



The Role of the Elder Law Attorney

Many Elder Law attorneys have extensive training and experience concerning Medicaid and have been advising clients and their families for many years. Much of the planning done by older persons concerning Medicaid has been done with the help of such experienced attorneys. It is important to see such an advisor as soon as possible to enable the greatest benefit from such planning.

Long-term care insurance (covered in another NAELA Special Needs & Elder Law Series brochure) is one way of preparing for the expenses of long-term care and should be considered. Such insurance is not available for everyone and will not be available once a disabling long-term illness has struck.

Because the law is so complex, Elder Law attorneys are a particularly appropriate source of advice. Your Elder Law attorney can assist you in planning for the expenses of long-term care as well as planning for the protection of assets for the rest of the family.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

While NAELA Elder Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors in America including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney.

More information on NAELA and a directory of NAELA members in your area can be found at www.NAELA.org.

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Medicaid



Special Needs & Elder Law Series

The Issue

Medicaid is a joint federal and state program that provides payment for medical care for persons unable to afford to pay. Medicaid covers physicians' services, hospital care, supplies and other necessary services once a person has been made eligible for the program. It also pays for the expenses of long-term care in a nursing home.

The Medicaid program is administered independently in each state. While the basic eligibility standards are the same throughout the United States, there are significant differences between the state Medicaid programs. Despite these differences, eligibility is generally based upon the amount of assets a person has along with the income that the person receives. Eligibility is determined at state Medicaid offices and, in the case of married individuals, the assets and income of both spouses are considered in the determination process.

It is important to distinguish between Medicare and Medicaid. Medicare is an insurance program providing payment for medical needs for persons 65 and over and for certain people with disabilities. All persons 65 and over, regardless of financial resources or income, are eligible for Medicare. Medicare and Medicare supplemental insurance, however, provide very limited coverage with regard to the cost of long-term care in nursing homes. These non-covered services must be paid privately by the individual, unless the

individual has coverage under a long-term care insurance policy. Medicaid, on the other hand, pays for medical needs for those of any age that have been determined to be eligible. In fact, a person with limited income and resources who has Medicare coverage may also qualify for Medicaid benefits.

What You Need to Know

Medicaid is considered to be one of the most complex laws of the United States and, further complicating matters, each state has a different version of Medicaid. Many Elder Law attorneys have carefully studied the Medicaid statutes and regulations and are able to assist clients.

Medicaid is often of importance to middle-income Americans because Medicare does not cover the costs of long-term care for illnesses such as Alzheimer's disease or paralysis caused by a stroke. Most people who need such care for extended periods will eventually deplete their assets and become unable to pay the costs of their care.

At such a time Medicaid is available to pay the difference between their income and the actual costs of care provided in a nursing home, including room and board, as well as physicians' care, hospital care and all other reasonable necessary medical expenses. Medicaid covers the costs of such care in nursing homes, adult care homes, hospices, and, in appropriate cases, in the individual's own home.

If faced with the possibility of such long-term care expenses, there are certain rules that you should be aware of:

- In determining eligibility for Medicaid payment for long-term care expenses, the eligibility team will review the individual's actual need for care, the person's available resources (including life insurance and retirement plans) and income received from any source. In some states, if monthly income exceeds a certain amount, then the individual is ineligible for Medicaid, even though the individual's long-term care expenses exceed his or her income.
- In determining eligibility, a person will be disqualified from Medicaid for gifts made within the previous few years.
- In determining eligibility for one spouse, the assets and income for both spouses are considered, regardless of

premarital agreements, community property laws or the nature of the ownership of the asset.

- Assets of married couples, however, receive special treatment so that the spouse who remains living at home will not be unduly impoverished. Such a community spouse is permitted to keep one-half of all of the available assets (up to a federally-established maximum) and is allowed to keep a minimal amount of income of the couple in order to provide for support expenses at home.
- In addition, there are certain resources that are considered non-countable for eligibility purposes; these include the family residence, household contents, a vehicle, a prepaid burial fund and other necessary items.
- It is important to be aware of the state specific eligibility provisions and exemptions so that assets will not be unnecessarily spent down before applying for Medicaid.
- Finally, it is important to know that there are appeals processes built into the Medicaid system. If you are unhappy with eligibility determinations, care decisions or placements made under Medicaid, there is a process for an administrative hearing and even court proceedings to enforce your rights.

Where to Go For Help

Keep in mind that Medicaid laws and rules vary between states and are constantly changing. There have been major changes in the Medicaid program during the last few years. A qualified Elder Law attorney can advise you on matters pertaining to your situation and current state laws. To find a NAELA member attorney in your area, please visit www.NAELA.org/findlawyer.

Family support groups and organizations such as the Alzheimer's Association and AARP provide assistance and often have literature available. Local Area Agencies on Aging (pursuant to the Older Americans Act) also have comprehensive advice and literature available concerning Medicaid. The state Medicaid Eligibility Office may be a good source of basic information about the program, its services and the requirements for eligibility.

