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Estate Planning
Special Needs Planning

Newsletter



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Medicaid and Nursing Home Costs

Nursing home costs are on the rise. Monthly nursing home costs can be in excess of \$5,000 in Northern Virginia. This cost may be well beyond the reach of many of the elderly. However, the Government has a program, Medicaid, which may be able to cover the cost of nursing home care when a person cannot afford it.

A person may qualify for Medicaid if his or her income is not enough to cover nursing home or other medical expenses. In addition, a person cannot have more than \$2,000 in countable resources for an individual, and \$3,000 for a married couple.

A resource is defined as cash or any other personal property that a person, or the person's spouse: (1) owns; (2) has the right, power and authority to convert to cash; and (3) can legally use for his or her support and maintenance. Resources are either countable or excluded. Excluded resources include: (1) a person's hom; (2) real property so long as the person is engaged in reasonable efforts to sell it; (3) one vehicle to be used for the person's transportation; (4) life insurance with a cash surrender value of \$1,500 or less; (5) a burial plot; (6) up to \$1,500 in burial funds; (7) an irrevocable pre-paid burial contract; (8) household goods and personal effects; and (9) property essential for self-support.

When a person has more countable resources than that allowed by Medicaid, the person will be permitted to "spend down" those resources to reach the countable resource limit. Note

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

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- The District of Columbia
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- New York
- Pennsylvania
- Virginia

that in spending down, the person may not give any resources away, or sell them for less than their fair value. If the person does, he or she will create a period of ineligibility. In fact, the government will look back over the five years before making the Medicaid application to make sure that the person has not given any resources away to qualify for Medicaid.

If one spouse must enter a nursing home, but the other remains at home, there are rules designed to prevent the impoverishment of the spouse who will stay at home. To take advantage of these rules, the couple will request that a snapshot be taken of their assets. The snapshot can be requested at any time, but it must occur when the institutionalized spouse applies for Medicaid. The countable resources will be divided in half, with the spouse remaining at home, known as the community spouse, permitted to keep up to \$109,560. However, the community spouse will be entitled to a minimum of \$21,912 in countable resources.

For example, assume a couple has \$100,000 in countable resources, and one spouse requires nursing home care. The community spouse may keep one half of the countable resources, or \$50,000. But, if the couple had \$300,000, the community spouse may only keep \$109,560 in countable resources. The rest must be spent down to reach \$3,000. However, if the couple had only \$30,000 in countable resources, the community spouse may keep \$21,912.

The community spouse may also have a Minimum Monthly Maintenance Needs Allowance (“MMMNA”) of \$1,750 plus an excess shelter allowance to the extent that shelter costs exceed 30% of the MMMNA. The MMMNA and the shelter allowance together is limited to \$2,739. The community spouse may request a fair hearing to increase the MMMNA in exceptional circumstances. If the community spouse’s monthly income is less than the MMMNA, then the income of the institutionalized spouse may be used to make up the difference. If the income of the institutionalized spouse is not enough to bring the community spouse’s income up to the MMMNA, then additional resources may be used to produce the income needed to reach the MMMNA.

To maximize the community spouse’s resources, the strategy is for the couple to have about \$219,000 in countable resources on the date that the snapshot is taken. If a couple has more than this in countable resources, the couple may convert countable resources into excluded resources. For example, if the couple owns a home, and has more than \$219,000 in countable resources, this may be the time for the couple to make improvements and repairs to the home. This may also be the time to trade in a used vehicle for a new vehicle. The couple should take care, however, not to give away any assets, or sell them for less than their fair value.

If you are facing the need for nursing home care, and you do not have the ability to pay for it, you should consult with an elder law attorney to devise a plan to maximize the resources that you or your spouse may keep, while qualifying for Medicaid.■

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.