

Medicaid Promissory Notes: Gift and DRA Compliant Transactions, Shielding Assets, Safe Harbors, Spousal Refusals

TUESDAY, JUNE 25, 2019

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Today's faculty features:

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NO SPOUSE LEFT BEHIND: PLANNING AHEAD FOR LONG-TERM CARE USING MEDICAID

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2019

6 THE CURRENT COSTS OF HEALTH CARE: THE NUMBERS

- In 2010, the US spent 2.6 trillion dollars or \$8,402 per person on health care and 18% of the US economy was devoted to health care. This spending was 90% higher than in many other industrialized nations.
- Health care costs per capita have grown an average 2.4 percentage points faster than GDP since 1970
- Half of health care spending is used to treat just 5% of the population.
- Prescription drug expenditures grew 114% from 2000 to 2010

Health Care Costs, A Primer, Key Information on Health Care Costs and Their Impact; Kaiser Foundation May 2012.

7 THE NUMBERS, CONTINUED

- Per capita spending is highest on those 65 and older with an average of \$9,744 per person.
- Average out-of-pocket expenses have increased 73% from 1996 and 2009.
- For those age 65 and older, the increase has been 46%; The greatest increases have been for those through 125% of the poverty line- 85%

8 MORE NUMBERS.....

- Health expenses accounted for 14% of Medicare household budgets in 2012, three times that of non-Medicare households.
- The older the Medicare recipient, the greater their percentage of spending.
- Health Insurance Premiums (Part B, Medigap coverage, Part D) account for the largest portion of the money spent on health expenses.

Health Care on a Budget: The Financial Burden of Health spending by Medicare Households, Kaiser Foundation, Jan. 9, 2014

9 MORE NUMBERS.....

- By far, some of the most daunting numbers out there are for LTC.

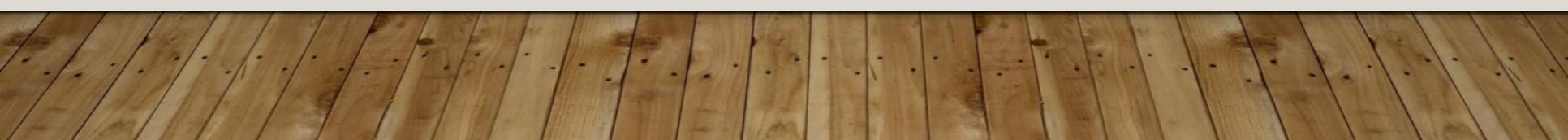
Nationally:

Average hourly rate for Home health- \$20/hour

Assisted Living Facility Costs- \$3,628/month (\$43,536/year)

Nursing Home Care (\$225/day semi-private; \$253 private)
(\$82,125 or \$92,345/year)

Cost of Care Survey 2016; Genworth.



10 MORE NUMBERS.....

- In Kentucky,

Average Home Health costs- \$19/hour or \$43,907/year

Average Assisted Living costs- \$3,350/month or \$40,200/year

Average Nursing Home costs- \$208/day \$75,920/year (semi-private) or \$239/day

\$87,235/year (private)

Cost of Care Survey 2016

|| OVERALL

- Greater spending for women
- Greater spending for those with cognitive impairment (Alz for example)
- Studies vary on average length of stay in a nursing home with numbers ranging from a little under one year to just under three.
- Over 70% of those 65 and over will need some form of long-term care, lasting an average of 3 years, with some type at home and some in a formal facility.

<http://www.cbsnews.com/news/long-term-care-what-are-the-real-risks/>

12 WHO PAYS?

- Private Health Insurance (Anthem, Humana, etc.)
- Government as provider

VA Health System, military retiree health care, prisons, Indian Health Services

- Government as Insurer

Medicare (Elderly and Disabled- not indigent)- administered by Department of Health and Human Services/ Centers for Medicare and Medicaid Services.

13 WHO PAYS?

- Medicaid (Blind, Elderly, Disabled- indigent)- Administered by DHHS/CMS and State Medicaid Agencies
- Private Long-term Care Insurance (Transamerica, Genworth, etc.)
- The Individual
- Family Caregivers through time, loss of work, and health.

14 MEDICARE- NOT YOUR LONG-TERM CARE SOLUTION

Medicare is the health insurance benefit that is a part of Social Security. To qualify for Medicare you must:

- Be 65 or older, OR
- Be disabled and entitled to Social Security benefits for 24 months, OR
- Suffer from end-stage renal failure or amyotrophic lateral sclerosis (ALS – Lou Gehrig’s disease). There are no income or asset limits to qualify for Medicare; everyone who is eligible is entitled to coverage. Bill Gates will get Medicare.

15 MEDICARE – PAYING FOR THE NURSING HOME FOR REHAB ONLY

- Medicare will pay for 20 days if:
 - The Resident is on Medicare and the Resident has spent 3 consecutive admitted midnights in a hospital prior to being placed in the Nursing Home
- Medicare may pay for an additional 80 days
 - If the patient is being kept from declining with rehabilitation
 - Co-pay of \$167 a day (2018 figure) – which some Medicare supplemental insurance will pay

16 LONG-TERM CARE INSURANCE

- Long Term Care Insurance (LTCi), also known as nursing home insurance, is a method of prepaying the cost of care
- It is very effective in preserving assets and is highly recommended for persons age 50-70

17 LONG-TERM CARE INSURANCE

- A person contracts to get a benefit of a certain amount (e.g. \$100/day) for a period of time (e.g. - 2 years) up to a certain amount (e.g. - \$73,000 maximum).
- They may be able to get a lower amount (e.g., \$50/day) for home care or assisted living.
- Most new policies all cover the full range of care: Home, assisted living, personal care, NH

18 LONG-TERM CARE INSURANCE PARTNERSHIP PLAN

- Partnership Insurance (PI) allows a person to keep more of his own assets and qualify for Medicaid sooner.
- For every dollar paid by the PI policy, the insured can keep a dollar in countable resources and qualify for Medicaid.
- Must meet certain requirements, e.g., have an inflation rider, which make the premiums higher.

19 LONG-TERM CARE INSURANCE

- Mom buys a Partnership Insurance (PI) policy with the following benefits:
 - Daily payment rate = \$200/day
 - Benefit Duration = 5 years.
 - 5% inflation rider
 - Maximum benefit = $\$200 \times 365 \times 5 = \underline{\$365,000}$

20 LONG-TERM CARE INSURANCE

- Mom, a widow by the time she enters a nursing home (very typical) is Medicaid eligible when her countable resources get below \$367,000.
- ($\$365,000 + \$2,000 = \$367,000$)
- **\$367,000 will eventually pass to her family instead of \$2,000.**

21 LONG-TERM CARE INSURANCE LIFE INSURANCE W/ABR

- New products have been developed that are life insurance with accelerated benefit rider.
- May require a substantial up-front premium.
- Will allow the insured to access a percentage of the death benefit to pay for long-term care.

22 LONG-TERM CARE INSURANCE LIFE INSURANCE W/ABR

- Benefits include easier underwriting (life, not health insurance)
- There is no “Use it or lose it.” If long-term care benefits are never accessed, the family will still receive a death benefit.
- There is no risk of substantial premium increases down the road.

23 LONG-TERM CARE MEDICAID BENEFITS ELIGIBILITY

- To qualify for Medicaid, a Resident needs to meet the following criteria:
 - Have been in an institution for 30 days or longer (hospital or skilled care facility)
 - Be in a nursing home (not assisted living)
 - Be in a Medicaid bed
 - Need skilled or intermediate nursing care
 - Meet Medicaid's financial criteria

24 LONG-TERM CARE MEDICAID BENEFITS INCOME LIMITS

- Technically, if the institutionalized person's income is over \$2,313/month, he is not eligible for Medicaid. (Federal SSI rate of \$771 x 3 = \$2,250)
- Practically, income above \$2,313 is placed in a Qualified Income Trust and he is then eligible. Bottom line – if income is less than the cost of the nursing home, he is income eligible.
- The income of the spouse of an institutionalized person is not limited
 - For those situations where the spouse's gross income is below the Community Spouse Income Allowance (CSIA) or Minimum Monthly Maintenance Needs Allowance (MMMNA) currently \$2,057.50/mo, some of the institutionalized person's income may be transferred to the CS to bring the spouse's income up to \$2,057.50. (2018-2019 numbers)

25 SHELTER EXPENSE

- The CSIA includes a presumption that shelter costs \$617.25/month (2018-2019, subject to adjustment July 1). To the extent shelter costs exceed this amount, the CSIA may be raised up to a maximum of \$3,160.50/month (2018-2019, subject to adjustment January 1).

26 SHELTER EXPENSE CALCULATION

- What is included as a shelter expense?
 - Rent or mortgage
 - Property taxes
 - Homeowners insurance
 - Utility expenses
 - \$36 or actual telephone expense

27 SHELTER EXPENSE CALCULATION

- As a practical matter, unless a spouse has a mortgage or is paying rent, shelter expenses are not likely to exceed the \$617.25 allowance, hence no upward adjustment in the CSIA.
- However, this is a very useful tool where one spouse is in a nursing home and the other is in assisted living.

28 INCREASING THE CSIA (MMMNA)

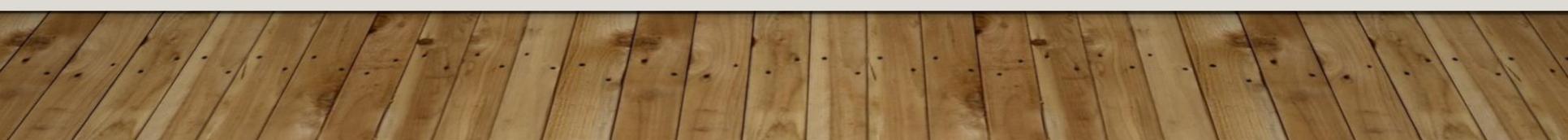
- The community spouse income allowance can only exceed the maximum allowable amount if there is a court order in a greater amount or if a hearing officer establishes need for a higher amount through the fair hearing process.

42 USC 1396r-5

29 INCREASING THE CSIA

- An Administrative Hearing officer may increase the CSIA through the fair hearing process.
- Either spouse may request a hearing to present evidence that additional income is needed due to significant financial duress.
- If the hearing officer determines that exceptional circumstances exist, the hearing officer grants the increase in the community spouse allowance for a stated period of time.
- Must show significant financial duress

30 INCREASING THE CSIA

- In some jurisdictions, can be accomplished through action in Court with an Order of Support.
 - Bring a declaratory action to have the CSIA (or MMMNA) set at a higher amount than the maximum.
 - Medicaid must be noticed and given the opportunity to object.
 - Must wait for statutory time to appeal.
 - Present Court order to Medicaid and *should* be honored.
- 

3 | LONG-TERM CARE MEDICAID BENEFITS- RESOURCE LIMITS

- In Medicaid speak, an asset is called a Resource.
- Resources are those assets that an individual or a couple own and can apply, either directly or by sale or conversion, to meet basic needs of food, clothing and shelter. This includes anything owned by their revocable trust.
 - Translation – everything you own or have a legal right to assert a claim upon
- A disclaimed inheritance is a resource because of the right to assert a claim. Therefore, try to avoid leaving an inheritance to a nursing home resident. Leave the asset to his or her heirs instead.

32 LONG-TERM CARE MEDICAID BENEFITS- RESOURCE LIMITS

- A single person (never married, widowed, divorced, or married when both are in the Nursing Home) is resource-eligible when his or her countable resources are less than \$2,000
- A Community Spouse may keep half (50%) of countable resources up to a maximum of \$126,420 (2019 figures). This is called the Community Spouse Resource Allowance (CSRA)
- A Community Spouse may keep all countable resources if the total is less than \$25,284 (2019 figure)

33 LONG-TERM CARE MEDICAID BENEFITS- RESOURCE LIMITS

- A Community Spouse is a spouse of an institutionalized person who resides in the community (as opposed to also being institutionalized).
- If the spouse lives at home, with a child, in a personal care residence or an assisted living facility, he or she is still a Community Spouse.
- Medicaid rules are tilted toward protecting the Community Spouse, generally the wife.

34

LONG-TERM CARE MEDICAID BENEFITS- EXCLUDED RESOURCES

- Homestead property and all contiguous property. However, for singles, the home will lose its excluded status after six months of institutionalization. Under the new rules, there is no six-month exemption if the home is valued over \$585,000. (2019)
- One vehicle, regardless of value, if it can be used to obtain medical treatment. For a single person, you will need a letter from the family physician stating that the NH resident is capable of being transported in this vehicle.
 - Resident forfeits right to non-emergency transport
- Household personal effects
- Qualified Plans such as pensions, 401K's, IRA's, Roth IRA's and Keogh plans (HR-10) are exempt in some states, not in others.



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LONG-TERM CARE MEDICAID BENEFITS- EXCLUDED RESOURCES

- Property that is essential for support for the individual or spouse and that is used in a trade or business. Rental property may or may not be considered a trade or business. State dependent
- Life insurance, up to \$1,500, if designated as a burial reserve
- Irrevocable funeral contract for reasonable amount.



36 WHAT IS A RESOURCE ASSESSMENT?

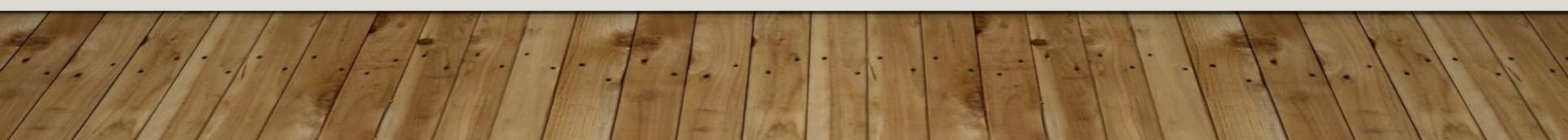
- The Resource Assessment is an evaluation of the combined countable resources of the Institutionalized Spouse (IS) and Community Spouse (CS) completed at the beginning of the continuous period of institutionalization. The combined countable resources are compared to the current Medicaid resource allowance to determine when the IS will meet resource eligibility for Medicaid. In some states, this is a separate step that must be taken. In others, it is calculated at the application.
- 42 USC 1396r-5

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EXAMPLE #1

COMMUNITY SPOUSE RESOURCE ALLOWANCE

• Home	\$90,000		Excluded
• One Car	\$15,000		Excluded
• Savings	\$95,000	\$95,000	H,W,JT,RLT
• Cabin	\$30,000	\$30,000	PVA value
• IRAs	\$75,000		Excluded
• Ins. CV	\$17,000	\$17,000	
• TOTAL	\$142,000		Countable



38

EXAMPLE #1 COMMUNITY SPOUSE RESOURCE ASSESMENT

$\$142,000 / 2 = \$71,000$

Community Spouse keeps $\$ 71,000$ (CS)

Institutional Spouse keeps $\$ 2,000$ (IS)

Spend Down $\$ 69,000$

Medicaid eligibility is reached when combined assets of H & W are less than \$73,000 (\$71,000 for W and \$2,000 for H)

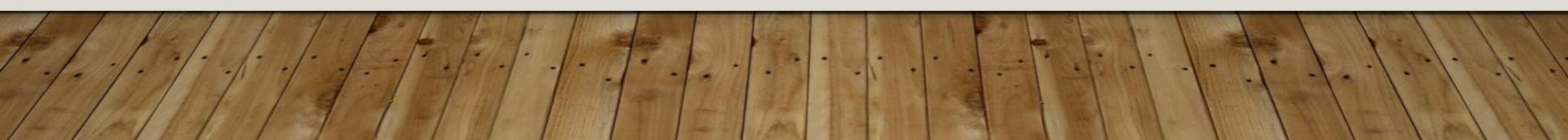
The result of the resource assessment will be a CSRA and a spend-down dollar determination.

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EXAMPLE #2

COMMUNITY SPOUSE RESOURCE ALLOWANCE

• Home	\$ 90,000		Excluded
• One Car	\$ 15,000		Excluded
• Savings	\$ 205,000	\$205,000	H,W,JT,RLT
• Cabin	\$ 30,000	\$ 30,000	PVA value
• IRA's	\$ 75,000		Excluded
• Ins. CV	\$ 20,000	\$ 20,000	
• TOTAL	\$255,000	Countable	



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EXAMPLE #2

COMMUNITY SPOUSE RESOURCE ALLOWANCE

\$255,000 / 2 = \$127,500

(which is above the limit of \$126,420)

Community Spouse keeps \$ 126,420

Institutional Spouse keeps \$ 2,000

Spend Down \$ 126,580

\$255,000 - \$126,420 - \$2,000 = \$126,580

Medicaid eligibility is reached when combined assets of H & W are less than \$128,420 (\$126,420 for W and \$2,000 for H)

4 | LONG-TERM CARE MEDICAID BENEFITS- TRANSFERS

- Disqualifying transfer - “transfer for less than fair market value” within 5 years of applying for Medicaid
- For 2019, the Transferred Resource Factor in KY is \$6,067/month, or \$199.46/day. The state uses the daily figure. Each state will have its own factor.
- Example- A \$100,000 gift creates a period of ineligibility of 501 days (16.7 months)
- Rebuttable presumption that the transfer was for the purpose of obtaining Medicaid

42 LONG-TERM CARE MEDICAID BENEFITS- TRANSFERS

- The penalty period does not start until the Medicaid applicant is “otherwise eligible” if not for having made the gift.
- Therefore, an applicant must actually apply for Medicaid and be totally eligible in every other way before the clock starts running on the penalty period
- This is often a very important step
- Get the Medicaid denial in writing and make sure it shows the starting and ending dates for the period of ineligibility (penalty period)
- Other than transfers between spouses, the disabled child exception, and the caregiver child exception, there are NO Medicaid gift exclusions. They all count.
- The \$15,000 exclusion for federal gift tax reporting purposes does not apply to state Medicaid eligibility

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LONG TERM CARE MEDICAID BENEFITS- TRANSFER EXCEPTIONS

- Disabled Adult Child – The home and financial assets may be transferred to a disabled child without a transfer of resources penalty (§2070 – Vol. IVA). Definition of “disabled” is Social Security definition.
 - Important to determine whether child is receiving SSI (needs based) or SSDI (ability based)
- Caregiver Child – can receive the home only.
 - *A caregiver child is a child who resided in the parent’s home for the two years immediately preceding the nursing home admission and provided care such that without such care, a nursing home admission would have been necessary at least two years earlier.*
 - Child should still be in the house at time of application.
 - Going to Assisted Living before the Nursing Home will sever ability to make caregiver child transfer.

44

LONG-TERM CARE MEDICAID BENEFITS- TRANSFER EXCEPTIONS

- Sibling Exception – A home may be transferred to a sibling who has an equity interest in the home and who lived with the institutionalized individual one year prior to institutionalization. Any amount of equity is sufficient.
 - Make sure deed showing an equity interest is recorded.

45 PRE-PLANNING WITH IRREVOCABLE TRUSTS

- Used when we are highly optimistic that we will get at least five years before skilled nursing care is needed OR
- Used when there are sufficient assets to support a private pay period of at least five years (will NOT be able to apply for Medicaid until at least five years have passed)

46 PLANNING WITH IRREVOCABLE TRUSTS

- Warning – For an irrevocable trust to be an effective planning tool under Medicaid, the trustee must be prohibited from distributing ANY of the corpus to the grantor or spouse under ANY CIRCUMSTANCES
- It is paramount that a client placing assets into an Irrevocable Trust for the purpose of Medicaid planning understand that he or she will have essentially no legal right or control over those assets.

47 PLANNING WITH IRREVOCABLE TRUSTS

- Because the client(s) will not have control over the trust assets, choice of trustees and beneficiaries requires careful consideration.
 - To the extent possible, have trustee and lifetime beneficiaries be separate individuals
- Trustee and beneficiary need to realize that trust assets may need to be returned to avoid Medicaid penalties and the need for private pay.

48 PLANNING WITH IRREVOCABLE TRUSTS

- The usual language giving the trustee discretion to distribute principal to the grantor or spouse is fatal in this type of trust
- Normal Irrevocable Trust language allowing assets to be used “for the health, welfare or maintenance” of the grantor is FATAL and makes all of the trusts assets “countable resources” for Medicaid eligibility purposes
- See 42 U.S.C.1396p – Irrevocable trust section; See also 907 KAR 20:030

49 MEDICAID IMPLICATIONS

- For Medicaid eligibility purposes, transfers into irrevocable trusts are considered gifts and subject to the five year look back rule
- After five years, the assets are not counted for Medicaid eligibility purposes and are considered “protected.”
- BUT - the irrevocable trust needs very precise language, which most irrevocable trusts do not contain
- Medicaid actively tries to pierce these trusts to get at the money inside

50 SPOUSAL SUPPORT TRUSTS (WILLS)

- When planning for a couple, investigate whether the Nursing Home resident is the beneficiary under any will, insurance policy, financial asset.
- Do not want Nursing Home resident inheriting any assets free or outright when on Medicaid.
- Typically this will be from spouses' will, but also likely from siblings that had no children (e.g., leave everything to by brother Bob), family members dying intestate (remember that your clients' children may be in their 60s or even 70s).

51 SPOUSAL SUPPORT TRUSTS

- If a will contains a properly drafted spousal support trust, courts will generally not consider the trust to be an available asset to the beneficiary
 - Meaning a trust that states it exists to supplement, rather than to supplant, any financial government benefits
 - *Matter of Leona Carlisle Trust*, 498 N.W.2d 260, 265 (Minn.App. 1993).
- This means that the spousal support trust need not be exhausted before the beneficiary would be eligible for Medicaid benefits
- This is a useful pre-planning technique but only to the extent that the assets were titled to the first spouse to die so that they pass under his/her will

52 SPOUSAL SUPPORT TRUSTS

- 42 USC 1396p(d) Treatment of trust amounts

(1) For purposes of determining an individual's eligibility...the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

53 TACTIC #1A: CONVERT COUNTABLE RESOURCES TO EXEMPT RESOURCES



54 **Converting Countable Resources to Exempt Resources: Case Study**

CASE STUDY: MEDICAID CRISIS CASE FOR MARRIED COUPLE

- Bob and Sue Smith are married. Bob is 81 and Sue is 74. With help of caregivers, Sue took care of Bob at home until recently. Bob has now been admitted to a skilled nursing facility, where he is expected to stay. Bob and Sue have a combined income of \$3,850 each month: Sue gets \$850 from Social Security and Bob gets \$3,000 between his Social Security benefits and retirement pension. Bob and Sue own a home with a PVA value of \$178,000. They have money in checking, savings, CDs and a brokerage account totaling \$280,000. Sue has a \$70,000 IRA with an annual RMD of \$4,000. They each have life insurance policies with combined cash value of \$4,500. Sue has an older car.



55 **Converting Countable Resources to Exempt Resources: Case Study**

1. What does Bob need from the skilled nursing facility?
2. What resources or assets are exempt for purposes of Medicaid?
3. What resources or assets are countable?

56 **Converting Countable Resources to Exempt Resources: Case Study**

- Exempt Resources
 - The home
 - Sue's IRA
 - Sue's car

57 **Converting Countable Resources to Exempt Resources: Case Study**

Countable Resources

- a. Checking, savings, CD's and brokerage account
- b. Life Insurance Cash Surrender Values

58 Countable Resources to Exempt Resources: Case Study

- What is the first step to take to establish Medicaid eligibility for Bob?
 - Transfer the joint assets to Sue alone
 - Get a Resource Assessment!
- After obtaining the Resource Assessment, what are some available options to preserve the spend-down amount?



59 **Converting Countable Resources to Exempt Resources: Case Study**

- Bob and Sue have at the time of the Resource Assessment \$284,500 in countable resources
 - Sue as Community Spouse keeps the maximum amount \$126,4200.
 - Bob as the Institutionalized Spouse keeps \$2,000.
- After completing the Resource Assessment, Sue and Bob purchase two Medicaid-compliant prepaid funerals.
- Sue trades in her old car on a new or newer used car. Sue spends some money on the house.
- After doing so, Bob and Sue have \$230,000 in total countable resources. That leaves \$101,580 to be spent down before Medicaid will pay for Bob's Nursing Home care.



60 **Converting Countable Resources to Exempt Resources: Case Study**

- What can be done to preserve the remaining spend down?
 - Upgrade the home
 - The home of any value is exempt.
 - Sell the current home for \$178,000 and combine that with the \$101,000+ that needs to be spent down to buy Sue a newer, safer home on one level (maybe a patio home) where she can age in place for years to come



6 | **Tactic #1 B: Converting Countable Resources to Income: Case Study**

- What can be done to preserve the remaining spend down?
 - Spousal Medicaid-Compliant Annuity or Promissory Note
 - Any amounts remaining countable are then turned into an income stream for Sue as the Community Spouse.
 - For the annuity, Medicaid will be the primary beneficiary for any amounts paid on behalf of the institutionalized individual so only a good idea with a healthy community spouse.
 - The cabinet must be named beneficiary of the annuity to the extent of benefits paid on behalf of institutionalized spouse



62 Converting Countable Resources to Exempt Resources: Case Study

Spousal Medicaid-Compliant Annuity

- Sue purchases the Medicaid-compliant annuity in the amount of \$105,000, thereby converting this amount from a countable resource to an income stream payable to her that does not count for purposes of Bob's eligibility for Medicaid.
- Sue keeps all of her income and all of the annuity income. The annuity income probably disqualifies her from the CSIA because her income is probably over \$2,057.50 a month. All of Bob's income goes to the NH and Medicaid pays the balance. Bob is on Medicaid sooner but the monthly cost to the state is lower because there is no CSIA. Mom is the big winner assuming she does not end up in a nursing home or die within a short period of time. She is also much more financially secure should she end up as the surviving spouse, which is likely.

63 Converting Countable Resources to Exempt Resources: Case Study

Spousal Medicaid-Compliant Promissory Note

- Sue loans her children the amount of \$105,000 with a Medicaid-compliant Promissory Note, thereby converting this amount from a countable resource to an income stream payable to her that does not count for purposes of Bob's eligibility for Medicaid.
- Sue keeps all of her income and all of the promissory note income. The note income probably disqualifies her from the CSIA because her income is probably over \$2,057.50 a month. All of Bob's income goes to the NH and Medicaid pays the balance. Bob is on Medicaid sooner but the monthly cost to the state is lower because there is no CSIA. Mom is the big winner assuming she does not end up in a nursing home or die within a short period of time. She is also much more financially secure should she end up as the surviving spouse, which is likely.

64 **Converting Countable Resources to Exempt Resources: Case Study**

Spousal Medicaid-Compliant Promissory Note

- Cannot be self-cancelling at death
- Must pay to the estate of the community spouse if they passed away before the note is paid in full
- Must be actuarially sound
- Must be irrevocable

42 USC 1396p

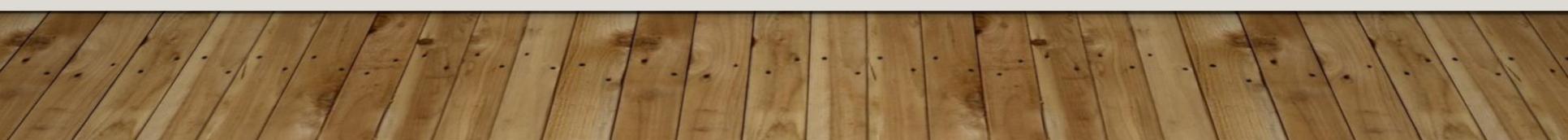
65

CONVERTING COUNTABLE RESOURCES TO EXEMPT RESOURCES: CASE STUDY

- What, if anything, should be done with Sue's IRA?
 - Sue's IRA is exempt. Sue is receiving a Required Minimum Distribution from the account. She should continue to take the RMD and, if possible, no more than the RMD. Because Medicaid is a monthly based program, Sue should begin taking the RMD on a monthly basis.

66 OTHER OPTIONS

Divorce

- Medicaid does not recognize or honor pre or post-nuptial agreements.
 - Medicaid will honor an Order of Dissolution.
 - Spouse that is filing for divorce must have capacity to do so. If the other spouse does not have capacity, an attorney must be appointed for them.
 - Be sure to lay out the reasons that divorce with assets staying with the community spouse is what both spouses would want.
- 

67 OTHER OPTIONS

- Spousal Refusal

This is a frequent method used in some states, but not at all in others.

The Community spouse will sign “spousal refusal” indicating that they refuse to make the assets available to the institutionalized spouse. The state must then only consider eligibility based on the institutionalized spouse’s income and assets. The state must then sue the institutionalized spouse to force support, but courts are often sympathetic to community spouses. More often, the state will wait and recover after the death of the community spouse. This tactic is used most often in New York, Florida, and Connecticut.

68 KEY MEDICAID WEBSITES - I

- 42 U.S.C. 1396p Enabling Federal Law
 - http://www.law.cornell.edu/uscode/uscode42/usc_sec_42_00001396---p000-.html
 - (use the Next button to look at sections r & r-5)

- DRA (2005) Deficit Reduction Act of 2005
 - <http://thomas.loc.gov/cgi-bin/query/z?c109:S.1932:>
 - Go to # 5 EAS

69 KEY MEDICAID WEBSITES - 2

- CMS (Center for Medicare & Medicaid Services – Go to Publication 45)
 - <https://www.cms.gov/Regulations-and-Guidance/guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html>
 - State Medicaid Manual
- Social Security Program Operations Manual (POMS) Medicaid Section
 - <https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttcategory=05>