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Estate Planning & Elder Law

Not Your Grandma's Medicaid: Applying for Medicaid in 2017

1. **Long Term Care Medicaid**
    a. Single Person
        i. Total assets < $2,000
        ii. Keep $30/month of their income
        iii. 5 year look back
    b. Married Couple—one person applying
        i. IS ("institutionalized spouse") total assets < $2,000
        ii. CS ("community spouse") total assets < $109,560 + house
        iii. IS income = $30/month
        iv. CS income = $2,739/month
        v. 5 year look back (for both spouses)
2. **Five Year Look Back and Gifting**
    a. Every time a Medicaid application is submitted, the applicant needs to include 5 years of documentation for ALL aspects of their financial life over the 60 months prior to applying for Medicaid
        i. This includes monthly statements for checking and savings accounts, CDs, brokerage accounts, stocks, investment portfolios, IRAs, 401(K)s, tax returns, and life insurance policies to name a few
    b. Medicaid is looking to see if there were any transfers made for less than fair market value (i.e. gifts)—if so, Medicaid will institute a penalty
    c. The way that Medicaid determines the penalty is by taking the total amount gifted within the previous 5 years and dividing it by the monthly cost of care at the particular skilled nursing facility the Medicaid applicant is residing in. The resulting figure is the number of months that the individual must pay the facility privately BEFORE Medicaid will kick in and start paying for him/her
3. **Payback Trusts**
    a. Self-Settled Pooled Trust

i. Available to individuals with disabilities and their families to use private assets in a trust for supplemental purposes while maintaining or qualifying for federal and state public benefits (i.e. Medicaid, SSI, etc.)

ii. Can be set up by the individual, a parent, grandparent, or legal guardian of the beneficiary

iii. Differs from a Third Party Special Needs Trust in that funds remaining in the trust upon the death of a beneficiary must "Payback" the State for the lifetime of medical assistance provided to the beneficiary.

    A. Any remaining funds can then be distributed to beneficiaries

iv. Pooled with other individuals' funds so that a greater interest rate can be earned for the "pool" of beneficiaries

v. Managed by a "corporate" Trustee

vi. All end of life (funeral and burial) planning must be done prior to the creation of the pooled trust as the State does not allow remaining funds to be used prior to it being reimbursed at the death of the beneficiary.

vii. If the individual is under 65 y/o, there is no penalty in a Medicaid application scenario and the individual can transfer all funds to first party trust

    A. If individual is over 65, there is a penalty for Medicaid

b. First Party Special Needs Trust

i. Funded with individuals' personal funds in order to maintain or qualify for federal and state public benefits (includes "payback" provision)

ii. Can be set up by individual, parent, grandparent, legal guardian of beneficiary or a court

iii. Similar in a lot of respects to the pooled trust previously noted, but the Trustee can be a family member or friend.

iv. Still requires payback to the State for all benefits provided upon the death of the beneficiary.

4. Exceptions to the Look Back

a. Transfers to a 3rd party special needs trust for the benefit of a child/grandchild who is under the age of 65 and disabled (as determined by SSA or Medicaid's Determination Review Unit)

i. Must be irrevocable and solely for the benefit of the child/grandchild with a disability

    ii. The trust must be created by a parent, grandparent, or court
    iii. A 3rd party special needs trust does NOT require payback to the State upon the death of the beneficiary. The remaining trust funds can simply be distributed to named beneficiaries of the trust.

b. Transfers to child who is receiving SSDI
    i. These transfers can be outright to the individual with no requirement of being transferred into any trust.
c. Transfer of primary residence to:
    i. Sibling with equity interest in the house and who has been living there for at least one year prior to the Medicaid applicant applying
    ii. Child under the age of 21
    iii. Child with disability as determined by SSA or Medicaid's Determination Review Unit (child who receives SSDI)

5. **Child Caregiver Exemption**
    a. Child must have lived in Medicaid applicant's home for at least 2 years and provided care
    b. Must have doctor's letter that explains the level of care was at least that of assisted living
        i. Ideal for there to be a letter from the doctor at the time the adult child begins providing care, however, Medicaid has accepted letters drafted at the time of application so long as that doctor states that the Medicaid applicant was under his/her care the entire time.
    c. Need to provide evidence of child living there
        i. Tax returns, driver's license, mail with address, etc
        ii. The State will be very hesitant to agree to this exemption if the adult child can't provide ANY evidence that he/she lived in the parent's home for the previous 2 years (at least)
6. **Hardship Waivers**
    a. Prior to November 2011, easier and more straightforward
    b. After November 2011, more difficult, the burden is on the applicant to prove that he/she was the "victim of something"
        i. CANNOT be "I lent money to my son and he can't pay me back"

ii. If an adult child/POA stole money from parent/applicant, then the applicant will have to file a police report for the State to even consider the hardship waiver
   A. Most parents are very reluctant to file a police report against a child even if he/she did in fact steal from him/her

7. **Spousal Refusal**
   a. Must disclose spouse's assets to State, but state that they are unavailable
   b. State can still "go after" community spouse for their contribution
8. **Divorce and Re-Marriage**
   a. Divorce is an option to separate and protect assets when applying for Medicaid for one spouse
   b. Need to be conservative in dividing assets
      i. The State has stated that they do NOT need to honor divorce judgments in situations where the spouse applying for Medicaid leaves the divorce with a very small amount of the marital assets while the non-nursing home spouse walks away with the vast majority
9. **Reverse Mortgages**