse is entitled to retain half of the couple's joint assets up to \$109,560.00 in countable assets. The community spouse may keep the first \$21,912.00 in joint countable assets, even if that figure exceeds half of the couple's assets. The community spouse may also remain in the marital home.

### **C. The Transfer Penalty.**

Often times, the elderly client believes they may qualify for Medicaid if they give or transfer their money to a relative or friend. Such a belief may lead to the financial exploitation of the elderly client by someone who may abscond with their assets. Even

when the relative or friend is completely trustworthy, the transfer of assets to them may result in unforeseen tax consequences for the relative or friend, or, may trigger the Medicaid “transfer penalty” rendering the elderly client ineligible for Medicaid benefits for a period of time. The transfer penalty period is generally calculated by dividing the amount of the countable assets that have been transferred by the elderly client by what Medicaid designates as the average private pay costs of a nursing home in your state. For transfers made after February 8, 2006, Medicaid will look at transfers of countable assets made in the 60 months prior to the Medicaid application (“the look back period”).

#### **D. The Attorney’s Role in Medicaid Planning.**

Given the above basic information, it may well appear to the layperson that all one need do in applying for Medicaid is follow the above guidelines and fill out the application. But determining what assets Medicaid may view as “countable” or “noncountable” is often more complex than that. For example, an attorney will ask about and evaluate the effect of certain assets on Medicaid eligibility:

- Annuity policies and payments;
- Reverse mortgages;
- Promissory notes;
- Testamentary trusts;
- Supplemental needs trusts;
- Life estate;
- Home equity limits; and,
- Continuing care retirement community payments.

Further, an attorney is aware of recent changes in the law, such as changes in community spouse assets and income levels, or changes in the look back period for eligibility. Early estate planning with an attorney may allow the elderly client to have a means to obtain items and treatment that Medicaid will not pay for. An attorney may also be able to assist in obtaining a hardship exemption from the transfer penalty, or an increase in the assets the community retains. Social workers, particularly in the nursing home setting, are relied upon every day to assist in completing Medicaid applications for the elderly client. However, as demonstrated above, in many instances the elderly client and his/her family should be advised to seek the assistance of counsel to assist in preserving assets that may provide them with a better quality of life while receiving Medicaid benefits.