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Qualifying for Medicaid Benefits- What Every Estate Planner Should Know

INTRODUCTION

These materials and the presentation offers a “peek” into available Medicaid benefits but is not meant to be all inclusive. Every attempt is made to offer the attendee some insight into planning opportunities in the situations seen most often when dealing with the disabled and chronically ill community.

MEDICAID BENEFITS

Supplemental Security Income (SSI) related programs

These materials will focus on:

- Institutional Care Program.
- Medicaid Waiver Programs.
- Program of All Inclusive Care for the Elderly.

Institutional Care Program (ICP)

Qualifying requirements for ICP Medicaid in the nursing home are like building a three-legged stool.

First Leg - Assets:

- The assets that count, also known as “available” assets generally cannot exceed \$2,000 for the Medicaid applicant and \$119,200 for the Community Spouse.
- Always review assets to determine whether or not they are available. A few examples of unavailable assets include:

- A home with equity value under \$552,000 if single, \$1,104,000 if married owned jointly.
- Rental property rented or for rent for a reasonable rate of return.
- Property for sale at market value.
- Property used in a trade or business.
- Property with a joint owner unwilling to sell.

Second Leg - Income:

- Florida's income cap for 2010 is same as 2009 - \$2,022 per month for applicant. Community spouse income does not count toward cap.
- If applicant is over income cap, must have Qualified Income Trust for first month of Medicaid qualification.
- Cap based on gross income not net income.
- Low income community spouse may receive some of institutional spouse income but community spouse never responsible for share of institutional spouse share of nursing home cost.

Third Leg- Level of Care:

Level of care determined by:

- Doctor fills out and signs Form 3008, which is a medical assessment form.
- Comprehensive Assessment and Review for Long-Term Care Services (CARES) evaluation. CARES is part of The Florida Department of Elder Affairs.

ICP is an entitlement program. If one builds the three-legged stool, you have a right to a nursing home bed.

Medicaid Waiver Programs

- Statewide Medicaid Managed Care Program(SMMC)
- Long-Term Care Managed Care Program (LTC)
- Managed Medical Assistance Program (MMA)

LTC Consumer → Medicaid LTC and MMA program

95% of LTC consumers qualify for Medicare, likely be enrolled in three programs

Rules for program not consistent, more protection for beneficiaries in MMA than LTC

Program of All Inclusive Care for the Elderly (PACE):

- Now in Pinellas County managed by Suncoast Hospice (Empath Health)
- Does not seem to be on the radar for Information and Retrieval services.

Elective Share and Medicaid

The Problem:

In Florida, the surviving spouse has the right to an elective share of the deceased spouse's estate. The elective share amount is 30 percent of the decedent's elective estate. This share is a right to a dollar amount, not a right to any specific property. Some of the assets included in the value of the elective estate are:

- The decedent's probate estate.
- The decedent's ownership interest in accounts or securities registered as payable on death, transfer on death, in trust for or joint tenants with rights of survivorship.
- The decedent's fractional interest in property other than as described above.
- The decedent's revocable trust(s).
- The decedent's interest in any irrevocable transfers in which the decedent retained the right of the possession and use of the property.
- The net cash surrender value on life insurance policies on the decedent's life.
- The value of death benefits received under any public or private pension, retirement or deferred compensation plan, other than from the Railroad Retirement Act or from Social Security.
- The value of all property gifted or transferred within one-year of the decedent's death, except for property that was sold for full market value.
- The value of any property transferred in satisfaction of the elective share.

However if the surviving spouse claims the elective share, he or she will be over the Medicaid asset limit and will be disqualified from further Medicaid benefits until the elective share funds have been spent down to under \$2,000.

The Solution:

Florida law allows for the elective share to be satisfied by the creation of a trust by the Medicaid applicant's spouse in his or her Last Will and Testament. In order to maintain the surviving spouse's Medicaid benefits, the trust should be a special needs trust. The trustee of a special needs trust has the discretion to pay for any items or services not covered by Medicaid. The trust can either be a Qualifying Special Needs Trust or an Elective Share Trust.

Qualifying Special Needs Trust (QSNT)

A QSNT must be funded with at least the value of the elective share amount or greater. Some of the QSNT requirements are:

- A QSNT funded with greater than \$100,000 requires court approval.
- The surviving spouse must be ill or disabled.
- The QSNT trustee has the discretion to distribute income or principal of the trust to or for the benefit of the surviving spouse.
- More than half of the QSNT trustees must be eligible family trustees, which means that they must be related to the decedent's grandparents and related to the surviving spouse.

Elective Share Trust (EST)

An EST is an alternative to the QSNT which would be created if the surviving spouse is not ill or disabled or if the court does not approve the creation of a QSNT. There are three types of ESTs and I recommend the following type as the best solution if the surviving spouse needs Medicaid benefits:

- The value of this trust must equal to or exceed 125% of the amount of the elective share.
- At least annually, the trustee must pay to the surviving spouse all the trust's net income.
- The surviving spouse must have the right to either require the trustee to make the trust's assets produce income or to convert the assets to produce income within a reasonable time.
- The trustee has the discretion to distribute principal from the trust for the surviving spouse's health, support and maintenance taking into account the spouse's other income and resources.

The advantage of an EST is there are no restrictions on who can serve as the trustee. The disadvantage is all income from the EST is paid to the surviving spouse, which means that these funds must be paid to the nursing home as part of the spouse's patient responsibility if the spouse is receiving Medicaid benefits.

By the time of our next forum, we may be talking about a whole new elective share as the Real Property, Probate, and Trust Law Section of The Florida Bar has legislation proposed to make some changes in the elective share law. None of the proposed changes deal with the Qualifying Special Needs Trust or the Elective Share Trust.