

Elder Law Overview and Medicaid Administration

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Overview

- Medicaid Administration in Texas
- Focus is on long-term care (“LTC”)
- Ethical issues

Medicaid in Texas

- Administered by Texas Health and Human Services Commission (“HHSC”)
- §1634 Contract with Federal Government
 - Requires Texas to follow SSI methodologies in its LTC Medicaid programs.

Ethical Issues

- Identify the Client
- Client Capacity and Gifting
- Medicaid Planning by Non-Attorneys

Medicaid Eligibility Requirements

- Citizenship
- Residence
- Age, Blindness, Disability
- Medical necessity (“MN”)
- Income/Resource Requirements

Monthly Income Limits

- Unmarried Individual - \$2,022
- Married Individual w/Ineligible Spouse - \$2,022
- Married Couple, Both Applying - \$4,044
- Name-on-the-Check Rule

“Miller Trust” or “QIT”

- Solves only income problems
- Must be irrevocable
- Holds only grantor’s income
- Distributions must be for certain purposes
- State has right of reimbursement
- All of a single source of income goes into trust
- Affects eligibility but not applied income

Asset Limits

- Unmarried Individual - \$2,000
- Married Individual w/Ineligible Spouse
(See “spousal impoverishment” below)
- Married Couple, Both Applying - \$3,000
- Assets determined as of 12:01 a.m. on first day of each month.

Excluded Assets for Eligibility Purposes

- Homestead - But DRA 2005 limits home equity to \$500K.
- One Auto
- Burial Spaces (includes casket, vault, marker, etc.)
- Irrevocable Pre-Need Funeral Contracts
- Business Property

Spousal Impoverishment Rules

- The purpose is to prevent impoverishment of the community spouse when the other spouse enters a nursing home.

Spousal Impoverishment Provisions

- Spousal Protected Resource Amount (“SPRA”)
- Minimum Monthly Maintenance Needs Allowance (“MMMNA”)

SPRA

- Equals half of the couple's combined assets as of month of entry to medical care facility for a continuous stay (30 consecutive days), but
- Not less than \$21,912
- Not more than \$109,560

Calculation of SPRA

- If combined assets total \$250,000, the SPRA is \$109,560
- If combined assets total \$100,000, the SPRA is \$50,000
- If combined assets total \$20,000, the SPRA is \$21,912

MMMNA for Community Spouse

- This amount is \$2,739.00 per month in 2011

SPRA Expansion

- May be expanded (even beyond the \$109,560 maximum) in certain instances to bring the community spouse's monthly income up to the MMMNA (\$2,739.00)

Transfer of Assets

- OBRA 1993 imposes a penalty (period of ineligibility) for disposing of assets for less than FMV
- The length of the penalty period depends upon the amount transferred

Exempt Transfers of the Home

No penalty if transferred to -

- The spouse
- The individual's child under 21
- The individual's disabled child of any age
- A sibling with an equity interest who lived there 1 yr. before nursing home entry
- The individual's child who lived there 2 yrs. before nursing home entry and who provided care that delayed that event

Other Exempt Transfers

- No penalty for assets transferred to -
- The spouse
 - A third-party for the spouse's sole benefit
 - To the individual's disabled child of any age, or to a trust for the sole benefit of such child
 - To a trust for the sole benefit of any disabled individual under 65

Other Exempt Transfers (Cont.)

- The individual intended to dispose of assets at FMV
- The transfer was exclusively for reasons unrelated to Medicaid eligibility.
- All transferred assets are returned to the individual
- Imposition of penalty would work an undue hardship on the applicant

OBRA 1993 Transfer Rules (prior to 02/08/06)

- Look-Back Period - 36 months for non-trust transfers; 60 months for certain transfers to/from trusts
- Penalty Period Begins - The month the transfer occurred

DRA 2005 Transfer Rules (Effective 02/08/06)

- Look-Back Period - 60 months for all transfers
- Penalty Period Begins - When the individual enters a nursing home, applies for Medicaid, and would be eligible but for the transfer.
- Buying Life Estate in Someone Else's Home - A disqualifying transfer, unless buyer lives in the home 12 months after the purchase.

Formula for Calculating Penalty Period

$$\begin{array}{c} \text{Amount Transferred} \\ \div \\ \text{Average Nursing Home Daily Rate} \\ \underline{\text{(\$130.88)}} \\ = \\ \text{Penalty Period in Days} \end{array}$$

Calculation of Applied Income

The following income deductions apply:

- Personal Needs Allowance (“PNA”) of \$60
- Guardian fee, if applicable
- Diversion to community spouse (if that spouse’s income is less than \$2,739)
- Incurred medical expenses
- Home maintenance allowance, if applicable
- Remainder is applied income.

Medicaid Estate Recovery Program ("MERP")

Applicable To:

- Person 55 & older, and
- Who initially apply for covered services on or after 3/01/05

Covered Services

- Nursing home services;
- ICF-MR services;
- Home & community-based waiver services (CBA, CLASS, etc.);
- Certain Medicaid-funded attendant services; and
- Related hospital & prescription drug services

Basis For Claims

- Acceptance of Medicaid-funded covered services provides basis for a Class 7 Probate claim

The End

- Questions?