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Managing Prosperity: Estate and Retirement Planning for All Ages

Planning for Long-Term Health Care

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According to Bureau of the Census data, the number of persons older than 65 years will increase from 31 million (12.5% of the population) in 1990 to over 69 million (20% of the population) in 2030. Women achieving the age of 65 years in 1995 had an average life expectancy of 18.9 additional years, while men in that category had an average life expectancy of an additional 15.6 years. The fastest growing group of the elderly are those over 85 years old. This group has grown from less than 1 million in 1960 to 3 million in 1990. Estimates place the size of this group at 8 million by 2030 and over 15 million by 2050.

Less than 5% of elderly Americans reside in a nursing home at any one time, but 43% of all people eventually spend some time in a long-term care facility[1]. Annual private-pay nursing home costs average about $40,000[2] per person per year. Medicaid does not cover long term nursing home care.

Medicaid is a joint federal and state program that helps with medical costs for some people with low incomes and limited resources. In addition to meeting income and asset requirements, persons must be aged, blind, disabled, or deprived of parental support or care to be eligible for Medicaid. Programs vary from state to state, but most health care costs are covered if you qualify for both Medicare and Medicaid.

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In 1993, Medicaid expenditures for nursing homes and home care services amounted to $44 billion. Sixty-eight percent of nursing home residents in 1992 had their care at least partly financed by Medicaid[3].

1 Peter Kemper and M. Murtaugh, Lifetime Use of Nursing Home Care, 324 *New Engl. J. of Med.* 595 (1991).

2 Richard E. Hegner, *Eligibility for Medicaid in Nursing Homes: Coverage for Indigent or Well-Off Americans?* Issue Brief No. 688 (National Health Policy Forum, June 26, 1996).

3 The Kaiser Commission on the Future of Medicaid, Medicaid Fact 1 (1996).

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The high cost of nursing home care, coupled with the limited availability of federal assistance only in certain circumstances, should provoke many individuals to consider methods of paying these future costs when planning their estate. Many people do not wish to deplete their estate with nursing home costs, leaving no inheritance for their loved ones. Other people wish to spend their assets during life. This publication will outline some basic issues pertaining to Medicaid assistance eligibility and long term care planning. The federal and Virginia laws concerning Medicaid fill several books. Therefore, this discussion is necessarily limited. An attorney who deals with Medicaid and long term planning issues should be consulted for more information.

Medicaid Eligibility

The long-term care strategy that you pursue depends upon whether you may qualify for Medicaid assistance. A Medicaid applicant must be a United States citizen and a resident of Virginia for Virginia Medicaid eligibility. Requirements and benefits differ from state to state and this publication will exclusively discuss Virginia Medicaid.

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Three categories of eligibility exist. First, the "mandatory categorically needy" class consists of aged (65 or over), blind, or disabled individuals who receive Supplemental Security Income (SSI), so long as they meet complex Virginia criteria. SSI provides monthly checks to people who are 65 or older, or blind, or have a disability and who have limited assets and income. (The Virginia criteria are beyond the scope of this publication.) The "optional categorically needy" category includes individuals who are eligible for SSI or similar state payments, but have not applied; other individuals whose incomes are less than 300% of the SSI levels and meet other qualifications; and aged, blind, or disabled individuals receiving state payments similar to SSI.

Finally, the "medically needy" category includes the aged, blind, or disabled person who would receive SSI or Aid to Families with Dependent Children payments except that his/her income exceeds a certain level. This category includes most persons who would consider long term care planning. For this group, Medicaid coverage is first predicated on "spend-down." Spend-down requires a person to pay the costs of a nursing home out of his/her income. He/She is allowed to keep $30 per month for non-medical expenses. If he/she otherwise qualifies and his/her income (less $30 per month) does not cover nursing home costs, then Medicaid covers the remaining portion of the bill. Eligibility also hinges upon the nursing home resident spending all "excess resources." Excess resources are nonexempt resources in excess of $2,000 ($3,000 for married couples).

Resources Exempt from Medicaid Consideration

The following resources are not counted in considering eligibility for Medicaid assistance for nursing home care:

- the home and adjacent contiguous property so long as the applicant, the spouse or disabled child resides in the home (The applicant is considered as living in the home during the first six months at the nursing home. After six months, unless the spouse or disabled child resides in the home, or other limited exceptions apply, the applicant is not eligible until the value of the home is "spent down." The home may have to be sold, or the family may have to pay for nursing home care from other resources.);
- personal effects and household furnishings, except "durable items" (durable items are not well-defined);
- one automobile, regardless of value;
- term life insurance (with limitations);
- cash value of life insurance, but only if the combined face value is less than $1,500;
- "burial space items" (grave sites, crypts, caskets, vaults, headstones, services incident to opening and closing grave sites,
  and services for the perpetual care of grave sites) for the applicant, spouse, or member of either immediate family, regardless of value (funds set aside for burial expenses are exempt only up to $2,500);
- certain income producing property (with limitations);
- certain lump sum payments;
- life estates in real property;
- irrevocable trusts; and,
- one-half of joint bank accounts held with the spouse.

Asset Transfers and Medicaid Disqualification

Virginia law assumes that properties transferred without adequate compensation (like gifts or below market value sales) were transferred for the purpose of qualifying for Medicaid benefits. These transfers may result in a period of disqualification from Medicaid benefits. The state may consider any transfers within the three-year period immediately preceding the application for benefits (the "look back" period) in determining eligibility. If the transfer is made to a trust, the look back period is usually extended to five years.

The period of ineligibility is determined by dividing the total value of all transferred assets within the look-back period by the average monthly costs to a private patient of Virginia nursing home services. The answer is rounded down and represents the number of months during which Medicaid will not pay for long-term care services for the applicant. If there is one transfer within the look-back period, the disqualification period runs from the first day of the month within which the transfer occurred. If there are multiple transfers within the look-back period and in different months, each transfer disqualification period is calculated separately.

For example, Ellen Elderly gives her granddaughter $50,000 to pay for college expenses on June 13, 2000. On August 15, 2000, Ellen is admitted to a nursing home. On September 15, 2000, Ellen's family applies for Medicaid benefits. Assuming that Ellen otherwise qualifies and that average monthly nursing home costs are $2,800. $50,000/$2,800 = 17.857. Therefore, Ellen is ineligible for Medicaid benefits until November 1, 2001 (17 months counted from June 1, 2000).

The following transfers will not result in disqualification:

(1) transfer of the home to certain persons;
(2) transfers of assets to a spouse or for the benefit of the spouse, to a child of the applicant under age 21 or for the benefit of such child, or to a trust for the benefit of a disabled person under age 65 years;
(3) transfers of certain tangible assets (for example, a wedding ring, engagement ring, and vehicles under certain circumstances and with certain limitations); and,
(4) transfers for fair market value or SOLELY for a purpose other than qualifying for Medicaid benefits.

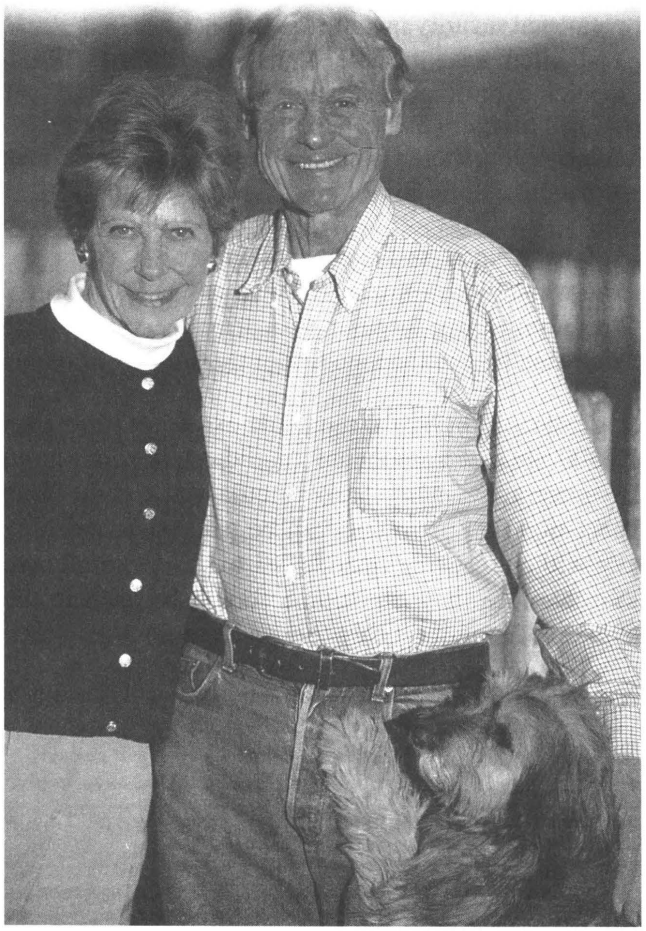
Transfers to trusts receive special, mostly negative, treatment and should be done only with caution and legal counsel.

Finally, transfers made after December 31, 1996, for the purpose of qualifying for benefits may be subject to criminal prosecution. The law imposing this penalty is now limited to attorneys and others advising elderly Americans to make such transfers.

Long-Term Care Insurance

Given the extremely complex and constantly changing rules governing Medicaid eligibility, long-term care insurance is a relatively simple planning tool that avoids consideration of Medicaid issues. The typical health insurance policy or HMO policy usually pays nothing towards nursing home care. However, only 5% of patients in nursing homes receive custodial care that qualifies for Medicaid, while about 50% of Americans will spend some time in a nursing home.

Long-term care insurance covers all or a portion of nursing home care expenses, subject to limitations, deductions, and exclusions contained in the policy. The provisions of available polices vary significantly. However, all policies involve relatively high cost. Premiums are based on your age when you buy the insurance, the daily benefit you choose, the length of time for which the insurance will pay, elimination period options and other factors.



If a person has adequate income to make the premium payments, a long-term care insurance policy offers valuable benefits that may help achieve planning goals. You should also consider the extent of the assets you wish to protect and your estate planning goals in evaluating a long-term care policy.

Virginia law requires that the insurer give the applicant a summary of the policy coverage at the time of application or upon request. In addition, the insured has a right to return the policy within thirty days and receive a full premium refund. These provisions allow the advisable strategy of having a qualified attorney review several policies to assist in making a choice among policies. A long-term care policy may not be canceled because of the age or deterioration of the physical or mental health of the policyholder.

In general, you should not buy long-term care insurance if:

- You can't afford the premiums.
- You have limited assets.
- Your only source of income is Social Security benefit or supplemental security income (SSI).
- You often have trouble paying for utilities, food, medicine, or other necessities.

Similarly, you should consider buying long term care insurance if:

- You have significant assets and income.
- You want to protect some of your assets and income.
- You want to pay for your own care.
- You want to stay independent of the support of others

As a rule of thumb, those with assets of less than $25,000 are not appropriate candidates for long-term care coverage. Also, there should be a reasonable expectation that premiums can be paid on an ongoing basis without causing financial distress. Generally, no more than 7% of your income should be used in the purchase of long-term care insurance.

Conclusion

The likelihood of needing nursing home care along with the high costs of these services plays an important role in any estate plan. Complex and constantly changing Medicaid qualification rules offer serious challenges and limited planning opportunities. Long-term care planning considerations often overlap with and/or conflict with other estate planning considerations. For example, how the transfers of assets to a trust or real property to a limited liability company impacts Medicaid eligibility.

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Each individual must establish his/her estate planning goals and determine the importance of long-term care planning within that context. The rules pertaining to Medicaid eligibility are complicated. Given the complexity and ever-changing nature of the rules, competent legal advice is essential. The authors therefore recommend that the reader seek out an attorney with experience and knowledge in this particular area. Note that many estate-planning attorneys lack this knowledge.

Even if the reader determines that long-term care insurance meets his/her needs, a knowledgeable attorney is essential to assist in interpreting and evaluating the broad range of available policies. Failure to adequately consider long-term care planning can destroy even the best-laid estate plans.

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