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THE JOURNAL REPORT: ENCORE

## Medicaid Maneuvers

*Getting Uncle Sam to pay for long-term care has more drawbacks than you think*

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Are you thinking of giving it all away?

It sounds tempting: By "spending down" or giving away most of your assets and savings, Uncle Sam will pick up the tab for long-term care, if needed.

But the strategy -- better known as Medicaid planning -- has more pitfalls than you might imagine.

The debate over the merits of Medicaid planning has taken on a greater urgency of late. Investors are still trying to pick up the pieces from the stock-market slump and its impact on retirement plans, and long-term care insurance remains costly and complicated. Defenders of Medicaid planning consider it a legal form of estate planning that helps individuals protect at least part of their life savings from the crippling expense of a nursing-home stay. Opponents contend that the practice abuses a safety net meant for people with little savings to give away in the first place -- and that Medicaid wasn't created to provide inheritance insurance for parents of baby boomers.

In 2002, Medicaid, the federal-state program that helps pay for health care for the needy and disabled, paid 49%, or about \$51 billion, of U.S. long-term care bills. Medicare, the federal health insurance program for those age 65 and over, paid 13%. (Many people think Medicare pays for all long-term care needs for the elderly; in fact, its nursing-home coverage is limited mainly to short-term patients recovering from hospital stays.)

As reasonable as Medicaid planning might seem in some cases -- such as for individuals worried about leaving their spouses with nothing -- there are drawbacks. What follows is a look at some of the biggest snags, drawn from interviews with families of Medicaid patients, financial planners, a former Medicaid analyst and elder-law attorneys:

- **You could wind up in a dump.**

Nursing homes get paid less by Medicaid than by people paying their own bills or using private insurance. As a result, many facilities -- particularly newer, more popular ones -- try to limit the number of Medicaid patients they take. From 1998 to 2002, the total number of nursing homes certified to take Medicaid and Medicare patients dropped 5% to 16,491.

## MEDICAID BY THE NUMBERS

### Low Limits

Important figures to know about "spending down" or giving away assets and using Medicaid to pay for long-term care

Resources you are allowed to keep \$2,000

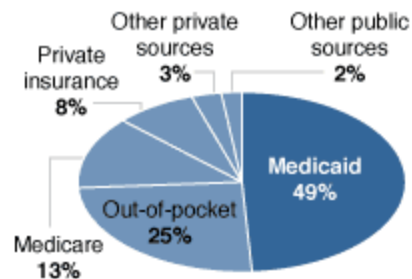
Resources your spouse is allowed to keep \$18,552 to \$92,760

Monthly income your spouse can keep \$1,515 to \$2,319

Note: Numbers vary by state.

### Who Pays?

Funding sources for long-term care



Note: Figures are for 2002.

Sources: Centers for Medicare and Medicaid Services; General Accounting Office

What that means for new Medicaid patients is that you could wind up on a waiting list for the placement you want, or you could get put in a facility much farther from your family than you would like. The placement process differs from state to state, but in some parts of the country you have to take the first bed that opens up, no matter where it is. And it may not be as nice as your first choice.

Linda Blackwell's mother lived in a private facility for Alzheimer's patients for four years, until Ms. Blackwell, of Poway, Calif., and her sister started worrying that the bills would deplete all of their parents' assets, leaving nothing to take care of their father if he became ill. They finally moved their mother to a nursing home that took Medicaid patients.

"It was dark and not as warm and inviting," Ms. Blackwell recalls. "The staff seemed a little more harried... . When you see the difference in nursing homes, you think, 'How could anyone in good conscience shelter their money?' All you'd have to do is walk into [the two types of facilities] and see the difference."

Shortly after moving to the nursing home taking Medicaid patients in November 2000, Ms. Blackwell says her mother fell and broke her wrist, traumatizing the older woman. She died the following January. "Perhaps if she had been at the other nursing home, she wouldn't have fallen," Ms. Blackwell says. "There's a lot of guilt associated with it. It's very, very difficult."

If you have to enter a hospital, there's no telling where you'll end up afterward.

Some lawyers suggest that clients doing Medicaid planning keep enough to pay for one year of nursing-home care themselves (currently \$60,000, on average). That way, you could enter long-term care as a patient paying your own way, helping you avoid waiting lists for the facility of your choice. Then, after your money runs out, you could switch to Medicaid and stay in the same place.

That sounds good -- unless you have to enter a hospital. After the hospital stay, there's no guarantee you'll get your bed back or even get to return to the same facility. Nursing homes, struggling to make money amid decreasing government reimbursements, need to keep their beds filled.

"If the nursing home can legitimately replace that person with a private payer, it's going to do it," says Stephen Moses, president of the Center for Long Term Care Financing in Seattle, a group, with some funding from insurers, that pushes for public policy helping individuals buy long-term care insurance rather than use Medicaid planning. (Mr. Moses is a former analyst for the inspector general of the Department of Health and Human Services.)

- **Home care or assisted living may not be options.**

Long-term care involves more than nursing homes. Increasingly, older patients are seeking out home health services to get help eating, bathing and doing other basic "activities of daily living" so they can stay in their own homes. An increasingly popular alternative is an apartment at an assisted-living facility, offering more privacy and independence than a traditional nursing home. People also are seeking out continuing-care retirement communities, where residents can move back and forth from independent apartments or villas to assisted living or nursing-home settings, depending on their needs.

But there's no way to be sure whether the Medicaid program in your state will be offering any of those alternatives when you need care. Under federal waiver programs, some states offer home health care, but they aren't allowed to spend any more than they would have for nursing-home care. And to qualify for such services, you typically would need to be in medical need of nursing-home care anyway. Assisted living is covered even less frequently under state Medicaid programs.

"You're literally closing the door to extremely attractive options" by pursuing Medicaid planning, says Marilee Driscoll, an author and consultant on long-term care planning.

Even if your parents or grandparents "had wonderful experiences receiving their care under Medicaid, it may not necessarily be relevant today," she adds. That's because assisted-living facilities and continuing-care communities "have really skimmed the cream from nursing homes. Now, the population in nursing homes is older and sicker than ever before," stretching their staffs to provide time-consuming care to an increasing number of patients.

- **It could take longer to get government help than you think.**

The federal government lets states go back three years in examining the finances of people applying for Medicaid (and five years for those who have established certain types of trusts). If a state finds that the applicant gave away assets during that time period, it can impose a waiting period before the benefits kick in. States typically determine the number of months in the waiting period by dividing the average monthly cost of nursing-home care into the amount that was given away. And the waiting period typically starts on the date of that transfer.

But a small number of states, including Connecticut, Massachusetts and Minnesota, have asked the federal government for permission to toughen the rules, estimating that they could save tens of millions of dollars a year. They want to add more years to the "look-back" period, as it's called. And they also want to start the waiting period on the day the person applies for Medicaid -- typically long after the date the money was given away -- which means it could take a lot longer to start getting the actual benefits.

The federal Medicaid regulator, the Centers for Medicare and Medicaid Services, hasn't decided whether to let the states tighten the rules. But if the changes are approved, a few dozen other states are expected to follow suit. And when rules governing Medicaid planning change, there's no grandfather clause. That means that even if you gave away your assets years ago, you still would have to follow the rules in effect when you apply for the program.

- **States are cracking down in other ways, too.**

Local lawmakers are finding ways to close Medicaid loopholes without waiting for federal permission.

Among the toughest changes: Starting last August, Washington state slashed the amount of assets that your spouse can keep if you qualify under Medicaid for nursing-home care. Now, spouses still living at home can keep only \$40,000 -- down from \$90,660.

In Kentucky, as of last September, single nursing-home residents on Medicaid can be forced to sell their homes -- while they're still alive -- to help pay for their care if they are institutionalized for more than six months and don't expect to move back. Kentucky also did away with an exemption of \$50,500 it used to let heirs keep when recovering costs from the estates of nursing-home residents after their deaths. Other states, including New York, also are considering cutting back on what spouses can keep.

- **Giving your house to your children now could hurt you later.**

Yes, you spent 30 years paying off your mortgage, and you would like to see your children inherit your home rather than having it sold to pay for long-term care needs. But giving it to your children now -- or even putting it into a trust so they get it later -- isn't necessarily the answer.

The main problem is that you give up the ability to use your house's equity to pay for new types of care down the road that may not even exist yet. "Our house has doubled in value in five years, and I have no problem with tapping into my home equity to pay for my long-term care," says Ms. Driscoll, the author. Reverse mortgages, another tool for using home equity, "are increasing in popularity, too, and they were barely on the radar screen 10 years ago. But if you give your house away or put it into a trust, you may have cut off that avenue."

And your children, as the new owners, could suffer a setback that jeopardizes the roof over your head.

What if they "go bankrupt, get divorced, get sued, or decide they'd rather live in Tahiti?" asks Harry Margolis, an elder-law attorney in Boston. "Worst of all, they can decide a lot sooner than you that it's time to go to a nursing home."

Another pitfall, he warns, is selling your home and giving your children the money so they can build an addition onto their house or buy a bigger house for you to share. "If it works out, great," Mr. Margolis says. "But you don't know ahead of time that it's going to work out. You've sunk your money into your daughter's house and you want to move out. Are you going to force her to sell her house?"

- **Giving money to your children could complicate their finances.**

Let's say you decide to place most of your money in your adult child's name, and at some point your grandchildren apply for college. Your kids and grandkids could end up getting squeezed twice, Ms. Driscoll notes.

First, the college admissions staff may well conclude that your adult child has a healthy savings account; thus, the grandchildren won't qualify for financial aid. But that money probably can't be used for tuition. That's because you likely drew up an agreement with your adult child to spend the money

only on your needs.

And have you thought about the tax bill that your children, probably at their peak income levels in their 40s or 50s, might have to pay on any income they make from your gifts? Or the property taxes they would have to pay on your former home? If you give away more than \$1 million of investments and property, you might incur gift taxes as well. Sometimes, those bills wind up costing the family more than premiums for long-term care insurance, Ms. Driscoll says.

- **Is your lawyer representing you -- or your children?**

There's an inherent conflict in Medicaid planning. Sheltering the money means your family gets an inheritance. Not sheltering it means you get more control over your medical treatment in later life. That makes it tough for one lawyer to represent both generations fairly.

Some lawyers, such as Mr. Margolis, "try to make it clear that the senior's the client." If there's a conflict, "we suggest to the kids that they get their own representation." But in other cases, lawyers may favor the children, even helping them win guardianship over their parents' assets.

- **Your assets might not be protected after all.**

Some of the estate plans being hawked as ways to protect your savings are, as the saying goes, too good to be true.

Case in point: More than 700 families paid \$2,000 to \$3,000 apiece for estate plans done by a Colorado elder-law attorney and associate from 1996 through 2001. They claimed the plans would qualify buyers for Medicaid coverage of nursing-home costs regardless of their income or assets -- and would avert the need for spending down assets or placing liens on homes.

It turned out the estate plans were a sham, and Colorado's attorney general filed a consumer-fraud complaint against the team. A state district-court judge ruled last year that they had violated the state's consumer-protection act. And the money paid for the estate plans, essentially, was money down the drain.

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