

—| *Spotlight* |—



GERALD M. MORELLO, JR.  
Attorney & Counselor At Law

# MEDICAID

## *An overview of benefits planning*

**A**s an experienced estate planning and elder law attorney, I regularly assist clients who are preparing to incur the significant costs associated with receiving adequate medical care for our senior citizens. Further, I regularly witness the great concern that my senior citizen clients and their families experience when a loved one falls ill and is in need of an extended nursing home stay.

### THE HIGH COST OF NURSING HOME CARE

Nursing home costs continue to escalate. These costs, which can run as high as \$8,000 - \$10,000

a month for a full-service Alzheimer's facility, will ultimately leave the client, or the client's surviving spouse, impoverished and usually unable to maintain a standard of living that he or she was accustomed to.

For those individuals who have purchased, in advance, a long-term care policy, these concerns are diminished. However, many such policies either do not cover all the costs of an extended nursing home stay, provide only a certain monetary benefit or, in the alternative, cover only a certain period of time (for example, 36 months or 60 months of nursing home stay).

For individuals who do not have a long-term

care contract, there are planning opportunities available to protect their hard-earned assets, while qualifying for Medicaid benefits. *For those who plan properly and implement the planning on a timely basis, assets can be protected and government benefits can be secured.* For those who do not plan properly, or do so without proper legal guidance, the assets will be spent down on significant nursing home costs, leaving a surviving spouse at financial risk after depleting much of the estate.

### THE FIRST STEP IS ESTATE PLANNING

The best way to ensure that your affairs are protected is to initially develop a comprehensive estate plan. A comprehensive estate plan should include the following:

- ♦ Last Will and Testament. A Last Will and Testament appoints a Personal Representative ("Executor") to manage any probate affairs, distribute personal effects and file a final estate tax return in connection with the client's estate.
- ♦ Revocable Living Trust. A Revocable Living Trust enables the client to transfer assets such as real estate, stocks, mutual funds, retirement accounts and life insurance proceeds to his or her heirs without probate court supervision. A Trust provides flexibility related to the age the client's heirs receive their inheritance. A Trust also protects the client's heirs against lawsuits, like divorce, and is truly a legacy building device. Each person, or married couple, should utilize a Revocable Living Trust as part of their planning.
- ♦ Durable Power of Attorney for financial affairs. A person appointed as an Agent under a Durable Power of Attorney executed after October 1, 2012 must sign an Acknowledgment before acting. Further, the Power of Attorney instrument must be very clear in authorizing the Agent to have the authority to implement Medicaid planning in order to preserve assets in the event of a nursing home stay or other advanced planning purposes. It is very important that a good decision is made on who can act over your financial assets if you are deemed incapacitated.
- ♦ Patient Advocate Designation for medical affairs, which includes an Advance Medical Directive and HIPAA Release and Authorization. A Patient Advocate Designation appoints a Patient Advocate. The Patient Advocate is authorized to make general medical

decisions in the event that the client is unable to participate in his or her own medical decisions. The Patient Advocate is also responsible for following the client's wishes on life support. The HIPAA Release allows the Patient Advocate to review and receive any medical records and any medical information on the client's behalf.

- ♦ Lady Bird Deed (or Enhanced Life Estate Deed). We utilize this type of Deed on a regular basis to ensure that an individual can protect a primary residence during a nursing home stay from the Medicaid spend-down rules, while ensuring that, at death, the home ultimately is transferred to the Trust. The Michigan Estate Recovery Act currently provides the State of Michigan with the ability to be reimbursed for Medicaid costs by extracting the reimbursement from the sale of the primary residence after the taxpayer has passed away. A Lady Bird Deed protects a primary residence from the Medicaid spend-down rules. This is an excellent technique for most every client of ours that we assist with estate planning.

### WHAT IS MEDICAID?

Medicaid provides medical assistance to persons who meet financial and nonfinancial eligibility factors. The program is funded by the federal and state government and administered by the Michigan Department of Human Services (DHS). Providing medical assistance to those who require nursing home care is just one of many programs available through Medicaid.

### MEDICAID ESTATE RECOVERY

As our population ages, more and more seniors are turning to the Medicaid program for assistance in paying for long-term nursing home care. Those who are fortunate enough to qualify for Medicaid benefits will have some or all of their nursing home care expenses paid for by Medicaid. Most seniors, once admitted to the nursing home, will live out the remainder of their lives with the assistance of skilled nursing care. However, once a Medicaid recipient passes away, this is not the end of the story for purposes of the Medicaid program. In 2007, Michigan passed a law that allows the State to recover the costs paid for by the Medicaid Program from assets owned by the Medicaid beneficiary at that person's death. This law is commonly known as the Estate Recovery Law. Although

the law was passed in 2007, it did not receive approval from the federal government. Michigan implemented its Estate Recovery Law for Medicaid beneficiaries starting July 1, 2011.

In order to qualify for Medicaid benefits in the first place, an applicant must have less than \$2,000.00 in countable assets. However, an applicant is permitted to retain certain assets that are treated as "non-countable" in determining Medicaid eligibility. In most cases, the only asset of significant value that a Medicaid beneficiary owns at the time of their death is their home. The Estate Recovery Law is designed to enable the State of Michigan to be reimbursed from the value of assets that remain in a Medicaid beneficiary's estate. In other words, the State of Michigan will attempt to be reimbursed from the proceeds of the sale of the Medicaid beneficiary's home.

Certain exemptions have been written into the law. For instance, if the Medicaid beneficiary's home is still occupied by their spouse or child (if the child is blind, disabled, or under age 21). Additionally, the homestead may be exempt if occupied by a relative of the Medicaid beneficiary who provided care to the Medicaid beneficiary for at least two years prior to the beneficiary's admission to a nursing home. Additionally, a hardship exemption may be obtained to protect a homestead which is of low or depressed value as compared to other homesteads in the same county. Finally, an exemption may be available for a family farm, business, or other income-producing asset if they are the primary source of income to the survivors.

Perhaps, what is most important about the Estate Recovery Law as it is currently written is that Estate Recovery Law only seeks to recover against assets that pass through a probate estate. Thus, if the assets remaining to a Medicaid beneficiary upon their death passed to their survivors without the necessity of going through probate court estate proceeding, then the State of Michigan will make no claim against such assets. With proper planning, and through the advice and assistance of a qualified estate and elder law attorney, a Medicaid beneficiary may take full advantage of the exemptions noted to protect or exempt their assets from estate recovery after they have passed away.

The field of Medicaid Planning has been rapidly evolving due to numerous changes to laws and regulations which affect this area of practice. Currently, there are proposals within the State legislature to make further modifications

to the Estate Recovery Act to limit exemptions that are available to a Medicaid beneficiary and broaden the scope of estate recovery's reach. Therefore, it is important to meet with an attorney who is well-versed in this area and aware of the frequent shifts in the Medicaid Planning landscape. With proper planning with a qualified professional, the maximum value of assets may remain in the hands of a surviving spouse or other family members who depend upon family assets for their support and security.

### HOW DO I QUALIFY?

To qualify for Medicaid benefits, an applicant must require nursing home level care and have less than \$2,000 in countable assets. For a married applicant, the couple's combined assets must be less than \$2,000 plus the Protected Spousal Amount, which is the amount the non-nursing home spouse may keep for his or her own needs. An experienced estate and elder law attorney can assist applicants, who are single or married, meet the eligibility requirements to receive Medicaid benefits and preserve their assets. Depending on the applicant's marital status, assets, income, prior gifting, and need for care. An experienced estate and elder law attorney can employ various strategies that can save between 50% and 100% of a person's assets.

### WHAT IS THE FIRST STEP IN PLANNING?

Your estate and elder law attorney can look at each family's individual situation and develop a plan based on the family's short and long-term goals. Oftentimes, families contact us after a senior reaches the stage where long-term nursing home care is required immediately. Nursing home care can cost as much as \$8,000 per month, and waiting to take action can quickly empty a person's life's savings. Without proper planning assets can be depleted unnecessarily and the family can lose assets to the State after the senior passes because of Michigan's new law allowing estate recovery. Your estate and elder law attorney will not only assist with the first step of qualifying for Medicaid benefits, but work to ensure that the senior continues to receive benefits and preserve their assets for their loved ones after he or she passes away. ♦

*For more information or to schedule an appointment, please contact the Morello Law Group at 734-281-6464 or [morello@morellolawgroup.com](mailto:morello@morellolawgroup.com)*