Medicaid: States Rules and Planning Strategies

Michael H. Erde
Michael H. Erde & Associates, P.C.
erde@elderlawchicago.net
www.erdelaw.com
773/286-3800 (phone)
Agenda

- Who Contacts us and Why?
- SMART Act
- Eligibility
- Transfers
- Community Spouse
- Retroactive Eligibility
- Homestead
- Exempt Assets (Resources)
- Planning Strategies
- What is Medicaid (Gifts/Transfers/Applications)
Who Contacts Us and Why?

- Concerned family member of someone suffering from Alzheimer's, Dementia, Parkinson's, etc.
- Assets depleting because privately paying HIGH Nursing Home rates
  - $5,000-$7,000/month
- Medicaid rates are LOWER
  - $3,000/month
- Extra $$ set aside for disabled person, over and above room and board from Medicaid
- Possibly more $$ left for the family
What is Medicaid

• U.S. health benefits program for certain eligible people and families with low incomes and assets
• Jointly funded by the state and federal governments
• Managed/Administered by the states
• The largest source of funding for medical and health-related services for people with limited income in the United States
• Not to be confused with Medicare
What is Medicare? ...vs. Medicaid

- Federal government, not state funded
- Available for persons over 65 (approx. 40 million), or younger and disabled (approx. 8 million)
- Health care coverage
- Up to 100 days of skilled nursing care coverage, but only after three days in the hospital
  - Medicare pays 100% for the first 20 days and then the patient has a copayment for days 21-100
SMART ACT - Changes in IL Medicaid

• Signed by Governor on June 14, 2012
  ▫ Certain provisions effective July 1, 2012
• Overall intent to save $$
  ▫ $1.6 billion in funding cuts

• What does SMART stand for?
SMART ACT - Changes in IL Medicaid

• Save
• Medicaid
• Access, and
• Resources
• Together
Eligibility - Who Can Benefit?

- Elderly (65+), blind or disabled
  - Dementia/Alzheimers
- Long Term Care (LTC) Residents
  - nursing home, assisted living, etc.
- Illinois Resident
- U.S. citizen or non-citizen living in the U.S. with a specific type of Immigration and Naturalization status or residing under the color of the law
Eligibility - Asset (Resource) /Income Allowance

- $2,000 for individual; $30/month income
- $3,000 for couples
  - Resources include motor vehicles, bank accounts, stocks, bonds, property, cash on hand, cash value of life insurance, tools and equipment for self-employment, etc.
  - Wedding rings are allowable
  - Items required because of a person's medical or physical condition are allowable
Eligibility - Asset/Income Allowance (cont.)

- Income includes wages, Social Security benefits, contributions, unemployment insurance, etc.

- Jointly held property
  - PERSONAL property considered entirely owned by applicant
  - REAL property considered owned in proportion of # of owners (i.e. if 4 owners, each own $\frac{1}{4}$ share)
Transfers - Allowable vs. Non-Allowable

- Transfers are considered changing the way any asset is held, such as:
  - Adding a name to a deed, creating a trust, opening or closing a bank account, etc.
- Transfers reviewed for 5 years = Look Back Period
  - (formerly 3 years; 5 years for trusts)
  - $500 or greater (Cook County)
- Non-allowable transfers:
  - Transfers for less than fair market value for the purpose of qualifying for assistance
- Guardianship vs. Power of Attorney with Gift Power
Transfers - Non-Allowable/Penalty Period

• Non-allowable transfers combined and treated as a single transfer
• Start date of penalty period is the later of:
  1. Date applicant becomes eligible for long term care services (including meeting any spend-down),
  2. Date of the transfer, or
  3. Day after any previously existing penalty period ends
     • Partial months of ineligibility will be included in the penalty period.
Transfers - Non-Allowable/Penalty Period (cont.)

- **Example:**
  - Mrs. Smith enters a long term care facility on 08/01/12 and applies for assistance.
  - She reports non-allowable transfers of $5,000 in 07/08 and $5,000 in 04/09
  - Private-pay rate is an average of $5,000 per month
  - Calculate the penalty period:
    - Total amount transferred = $10,000.
    - $10,000 / private-pay rate of $5,000 per month = 2 months penalty (not qualifying for Medicaid benefits)
Community Spouse - Asset/Income Allowances

- $109,560 community spouse allowance
  - (reduced from $113,640)
- $2,739 community spouse maintenance needs allowance
  - (reduced from $2,849)
  - May be adjusted after a fair hearing, whichever is greater
  - Excess to LTC facility
Community Spouse - Asset/Income Allowances (cont.)

- Health Care and Family Services (HFS) may seek support for institutionalized spouse if that spouse assigns their right of support to the State
  - Orders of support can’t reduce community allowances, either maintenance or asset
Community Spouse - Spousal Refusal

• Cooperation requirement
  ▫ Persons, and spouses of persons, who apply for medical assistance in a LTC, supportive living facility, or through the DoA Home and Community Based Services (HCBS) waiver are required to cooperate in determining financial eligibility

• Applicant may be denied eligibility for failure to cooperate
  ▫ (formerly, where there had never been transfers from the LTC spouse to the community spouse, the refusal to disclose assets was best strategy)
Retroactive Eligibility

- Allowable for up to 3 months prior to date of application
  - If individual would have been eligible the first day of each month, then can back date for that month
  - Must meet financial and non-financial eligibility
    - (formerly only non-financial eligibility required)
  - Attorney’s fees up to $10,000 allowed as of date of application
Homestead Transfers Allowed

- Spouse
- Minor Child
- Child who is blind or has a disability
- Sibling who has equity interest in the property and resided in the home for at least 1 year immediately prior to the date the person moved to a nursing home or LTC facility
- Child Caretaker – child cared or parent in the homestead for the 2 years immediately prior to parent moving to a nursing home of LTC facility
What is Considered Homestead?

- **Homestead = Exempt property**
  - Owned and occupied by the person as their home
    - Remains exempt if person living in LTC says it is their homestead and intends to return to it
  - **$500,000 equity in home**
    - (reduced from $750,000)
  - Also exempt as homestead if it is occupied by:
    1. Spouse;
    2. Dependent sibling;
    3. Child under age 21; or adult child who is blind or has a disability; or
    4. Child caretaker who has resided in the home for the 2 years immediately before the person moved to the nursing home or LTC facility.
What is Not Considered Homestead?

- Non-homestead = not exempt property
  - All real property that is not the client's homestead
  - Abandoning homestead property with no intention of returning, immediately becomes non-homestead property
  - Transfer to trust becomes non-homestead
    - (formerly allowable transfer)
    - “trust” undefined in SMART Act
Exempt Assets (Resources) - Personal items

- Personal items and household goods
  - Anything owned by a person that is not land or permanently affixed to land such as clothing, personal effects, and household furnishings are exempt
Exempt Assets - Resources for Self Support

- Property or equipment needed for income or self-support
  - Land, buildings, equipment, supplies, and tools including farmland and personal property (such as equipment and supplies, motor vehicles, and tools) used in the income-producing operations
    - Up to $6,000 total equity value in the property
    - Only if the property produces a net annual income of at least 6% of the excluded equity value of the property;
    - Or if failure to produce at least 6% is beyond the person's control
Exempt Resources - Life Insurance

- Cash value of a life insurance policy owned by applicant and/or spouse is counted as an asset unless:
  - the policy is exempt; or
  - the total face value is $1,500 or less

- Exempt policies:
  - Term policies with no cash value
  - Group policies provided by an employer or required for employment
  - Policies on the life of a person who is not the client's responsible relative
  - Policies on the life of an applicant owned by someone other than the applicant
Exempt Resources - Prepaid Funeral/Burial

- Irrevocable funeral/burial contract may be up to $5,874
  - (increased from $5,387)
- Revocable pre-paid funeral is exempt up to $1,500
  - Burial space is exempt
- Irrevocable assignment of life insurance policy is exempt
  - Additional amount not related to burial is a transfer for less than fair market value
  - Trust must name State of Illinois as remainder beneficiary up to amount equal to total medical assistance paid on behalf of decedent by the State
Exempt Resources - Motor Vehicle

- Value up to $4,500 is exempt
- Also exempt if:
  - Vehicle needed for transportation by or for a handicapped person
  - Vehicle has been modified for transportation for essential daily activities based on unique needs for climate, terrain, etc.
  - Vehicle is for the community spouse of an applicant and has been transferred to the community spouse
Planning Strategies - Allowable Transfers

- Pay off mortgages and/or make improvements to the home; especially if one spouse lives there
- Make prepaid burial arrangements
- Purchase life insurance to cover burial and funeral expenses
- Purchase a new car or better vehicle for community spouse
- Purchase a life estate interest in another person's home
  - (only allowed if the applicant resided in the home for at least 12 consecutive months after the date of transfer)
Planning Strategies - Allowable Transfers

• Undue hardship - Hardship waiver may be submitted:
  ▫ Hardship exists when penalty would deprive a person receiving long term care services of:
    • Medical care, endangering the person's life or health; or food, clothing, shelter, or other necessities of life
  ▫ Hardship does not exist when imposition of a penalty would cause a person or the person's family members:
    • inconvenience, or restrict the person's or their family members' lifestyles, but would not put him or her at risk of serious deprivation.
Planning Strategies - Return of Transferred Resource of Income

• Return assets or income creating penalty period to the person in full, transfer allowed
• No partial returns on or after 1/1/12
  ▫ Exception: if assets or income transferred for less than FMV prior to 01/01/12 are partially returned, penalty period reduced but not eliminated
    • E.g., if half the value of the assets or income is returned, penalty period reduced by one half
Planning Strategies - Pooled Payback Trusts

- Supplemental funds to provide for Medicaid recipient – pays for items Medicaid does not
  - personal needs, leisure time activities, training, clinical services, and transportation.
- Allows individuals to provide for loved ones after pay back to the state
Planning Strategies - Pooled Payback Trusts

- **Allowable**
  - Under 65
  - Any age if Ward of Public Guardian or the State

- **Not Allowable**
  - Over 65 if not Ward of Public Guardian or the State
  - Any addition to the trust is treated as a transfer of assets or income for less than fair market value

  - (Formerly allowed for over 65 pre-SMART) - Was excellent Medicaid planning tool for LTC facility residents to save their $ from the facility
Planning Strategies - Annuities

• Annuity is a transfer for less than FMV unless it meets the following conditions:
  ▫ **Medicaid Compliant Annuity** - Purchased from a commercial financial institution or insurance company authorized under federal or state law to issue annuities and is,
    a) actuarially sound,
    b) irrevocable and non-assignable,
    c) pays benefits in approximately equal periodic payments, no less than quarterly, and
    d) no deferred or balloon payments

  ▫ State must be named as remainder beneficiary (up to amount paid out on behalf of Medicaid recipient)
Planning Strategies - Medicaid Compliant Annuity Strategy

1. Gift ½ value of asset - Half a Loaf
2. Put ½ in Annuity
3. Annuity income pays for LTC during penalty period
   - Income must be under private pay rate

- Gift may be direct to person or a third-party trust
Planning Strategies - Medicaid Compliant Annuity Benefits

- Eliminates Spend-down
- Converts spend-down into an income stream to pay private-pay rate
- Individual must be down to $2,000 before the penalty for the gift can be started
  - E.g. Joe gave away $50,000 and purchased an annuity with $48,000 to get down to $2,000
Civil Union Act & Medicaid

- Community Spouse Resource Transfer Allowance,
  1) $109,650.00

- Community Spouse Support, Standard Responsible Relative, Monthly Liability
  1) $47,501 - $48,000
  2) In family support $410.00
Civil Union Act & Medicaid

- Homestead to Spouse.
  1) $500,00.00

- Income Allowance to keep
  1) Individual $2000.00
  2) Couple’s $3000.00

- Personal Property,
  1) Wedding Rings
Civil Union Act & Medicaid

- Community Spouse Maintenance Needs Allowance
  1) $ 2,739.00

- Life Insurance Policies on the life of a person who is NOT the clients responsible relative is an exempt Policy

- Assets include Community Spouse
  1) Vehicle Community Spouse or
Civil Union Act & Medicaid

• 2) Pay off mortgage if one Spouse lives there (in home) allowable transfer.

• Hardship waiver does not exist when imposition of a penalty would cause the person’s family member.
  1) Inconvenience
  2) Restrict the person’s life style.
   But would not put him/her at risk of serious deprivation
Civil Union Act & Medicaid

• Can domestic partner Adopt other?

• Care Giver Better for non family.
Civil Union Act & Medicaid

- Sole Benefit Rule for Trust
  (Funds must be used for Special Needs Person)

- Common Problems in Nursing home Facilities
  & especially Nursing Home Contracts.
Thank you.

• Questions???