

Medicaid: States Rules and Planning Strategies

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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 Alzheimers, 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

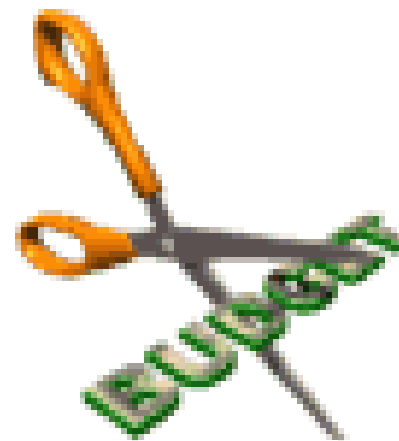
- Signed by Governor on June 14, 2012
 - Certain provisions effective July 1, 2012
- Overall intent to save \$\$
 - \$1.6 billion in funding cuts

- What does SMART stand for?



SMART ACT - Changes in IL Medicaid

- **Save**
- **Medicaid**
- **Access, and**
- **Resources**
- **Together**



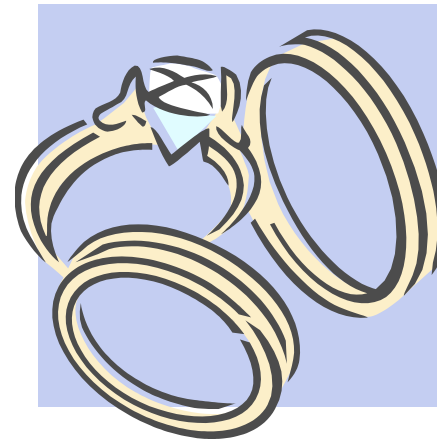
Eligibility - Who Can Benefit?

- 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

Date	Amount
10/20	\$ 738.97
10/21	526.82
10/22	590.53
10/23	524.21
10/24	362.24
10/27	308.42

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.
 - $\$10,000 / \text{private-pay rate of } \$5,000 \text{ per month} = 2$ 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 or 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.

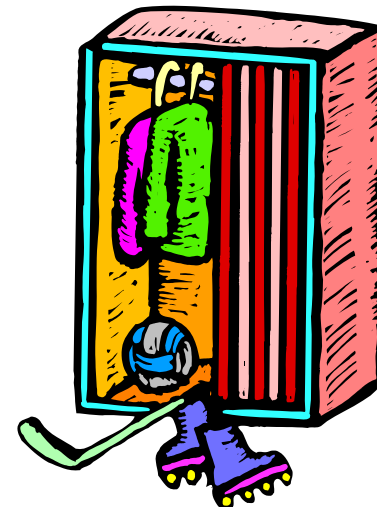
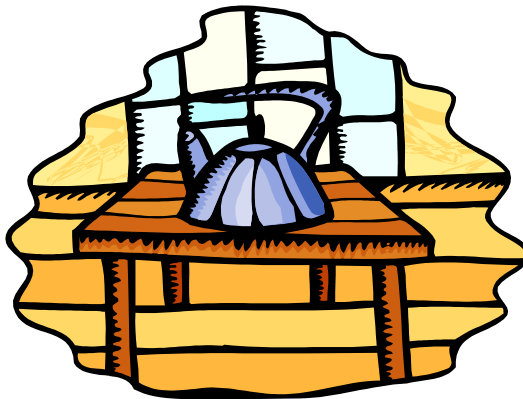


What is Not Considered Homestead?

- 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)

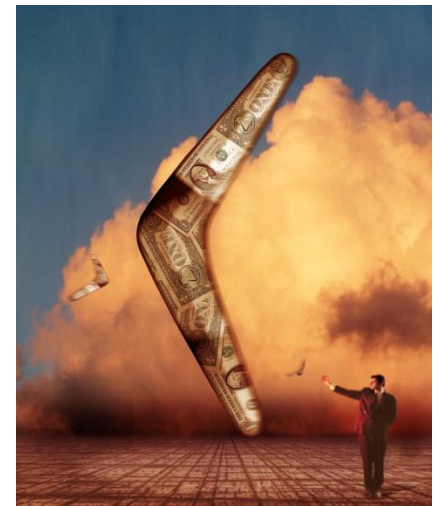


Planning Strategies - Allowable Transfers

- 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 $\frac{1}{2}$ value of asset -
Half a Loaf
1. Put $\frac{1}{2}$ in Annuity
2. 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???

