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# 2018 Update – "Basics" of Medicaid and Nursing Homes

**By James S. Rizzo, Esq.***

I should begin by clarifying there is not much "basic" about Medicaid. When faced with the life altering event of entering a nursing home, it is important to consult a professional to review your family's assets and income and apply the various Medicaid figures and formulas set by the government. Everyone's asset situation is different and there are exceptions and legal nuances to the figures below that may apply to your situation, so one should not rely on the numbers provided as legal advice. However, they are a good starting point to understanding the complexities involved and the need to consult with a professional.

In brief, when a loved one needs to be placed in a nursing home facility, the payment options are: private pay, long-term care insurance or Medicaid, if you are eligible. The current private pay cost in Upstate New York averages $10,000 - $11,000/month, and approximately $13,000/month in the New York City and Long Island area. Long term care insurance policies are often cost prohibitive and should be scrutinized to see how much coverage per month is allowed and if such amount increases over time with inflation. Thus, as nursing home costs grow, Medicaid becomes a more relevant and viable option for many people. The Medicaid eligibility rules can be difficult to understand and there is much disinformation out in the public.

The general parameters for Medicaid eligibility, which have changed for 2018, are as follows: For a married couple, the spouse at home is allowed to keep $74,820 in marital assets, one primary residence (with home equity value up to $858,000), one vehicle, pre-paid funerals and $15,150 for the spouse in the nursing home. As for income (usually pension and social security amounts), the spouse at home is generally entitled to keep the first $3,090/month of joint income but any remaining or "excess income" must be paid to the nursing home.

A single person is much more vulnerable to a substantial loss of assets when entering a nursing home. He/she is generally only entitled to keep $15,150 in assets, pre-paid funerals (for him or herself and children) and only $50/month in income. With the exception of IRAs or other tax qualified funds, most assets above these thresholds (including the primary residence) are considered "excess resources" which must be used to pay for nursing home care.

You may have also heard of the "5-year look back period". In short, if an applicant has made a transfer or gift of an asset (especially real property and other assets over $1,000) within 5 years of applying for Medicaid, the New York Department of Social Services ("DSS") can apply a penalty for each transfer, no matter how well intentioned at the time. DSS will generally calculate the penalty based on the amount of the transfers divided by what is called the regional rate, currently $9,722 for the Central New York area, which includes Oneida, Lewis, Herkimer, Onondaga and Madison Counties.

For example, if someone transfers a home worth $195,000 for a nominal sum or as a gift to their children, and ends up in a nursing home within 5 years of that transfer, DSS takes the value of the home and divides it by $9,722, to come to a penalty period of approximately 20 months. That penalty period is the amount of time Medicaid will not pay for the nursing home. The applicant must then privately pay for that 20 month penalty period. After the penalty period expires, Medicaid will begin paying the calculated balance. Once a penalty is imposed it is difficult to remedy. The best practice is to address any potential penalty before making a formal Medicaid application.

Having the foresight to proactively set up an Irrevocable Medicaid Trust, where assets including but not limited to your home and other real property, life insurance, a percentage of savings, brokerage accounts, CDs, stocks, bonds, etc., can be placed, usually pays for itself many times over due to the substantial asset protection it provides. Those assets will be protected 100% from nursing home costs when placed in an Irrevocable Medicaid Trust after 5 years, so long as there is no nursing home event in that time.

One should also be cautious to not apply for Medicaid until eligibility exists. Medicaid applications are often offered and/or handled by the nursing home at no charge; however, if there is an issue regarding eligibility, if substantial asset transfers have been made in the past 5 years, if there are a lot of properties and different funds at stake, or if you are simply unsure of what you should do, then you should contact an Elder Law attorney.

The application process is quite involved and entails gathering a wealth of documents pertaining to the nursing home resident, including 5 years' worth of asset records and transactions. While there may be a concern with the cost of hiring an attorney, a professional consultation could save months of Medicaid ineligibility, keeping in mind each month may cost up to $10,000-$11,000 until all so-called "excess resources" (as outlined above) are drained. One mistake could result in tens of thousands of dollars in costs which might otherwise be avoided or mitigated by taking proper and timely measures.

Contact a professional and request a free consultation to thoroughly review your situation if and when you or your loved ones face this situation. If you favor a more proactive approach, use the consultation to get information on crafting an Irrevocable Medicaid Trust to best suit your needs and to insulate your home and other valuable assets from this stressful scenario.

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