IT'S THE LAW: WHAT HEALTHCARE PROFESSIONALS NEED TO KNOW

KARLA B. LEVINSON, THE LEVINSON FIRM, LLC

MEDICAID ELIGIBILITY BASICS (SINGLE PERSON)

- Receiving institutional level of services that would be covered by Medicaid (includes home-based and assisted living care in DE)
- Under the INCOME LIMIT
  - Gross monthly income below $1,947.00 OR
  - Establish a Miller Trust
- Under the RESOURCE LIMIT
  - $2,000.00

MEDICAID ELIGIBILITY BASICS (SINGLE PERSON, CONT'D.)

- RESOURCE EXCLUSIONS
  - One car
  - Personal belongings
  - Life insurance with a total face value of $1,500 or less, regardless of cash surrender value
  - Life insurance with no cash surrender value
  - Pre-paid funeral

THE LOOKBACK RULE V. THE PENALTY PERIOD

- Applicant files Medicaid application February 6, 2019
- What is the lookback period?
- Medicaid has a right to lookback to February 6, 2014

TRANSFERS OF ASSETS AND CALCULATION OF THE PENALTY PERIOD

- Example One
- Uncompensated transfer of $100,000.00
- Divide by the Medicaid Penalty Divisor ($320.87 2019 penalty divisor)
- $100,000/320.87=311
- Penalty period is 311 days

WHEN DOES THE PENALTY PERIOD BEGIN? CALCULATION OF THE PENALTY PERIOD: EXAMPLE 2

- $100,000.00 uncompensated transfer on January 3, 2017
- Applicant enters skilled nursing facility care in January 2019 and files a Medicaid application on February 15, 2019
- Total countable resources are $1,500.00 as of February 28, 2019.
- Gross monthly income is $1,432.00
- How do you calculate the penalty and when will it begin and end?

CALCULATION OF PENALTY PERIOD, EXAMPLE 2 CONT'D.

- The penalty period begins the LATER OF the month during which assets have been transferred OR the date on which the individual is eligible for Medical assistance under the State plan and is receiving institutional level of care services (based on approved application for such services) that, were it not for the imposition of the penalty period, would be covered by Medicaid.
- What does this mean????

EXAMPLE 2, CONT'D.

- Is applicant "otherwise eligible" but for the transfer of assets?
- Applicant is residing in a skilled nursing facility
- The Medicaid application has been filed
- The applicant is below the monthly income cap of $1,947 and the monthly resource limit of $2,000.00
- If the applicant had not made the transfer they would have been qualified as of?
  - February 1st. (DE Medicaid eligibility will go back to the first of the month as long as you are eligible by the end of the month)

EXAMPLE 2, CONT'D.

- The penalty would start February 1, 2019.
- The penalty is 311 days, so the penalty would finish on December 9, 2019
- What is the problem with this?
- The Medicaid applicant has no money to pay for long-term care while the penalty is running.

TIMING OF TRANSFERS, CONT'D.

- What is the worst case scenario??
- By filing a Medicaid application without considering these rules, a penalty period could be imposed for a period of **longer than five years**
- For example, if a $600,000.00 residence was transferred within the lookback period, the penalty period would be 1,869 days, or 5.1 years!

PRESUMPTION OF ASSET TRANSFERS

- Medicaid presumes that any asset transferred for less than fair market value within the five year lookback was done for the purpose of qualifying for Medicaid.

EXAMPLE OF MEDICAID REBUTTAL LETTER

OFFICE RESPONSE TO MEDICAID REBUTTAL LETTER

EXCEPTIONS TO TRANSFERS OF ASSETS

- Primary Residence– Transfer rules do not apply to transfers of residence to:
  - A spouse
  - A child under 21
  - A child who is blind or disabled as defined by the SSI program
  - A sibling who has an equity interest in the home and has resided for at least one year immediately before the date the individual becomes institutionalized
  - A "caregiver child"

EXCEPTIONS TO TRANSFERS OF ASSETS (CONT'D.)

- Any Asset. Transfer penalties do not apply to any asset transferred to:
  - An individual's spouse
  - An individual's child who is permanently or totally disabled
  - A self-settled special needs trust (d(4)(a))
  - A pooled trust (d(4)(c))

TRANSFERRING REAL PROPERTY

Considerations

- Loss of basis step-up
- Loss of senior citizen tax exemptions
- Subjects real estate to donees' liabilities and creditors
- Trigger of due on sale clause

ADDITIONAL CONSIDERATIONS

- Transfer to MAPT
- 2/3 sale permitted
- Be careful of titling

HALF-LOAF ANNUITY PLANNING

HALF LOAF EXAMPLE ONE

- Mrs. Jones is moving to a skilled nursing facility. The monthly nursing home cost will be approximately $10,500.00. She has Social Security and pension of $2,500.00 per month. She has a total of $150,000.00 of assets in a checking and money market account.

MRS. JONES ANNUITY CALCULATION

MEDICAID-QUALIFIED ANNUITY

- Irrevocable
- Non-assignable
- Non-transferable
- Actuarially sound
- Term certain
- State of DE named as the primary beneficiary to the extent benefits are paid.
- No transfer for penalty for conversion of assets to purchase an annuity; counts as applicant's income

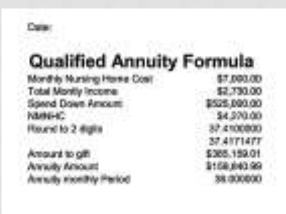
FACTORS TO CONSIDER IN HALF-LOAF PLANNING

- Family dynamics
- Cost of care
- Likelihood of increased cost of care
- Facility choice
- Testamentary intent
- Income tax implications

HALF-LOAF PLANNING– MRS. BROWN

- Monthly income: Social Security and Pension $2,730.00
- Assisted Living costs: $7,000.00
- Assets: Home worth $225,000.00 (cost basis $35,000.00)
- IRA $150,000.00
- Checking and savings $150,000.00
- POA that limits gifting, no power to create trusts
- Wants to disinherit one of her three children
- Wants to protect assets, wants to update her EP documents
- What issues do you consider and what would you advise her?

MRS. BROWN ANNUITY CALCULATION



Date:

Qualified Annuity Formula

Monthly Nursing Home Cost	$7,000.00
Total Monthly Income	$2,730.00
Spend Down Amount	$525,000.00
NMNHC	$4,270.00
Round to 2 digits	37.4100000
	37.4171477
Amount to gift	$365,159.01
Annuity Amount	$159,840.99
Annuity monthly Period	38.000000

WHAT ISSUES DO YOU SEE WITH MOVING FORWARD WITH THIS PLAN AND WHAT SHOULD YOU ADVISE MRS. BROWN?

POTENTIAL ISSUES FOR MRS. BROWN

- Loss of basis step up and primary residence capital gain exclusion if house is transferred
- Income taxation if 401k is liquidated
- Potential for increased care costs if her care needs increase and she has to move to a skilled nursing facility
- Inadequate power of attorney
- Family dynamics

MRS. MILLER

- Social Security $1,700.00 gross monthly income
- Home worth approximately $200,000.00 with a mortgage of approximately $75,000.00
- Daughter has been living with her for her whole life, receives Social Security Disability of $1,800.00.
- Other daughter lives independently and works full-time
- Other savings approximately $100,000.00
- What issues should you consider for Mrs. Miller and what would you advise her?

What issues do you see planning for Mrs. Miller and what would you advise her?

MRS. MILLER PLANNING ISSUES

- "Caregiver child" exception
- Transfer to a disabled child exception
- Potential issue with transferring home subject to a mortgage
- Testamentary intent and potential unfair distribution of assets

MARRIED COUPLE PLANNING

INCOME FOR MARRIED COUPLES

- Medicaid recipient
  - $1,947 gross monthly income limit
  - Allowed deductions of $50.00 per months for personal needs and Medicare and supplemental insurance premiums
- Community spouse
  - No income limit
  - Minimum monthly maintenance needs allowance $2,057.50 - $3,160.50

CALCULATION OF THE MMMNA, EX. 1

- Mr. Smith's gross monthly income is $1,800.00 and he is applying for Medicaid. Mrs. Smith is the community spouse. Mrs. Smith's gross monthly income $800.00. How much of Mr. Smith's income is Mrs. Smith allowed to keep?
- ANSWER: $1,257.50

CALCULATION OF THE MMMNA, EX. 2

- Mr. Smith's gross monthly income is $1,800.00 and he is applying for Medicaid. Mrs. Smith is the community spouse. Her monthly income is $3,200.00 per month.
- ANSWER: NONE

CALCULATION OF THE MMMNA, EX. 3

- Mr. Smith's gross monthly income is $1,800.00 and he is applying for Medicaid. Mrs. Smith is the community spouse. Mrs. Smith's gross monthly income is $800.00. Mrs. Smith has a mortgage of $1,800.00 per month, her utilities are $300.00 per month and her food expenses are $500.00 per month. How much of Mr. Smith's income is Mrs. Smith allowed to keep?
- ANSWER: $1,300.00

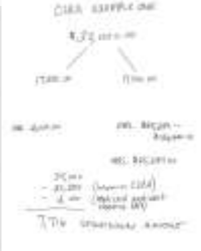
CALCULATION OF THE CSRA

- CSRA is between $25,284.00 and $126,420.00.
- The CSRA is calculated as of the "snapshot date."
- The "snapshot date" is the sooner of the first continuous period of institutionalization lasting longer than 30 days or the date of the filing of the Medicaid application.

CALCULATING THE CSRA EXAMPLE 1

- Mr. A. is applying for Medicaid. Mrs. A. is the community spouse. Their total countable assets are $35,000.00.
- What is Mrs. A's CSRA?
- What can Mr. A. keep?
- What is the total spenddown amount?

EXAMPLE ONE ANSWER



EXAMPLE 2

- Mr. A. is applying for Medicaid. Mrs. A. is the community spouse. Their total countable assets are $135,000.
- What is Mrs. A's CSRA?
- How much is Mr. A. allowed to keep?
- What is the spenddown amount?

EXAMPLE TWO

EXAMPLE THREE

- Mr. A. is applying for Medicaid. Mrs. A. is the community spouse. Their total countable assets are $275,000.00.
- What is the CSRA?
- How much is Mr. A. allowed to keep?
- What is the spenddown amount?

EXAMPLE THREE ANSWER

PERMISSIBLE SPENDDOWN EXPENDITURES

- Daily living expenses
- Debts, including mortgages
- Nursing care
- Irrevocable prepaid funeral
- Home repairs
- Medicaid-qualified annuity

QUALIFYING A MARRIED PERSON FOR MEDICAID, EXAMPLE 1

- MR. AND MRS. C., MR. C. is in a nursing home, Mrs. C. is the community spouse
- GROSS MONTHLY INCOME: MR. C. Social Security $2,200.00, MRS. C. Social Security $800
- ASSETS
  - Primary Residence $250,000.00
  - Car worth $25,000.00, car loan $10,000.00
  - Mrs. C. inheritance $50,000.00
  - Mr. and Mrs. C. savings $100,000.00
  - Mr. C. IRA $30,000.00

EXAMPLE ONE

- What is the spenddown amount?
- How would you propose that Mr. and Mrs. C. become Medicaid-eligible?
- What issues do you need to advise them about?

EXAMPLE TWO

- Mr. D. is at home paying caregivers approximately $3,500.00 per month. Mrs. D. is healthy but she would like to apply for Medicaid to get extra help for her husband. Mr. D's monthly income is $2,200.00 and Mrs. D.'s monthly income is $4,200. They own a home worth $450,000.00 with a mortgage of $50,000.00. Mr. D. has an IRA worth $300,000.00. Mrs. D. has an IRA worth $500,000.00. They have total combined savings of $100,000.00.

EXAMPLE TWO

- What is the spenddown amount?
- How would you propose that Mr. and Mrs. D. become Medicaid-eligible?
- What issues do you need to advise them about?

EXAMPLE THREE

- They own a home worth approximately $350,000.00. They also own a beach house worth approximately $400,000.00 that they purchased many years ago for $50,000.00. Mr. E. is the owner and insured of a life insurance policy with a death benefit of $500,000.00 and a cash surrender value of $50,000.00. They have other savings of approximately $700,000.00.

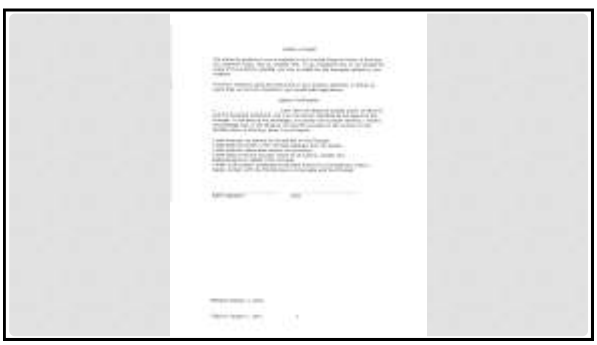
EXAMPLE THREE

- What is the spenddown amount?
- How would you propose that Mr. and Mrs. E. become Medicaid-eligible?
- What issues do you need to advise them about?

DURABLE POWERS OF ATTORNEY AND ADVANCE HEALTHCARE DIRECTIVES

NAVIGATING DURABLE POWERS OF ATTORNEY

- Document Requirements
- Execution Requirements



NAVIGATING ADVANCE HEALTHCARE DIRECTIVES

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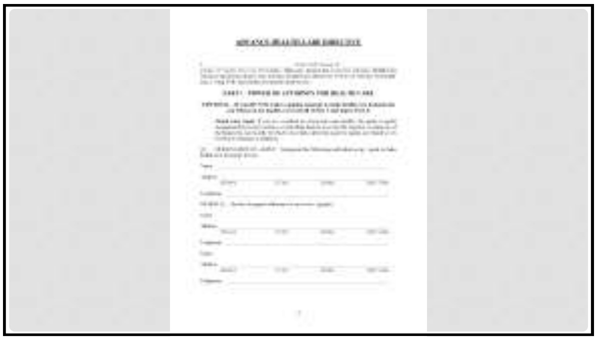

ASSESSING COMPETENCY

CRITERIA

- What is legal competency?
- Examples of competency assessment

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