ThinkAdvisor

September 21, 2017

How to Get Medicaid for Nursing Home Care Without Going Broke

Medicaid expert Gabriel Heiser tells ThinkAdvisor how to pay for long-term care while protecting assets

Well-off people can easily go broke paying for sky-high nursing home care: First they deplete their own funds and then, eventually needing Medicaid, spend down nearly all the rest of their assets to qualify for that government program designed for low-income individuals.

The way to avoid this terrible situation is to put in place a Medicaid asset-protection plan early on. One powerful solution is to buy a single-premium immediate annuity, says attorney K. Gabriel Heiser, an elder care Medicaid expert, in an interview with ThinkAdvisor.

For 25 years, Heiser focused exclusively on elder law, and estate and Medicaid planning. He is author of "How to Protect Your Family's Assets from Devastating Nursing Home Costs: Medicaid Secrets" (Phylius Press 2017-11th updated edition).

Sixty percent to 70% of nursing home patients are on Medicaid, says Heiser.

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In determining eligibility, Medicaid differentiates sharply between "assets" and "income." The potential Medicaid recipient is permitted to have only $2,000 in assets, though they can still receive certain income under certain circumstances.

In the interview, Heiser discusses a number of techniques — all of them legal — to shelter or reduce assets to qualify for nursing-home Medicaid.

One of the best, he says, is a so-called Medicaid-Friendly annuity, which essentially converts "countable" assets into income, which is exempt.

The average cost of nursing home care is $92,000 a year and much higher in New York and Hawaii, among other states. The average stay is two-and-a-half to three years. Care for a person with Alzheimer's disease in a locked unit can come to more than $450,000 annually and is typically for a period of at least five years, Heiser says.

Though Medicaid wasn't created for middle-class people "to pass their money on to their children at taxpayers' expense," Heiser writes, he reasons that it makes sense and isn't unethical to "avail yourself of the laws" in order to minimize expenditures on nursing home care and indeed "pass those savings on to your children."

Most folks make the mistake of waiting too long to plan for asset protection, says Heiser. They should begin at the first sign that their spouse, parent or sibling likely will need nursing home care.

Heiser was formerly chair of the estate planning committee of the Massachusetts Bar Association and an adjunct professor of the College for Financial Planning at David Lipscomb University. A professional version of his book, "Medicaid Planning: From A to Z," is directed at attorneys, financial advisors and CPAs.

ThinkAdvisor recently spoke with the semi-retired Heiser, 68, on the phone from home in San Miguel Allende, Mexico. He revealed some of his Medicaid secrets and how they can help clients shelter their assets. Here are highlights:

THINKADVISOR: What's critical to know about Medicaid?

GABRIEL HEISER: To qualify, you can't have more than $2,000 in Medicaid-countable assets. So if you have cash in the bank or any other assets that aren't on the exempt list, they'll count toward the $2,000. That's not a very high amount — but the point of Medicaid is that it's supposed to cover the poor.

You write that hiding money and not reporting an asset on a Medicaid application is fraud.

Yes, fraud against the government. You'll be disqualified for Medicaid, and there are also criminal penalties.

What about having income?

You can still qualify if you have, say, pension income. But there's a cap of $2,205 a month for Medicaid recipients. However, some states have a rule that if your income is over that figure, you can direct your Social Security or pension into a trust — a Miller Trust, also known as a Qualified Income Trust. The trustee pays the money to the nursing home, and Medicaid pays the difference. Typically, the bills are going to be more than $2,000 a month. So even though you have income over the cap, you can still qualify by setting up that trust.

Suppose the "community spouse" — wife or husband of a Medicaid applicant or recipient — is living at home and earning income?

Those earnings are always completely separate, and there's no cap. As of July 1, 2017, the minimum income that the community spouse is permitted to own [Minimum Monthly Maintenance Needs Allowance] is $2,030. If the community spouse has less than that, she or he can get some income from [their spouse] in the nursing home. Say the wife is living on Social Security of $1,000 a month. She'd be entitled to another $1,030 — or more — from her spouse's income.

You write that Medicaid is actually a loan from the government.

Yes, and when the recipient dies, the state can come after the person's estate to repay it. A lot of states never used to enforce that, but then the government clamped down.

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How can you plan to avoid Medicaid's going after your house?

If you're married and your spouse lives in the home, the house is exempt no matter what the value. One technique for a single person would be to own their home jointly with another family member. You can get a "ladybird deed" that says upon my death, the house passes automatically to so-and-so. A number of states allow that. It's terrible if someone doesn't avail themselves of that because it's just the price of a deed.

So a single person should take special precautions.

Right. Sometimes, if you didn't do advance planning, the state will force the survivors to sell the house and repay the nursing home bill. Then if anything is left, it will go to the family members.

What if a couple has a joint investment account?

They should transfer all the assets to the name of the community spouse.

Suppose they have assets of, say, half a million dollars in the account?

They should get help from an elder law attorney. Sometimes there isn't much you can do, and you just have to spend it down. Typically the elder law expert would recommend some combination of gifting and a Medicaid Planning annuity, and possibly an irrevocable trust. You can wait out the five-year lookback period for gifting and pay privately until the five years are up.

What if you do nothing?

That's the worst thing because you'll wind up spending all the money on the nursing home. They cost about $100,000 a year, and the average stay is two-and-a-half to three years. So you'd quickly go through that $500,000.

What about returns the investment account could be generating? Won't those be counted?

That's OK because starting 30 days after a spouse enters the nursing home, federal law says that the assets of the community spouse no longer count. So even if they won the lottery, it doesn't matter. The good news is that once the individual qualifies, Medicaid doesn't look at the community spouse's assets again.

Please talk about an irrevocable trust and the Medicaid Planning annuity you mentioned.

The best idea would be to put excess money into an irrevocable trust five years in advance. The next best thing would be to make a gift into the trust with part of the money, which is counted as a gift and is therefore subject to a five-year lookback period. The other part of the money would perhaps go into a Medicaid Planning annuity, also known as a Medicaid-Friendly annuity. That turns an asset into an income source.

Tell me more about the Medicaid Planning annuity.

It's an irrevocable immediate annuity that pays a fixed amount every month. The government says it will be counted as income, not an asset. So if you put $100,000 into this annuity, you're making it "disappear" by turning it into a source of income.

Who gets the monthly payment?

The nursing home. Typically, the annuity won't pay the whole bill, and Medicaid will pick up the difference; whereas if you kept the $100,000, you'd have to spend it down till it's gone and then apply for Medicaid.

Is the Medicaid annuity subject to the five-year lookback period?

No. That's the beauty of it. It's not considered a gift. You're just converting something from the countable side to the non-countable side. It works best for a married couple because you make it payable to the community spouse. Depending on how long the person in the home lives, you can still come out ahead by using this annuity.

You write about converting an IRA into a Medicaid annuity.

That's a very good option. Depending on the state, an IRA could be considered cash and therefore would be a countable asset. You don't have to withdraw the money from the IRA — you can convert to an immediate annuity within the IRA and get paid a monthly fixed amount.

You say that long-term care insurance is a good idea. But that's expensive. When is it appropriate to get such a policy?

It's quite cheap if you buy it in your 40s or 50s. But if you're in your 70s, it might be $5,000 or $6,000 a year. It still might be worth doing if you have the cash because it will protect your assets. I would definitely look into it. It could make sense, depending on the person's age and factors such as a family history of Alzheimer's.

Is setting up a "burial account" to prepay the Medicaid recipient's funeral and burial expenses a good idea?

Yes. Depending on the state, you can sometimes put in $8,000 or $10,000, though there's a cap. This should be an irrevocable transfer specifically for funeral and burial. I would recommend it. You might as well pay for this now because after you've spent all your money, if the person on Medicaid dies a year later, where's the money for the funeral and burial going to come from?

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If a married couple has a joint savings account, can the community spouse withdraw some of that money and put it in a separate account?

Yes. It's always a good idea to separate any joint accounts and put as much as possible in the name of the community spouse. Some states say the first $120,900 is permitted to be kept by the community spouse; other states say you have to divide by two; and half will be attributed to the community spouse, the other half to the spouse in the nursing home. But that doesn't count a house they may own, a car or other personal property.

What if they have more than $120,900?

They have to do some planning. It would be almost like a single person with too much money in their name figuring out what to do with it.

You write that one way of spending down assets is for an adult child to charge their parent for caregiving.

That's a good technique because it will quickly reduce the assets in the parent's name. Some states will allow the child to get paid in advance based on the parent's life expectancy, how much time the child is putting in, what they're doing for them and so on.

What's another way to shelter assets?

If there's a disabled child living in the house, you can transfer the house from the parents' name to the child's name; and it's not considered a gift. Or you can transfer it into an irrevocable trust for the benefit of the disabled child.

What if you transfer your home to the name of a child that's not living in the house and disabled?

Generally, that's a mistake. People think the state won't come back and take it later. But Medicaid expects its loan to be repaid. If you transfer the house to your kid's name, it disqualifies you from getting Medicaid for five years because of the five-year lookback period for gifts as a way to transfer assets.

If the community spouse receives an inheritance, they shouldn't refuse it or give it away, you write. Should they just spend it down, then?

They should accept it and then use a technique such as "half-a-loaf," where they give away half the money and with the other half purchase, say, a Medicaid annuity.

Suppose the person in the nursing home gets an inheritance?

They'll be disqualified from Medicaid until they're back down to the $2,000 limit.

What if the community spouse dies before the death of the nursing home spouse?

They have to make sure their will doesn't leave everything to the nursing home spouse. It should go into a special trust for their benefit. If you leave it outright, it's the same as their having cash or getting an inheritance.

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What if the community spouse doesn't own a house but rents an apartment instead?

One idea is for them to move in with their adult child and put their name on the deed. That way, they can convert some of the money sitting in the bank account into interest in a house, which is exempt.

Can military veterans receive any special Medicaid consideration in the scenarios we've discussed?

Veterans should definitely look into whether they qualify for the veteran administration's Aid and Attendance Pension Benefit because in some cases, they can even have assisted living paid for. The disability doesn't have to be from a service-related injury. With Aid and Attendance, [the requirement] is that they need the care at this point in time.

What's the error mistake people make regarding Medicaid?

Not planning soon enough — putting off the inevitable and then they're thrown into having to do emergency planning. When you start seeing a parent or spouse going downhill, you should try to do some planning. The best planning is done five years in advance because of the lookback period for gifts as a way to transfer assets.