

LawClips

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Topic for the Month

Medicaid 2014

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The cost of financing a stay in a nursing home has increased steadily over the years.

State of Wisconsin figures indicate the average cost of a one month stay in a nursing home now exceeds seven thousand dollars (\$7,000). Because of this, public assistance becomes crucial for most nursing home residents. For many individuals, admission to a nursing home will require families to consider the Medical Assistance program (also known as Medicaid or Title XIX).

The requirements to qualify for Medicaid have always been complex. However, the Budget Bill passed by the Wisconsin Legislature in June 2013, and subsequent amendments to this legislation, have made the program even more complex. This article highlights certain provisions of the new law, many of which became effective on August 1, 2014.

In order to qualify for Medicaid, the applicant must meet certain asset limits. Once an individual meets the assets test, an application is submitted. Prior law indicates the applicant and his/her spouse could not have given away assets (with certain exceptions) five years prior to applying for Medicaid. This five year look-back provision remains in the law. The new law, however, now indicates no gifts are to be made for a period of five years after the nursing home patient begins receiving Medicaid benefits. If such gifts are made in this five year look-forward, the nursing home patient will lose his/her Medicaid benefits. Consequently, there is now a ten year gifting prohibition: five years before Medicaid, as well as five years thereafter.

Another change to long standing rules includes the use of life estate deeds. This is an arrangement whereby a parent owning real estate will keep his/her own name on the deed, owning what is called a life estate. The names of one or more other family members are then added to the deed, owning what is called a remainder interest. If this arrangement was established five years prior to applying for Medicaid, the property was considered a protected asset. Previously, at the date of death of the parent, the State did not have a claim against such real estate. The new law indicates that life

estate deeds established prior to August 1, 2014 will not be impacted by the new law. Life estate deeds established on or after August 1, 2014 will be subject to the new estate recovery rules. That is, the State will be entitled to a claim on such property at the death of the parent. As a result, while such deeds may be useful for other estate planning purposes, they will not be as beneficial in a nursing home context.

Estate Recovery is also a major portion of the new law. This is the program the State of Wisconsin uses to recover the cost of a patient's Medicaid payments from the family. Historically, families have attempted to avoid recovery against the decedent's assets by avoiding probate and a variety of other techniques used by elder law attorneys. The new law now recovers assets from families in many additional ways.

The State has always recovered from probate estates and payable on death accounts. The new law now permits the State to recover from assets such as joint tenancy property, life estate deeds, revocable trusts in the name of the healthy spouse, life insurance policies and many other assets. Such recovery is made after the death of the healthy spouse who is not in the nursing home. Given that the healthy spouse cannot give assets away for a period of five years after the date the nursing home patient begins receiving Medicaid payments, many assets previously protected from the estate recovery process will now be subject to the program.

To illustrate the new estate recovery rules, assume the healthy spouse owns a life insurance policy, naming adult children as beneficiary. The State traditionally did not recover from this type of policy because a beneficiary was named, thereby avoiding the probate process. Under the new law, the State will be entitled to make a claim against the children who received the death benefit from the policy. It is unclear how the State will enforce its claim on such a policy. However, the beneficiaries of such policies will need to be aware of this possibility and how to deal with such a claim.

As a result of these new law changes, planning to obtain Medicaid benefits as well as planning to avoid the estate recovery program has become much more complex. The use of special needs trusts and other planning techniques will become increasingly important. The use of the probate process will also become more common as families try to preserve the family nest egg from the cost of this long term care.

The elder law attorneys at Stellpflug Law welcome the opportunity to discuss these new provisions with you and your family. We can put together a plan that will ensure your loved one receives the best possible care in the nursing home, while preserving the family nest egg to the maximum extent possible.

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Barbara Fontaine



Stellpflug Law, S.C. welcomes Attorney Daniel J. Walsh, CPA to the firm. Dan, formerly with Walsh Law Office in De Pere, joined Stellpflug Law, S.C. in April of this year. Dan's practice areas include elder law, veteran's benefits planning, estate planning, probate & trust administration, guardianships, real estate and small business law.

Dan wrote the article in this newsletter to help shed some light on recent changes in the law that could affect how you protect your assets for the future. Dan, along with his paralegal Barb, have been a great addition to the Stellpflug Law team!

Welcome Dan and Barb

Daniel J. Walsh

