Medicaid Rules for Long Term Care

When it was first created in 1965, Medicaid would only pay for nursing home care for recipients over the age of 65. But allowances were made in the legislation for exceptions or "waivers" to the nursing home coverage. In recent years, many states have applied for waivers to allow their state programs to pay for care in assisted living or at home. These waiver slots are typically administered by the local area agencies on aging. As a rule, the vast majority of elderly Medicaid recipients are still receiving their care in nursing homes.

Financial Eligibility Rules
Financial eligibility for Medicaid nursing home and community waivers requires the recipient to have less than $2,000 in resources. ($3,000 if a couple needs care)

Resources are defined as any asset that can be utilized to produce income or cash payments. There are numerous rules as well as gifting look back provisions that define what a resource is and is not. Some important assets that aren't required to be counted as resources are a personal residence, a life insurance policy with less than $1,500 cash value, a prepaid funeral and burial plan and a car (if necessary for transportation and care). If the recipient is married, the spouse at home keeps the residence and a vehicle worth any value. These excluded assets do not count against the eligibility of someone applying for Medicaid.

If the recipient is single but plans on returning home, the residence in most states is not included but is excluded for purposes of eligibility. The house would however, be subject to lien recovery at the death of the recipient. Any rental income must be applied towards the care of the recipient. An important rule change this year takes into account the market value of the home. If the home is worth more than $500,000 it prevents any single person from qualifying for Medicaid. This penalty does not apply if a spouse or dependent child is living in the home

In most states, money invested in an IRA, a 401(k) or any other tax qualified account is not counted as a resource if the Medicaid recipient is older than age 70 1/2. Mandatory withdrawals from these accounts are considered income and not assets. It's possible these assets might be subject to recovery after the death of the recipient or require assignment on tax qualified annuities.

After meeting the resource and level of care (need for care assessment) tests and qualifying for Medicaid, a recipient is required to share Medicaid costs by contributing all of his or her income to the total cost of care and Medicaid picks up the balance, if any. An allowance of $45 a month is added back in to provide monthly personal care. Also, an allowance for medical costs and insurance premiums not covered by Medicare is added back in.

Spousal Impoverishment Rules
There are special rules that apply to couples and prevent the healthy spouse from being impoverished due to a lack of assets or income.

Regardless of who owns them, all assets are considered jointly owned by the couple. Assets are totaled and then split in half and a healthy spouse at home keeps his or her half and the Medicaid applicant must spend down his or her half until it is less than $2,000. This money need not be spent on care but can be spent on any legitimate purchase. Tax qualified savings accounts under the rules above are not considered assets.

If the total amount of assets are less than $20,328, the spouse at home keeps the entire amount and does not have to split in half. If the spouse at home gets more than $101,640 after the assets have been split in half, that spouse can only keep $101,640 and all the rest of the assets have to be spent down by the person applying for Medicaid. As an example, a couple owns $400,000 in resources. The spouse at home can only keep $$101,640 and the spouse applying for Medicaid has to spend $298,360 less $2,000 before that spouse can qualify for Medicaid.

Incomes are not considered jointly owned and do not have to be split in half. If John has $3,000 a month in income and Sarah has $800 a month, and John applies for Medicaid, then John's entire $3,000 will go towards his care and Sarah will presumably be left impoverished with only $800 a month. The reverse is also true if Sarah needs the care. John can keep his $3,000 and the state must make up the difference between Sarah's $800 and the cost of the nursing home.

If John is applying for Medicaid, and in order to avoid complete impoverishment of Sarah, (she only has $800 a month) the state will transfer enough of John's income to bring Sarah's income up to $1,650 a month. This is called the community spouse monthly income impoverishment allowance. For people receiving community waiver care there are additional allowances. The asset and income allowances are adjusted each year for inflation.

Gifting Rules
New rules adopted in 2006 require any gift or a transfer-for-less-than-value within 60 months of a Medicaid community waiver or nursing home application to be counted as a resource to the extent of the amount of transfer. A transfer within 60 months from application is considered a gift whether made outright or conveyed in a trust. It makes no difference. There is a new penalty associated with these transfers. Disregard what you have heard in the past about gifts and penalties.

Here's how the new version works. Suppose Mary replaces her name with her daughter's name on the title of Mary's residence with a net value of $280,000. Mary applies for Medicaid 59 months after the title transfer and one month shy of the look back limit. Because she is inside the look back period, the gift of the house becomes a transfer for less than value. Mary has less than $2,000 in resources and could qualify for Medicaid. Medicaid will not pay a dime for Mary's care until the equivalent spend down for her gift has been paid. In other words, the state considers the gift to be cash-in-hand that should have been spent before Mary qualified for Medicaid assistance. This spend down requirement now becomes a penalty after the fact.

The penalty is determined in months of care and is calculated by dividing the amount of the gift by the state Medicaid rate which in this example is $4,000 a month. Dividing the gift by the monthly rate yields 70 (almost 6 years) months of penalty. From the date that Mary would have been approved for Medicaid someone must pay for 70 months of her care before Medicaid will take over. Note in this case the penalty is longer than the look back period.

With a large gift, penalty periods could last up to five to ten years or more. If Mary applied for Medicaid 60 months and one day after making the gift there would be no penalty.

Medicaid Recovery
Medicaid recovery rules were initiated by Congress in 1993. After the death of the Medicaid recipient, Medicaid has a claim against the home that was previously excluded for eligibility. The claim is in the amount that Medicaid paid for the recipient's care. In some states a lien against the property, called a TEFRA lien, can be filed in anticipation of Medicaid's cost. Not all states file a TEFRA lien but typically file a debtor lien after the death.

As a matter of policy, some states do not make a claim against the property if the surviving spouse is living in the House. The debt is forgiven. This is only current policy since rules allow the state to initiate recovery through a lien on the property. There are also rules allowing the family to request a hardship hearing if recovery puts a burden on the family and the state also has authority to waive recovery on homes worth less than a certain dollar amount.

Common rumor among professionals who do Medicaid planning is that Medicaid recovery in many states is more "bark than bite". Numerous articles and studies indicate that states do an extremely poor job of recovering money from assets that should be subject to recovery. There is a suspicion that some property transferring in trusts or through joint tenancy may be escaping from recovery services.

Do not let these statements lull you into a false sense of security. Continuing Medicaid budget deficits and a change in state leadership could result in Medicaid becoming much more aggressive about recovering money it can legally go after. The first step would be changing state code allowing for TEFRA liens. The use of such liens would preclude any transfer of property prior to satisfaction of the lien.