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MEDICAID PLANNING GUIDELINES

2022

ELIGIBILITY: In order to be eligible for Medicaid long term care benefits, a Medicaid applicant must spend down their total assets to \$16,800.00 or less (the “resource allowance”). Resources include bank accounts (including joint accounts), investment accounts, cash surrender values on life insurance policies, savings bonds, stocks or mutual funds, and the fair market value of any real property other than the primary residence. The applicant’s primary residence may be considered an exempt asset under certain circumstances, however, in some cases a lien may be placed on the property once Medicaid begins to provide benefits. Pre-planning is important to protect the home and to avoid a lien, if possible.

The applicant is also allowed to establish a pre-paid irrevocable burial account (of any amount) for both themselves and their spouse, which may be set up at any licensed funeral home and may retain any life insurance policy with a face value of \$1,500.00 or less.

The applicant is allowed to retain \$50.00 per month of his or her income, plus the cost of any health insurance or long term care policy premiums. Income includes social security benefits, pensions, interest and dividends and distributions from IRAs, 401Ks, or annuities.

COMMUNITY SPOUSE In order for a married applicant to be Medicaid eligible, his or her spouse, (referred to as the “Community Spouse”) cannot retain more than the spousal resource allowance, which ranges from \$74,820.00 to \$137,400.00. The actual spousal resource allowance is determined by dividing the married couple’s total net worth in half, but the allowance can never be less than \$74,820.00 or more than \$137,400.00. This excludes the value of the primary residence, up to \$955,000.00 in equity, as long as the Community Spouse continues to occupy it. One automobile owned by the applicant or the Community Spouse is also exempt.

In addition, the Community Spouse may keep up to \$3,435.00 per month of income (the “income allowance”). If the Community Spouse has less than \$3,435.00 of their own monthly income, then any additional income received by the Applicant can be retained by the Community Spouse to bring his or her own income up to that level.

LOOK-BACK PERIOD The “look-back” period is currently 60 months (or 5 years) from the date of eligibility, meaning the Applicant and his or her spouse must provide the Department of Social Services with 60 months of financial records, including all bank, retirement or investment account statements, all canceled checks or proofs of deposits and any other relevant financial records in order to determine eligibility for Medicaid.

PENALTY PERIOD In the event resources are gifted to anyone other than a spouse or a disabled child within the look back period, a “penalty period” will be assessed. The penalty period is a period of time during which Medicaid will not pay for the cost of nursing home care. The penalty period is determined by dividing the total amount of the transferred resources by the current Regional Rate for nursing home care in your area. In Western New York, the Regional Rate is currently \$11,884.00. The penalty period does not begin to run until the Applicant is otherwise eligible for Medicaid long-term care coverage, meaning that the Applicant’s total available resources have fallen below the Medicaid allowance of \$16,800.00 and he or she is then receiving skilled nursing home care. Gifting should be carefully considered and done with the advice of an elder law attorney to avoid penalty periods that cannot be resolved at the time nursing home care is needed.

EXEMPT TRANSFERS There is no penalty imposed for the transfer of assets from one spouse to another. Transfers of assets to a disabled child or to a trust for the sole benefit of a disabled child are also exempt. There is no penalty for the purchase of goods and services for fair market value. However, the purchase of goods and services from immediate family members will be heavily scrutinized.

The transfer of a primary residence is exempt if it is transferred to a spouse, a sibling with an equity interest in the home who has lived in the home for at least one year, a child who has lived in the home for at least two years prior to the date the Applicant entered the nursing home and who had provided care to the Applicant during that time, or a dependent child under the age of 21 or a disabled child of any age.

ANNUITIES Medicaid Applicants must disclose any interest they or their spouse have in any annuity product. If an annuity purchased after February 9, 2006 is annuitized (placed in “pay-out status”) in order for it to be considered exempt, it must be irrevocable, non-assignable, actuarially sound (according to Medicaid life expectancy tables) and have no provision for deferred or balloon payments. In addition, the Department of Social Services must be named as the primary beneficiary and reimbursed to the extent of any Medicaid benefits provided, unless a spouse or a minor or disabled child has been named as the death beneficiary.

In addition, annuitization should be carefully considered, as this permanent income stream will be added to the Applicant’s or the Community Spouse’s available income. If the resulting total income is in excess of the Medicaid spousal income allowance, the excess will be required to be paid to the nursing home toward the cost of monthly care.

IMPORTANT PLANNING CONSIDERATIONS

Viable planning opportunities exist for both advance and immediate-need situations that allow for the protection and preservation of assets.

Planning done in advance allows people to protect and preserve the maximum amount of assets. One of the most effective ways to protect assets is to use a Deed Transfer with Retained Life Estate to protect the primary residence.

In the event of a crisis situation where a loved one is about to or has already entered a nursing home and has not done any advance planning, there are still many techniques available that can help preserve assets for the family. This is particularly important if the Applicant or Community Spouse has made any significant monetary gifts within the last 5 years.

There are also important planning considerations for the Community Spouse after Medicaid eligibility is established for the Applicant. This includes updating wills and other estate planning documents, paying special attention to beneficiary designations and the way the Community Spouse’s assets are titled. Medicaid can recover assets from a Community Spouse’s estate for up to ten years after the Applicant’s death. It is also important to address the possibility that the Community Spouse’s health may deteriorate and that he or she may need long-term care themselves.

Keep in mind that Medicaid regulations are constantly being revised and amended. Therefore, while the information contained in this publication is current, changes may occur in the future that may affect your individual planning strategy.



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