

Basic Medicaid Eligibility for Nursing Home Residents and the ADvantage Program

Tulsa Estate Planning Forum
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INTRODUCTION

- I. What is Medicaid
 - . Federal Program
 - . administered by states within parameters set by feds
 - 1. Mandatory eligibles and services
 - 2. Optional eligibles and services
 - 3. Waivers
 - . Needs based benefit (**welfare**)
- II. OHCA & OKDHS
- III. Medicare v Medicaid.
- IV. Materials
 - . Presentation does not strictly follow because Medicaid is not always linear
 - . Designed to be used as reference
 - . Everything I plan to say is in the materials
- V. Going to cover Medicaid eligibility in three passes

MEDICAID FOR PEOPLE NOT IN A NURSING HOME

- I. **WHAT KINDS OF PEOPLE ARE ELIGIBLE?** (Categorically Related)
 - . Aged)
 - . Blind) **ABD**
 - . Disabled)
- II. **FINANCIAL RULES**
 - . Intro
 - 1. Talked about the income and resource eligibility limits
 - 2. How are income and resources calculated
 - a. Assets are called resources
 - b. T19 eligibility is based on SSI
 - c. SSI uses the term resources
 - . Resources: Everything counts, with exceptions.
 - 1. Doesn't Count
 - a. Car used four times a year for medical purposes
 - b. Home you live in, all adjacent land, and minerals underneath
 - c. household goods and furniture
 - d. clothing
 - e. life insurance up to a cash value of \$1,500
 - f. cemetery lot
 - g. Irrevocable funeral up to \$10,000, with limit reduced by
 - (1) life insurance
 - (2) burial fund
 - (3) revocable funeral

2. Counts
 - a. IRA and Qualified Retirement Plan
 - (1) Gross cash-in
 - (2) taxes and penalties not deducted
 - b. Trusts **established after 8/10/93** Trusts
 - (1) Trusts funded by another
 - (a) Not a resource
 - (b) Income if used for cash, food, clothing, and shelter
 - (2) Trusts funded by self or spouse
 - (a) Irrevocable counts to the extent that the trustee disburse in a month
 - (b) Revocable is available
 - (3) (d)(4)(A) trust
 - (a) Special Needs Trust
 - i) SNT requirement contained in pre 8/10/93 law
 - ii) Law amended 8/10/93 and has no special needs requirement
 - iii) T19 payback trust
 - (b) Requirements
 - i) disabled under SSA rules
 - ii) Established by
 - a) parent
 - b) grandparent
 - c) guardian
 - d) court
 - iii) under 65 when established or funded
 - iv) irrevocable
 - v) amend only with OKDHS consent
 - vi) T19 reimbursed at death
 - a) allow payment of trust expenses
 - b) no funeral

Income

1. General rule is that everything you think of as income and which can be used for food, clothing, and shelter is income, with exceptions.
2. Exceptions are:
 - a. Earned Income - disregard first \$85 plus half the remainder;
 - b. Proceeds of a loan
 - c. Indian payments
 - (1) made per capita by the tribe
 - (2) every tribe in OK qualify except Osages
3. Unearned income counts 100%
4. Examples of unearned income are:
 - a. T2 and T16
 - b. Civil Service
 - c. Pensions
 - d. 401k distributions
 - e. interest
 - f. dividends
 - g. workers compensation

III. FINANCIAL CATEGORIES

- . Categorically Needy

1. Financial
 - a. Single
 - (1) Income - \$739 [\$698 + \$41]
 - (2) Resources - \$2,000
 - b. Couple
 - (1) Income - \$1,130 [\$1,048 + \$41 + \$41]
 - (2) Resources - \$3,000
 2. What Do You Get?
 - a. SSP
 - b. Medicaid
 - (1) If you are on Medicare
 - (a) Medicaid is fee for services
 - (b) Medicaid pays Medicare costs
 - (2) No Medicare – fee for services
- Qualified Medicare Beneficiary Plus (no requirement for Medicare)
1. Who Are You?
 - a. 65 or more; or
 - b. meet SS test for disability aged
 2. Financial Requirements
 - a. Single
 - (1) Income - \$908
 - (2) Resources - \$6,940
 - b. Couple
 - (1) Income - \$1,226
 - (2) Resources - \$10,410
 3. What Do You Get?
 - a. No SSP
 - b. Medicaid - same as categorically needy

INDIVIDUAL IN LONG TERM CARE WITH NO SPOUSE

I. WHAT IS LONG TERM CARE

- . Nursing Home
- . ADvantage Waiver: Need NF LOC, but can stay at home safely with care no more costly than NF

II. RESOURCES

- . Resources cannot exceed \$2,000
- . Homes
 1. ADvantage - house doesn't count
 2. NF
 - a. House not a resource for 12 months
 - b. Thereafter
 - (1) not a resource as long as you are trying to sell
 - (2) OKDHS could put a lien on it. If so, doesn't count anymore
 - c. Once sold, proceeds count against the \$2,000 resource limit.

III. Transfer without receipt of FMV in return.

- . A transfer is any transaction, or series of transactions, in which you end up with less than you transferred away.
- . Lookback is 5 years for gifts made after 2/8/06
- . Penalty is total gift/\$126.90 = # days disqualification.
- . Penalty begins later of

1. the date of the transfer; or
2. the date on which the person has been found to be eligible for Medicaid payment for nursing home care, were it not for the gift penalty

Gift exceptions

1. spouse, or spouse trust, up to CSRA
2. home to
 - a. spouse
 - b. minor child
 - c. disabled child
 - d. child living with and caring 2 years
3. disabled child
4. trust for disabled person
5. intended to transfer for FMV
6. no Medicaid purpose
7. hardship
 - a. 'hardship' exists when application of a transfer disqualification would result in loss of medical care that would endanger person's life or health OR deprive them of food, clothing, shelter or other necessities;
 - b. Requires notice to the individual that they may apply for a hardship exception;
 - c. With permission of the individual or personal representative, allows nursing homes to pursue hardship exemptions.

Undoing a gift

1. restore
2. pay back
3. personal services
 - a. can't be used to pay back a gift
 - b. payment for personal services isn't gift

ANNUITY (2/8/06)

1. on app or recert, must disclose an interest the institutionalized or community spouse has in an annuity, or in a similar financial instrument.
2. disclosure must say, ". . . the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance."
3. State must notify in issuer of the annuity that the State is a preferred remainder beneficiary up to the amount expended by Medicaid.
4. The issuer must notify the State when there is a change in the amount of income or principal being withdrawn.
5. Not counted if:
 - a. an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;
 - b. purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;
 - c. purchased with proceeds from a simplified employee pension (within the meaning of section 408(k) of such Code);
 - d. a Roth IRA described in section 408A of such Code; or
 - e. the annuity is:
 - (1) is irrevocable and nonassignable;
 - (2) actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
 - (3) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.
 - f. Purchase is not a transfer if:

- (1) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or
- (2) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

IV. INCOME

- . \$2,094 mo/300% SSI.
 1. NF
 - a. \$50 personal needs
 - b. Medical Insurance premiums
 - c. remainder to NF
 2. ADvantage - No Copay
- . With Medicaid Income and Pension Trust
 1. up to \$3,000
 2. \$2,094 paid out each month
 - a. \$50 for personal needs
 - b. medicals not otherwise paid, including premiums
 - c. rest to NF
 3. Amount over \$2,094 accumulates to repay Medicaid
 - a. 3% to trustee

V. SCENARIO NUMBERS ONE AND TWO

INDIVIDUAL IN NURSING HOME WITH A SPOUSE AT HOME

I. Difficult

- . This takes up more of my time than anything else.
- . 42 U.S.C. § 1396r-5 appears to have been written
 1. just before recess to run for reelection
 2. committee had been up for three days
 3. In a bill so big nobody else really had time to read
- . Feds have promulgated reg only on post-eligibility, but not who is eligible.
- . As a result,
 1. states do it differently
 2. more litigation around the country than any other Medicaid issue
- . Spouses
 1. Institutionalized & Community
 2. IS & CS
 3. Sick spouse & home spouse
 4. he & she

II. TO DETERMINE IF THE INSTITUTIONALIZED SPOUSE IS ELIGIBLE

STEP ONE - Basic Income And Resource Allocation

1. Income
 - a. Allocate by
 - (1) his is his
 - (2) hers is hers
 - (3) joint is split
 - b. Ignore community spouse income
 - c. Institutionalized spouse Income limits are the same as for single individual -- \$2,094/\$3000
 - d. If IS income is more than \$3,000, not eligible at all.
2. Resources
 - a. Limit is \$2,000
 - b. Allocate by
 - (1) Add all resources together, ignoring separate property

- or pre-nuptial agreements
- (2) Divide in half
- (3) If half is less than \$25,000 take resources from IS to give to CS to bring up to \$25,000
- (4) If half is more than \$113,640, give CS resources to IS until CS resources are down to \$113,640.
- (5) Amount CS gets is spousal share/CSRA

STEP TWO - Making sure that the CS' income is at least maximum monthly income standard/MMMNA

- 1. 2010 MMMNA is \$2,841
- 2. If CS income is less than \$2,841 use IS income, after \$50 personal needs allowance and medical insurance to bring up to \$2,841
- 3. **LOOK AT SCENARIO #3 AND 4**
- 4. If CS income is still less than \$2,841, can give CS some of IS resources to generate income to bring CS income up to \$2,841
- 5. Calculation of how much of IS resources to give CS is:
 - a. Start with \$2,841 MMMNA
 - b. deduct CS income not generated by resources to
 - c. deduct IS income to CS
 - d. This is the amount to be generated by resources
 - e. Figure out how much you would have to pay for an annuity that paid this much per month.
 - f. If this amount is more than the resources CS has already been given, then give IS resources until the level is met.
- 6. Can give IS resources to CS only if assessment is done prior to application

STEP THREE - Raising MMMNA due to extreme financial duress

- 1. Through the hearing process, can raise MMMNA if the CS can show extreme financial duress.
- 2. This allows either
 - a. CS to get more if IS' income; and/or
 - b. CS to get more of IS' resources.

III. WHEN YOU ARE DONE, IF THE IS HAS RESOURCES OVER \$2,000, MUST SPENDDOWN

THINGS YOU CAN DO TO MEET THE SPENDDOWN

- 1. Pay off house
- 2. repair/remodel house
- 3. buy a car
- 4. buy furniture
- 5. pay bills
- 6. NOT buy an annuity for the Community Spouse

APPEALS

I. Hearing

- . Held in county where client lives
- . Non-lawyer HO
- . no lawyer for OKDHS
- . Rules at OAC 340:2-5-60, *et seq.*
- . Rules of evidence and procedure not followed
- . hearsay let in, but can't make case with only hearsay

II. Director Review

- . Request in 30 days
- . no time limit for decision

III. District Court

- . file in 30 days
- . Review of administrative record
- . Administrative decision presumed correct
- . Standard of Review is at 75 O.S. § 322(1):

IV. Sct