The Basics of Wisconsin Medicaid & Long-Term Care Asset Protection Planning

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What Is Medicaid?

- It is a joint federal and state medical insurance program that covers the cost of long-term care, such as extensive nursing home stays as well as limited at home assistance to certain needy and low-income individuals
- Government offered long-term care insurance
- Medicaid coverage is comprehensive so eligibility can be a lifesaver
- Medicaid eligibility planning is the equivalent of insurance planning, *i.e.*, planning to secure coverage

Common Myths About Medicare & Medicaid

Myth:	Reality:
It is unlikely that I will ever need long-term care	**It is estimated that <u>50%</u> of all Americans will need long-term care at some point in their lives**
I can afford to pay for my own long-term care	Average costs in Milwaukee for long-term care in 2018: ▪ Medicare certified home health care aide: <u>$4,767</u> per month ▪ One bedroom assisted living unit: <u>$4,264</u> per month ▪ Semi-private room in a nursing home: <u>$9,555</u> per month

Common Myths About Medicare & Medicaid

(continued)

Myth:	Reality:
Medicare pays for all long-term care in a nursing home	**Medicare coverage is <u>limited</u> as to duration and cost of care**
Joint accounts protect assets	▪ All of the assets of a joint account may be considered "<u>countable assets</u>" of the Medicaid applicant ▪ A withdrawal from a joint account by a non-Medicaid applicant owner can constitute a "<u>divestment</u>" of the Medicaid applicant

Common Myths About Medicare & Medicaid

(continued)

Myth:	Reality:
Medicaid recipients receive less care than private individuals	**Most nursing homes accept Medicaid payments for their residents** **Federal law prohibits nursing homes from providing a different level of care to a resident based solely upon the resident's Medicaid eligibility**
You can qualify for Medicaid by giving away all your assets	Giving away assets may constitute a "divestment" and result in an "ineligibility period"

Common Myths About Medicare & Medicaid

(continued)

Myth:	Reality:
A gift of more than $15,000 will be taxable to the person making the gift not the person receiving the gift	**While a gift of more than $15,000 during a single year may constitute a taxable gift to the person making the gift, no gift tax will be due until this person has given away more than $11.4 million over his/her lifetime**
Gifts of less than $15,000 may be made to family, friends, and charities without negatively effecting Medicaid eligibility	With only limited exception, all gifts made within the look-back period can cause an ineligibility period

Common Myths About Medicare & Medicaid
(continued)

Myth:	Reality:
A person making a gift is ineligible for Medicaid for five years	**The five-year period describes the period in which gifts must be disclosed not the penalty period resulting from such gifts**
Someone in a nursing home must spend down all of his assets on nursing home care before qualifying for Medicaid	Countable assets can be converted to exempt assets or unavailable assets

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Common Myths About Medicare & Medicaid
(continued)

Myth:	Reality:
Medicaid will take all of my assets including my house	**Medicaid generally does not take assets; it only denies eligibility until available assets are spent down to a level of eligibility, *i.e.*, $2,000** **However, a Medicaid lien may be placed on a home of a Medicaid recipient but such liens are generally not foreclosed while the applicant is living**

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Common Themes to Medicaid

- Contrary to commercial health insurance, eligibility is limited to those who have an immediate need for medical care but who cannot afford it
- Substantial protection provided to community spouse and minor or disabled children
- Benefits provided to children who provide assistance to parents with their long-term care needs

Medicare Pays Certain Costs of Skilled Nursing Facility (2019 members)

Based on the number of days of a nursing home stay, as follows:

- First 20 days – Medicare pays 100% of approved amount
- Additional 80 days – Medicare pays all but $170.50 per day
- Beyond 100 days – Medicare pays nothing
- An individual must have been hospitalized for at least three days prior to entering the skilled nursing facility
- Medicare coverage may be limited to less than 100 days if there is a determination that a recipient's condition has plateaued – an appeal can be made to challenge this determination to secure additional coverage

Medicaid Provides Comprehensive Coverage

- Comprehensive coverage for Medical Services, including physician services, inpatient and outpatient hospital services, and prescription drug coverage
- Unlimited skilled care in nursing home and two levels of intermediate care
- Under Wisconsin Family Care, custodial care in assisted living facilities and certain care services in the home

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Medicaid Eligibility

A determination of Medicaid eligibility requires a consideration of all of the following for the applicant:

- Medical Need
- Income
- Assets
- Transfers/Divestments

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Medical Need

An applicant of Wisconsin Medicaid must satisfy a combination of the following non-financial requirements:

- A qualified recipient of Supplemental Security Income is automatically qualified for Medicaid
- Apply for all eligible non-need-based public benefits
- Cooperate with medical support liability and third-party liability, and pay any “cost share” required
- A U.S. citizen or have “qualified alien” status
- A Wisconsin resident 65 years of age or older, blind or a disabled individual

Medical Need *(continued)*

- Functional Eligibility for Medicaid
- Applicant must require assistance with certain “activities of daily living,” such as:
  - eating
  - bathing
  - transferring
  - dressing
  - toileting
  - moving about
- Different levels of care required for Nursing Home care and Non-nursing Home care

Medicaid Income Eligibility

- Depends on the "cost of care"
- Applicant's "net income" must be below the applicant's "cost of care"
- Applicant's "net income" must be spent on his or her cost of care and Medicaid pays the difference, if any (*i.e.*, co-pay situation)
- For example, if an applicant has $3,000 of monthly net income and his or her cost of care is $6,000 per month, then the applicant will have to spend $3,000 per month towards the cost of care and Medicaid will pay the balance

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Medicaid Asset Eligibility

Depends on the value of "countable assets" an applicant has at the time of application:

- "Countable assets" are all assets owned by an applicant and his or her spouse except for certain "unavailable assets" and "exempt assets"
- Unmarried applicant or an applicant whose spouse is already receiving Medicaid can only have $2,000 in countable assets

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Medicaid Asset Eligibility *(continued)*

Depends on the value of “countable assets” an applicant has at the time of application:

- Certain “Spousal Impoverishment Protections” are afforded to a married applicant who has a spouse that is not in need of Medicaid, *i.e.*, a “community spouse”
- Countable assets in excess of the allowable minimum amount must be “spent down” before Applicant is eligible for Medicaid

Medicaid Asset Eligibility – Unavailable Assets

“Unavailable assets” are assets that are not actually available to the applicant or convertible to cash by or for the applicant for at least 30 days; so the value of such assets does not count for Medicaid eligibility purposes

Examples of Unavailable Assets that are not counted for Medicaid purposes:

- Property listed for sale but not sold
- Life estate interests in real estate
- Certain annuities and promissory notes
- Certain irrevocable trusts, *e.g.*, special needs trusts

Medicaid Asset Eligibility – Exempt Assets

- Exempt assets for a single applicant that are not counted for Medicaid purposes, include:
  - Total of $2,000 in cash or investment assets
  - Reasonable value of personal property and furnishings
  - Wedding rings regardless of value
  - One car of no more than $4,500 in value, or unlimited value if car is used to go to medical appointments
  - Life insurance with a death benefit of $1,500 or less
  - Certain burial and funeral funds
  - Property used in a trade or business (may include farm or rental property)
  - Certain equity value of home
  - Assets in a special needs trust, if properly set up

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Medicaid Asset Eligibility - Home Exceptions

Certain equity value of a home is exempt

- The equity value of the home up to $750,000, if applicant has the subjective intent to return to the home
- An unlimited equity value of the home if the applicant's spouse, minor, or disabled child lives in the home
- **Planning Tip**: Countable assets can be made exempt by contributing them to the equity value of a home, *e.g.*, paying down mortgage, making structural repairs or upgrading to a more expensive home

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Additional Assets Allowed to the Community Spouse

- Tangible personal property, *e.g.*, furniture and furnishings, of unlimited value
- All tax deferred qualified retirement funds (*e.g.*, IRA or work related pension funds) of community spouse
- Community Spouse Resource Allowance (CSRA)

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The CSRA Equals the Greater of …

- As of July 2018, one half of the value of a couple's total combined "countable assets" up to $252,840 (*i.e.*, $126,420); or
- Up to $50,000 of the value of the couple's total countable assets

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Examples of the Determination of CSRA

Countable Assets of Couple	Community Spousal Resource Allowance
$300,000	$126,420
$150,000	$75,000
$120,000	$60,000
$75,000	$50,000
$50,000	$50,000
$45,000	$45,000
$30,000	$30,000

Minimum Monthly Maintenance Allowance (MMMA)

- A Community spouse is entitled to a MMMA to maintain the spouse's independence in the community
- The amount of MMMA is set annually according to federal poverty guidelines
- As of July 2018, the MMMA is $2,743.34, but can be raised to as much as $3,160.50 to cover certain "shelter expenses"

Medicaid Spend Down

- To the extent an applicant's "countable assets" or "net income" exceed the allowable amounts, the difference must be spent down or converted to exempt or unavailable assets before the applicant can qualify for Medicaid
- Funds can be expended to cover the cost of necessary services, including for personal and professional services provided by relatives who have served as a power of attorney or who have provided assistance with the activities of daily living
- Excess funds can also be converted to exempt assets or unavailable assets by paying down a mortgage on a home, prepaying for funeral expenses, purchasing a Medicaid qualified annuity or exchanging funds for a Medicaid qualified promissory note

Transfer of Assets

- Medicaid eligibility requires an examination of certain transfers made by the applicant
- This analysis requires an understanding of the following key terms:
  - Divestments
  - Look-back period
  - Ineligibility period
  - Ineligibility period start date

Divestments

The transfer of income, non-exempt assets, or homestead property in exchange for assets or services which are worth less than fair market value of what was transferred

- A divestment is the making of a gift
- The penalty for a divestment is the imposition on an applicant of a period of ineligibility for Medicaid benefits

Exception for the Transfer of Home

An applicant's transfer of his or her home does not constitute a divestment if the home is transferred to:

- The applicant's spouse
- The applicant's child, who is under age 21, blind or permanently or totally disabled
- The applicant's sibling who has an ownership interest in the homestead and who has resided in the home for at least 12 months
- Caregiver child

Caregiver Child

A child of the applicant who:

- Has resided in the home for at least two years immediately before applicant's institutionalization;
- Provided care to the applicant at home prior to his institutionalization; and
- By providing such care, permitted the applicant to remain at home for a longer period of time than applicant would have been able to without such care.

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Look-Back Period

- Describes the period of time preceding the date of a Medicaid application during which the applicant's finances are examined to determine if divestments were made
- Currently the duration of the look-back period is the 60-month period immediately preceding the date of the Medicaid Application
- Divestments during the look-back period may cause an "ineligibility period"

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Ineligibility Period

The period of time an applicant is ineligible for Medicaid because of a divestment

- The period is expressed in terms of a number of days (*e.g.*, a 350-day ineligibility period)
- The period is calculated by dividing the value of the asset divested (*i.e.*, gifted) by the "statewide average daily nursing home cost to a private pay patient"
- The average daily rate as of July 1, 2018 is <u>$286.15</u>

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Examples of Ineligibility Period Calculations

- A gift of $100,000 can result in an ineligibility period of 360 days ($100,000/$286.15 = 349.47)
- A gift of $45,000 can result in an ineligibility period of 161.84 days ($45,000/$286.15 = 157.26)
- A gift of $500,000 can result in an ineligibility period of 1,747 days or 4.8 years ($500,000/$286.15 = 1,747.34) – Less than five year look-back period

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Ineligibility Period Start Date

- The ineligibility period does not start until an applicant is "otherwise eligible" for Medicaid
- "Otherwise eligible" means in a nursing home with $2,000 in countable assets or less
- When you most need it, the ineligible period begins

Wisconsin Estate Recovery

The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long-term care services paid for by Medicaid

The state seeks repayment through:

- Liens against a home
- Claims against an estate, affidavits of transfer
- Revocable trusts, life insurance policies
- Voluntary recoveries

Before the State can put a Lien on an Applicant's Home

- The applicant lives in a nursing home and is required to contribute to the cost of his care;
- The applicant is not reasonably expected to return to live at the home; and
- A spouse, child under the age of 21, or a child who is disabled or blind and does not live in the home

The State Cannot Foreclose on a Home

- While the institutionalized applicant expresses an intent to return to the home
  - The intent does not need to be reasonable
  - The intent does not have to be currently expressed but it must be documented
  - It is important to reference the intent to return home in estate planning documents such as a power of attorney
- Caregiver Child and Sibling Exceptions

The Caregiver Child Exception

The state <u>cannot</u> foreclose while a child of the institutionalized applicant lives at the home, if the child lived with the institutionalized individual for <u>two</u> years prior to his or her admission to the nursing home and by doing so, the child <u>postponed</u> the institutionalized applicant's admission to the nursing home.

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The Sibling Exception

The state <u>cannot</u> foreclose while a sibling resides in the home, if the sibling holds an ownership interest in the home and the sibling resided in the home for at least 12 months before the applicant's admission to the nursing home.

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Medicaid Planning Techniques

Medicaid eligibility planning generally falls into one of three categories:

1. Avoiding the need for Medicaid by obtaining alternative sources of payment for long-term care, such as life or long-term care insurance
2. Reducing the total cost of a Medicaid spend down by sheltering certain assets when long-term care is not anticipated in the near future
3. Crisis planning when long-term care is immediately necessary

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Alternative Sources of Payment - Life Insurance

- Private insurance products can provide an alternative source for the payment for long-term care either through life or long-term care insurance
- Life insurance can provide a means of recouping funds expended on long-term care expenses
- Life insurance can be particularly useful in recouping expenditures from tax-deferred retirement benefits such as an IRA or 401(k)
  - While withdrawals from an IRA may cause taxable income, the tax rate for such withdrawals can be minimal if the funds are used to cover qualified medical expenses for which a deduction may be taken, *e.g.*, offset taxable income from the withdrawal with a medical expense deduction which can reduce the effective tax rate below 10%
  - Life insurance benefits are generally not taxable income
  - Accordingly, combining life insurance with an IRA to cover the cost of long-term care can provide an avenue of replacing taxable income with a non-taxable insurance benefit

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Alternative Sources of Payment – Long-Term Care Insurance

- "Long-Term Care Insurance Policies" (LTCP) cover certain costs of nursing home care and other forms of long-term care
- LTCPs offer a variety of benefits, including coverage for care at home, payment to relatives providing personal services and care, and life insurance riders
- The premiums for LTCPs depend on the age and health of the applicant and the benefits of the policy
- Annual premiums are normally less than the cost of a single month in a nursing home
- Tax deductions and other tax benefits are available for LTCPs

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Alternative Sources of Payment – Partnership Long-Term Care Plans

- Wisconsin Long-Term Care Partnership – Intended to encourage the purchase of private long-term care insurance
- Applicant is permitted to protect one dollar of his or her other assets for every dollar of qualified long-term care policy proceeds paid for applicant's care
- If applicant has $100,000 in total long-term care coverage, the applicant may be able to shelter up to $100,000 in other assets from Medicaid spend down
- The applicant must have been a Wisconsin resident at the time the policy was issued, and the policy must meet certain state requirements to qualify

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Alternative Sources of Payment – Hybrid Insurance Plans

- Hybrid life and long-term care insurance policies have emerged as an option
- Such as a life insurance with an acceleration of benefits for long-term care expenses or a long term-care insurance policy with a death benefit
- Some companies offer single premium policies with a return of premium option
- Such policies generally provide larger long-term care benefits than death benefits
- Hybrid policies are intended to preserve family assets and not to provide investment growth

Alternative Sources of Payment – Combined with Shelter Planning

- The benefit of long-term care insurance can be increased if coupled with additional planning
- Long-term care insurance can be coupled with a divestment to allow for substantial other assets to be sheltered from a Medicaid spend-down
- For example, a long-term care policy providing for a three year benefit could be used to cover a penalty period for a divestment equal to $313,334 in 2019 dollars
- Plan would be to make a large divestment once a long-term care claim is made and use the insurance policy to cover expenses during the resulting penalty period

Sheltering Certain Assets

Techniques may be employed to reduce the potential Medicaid spend-down, such as:

- Conversion of ownership in homestead and other real property to life estate and remainder interest
- Maximize contributions to both spouse’s deferred compensation accounts, such as 401(k) and IRA
- Leaving estate to surviving spouse through a testamentary discretionary trust instead of an outright distribution
- Transferring ownership of life insurance to children or an irrevocable trust
- Making transfers to children or an irrevocable trust
- Paying children for personnel services (need a written contract)
- Establishing a Caregiver child

Sheltering Certain Assets – Spousal Testamentary Trust

- For married individuals, substitute typical estate plan of everything to surviving spouse with everything to a testamentary discretionary trust for the surviving spouse
- The assets of a testamentary discretionary trust may be available to support the surviving spouse while not being counted for Medicaid eligibility purposes; surviving spouse gets the benefit of both the trust assets and Medicaid
- The creation and funding of a spousal testamentary trust is generally not considered a divestment
- Negative is that a spousal testamentary trust must be established through the will of the first spouse to die and thus requires a probate of the estate of the first spouse to die
- Surviving spouse cannot be the trustee of the testamentary trust and trustee must be given broad discretion as to distributions to surviving spouse

Sheltering Certain Assets – Irrevocable Trust

- Instead of the standard revocable trust use an irrevocable trust to hold certain assets such as life insurance, stock and real estate
- An irrevocable trust can remove assets from the category of "countable assets" for Medicaid purposes
- The creator of the trust can<u>not</u> be the trustee and should retain nothing more than a limited income interest in the trust
- Assets transferred to the trust avoid probate, a Medicaid spend-down and Medicaid estate recovery
- The transfer of assets to an irrevocable trust constitutes a gift for Medicaid purposes and can constitute a divestment if made within the look-back period

Sheltering Certain Assets – Life Estate Remainder Interest

- Ownership of real estate can be split into a life estate and remainder interest with a parent being the life estate owner and the children owning the remainder interest
- A life estate interest is considered an unavailable asset for Medicaid purposes
- The parent can use the property during life and then the remainder interest passes to the children on parent's death without probate
- The creation of a life estate may constitute a divestment if made within the look-back period
- Life estate interests created after August 1, 2014 may be subject to limited estate recovery

Crisis Planning When Long-Term Care is Immediately Necessary

- Techniques may be employed to save assets from a Medicaid spend-down even after long-term care becomes immediately necessary
- Paying relatives reasonable fees for personal services (need a written contract)
- Transferring homestead to a caregiver, disabled or minor child
- Countable assets can be converted to exempt assets, by spending money on a homestead, paying down mortgage, real estate taxes, and other necessary expenses

Crisis Planning When Long-Term Care is Immediately Necessary *(continued)*

- Countable assets can be converted to an income stream by the purchase of a Medicaid qualified annuity or transferring funds to a trusted child in exchange for a Medicaid qualified promissory note
- Establish "Special Needs Trust" through a "Pooled Trust" managed by a non-profit association such as WisPact

Long-Term Care Planning

- For a more detailed discussion of the eligibility rules and planning options see:
  - The Basics of Wisconsin Medicaid Eligibility Planning
  - Long-Term Care Asset Protection Planning

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QUESTIONS?

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