ALERT
New Medicaid Rules

Family & Social Services Administration has announced changes in the Indiana Medicaid rules that are scheduled to become effective November 1, 2009. The new rules can be found at http://www.in.gov/legislative/iac/20090916-IR-405080325FRA.xml.pdf. These are major changes which every senior citizen and their advisors need to be aware of. The changes are intended to bring Indiana into compliance with a bad federal law, the Deficit Reduction Act of 2005.

The proposed major changes are:

(1) The look back period will be extended from 36 months to 60 months for all transfers made after October 31, 2009. Transfers made within the look back period will usually result in a period of time a Medicaid applicant is ineligible for assistance with the cost of nursing home care or Medicaid Waiver Services.

(2) The period of ineligibility for a penalized transfer will not start running until a person is in a nursing home, is financially eligible for Medicaid, applies for Medicaid, and is denied benefits because of the improper transfer. This is the most important change in the Medicaid rules and the hardest to understand. The current rules state transfer penalties start in the month after the gift is made. This is best explained by an example. Mom gifts $20,000 to a child on November 1, 2009. Mom goes into a nursing home and pays for her care for 4 years. She then runs out of money and applies for Medicaid. She will be denied Medicaid for 4.33 months because of the transfer 4 years earlier.

(3) A person can purchase a life estate interest in another individual’s home without penalty under the Medicaid rules provided the purchaser resides in the home for a period of at least one continuous year beginning immediately after the date of purchase. This permitted transfer does not require a family relationship. This will be an effective planning tool for non-traditional families. This will also encourage families (using the term in the tribal sense) to keep the ill person home longer – usually the goal of everyone. This concept is best explained by an example. Mom moves in with her daughter. Daughter has a home worth $150,000 on which she owes $75,000. She has a monthly mortgage payment of $1,100. Mom is age 75. Mom purchases a life estate in daughter’s home. The purchase price is $78,223.50, based upon her 52.149% life expectancy under the Indiana Medicaid rules.

The proceeds to daughter are tax free to daughter, as the sale is part of her principal residence for a price of less than $250,000 for a single person. Daughter uses the funds to pay off the mortgage – drastically increasing her net worth. Mom also enters
into a homeowner’s shared expense agreement paying the daughter $1,000 per month as her share of the monthly expenses.

The daughter must keep Mom in her home for one year after the date of purchase. Mom has effectively given daughter $90,000 without the imposition of a transfer penalty ($78,000 purchase price plus $1,000 per month shared expense agreement). This can even be coupled with a personal service agreement to allow for the care of Mom while daughter is at work or to pay other family members to give daughter respite time.

(4) The State of Indiana will now have to be named the primary or contingent beneficiary for all non-qualified annuities purchased on or after November 1, 2009. You can name a spouse, a minor child, or a disabled child as the primary beneficiary of an annuity, but you must name the State of Indiana as the contingent beneficiary to the extent of any medical benefits paid on your behalf (or your spouse’s behalf). The failure to properly name the State creates a transfer penalty should you or your spouse ever need Medicaid for nursing home care or waiver services.

Example. Dad purchases a non-qualified annuity on November 2, 2009, for $30,000.00. He names his spouse as the primary beneficiary and his adult children as the contingent beneficiary. Three years later his wife has a stroke, goes to the nursing home and applies for Medicaid. She will be penalized for 6.5 months during which time she will not be eligible for Medicaid because the State was not properly named as beneficiary before the children when the annuity was purchased.

(5) The rounding down rule is eliminated. Prior to November 1st, penalties created by transfers have been rounded down to the last whole month. So a gift of $8,000 would be penalized by dividing it by the average monthly cost of nursing home care in Indiana of $4,611. A gift of $8,000 in August would make a person ineligible for Medicaid only for September (8000 ÷ 4611 = 1.73 rounded down to one). After November 1, the person will be ineligible for 1.73 months – with the penalty start date to be delayed until the person is in the nursing home and applies for Medicaid.

(6) All gifts to family members and friends no matter how small will be counted and accumulated, even if made in different months and years. Gifts of $1,200 total per year will not be penalized. Gifts which are not made in contemplation of Medicaid eligibility will be ignored if a person can prove the gift was not made to qualify for Medicaid. This requires you to prove a negative which is very difficult to do. Gifts made to churches and other charities can be ignored by the State if the person has a historical pattern of giving over at least a three-year period.

Example: Mom gives each of her three children $1,000 for Christmas for two years for gifts of $6,000 over the two years. This means she has made an excess gift of $3,600 [(3,000 x 2) – (1,200 x 2) = 3,600]. She goes into the nursing home a year later and pays
for her care for 18 months until she runs out of money. She will then be found ineligible for Medicaid for 3 weeks because of the prior Christmas gifts.

(7) Mom can now apply for a hardship waiver within 20 days of being turned down because of prior gifts. When she applies for a hardship waiver, she gives up her constitutional right to due process and a hearing before an Administrative Law Judge to argue the original Christmas gifts were not made in contemplation of becoming eligible for Medicaid. The State must rule in Mom’s favor within 30 or 45 days (the term period is not certain yet) or she is automatically denied. We are not optimistic any of these appeals will be approved.

(8) Promissory notes, mortgages, and other loan documents involving family members must have certain terms or the transactions may subject a person to a transfer penalty.

(9) We strongly recommend personal service agreements, expense-sharing agreements, rental agreements, or other intra-family arrangements that result in payments from Mom or Dad to a child be in writing!

We will update this article as soon as the official new regulations are published.

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