

Conference on Aging

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Medicaid, Long-Term Care, & Protecting Assets

Caveats

Presentation not legal advice

Examples will be Indiana-based

Lots of flavors of Medicaid

Our focus is Medical Assistance for Blind, Aged, Disabled and specifically for long-term care in and outside nursing facilities

What are we talking about?

Medicaid & long-term care

Medicaid v. Medicare

Medicaid is needs based, state/federal funded, payor of last resort, varies state to state

For every \$1 state pays, feds kick in anywhere from \$1 for Alaska to \$3.52 for Mississippi

Medicare is federal, funded thru payroll tax, trust fund, same rules nationwide

Long-Term Care

nursing home care

home care: nursing, therapy, medication management, personal hygiene, companion care, housekeeping & homemaker services, meals

Medicare does NOT pay for long-term care

Medicaid funding of nursing home alternatives varies widely from state-to-state

% of long-term care dollars for non-institutional care: 33.4% in Mississippi to 83.3% in Oregon

Indiana continues to compete with Mississippi at 35%

<https://www.mathematica.org/news/new-report-states-made-progress-rebalancing-medicaid-long-term-services-and-supports-but-major>

ADLs

Basic ADLs - indicator of need for long-term care

Ambulating: ability to move from one position to another and walk independently.

Feeding: ability of a person to feed oneself.

Dressing: ability to select and don appropriate clothes

Personal hygiene: ability to bathe and groom oneself and maintain dental hygiene, nail, and hair care.

Continence: ability to control bladder and bowel function

Toileting: ability to get to and from toilet, using it appropriately, and cleaning oneself.

Medication: ability to take medications as directed

HCBS

- Home and Community Based Services Waiver - state must get plan approved by feds
- Aim to provide care more economically in a more desirable setting when feasible

What does Medicaid pay for?

Mandatory

- Inpatient hospital services
- Outpatient hospital services
- EPSDT: Early and Periodic Screening, Diagnostic, and Treatment Services
- Nursing Facility Services
- Home health services
- Physician services
- Rural health clinic services
- Federally qualified health center services
- Laboratory and X-ray services
- Family planning services
- Nurse Midwife services
- Certified Pediatric and Family Nurse Practitioner services
- Freestanding Birth Center services (when licensed or otherwise recognized by state)
- Transportation to medical care
- Tobacco cessation counseling for pregnant women

Optional

- Prescription Drugs
- Clinic services
- Physical therapy
- Occupational therapy
- Speech, hearing and language disorder services
- Respiratory care services
- Other Diagnostic, screening, preventive and rehabilitative services
- Podiatry services
- Optometry services
- Dental Services
- Dentures
- Prosthetics
- Eyeglasses
- Chiropractic services
- Other practitioner services
- Private duty nursing services
- Personal Care
- Hospice
- Case management
- Services for Individuals Age 65 or Older in an Institution for Mental Disease (IMD)
- Services in an intermediate care facility for Individuals with Intellectual Disability
- State Plan Home and Community Based Services- 1915(i)
- Self-Directed Personal Assistance Services- 1915(j)
- Community First Choice Option- 1915(k)

TB Related Services
Inpatient psychiatric services for individuals under age 21
Other services approved by Secretary*
Health Homes for Enrollees with Chronic Conditions – Section 1945

Why would you want Medicaid?

Cost of care

<https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

Nursing home - semiprivate median \$7908 (IN \$7,270) per month

Assisted Living Facility - \$4,500 (IN \$4,283) per month

Adult Day Health Care - \$1,690 (IN \$1,733) per month

Home Health Aide - \$5,148 (IN \$4,767) per month

Homemaker Services - \$4,957 (IN \$4,767) per month

Need

1/3 of people turning 65 will need nursing facility care in lifetimes

2/3 will need long-term care during lifetimes

<https://files.asprtracie.hhs.gov/documents/aspr-tracie-ta-long-term-care-statistics-6-27-17-508.pdf>

2/3 of IN nursing facility residents use Medicaid

Protect spouse who does not need LTC - yet

Alternatives to Medicaid

long-term care insurance

some offer Medicaid asset protection in some states

reverse mortgage or savings

family & friends

Qualifying for Medicaid [CAUTION: Rules vary widely by state]

Medical Criteria

usu. unable to perform 3 ADLs independently

i.e., would otherwise qualify for NF care

Financial Criteria

Income

Assets

Five-year lookback for gifts or other uncompensated asset transfers

Married couples with one spouse needing care treated more generously

Certified provider - not all facilities take Medicaid

Income

Unmarried individual or "institutionalized" spouse

2022 income "cap" \$2,523.00

Institutionalized spouse is one living in a hospital / nursing facility for 30 or more days in a row or

approved for HCBS waiver and having a spouse not approved for those;
and has spouse not receiving that care ("community" spouse)

Income not "deemed" from community spouse to institutionalized spouse

i.e., only spouse needing help has his income counted

Income cap is a fiction; work around is Miller (aka Qualifying Income Trust)

Miller trust is for only income of individual, not assets or gifts from anyone

Income types

Social Security, pension, interest income, dividends, annuitized annuity payments, rental income, etc

Assets / Resources

limit for an unmarried individual is \$2000

for married couple both needing Medicaid to pay for long-term care, limit is \$3000

for married couple with only one spouse needing long-term care, limit is between \$28,076 and \$139,400

half of countable assets held at start of first "institutionalization" of 30 days in a row after September 30, 1989

plus \$2000 up to ceiling of \$139,400

some states just have a fixed limit of \$139,400

changes every year with cost of living increases

not all assets count, some are "exempt" - varies greatly from state to state

Typical exempt assets

residence with equity value not greater than \$636,000

one vehicle

Additional exempt or unavailable assets in Indiana

IRA, 401k, etc. of community spouse

real property owned by community spouse but not by institutionalized spouse

rental real property making a profit

loans with a Medicaid-qualifying promissory note

US savings bonds within 12 months of purchase

Typical countable assets

Checking, savings, CDs, Xmas Club, brokerage accounts, stocks, bonds, etc.

IRA, 401k, etc of institutionalized spouse

Cash surrender value of life insurance

Annuities that can be cashed in

Extra vehicles

Real property owned by both spouses and not connected to their residence

Five-year Look-back

Medicaid presumes that any gifts or transfers of assets for less than fair market value were made to qualify for Medicaid

Penalty is disqualification for nursing home or Home and Community Based Services

for as many months as gifted value would cover the cost of nursing home care

penalty not starting until otherwise eligible for Medicaid

can try to prove that transfer was for reasons having nothing at all to do with

Medicaid eligibility but difficult and unpredictable

Gotcha: Penalty can last far longer than 5 years

Estate recovery

After the individual dies, feds expect states to recover benefits paid from age 55 on

exceptions include when survived by spouse or disabled child

Some states more aggressive than others

HELP(!)

Medicaid is complicated

Gotchas abound and there are exceptions to nearly everything, often even exceptions to the exceptions!

there are reasonable strategies to protect assets and avoid estate recovery ranging from gifting and waiting 5 years to apply for Medicaid to gifting half now and loaning half to pay for care through penalty period to pooled special needs trusts to Medicaid compliant loans to US savings bond purchases and more

Skilled advocate needed

Elder law attorneys often have the skill set

Membership in NAELA big plus

Membership in state NAELA chapter and/or state elder law section also

Ask friends & fellow support group members

Ask social workers

Ask nursing home business office managers

How long has attorney engaged in Medicaid advocacy in particular?

How does attorney keep up on local Medicaid changes and practices?

Who does attorney consult with on complex or novel issues?

What portion of practice devoted to Medicaid advocacy and counseling?

For low-income, low-asset individuals, local Legal Services Corporation grantee often a good bet

Avoid annuity sellers and others trying to sell you a one-size-fits-all product

Presenting Partner:



Supporting Partners:



Contributing Partners:

