Ask the Lawyer

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Ask the Lawyer is a new regular feature for Quality Lifestyle magazine. Each issue will address your questions in areas relating to estate, probate, elder law, Medicaid, Medicare, and eldercare legal advocacy and counseling. If you wish to have your questions answered, please send them to Sanford J. Mall, 31000 Northwestern Highway, Suite 220, Farmington Hills, MI 48334. The questions below came from recent meetings at the law offices of Mall, Hamilton & Associates, P.C.

Most elders and their families are greatly concerned about the extremely high cost of long-term care. Truly, even the best planned estates are still at risk of the long-term care costs eroding or worse, wiping out a family's life savings. For all those young enough and healthy enough – long-term care insurance may be just the right answer. However, if it's too late (or too expensive) to obtain coverage, then having a flexible plan that can direct and provide asset preservation may be the final hope. If you need care, do you want to burden your children or other family members? Or, would you and your family have much more peace-of-mind knowing that your planning has addressed this critically important challenge. In this issue of Ask the Lawyer, we answer some of our client's frequently asked questions about Medicare, Medicaid and how to plan to maximize quality of life and quality of care without going broke.

What is the difference between Medicare and Medicaid?

Medicare is the federal health insurance program for elders and certain disabled persons. Coverage for Medicare is not based on a person's assets or ability to pay for medical services – it is an entitlement program. By contrast, Medicaid is a program designed to cover medical expenses when no other resources are available. Medicaid is a welfare program. Medicare pays only a small fraction of the overall long-term care nursing bills in this country. Most long-term care costs are paid by the Medicaid program.

Since Medicaid is a welfare program does that mean someone on Medicaid will not get the same quality of treatment and care as someone on Medicare or private pay?

No, the same level of quality of care should be provided regardless of the payment source. Federal and state laws protect the residents of Medicaid certified nursing homes by making it illegal to differentiate and provide substandard care to a resident because of their source of payment. In other words, discrimination against a Medicaid recipient is not allowed under the law. However, our experience is that even when families have been in the "best facilities" and private paying top dollar – quality of care generally improves when there is family participation and advocacy.

My husband had a stroke. If he goes into a nursing home from the hospital does Medicare pay for his entire nursing home bill?

The maximum Medicare nursing home benefit is 100 days. The Medicare program is designed as a short-term payor until the patient is well enough (recovers) or is determined he will not get better (and may be in need of long-term custodial care). In your husband's case, Medicare may pay 100% for up to the first 20 days of his stay if he receives skilled nursing care. Additionally, after his first 20 days, if he continues to be certified (by the treating physician) as continuing to need skilled care, then he may be eligible for up to an additional 80 days at a co-pay rate. If your husband is also covered by a medigap policy such as Blue Cross, the co-pay may be paid entirely by his supplemental health insurance carrier.

Remember two very important points: 1) to be eligible for the Medicare benefit the facility must be a Medicare certified facility (if not, then Medicare won't pay; and 2) in these budget crunch times it is becoming less common to see someone qualify for the maximum Medicare coverage. In fact, many families call upon our services to help them increase the number of days covered by Medicare. More information about nursing home rights and advocacy will be covered in a future issue of Quality Lifestyle – Ask the Lawyer.

The nursing home we've chosen for Mom has a 2 – 3 year waiting list Medicaid. She needs nursing care now and she'll be out of money before she gets to the top of the list. Does the family need to keep paying out-of-pocket until Mom gets to the top of the list?

No, you do not have to keep paying privately after Mom spends all her money. The "waiting list" families hear about is for someone that comes to the nursing home already on Medicaid (no private pay funds). Nursing homes can (and do) discriminate in the admission process when deciding whether to accept a Medicaid resident. The simple fact is that a Medicaid recipient will probably not be admitted to the facility of their (or their family's) choosing. The reason is economic; Medicaid payment rates (to the nursing home) are lower than Medicare or private pay rates. Therefore, nursing homes generally establish policies that help them limit the number of Medicaid residents while working to increase the population of private pay residents.

The most important, little known fact is that once "admitted" to the Medicaid certified facility, the resident

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cannot be required to relocate to another facility just because they run out of money and apply for Medicaid. In most cases the best planning is designed to 1) assure admission to the facility of choice; 2) preserve assets and 3) obtain Medicaid coverage.

Rather than play the "waiting list" game, your family should meet with a qualified ElderCare attorney who may be able to help save money, keep Mom in the facility of her choice and obtain Medicaid early. For example, If Mom has $100,000.00, proper planning can easily protect the majority of her money and even help provide her better quality of life and quality of care.

Mom and Dad have their home, a car, and about $250,000 of assets. Dad's in a nursing home on Medicare and won't be able to come back home. How much money can Mom keep to maintain her quality of life and how much of their money has to be spent before Dad can go on Medicaid?

Proper planning, even at this late stage, can help preserve your parent's assets, and protect both Mom's and Dad's quality of life. Special (but little known) rules apply to married couples. Because of those rules it is possible to save virtually all of your parent's money for them. Without proper planning and guidance almost $156,000.00 would be at risk and have to be spent down before Dad would be Medicaid eligible. Additionally, even though Dad is going to the nursing home, what happens if Mom passes away first? Without proper planning, all their assets would once again be at risk. Proper planning would help protect the assets to be used to improve Dad's care during his lifetime and if anything remains when Dad passes away the assets can be distributed as your parents wish.

If I go on Medicaid will the State take my house when I'm gone?

No, (at least not yet) there is presently no estate recovery law in Michigan. However, this answer could (and probably will) change. We know that the State is struggling with budget problems and estate recovery has been looked at as one way to help get money back in the treasury. When we plan for our clients, we take these facts into consideration. If you are not yet seeking Medicaid and may never need to, you should have your total estate plan reviewed to make sure that proper flexible planning has been included empowering your agent(s) and/or successor trustee(s) to carry-out your planning goals if and when the time comes. On the other hand, if you can no longer stay in your home, then it may be best to consider selling your home, eliminating the added costs of maintaining it, paying taxes, insurance, etc… The proceeds could then be used to help provide added protection for your quality of care and quality of life and do other allowable planning to preserve what you have worked hard for.

I'm 72 years old, live in my own home, drive and take care of myself. Most of my money (about $150,000) is in CD's. The bank suggested an annuity to "protect me from Medicaid." Is this a good plan for me?

No, based on your facts the annuity you heard about at the bank is probably not a good idea for you to protect you from Medicaid (or the cost of long-term nursing care). Presently, you are living independently with no apparent signs of needing such care or protection. Medicaid annuity rules can be quite complicated. When the use of this type of annuity is appropriate, it can work to protect anywhere from modest to large amounts of a person's savings. Generally, the right time to consider an such an annuity is when someone has run out of other options, have too many countable assets to receive Medicaid coverage, and won't need access to the money (other than the income stream) during the term of the annuity.

Annuities like other investment and insurance planning tools are best looked at together with your complete estate, financial and ElderCare legal planning needs. Annuities can be excellent planning tools but should be considered with caution and only after seeking competent professional counsel.

Can I just give my assets away to my children and wait three years to get on Medicaid?

Yes. However, this is an overly simplified plan with lots of potential problems. First, how do you know 3 years in advance if you will need Medicaid coverage? Second, once your assets are given away for Medicaid purposes, you are vulnerable; your assets are no longer yours. Instead, your life savings is now at risk of being taken by your children's creditors (in the event of lawsuit, divorce, credit cards bills, etc…). You may also be creating unexpected tax problems and extra tax expense that could easily be avoided with proper planning. Although this "give it all away now" plan is often discussed, most people really are not (and rightly so) prepared to give up all control over their life's savings (even to the best intended and most trustworthy and loving of children). Proper planning takes a bit more time but provides a lot more peace-of-mind and protection for you and your loved ones.

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