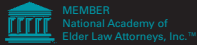


Elder Law in Pittsburgh

SUMMER 2007



NEWSLETTER OF THE ELDER LAW OFFICES OF PETRICH & SYKES, LLC

Pennsylvania implements new Medicaid provisions

Pennsylvania has now implemented the most significant new Medicaid rules in nearly two decades.

Slightly more than a year after passage of the federal Deficit Reduction Act, the Pennsylvania Department of Public Welfare (DPW) issued guidelines describing how the Act will change Medicaid procedures, starting with applications filed March 5, 2007 or later. The new guidelines tell us more about how the Deficit Reduction Act will affect Pennsylvania applicants.

Community spouses

One of the most significant changes applies to community spouses – that is, the spouses of persons who apply for Medicaid.

Federal law provides that a community spouse is entitled to a certain minimum monthly income. Often, a community spouse's income falls below that amount, and the question becomes where the community spouse will get the rest of the income.

Before the new rules, Pennsylvania authorized community spouses to use some or all of their excess financial resources (that might otherwise be spent down) to generate needed income. Through a process that involved an initial denial and appeal, DPW would stipulate that the community spouse could put excess resources into an annuity for the community spouse, instead of spending those resources down.

That process has now changed. Many couples that would have been authorized to use excess resources for the community spouse's benefit under

the old rules face an outright denial of benefits.

Under the new "income first" rule, a community spouse must look first to the Medicaid applicant's income to make up any shortfall in the community spouse's allowed income. The result will be that many more married couples will end up spending down significantly more money to qualify for benefits.

On the other hand, new rules applying to annuities offer such couples additional options to use excess funds to help the community spouse. Problem is, such annuity options are not a built-in part of the approval process, as they were before the new rules.

With the right planning, community spouses could end up as well off, or better off, than under the old rules. But they will have to know, before applying, what options best suit their circumstances and how to put the right pieces into place.

As a result, professional advice from an elder law attorney is more important than ever when a married person applies for Medicaid.

Gifting changes

As before the new rules, the state imposes a period of Medicaid ineligibility when an applicant has given away assets, without receiving fair market value in return, during the "look-back period" prior to application. The number of months of ineligibility is based on the amount of the gifts.

The first change lengthens the look-back period – the time for which DPW will look to see if gifts were given.

The new rules lengthen the look-back period from 36 to 60 months for all gifts made on or after February 8, 2006 (the date President Bush signed the Deficit Reduction Act). Because this change applies prospectively, the expanded look-back period required on new applications will phase in between 2009 and 2011.

For gifts given on or after February 8, 2006, the penalty period will run when a Medicaid applicant would otherwise have qualified (but for the gift), rather than from the month the gift was given (as under previous law).

As a result, seniors who have made gifts could face Medicaid ineligibility if they need to apply within five years.

The guidelines consider factors such as sudden onset of illness, and other exceptions to ineligibility. However, it is now more important to consider the consequences of gifts, and to get professional help if gifts in the past few years cause problems with qualifying.

Bottom line

Rules have tightened, and qualification for Medicaid has become more complicated – particularly for married applicants. However, the right advice and planning can still protect assets and enhance the community spouse's financial future. ■

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Use your horse sense when drafting a will

A recent Pennsylvania court ruling points up the value of precise drafting in estate planning.

The Last Will and Testament of Henry H. Wilton contained the following clause: "I give and bequeath my saddle and bridle, by double and single harness and tack, all my horse-drawn vehicles, and any Rose Tree Hunt memorabilia to my good friend, John Brislin."

Mr. Wilton and Mr. Brislin had been close friends and avid members of the Rose Tree Fox Hunting Club, the oldest fox hunting club in the United States, dating back to 1859.

Following Mr. Wilton's death, and the distribution of his effects, Mr. Brislin complained that many items of "Rose Tree Hunt memorabilia" had been sold at auction for a total value of \$80,850.77, instead of given to him under the will.

The executors apparently refused to pony up the money, so Mr. Brislin went hunting for a better deal in court. He testified that he and Mr. Wilton "thought on the same wavelength" and would both consider "anything to do with horses, hounds, or foxes, fox hunting scenes, or anything like that" as "memorabilia."

The trial court reined in Mr. Brislin's expansive definition, and held that the term referred only to

those items that had an "obvious and objective connection with Rose Tree Hunt." The court's definition did not include such items as dinnerware depicting foxes or hunt scenes, a weathervane depicting a horse, or a chair made of horseshoes.

Pennsylvania Superior Court upheld the ruling on appeal: *[W]e must focus on the precise wording of the will and ... are not permitted to determine what we think the testator might or would have desired under the existing circumstances, or even what we think the testator meant to say. Rather, we must focus*



on the meaning of the testator's words within the four corners of the will.

In their book *The Family Fight: Planning to Avoid It*, estate lawyers Barry Fish and Les Kotzer offer a pertinent suggestion relating to personal effects:

[A]void using general phrases such as 'my antiques' because such

phrases are hard to define and may create confusion and even arguments among your beneficiaries. For example, it is quite clear that an antique would be descriptive of an item which was from the era of the 19th century. However, it is not so clear that an item manufactured during the 1950's is an antique. The search for definition may well lead your beneficiaries to the courthouse.

Mr. Brislin's hounding was not entirely in vain – the court did award him the value of sleigh bells sold at auction (\$143.75), ruling that the bells were appropriate for fitting on horses, and therefore constituted "tack." Let's hope Mr. Brislin's paltry award didn't leave him saddled with a large legal bill. ■

Publications Available

The following publications are available free of charge by calling our office at (412) 531-7123. You can also order online at www.ElderLawofPgh.com.

- Basic Rules of Pennsylvania Nursing Home Medicaid Law
- Special Needs Trusts
- Pennsylvania Estate Planning
- Tips for Survivors: What to do When a Loved One Dies



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